

CITY ADMINISTRATOR
ROBERT OMANS

CITY CLERK
DEBBIE LEE

FINANCE DIRECTOR
ROBIN NEWCOMB

PUBLIC WORKS DIRECTOR
MATHEW BAILEY

POLICE CHIEF
RICH ALBO

FIRE CHIEF
ED MILLS

PLANNER
COLLEDA MONICK

Special Meeting
Cle Elum City Council - Bullfrog Flats
March 25, 2025

4:00 PM



119 W FIRST STREET
CLE ELUM, WA 98922

MAYOR
MATTHEW LUNDH

MAYOR PRO TEM
STEVEN HARPER

CITY COUNCIL
CASSIDY BUECHLE-CURTIS
BETH WILLIAMS
JERRED WEIS
KEN RATLIFF
STEVEN COOK
AUDREY MALEK

CITY ATTORNEY
ALEXANDRA KENYON

Join Virtually with Zoom: <https://zoom.us/j/7573184018?pwd=dERndjBJVC9GdVQ1d2ISRExwZFhXZz09>
Meeting ID: 757 318 4018 Passcode: 98922

Join by Phone: 1-(253)215-8782, Meeting ID: 757 318 4018, Passcode:98922

TextMyGov

Receive city text alert notifications: text CLEELUM to 91896

DISCLAIMER: The City does not guarantee that virtual or telephonic access to the City Council meeting will be available and the City does not warrant audio quality. Attendees are encouraged to attend in-person.

1. **Call to Order, Pledge of Allegiance, and Roll Call**
2. **Closed Record Public Hearing**
 - a. Resolution 2025-008 - Bullfrog Flats Master Plat and 3 Preliminary Plats
3. **Open Hearing**
 - a. Resolution 2025-009 - Amending the 2002 Development Agreement and Related Agreements
Request to Transfer the Development Agreement from Sun to Blue Fern
Request to Extend the Development Agreements Term by 10 Years to 2037, and Associated Conditions.
Traffic Mitigation Agreement
Water Mitigation Agreement
4. **Adjourn**

Upcoming Meetings:

General Government Committee Meeting: March 26, 2025 @ 8:30 a.m.

Planning Commission Meeting: April 1, 2025 @ 6:00 p.m.

Public Works & Community Development Committee Meeting: April 2, 2025 @ 12:00 p.m.

Coal Mines Trail Commission Meeting: April 7, 2025 @ 6:00 p.m.

Special Meeting Agenda March 25, 2025

119 W FIRST STREET
CLE ELUM, WA 98922

Regular Council Meeting: April 8, 2025 @ 6:00 p.m.

Lodging Tax & Events Committee Meeting: April 9, 2025 @ 8:30 a.m.

Historical Preservation Commission Meeting: April 15, 2025 @ 3:00 p.m.

Public Safety & Health Committee Meeting: April 16, 2025 @ 1:00 p.m.

City of Cle Elum

119 West First Street

Cle Elum, WA 98922



CITY OF CLE ELUM

Phone: (509) 674-2262

Fax: (509) 674-4097

www.cleelum.gov

From: City of Cle Elum Planning Department

To: Cle Elum City Council

Re: Memorandum Regarding March 25, 2025 Special Meeting on Bullfrog Flats Project

For Council consideration, there are two Resolutions:

The first Resolution pertains to the Master Plat and Preliminary Plats for Phases S-1, S-2, and J of the Bullfrog Flats Development Project and will be reviewed during a Closed Record Hearing.

The second Resolution pertains to the following: (1) amendments to the 2002 Bullfrog Development Agreement, which encompass changes to length of the agreement and associated conditions, (2) the proposed transfer of the Rights, Responsibilities, and Obligations under the Development Agreement from Sun Communities, LLC, to Bull Frog Flats, LLC; and (3) agreements relating to the future development of transportation and water system improvements and to address and mitigate the Bullfrog UGA development's impacts on transportation and water supply facilities.

Summaries of each Resolution, along with embedded links to supporting documents are provided below.

A complete copy of the record, including public comments, applicant submittals, as well as a Staff Report, can be found [here](#).

RESOLUTION 2025-008

Subject to the procedures of a Type 4 Review, this action shall be considered through a Closed Record Public Hearing process, with a decision based on the recommendation of the Hearing Examiner.

Master Plat, Boundary Line Adjustment, and Preliminary Plats for Phases S-1, S-2, and J

The Bullfrog Flats Development Project is a phased, mixed-use development located in the western part of Cle Elum, between Bullfrog Road and SR 903. The current proposal is for approval of subsequent development pursuant to the 2002 Bullfrog Flats UGA master site plan and development agreement approved by the City in 2002 (the "2002 Development Agreement"). The application is comprised of a boundary line adjustment to establish parcels and phase boundaries for the master plat, and preliminary plat applications for the first three phases: S-1 (103 single-family units), S-2 (130 single-family units), and J (164 zero lot line townhouse units), for a total of 397 units. The applicant is also requesting [minor](#)

[modifications](#) to certain conditions and development standards established in the 2002 Development Agreement, including increased lot coverage, adjusted impervious surface limits, changed garage door restrictions, replacement of the lake and clubhouse with a public park, and private ownership and maintenance of pocket parks by the homeowners' association.

The Hearing Examiner issued a [Recommendation](#) for approval, subject to conditions (beginning on pg. 24), on March 3, 2025.

RESOLUTION 2025-009¹

Pursuant to the terms of the Development Agreement, the City Council must approve amendments to the Development Agreement, mitigation agreements, and must provide consent to a party to the Development Agreement seeking to transfer their rights, responsibilities, and obligations. This action will be considered through an [Open Record Public Hearing](#) process.

Second Amendment to the Development Agreement

This amendment allows for two extensions of five years, for a potential total extension of ten years, to the term of the Development Agreement, up to October 30, 2037, provided that certain conditions are met by the Applicant. The conditions are designed to incentivize the Applicant to timely advance the Bullfrog UGA development. The first five-year term extension to 2032 shall be permitted if the Applicant has (1) submitted applications for a minimum of 600 residential units and demonstrated compliance with all conditions relating to access, utilities, and public facilities to serve those units, (2) submitted applications for the construction of a public recreational amenity, and (3) either: (i) conveyed the required acreage for the City or a non-profit to develop the required affordable housing, or (ii) committed to develop the affordable housing themselves. The Applicant must meet these conditions by October 30, 2027, the current term expiration date for the Development Agreement, to be entitled to the 2032 extension.

The second five-year term extension to 2037 shall be permitted if the Applicant has (1) submitted applications for a minimum of 1,000 residential units (inclusive of the 600 from the previous extension) and demonstrated compliance with all conditions relating to access, utilities, and public facilities to serve those units, (2) submitted a complete application for either: (i) at least one commercial building in the Business Park, or (ii) a major modification to the Business Park portion of the Project, and (3) in the event the Applicant decided to develop the affordable housing themselves, they must submit complete land use applications by October 30, 2029. All other conditions for the 2037 extension must be met by October 30, 2032.

¹ Copies of the agreements below will be provided as part of the Council package prior to the special meeting. Summaries are provided below as a reference for the Council's consideration.

City staff supports approval of the Second Amendment, as the terms provide the Applicant with additional time to develop the project, while incentivizing the Applicant to proceed in a timely manner and advance certain components of value to the City, including a public recreational amenity and affordable housing.

Transfer of Development Agreement Rights, Responsibilities, and Obligations:

Provides the City Council’s consent to the transfer of the rights, responsibilities, and obligations under the Development Agreement from Sun Communities to the Applicant, Bullfrog Flats.

Section 9 of the Development Agreement states that the City’s consent shall not be unreasonably withheld, and that only a “material reason” can justify refusing consent, such as evidence the transferee has reneged on similar agreements in the past. As required under the Development Agreement, the City has provided affected public entities with notice of the requested transfer, and no public entity or agency has identified an objection to the transfer.

The City Council has consented by resolution on two previous occasions to transfers under this Development Agreement. City staff supports approval of the transfer. The Applicant’s proposal generated significantly more public support and less controversy compared to the Sun Communities proposal, and City staff have not found a material reason to withhold consent to the proposed transfer.

Transportation and Water System Mitigation Agreements

The SEPA analysis prepared for the Bullfrog Flats project identified potential impacts to the City’s transportation and water system resulting from the project, as well as the potential need for construction of future improvements and facilities to meet demands associated with the project. City staff, in consultation with the applicant, has developed proposed agreements to address the future development of transportation and water system improvements and to address and mitigate the Bullfrog UGA development’s impacts on transportation and water supply facilities.

City staff supports approval of the agreements to provide greater certainty to both the City and the Applicant regarding the development of these improvements.

RESOLUTION NO. R-2025-008

A Resolution of the City Council of the City of Cle Elum approving the Master Plat (Boundary Line Adjustment) and Preliminary Plats for Phases S-1, S-2 and J for the Bullfrog Flats Master Planned Development; Adopting the Hearing Examiner’s Recommendation; and Providing for severability

WHEREAS, on January 30, 2025, the City of Cle Elum Hearing Examiner (“Hearing Examiner”) held an open-record public hearing to consider the application for a Boundary Line Adjustment (which establishes parcel and phase boundaries and serves as the Master Plat) and Preliminary Plats known as “Phase S-1, S-2 and J” submitted by Bullfrog Flats, LLC (PMU-2024-002, BLA-2024-004, SUB-2024-001, -002, -003); and

WHEREAS, on March 3, 2025, the Hearing Examiner issued his written “Findings, Conclusions and Recommendation of Approval for Bullfrog Flats’ Applications” (“**Recommendation**”) recommending approval of the proposed master plat and preliminary plats, subject to conditions; and

WHEREAS, the proposed applications conform with 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’” dated October 30, 2002 and as amended by the First Amendment dated March 28, 2017 (the “**2002 Development Agreement**”), Cle Elum Municipal Code, and Comprehensive Plan; and

WHEREAS, at a Closed Record Public Hearing on March 25, 2025, after notice duly given according to the requirements of the Cle Elum Municipal Code, the Cle Elum City Council adopted the Hearing Examiner’s Recommendation; and

WHEREAS, the City of Cle Elum has complied with the substantive, procedural, and notice requirements associated with SEPA, the Growth Management Act, and the Cle Elum Municipal Code for the purpose of reviewing the application; and

WHEREAS, the Cle Elum City Council has considered Bullfrog Flats, LLC’s concurrent request to amend and transfer the 2002 Development Agreement and related agreements at an Open Record Public Hearing on March 25, 2025, as set forth and addressed by separate Resolution concurrently adopted herein; and

WHEREAS, the Cle Elum City Council finds that it is in the best interest of the City of Cle Elum to pass the following;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CLE ELUM:

Section 1. Incorporation of Recitals. The above recitals are hereby incorporated into this resolution.

Section 2. Incorporation of the Hearing Examiner’s Recommendation and Conditions of Approval. The Hearing Examiner’s Recommendation is hereby adopted and ratified by the Cle Elum City Council as its conditional decision and approval of the Applications described herein. A copy of the Recommendation is attached hereto as Exhibit “A” and fully incorporated herein by this reference.

Section 3. Findings. The Cle Elum City Council adopts the findings of the Hearing Examiner as its own findings herein, and further finds that the requirements of RCW 58.17.110 have been met.

Section 4. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this resolution is declared invalid or unconstitutional for any reason, such decision shall not affect the validity of the remaining portions of this resolution.

Section 5. Effective Date. This resolution shall take effect immediately upon its passage and adoption.

PASSED BY THE CLE ELUM CITY COUNCIL AT A SPECIAL MEETING THEREOF ON 25TH DAY OF MARCH, 2025.

Matthew Lundh, Mayor

ATTEST:

Debbie Lee, City Clerk

RESOLUTION NO. R-2025-009

A Resolution of the City Council of the City of Cle Elum consenting to the transfer of the rights, responsibilities, and obligations under 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’” dated October 30, 2002 and as amended by the First Amendment dated March 28, 2017; Amending said Development Agreement; and Authorizing the execution and amendment of related agreements; and Providing for severability

WHEREAS, the City of Cle Elum entered into 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’” dated October 30, 2002 and as amended by the First Amendment dated March 28, 2017 (the “**2002 Development Agreement**”); and

WHEREAS, the 2002 Development Agreement governs and guides the development of approximately 1,100 acres known as the “Bullfrog UGA” as a planned mixed-use development; and

WHEREAS, Section 9 of the 2002 Development Agreement provides that the agreement may be assigned or transferred to third parties, provided that the transferee expressly assumes such obligations and responsibilities; and

WHEREAS, on March 28, 2017, the Cle Elum City Council approved the transfer of the rights, responsibilities, and obligations under the 2002 Development Agreement from Trendwest to New Suncadia, LLC (“**New Suncadia**”) and extended the term of the 2002 Development Agreement for an additional ten years, to October 30, 2027; and

WHEREAS, on February 14, 2022, the Cle Elum City Council consented to the transfer of the rights, responsibilities, and obligations under the 2002 Development Agreement from New Suncadia to Sun Communities, LLC (“**Sun Communities**”); and

WHEREAS, Bullfrog Flats, LLC (“Bullfrog Flats” or “Applicant”), has submitted Applications to develop the Bullfrog UGA pursuant to the 2002 Development Agreement; and

WHEREAS, on January 15, 2025, City of Cle Elum staff issued a Staff Report (as revised on January 28, 2025) addressing and recommending approval of a proposed Second Amendment to the Development Agreement granting the Applicant two (2) five (5) year term extensions conditioned on specific criteria and amendments to the 2002 Development Agreement’s Conditions of Approval (“**Second Amendment**”); a request to transfer the outstanding rights and obligations under the 2002 Development Agreement from Sun Communities to Bullfrog Flats (“**Transfer**”); and related agreements, including agreements relating to the mitigation and monitoring of transportation and water impacts associated with the Bullfrog UGA development; and

WHEREAS, on January 30, 2025, the City of Cle Elum Hearing Examiner (“**Hearing Examiner**”) held an open-record public hearing to consider the application for a Boundary Line Adjustment (which establishes parcel and phase boundaries and serves as the Master Plat) and Preliminary Plats known as “Phase S-1, S-2 and J” submitted by Bullfrog Flats, LLC (PMU-2024-002, BLA-2024-004, SUB-2024-001, -002, -003); and

WHEREAS, on March 3, 2025, the Hearing Examiner issued his written “Findings, Conclusions and Recommendation of Approval for Bullfrog Flats’ Applications” (“**Recommendation**”) recommending approval of the proposed master plat and preliminary plats, subject to conditions; and

WHEREAS, pursuant to Section 9.3 of the Development Agreement, the consent of the City is required for a party to the 2002 Development Agreement to transfer their rights and obligations; and

WHEREAS, pursuant to Section 9.3.3 of the 2002 Development Agreement, the City shall not consent to a proposed transfer until it has first consulted with public entities that may be affected by such a transfer; and

WHEREAS, pursuant to Section 9.3.5 of the 2002 Development Agreement, the City may only refuse to consent to a request to transfer rights and obligations if there is a material reason for such refusal; and

WHEREAS, Sun Communities has requested that all rights, responsibilities, and obligations under the 2002 Development Agreement be transferred to Bullfrog Flats, and that Sun Communities be released of its responsibilities and obligations; and

WHEREAS, the City mailed letters on December 20, 2024, to fourteen public entities inviting them to comment on the Transfer; and

WHEREAS, the City received no responses from a public entity indicating an objection to the Transfer; and

WHEREAS, Bullfrog Flats has expressed to the City that it will assume all rights, responsibilities, and obligations under the 2002 Development Agreement between the City and Sun Communities; and

WHEREAS, at a Closed Record Public Hearing on March 25, 2025, after notice duly given according to the requirements of the Cle Elum Municipal Code, the Cle Elum City Council adopted the Hearing Examiner’s Recommendation, as set forth by separate Resolution concurrently adopted herein; and

WHEREAS, at an Open Record Public Hearing on March 25, 2025, after notice duly given according to the requirements of the Cle Elum Municipal Code, the Cle Elum City Council considered the Transfer and Second Amendment; and

WHEREAS, at said public hearing, the Applicant has advised the City that they are a Redmond Washington-based limited liability company with a consistent source of available institutional

capital and a demonstrated capacity to perform the obligations proposed to be transferred, including experience in successfully developing projects of comparable scale and complexity; and

WHEREAS, based on the information provided to the City, there appears to be no material reason to reasonably withhold the City’s consent to the Transfer from Sun Communities to Bullfrog Flats; and

WHEREAS, the Council has determined it is in the best interest of the City of Cle Elum to extend the term of the 2002 Development Agreement up to ten (10) years, subject to the conditions and other terms proposed in the Second Amendment; and

WHEREAS, the City of Cle Elum has complied with the substantive, procedural, and notice requirements associated with SEPA, the Growth Management Act, the Cle Elum Municipal Code, and the 2002 Development Agreement for the purpose of reviewing the Bullfrog Flats’ permit applications and associated requests; and

WHEREAS, at the Open Record Public Hearing on March 25, 2025, the Council also considered the proposed “Agreement Between the City of Cle Elum and Bullfrog Flats for the Mitigation and Monitoring of Transportation Impacts Associated with the Bullfrog UGA Development” (the “**Transportation Mitigation Agreement**”) and the proposed “Agreement Between the City of Cle Elum and Bullfrog Flats for the Mitigation and Monitoring of Water System Impacts Associated with the Bullfrog UGA Development” (the “**Water System Mitigation Agreement**”); and

WHEREAS, the Council has determined it is in the best interest of the City of Cle Elum to enter into the Transportation Mitigation Agreement and the Water System Mitigation Agreement to address the future development of transportation and water system improvements and to address and mitigate the Bullfrog UGA development’s impacts on transportation and water supply facilities; and

WHEREAS, the Cle Elum City Council finds that it is in the best interest of the City of Cle Elum to adopt the following;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CLE ELUM:

Section 1. Incorporation of Recitals. The above recitals are hereby incorporated into this resolution and authorization.

Section 2. Consent to the Transfer of all Rights, Responsibilities, and Obligations. The Cle Elum City Council consents to the transfer of all rights, responsibilities, and obligations under the 2002 Development Agreement to Bullfrog Flats, provided that Bullfrog Flats now accepts all such rights, responsibilities, and obligations under the 2002 Development Agreement.

Section 3. Release of Obligations and Responsibilities. The Cle Elum City Council releases Sun Communities from its obligations and responsibilities under the 2002 Development Agreement, provided that Bullfrog Flats now accepts all such obligations and responsibilities under the 2002 Development Agreement.

Section 4. Execution of Transfer Document. The Mayor is authorized to execute a document in a form and content approved by the City Attorney for signature by Bullfrog Flats formally accepting the rights, responsibilities, and obligations under the 2002 Development Agreement.

Section 5. Execution of Second Amendment to 2002 Development Agreement. The Mayor is authorized to execute a Second Amendment to the 2002 Development Agreement in a form substantially similar to the document attached as Exhibit “A” and in a form and content approved by the City Attorney.

Section 6. Execution of Transportation Mitigation Agreement. The Mayor is authorized to execute a Transportation Mitigation Agreement in a form substantially similar to the document attached as Exhibit “B” and in a form and content approved by the City Attorney.

Section 7. Execution of Water System Mitigation Agreement. The Mayor is authorized to execute a Water System Mitigation Agreement in a form substantially similar to the document attached as Exhibit “C” and in a form and content approved by the City Attorney.

Section 6. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this resolution is declared invalid or unconstitutional for any reason, such decision shall not affect the validity of the remaining portions of this resolution.

Section 7. Effective Date. This resolution shall take effect immediately upon its passage and adoption.

PASSED BY THE CLE ELUM CITY COUNCIL AT A SPECIAL MEETING THEREOF ON 25TH DAY OF MARCH, 2025.

Matthew Lundh, Mayor

ATTEST:

Debbie Lee, City Clerk

Blue Fern  Development

Bullfrog Flats City Council Meeting

MARCH 25, 2025

About Blue Fern

Blue Fern Development is a privately held land development firm with a strong track record across a range of asset classes and investment structures. Our collaborative approach creates high-value deals that benefit all stakeholders. By bringing together diverse perspectives, expertly navigating complexities and maximizing returns, we help deals run more smoothly.

Backed by a team of industry-leading professionals, Blue Fern combines deep expertise with a proprietary process to identify and capitalize on promising opportunities nationwide. Our extensive network of local market experts adds to this advantage. Their in-depth knowledge about community landscapes and priorities ensures smart, strategic decision making.

As an independent company, Blue Fern is built for agility. We can step in at any project phase to drive momentum and minimize delays. Our flexible process and results-driven strategies continue to deliver valuable outcomes for our partners and the communities we serve.





Benjamin Paulus
CHIEF EXECUTIVE OFFICER, FOUNDER

My Job in 50 Words or Less

I'm the quirky developer. We live in a constantly evolving world, and my job is to provide housing and build communities that people will love today, and down the road. I also have the opportunity to partner with a number of different non-profits to use our company to try and help the environment and communities we are in.

Some Things I'm Really Good At

Making eggs, and forward planning. In our world everything takes a long time to come to fruition. Entitlement can take 2-3 years, site development 1-2 years, building houses a year to two. My job everyday is to make sure that we are laying the necessary foundation today to ensure that we are still a great company delivering exceptional communities 50 years from now.

Three Words That Best Describe Me

Adventurous, Inventive, Demanding

Favorite Part of My Job

I love underwriting projects, working with architects, and our other consultants to design communities that we will drive through, and have people living in. It's a pretty cool experience.

Where to Find Me When I'm Not at Work

On the lake surfing, in the mountains snowboarding, flyfishing or with my family.



Michelle Branley
CHIEF OPERATIONS OFFICER

My Job in 50 Words or Less

Designing and building homes that owners can be proud of and that add value to the communities we work in. Setting the bar at a really high level and then putting the people and processes in-place to meet and exceed expectations.

Some Things I'm Really Good At

Finding the best people and fostering collaboration. I manage and provide operational direction to teams working on every aspect of the building process from design, purchasing, construction, marketing, sales, warranties and entitlement. It's not easy to do right -- and that what makes this job so satisfying and the people here so great.

Three Words That Best Describe Me

Dependable, Trustworthy and Knowledgeable.

Favorite Part of My Job

Finding solutions to hard problems.

Where to Find Me When I'm Not at Work

Cooking, watching home renovation shows or relaxing with my family and our two dogs.



John Graves

DIRECTOR OF FORWARD PLANNING

My Job in 50 Words or Less

Primarily, I look to find housing markets that are underserved. Locations that have a logical service to homebuyers and their lifestyle. What is less desirable today, can be more desirable tomorrow. Living environments and locations that are untapped or undiscovered; locations where people in different stages of life can identify with - ultimately and logically call "home."

Some Things I'm Really Good At

One area of my job that I enjoy is peeling back the layers of the marketplace onion. Studying the demographic, economic and social forces that shape a marketplace; the expansion and contraction. Then secondly, using that knowledge to further our direction, focus and growth.

Three Words That Best Describe Me

Reliable, Stubborn, Approachable

Favorite Part of My Job

Collaborating on projects with our team and amazing group of consultants.

Where to Find Me When I'm Not at Work

Hanging out with my wife and friends, keeping up with my two children, boating, prepping food, playing my guitar.



Max Chappron
CHIEF FINANCIAL OFFICER

My Job in 50 Words or Less

I'm responsible for executing on Blue Fern's financial initiatives and strategies. Achieving our financial goals requires consistent communication and collaboration with our management team, investors and lending partners while maintaining a balanced view of opportunities and risks.

Some Things I'm Really Good At

Collaborating with others, maintaining and building relationships, setting priorities and executing on them, establishing processes and re-evaluating those processes by applying a mind-set for continuous improvement.

Three Words That Best Describe Me

Loyal, Persistent and Adaptable

Favorite Part of My Job

Seeing projects through from beginning to end, underwriting new projects, working alongside our management team and consultants, problem solving and developing a financial strategy to set up our projects for success.

Where to Find Me When I'm Not at Work

Surrounded by family and friends, keeping up with my three children, outdoors and on the golf course.

Washington

- 63 Communities
- 2 Multifamily Assets

Idaho

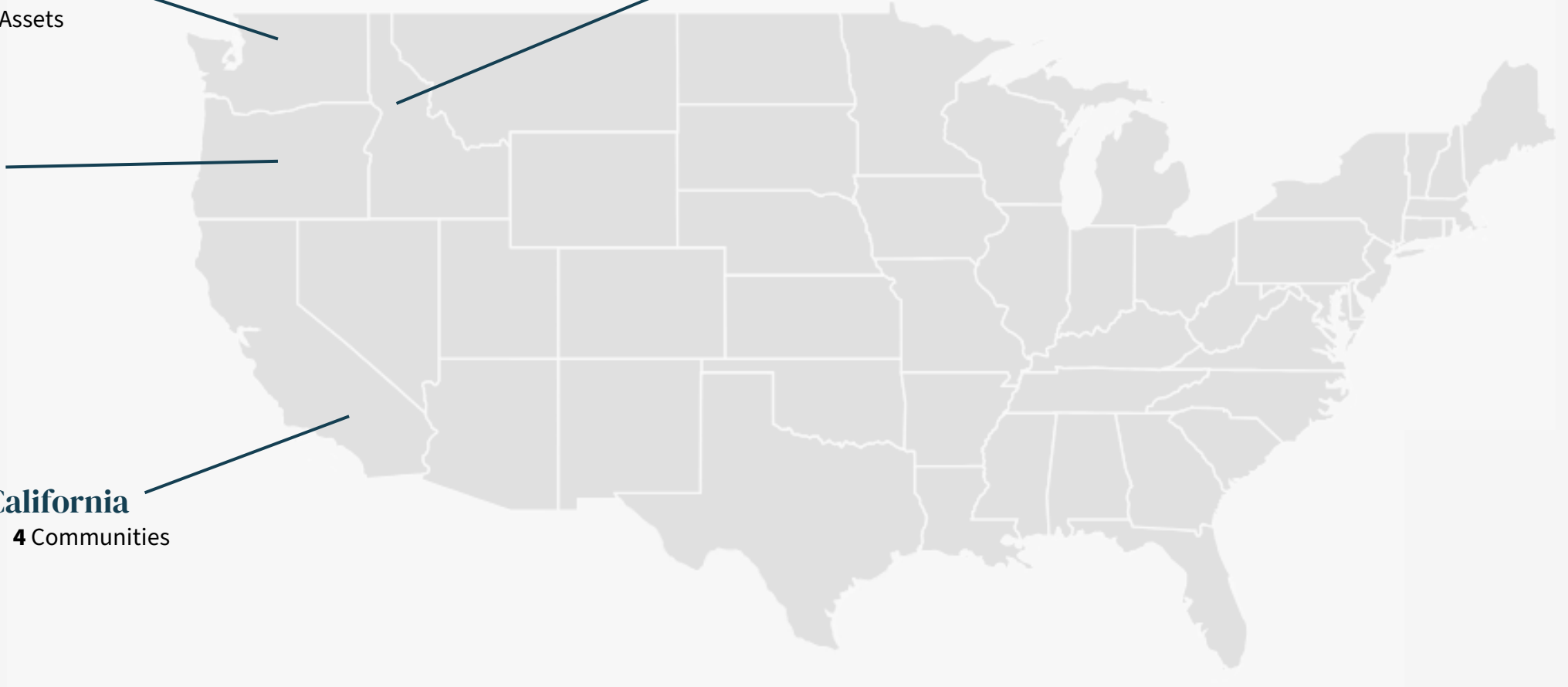
- 6 Communities

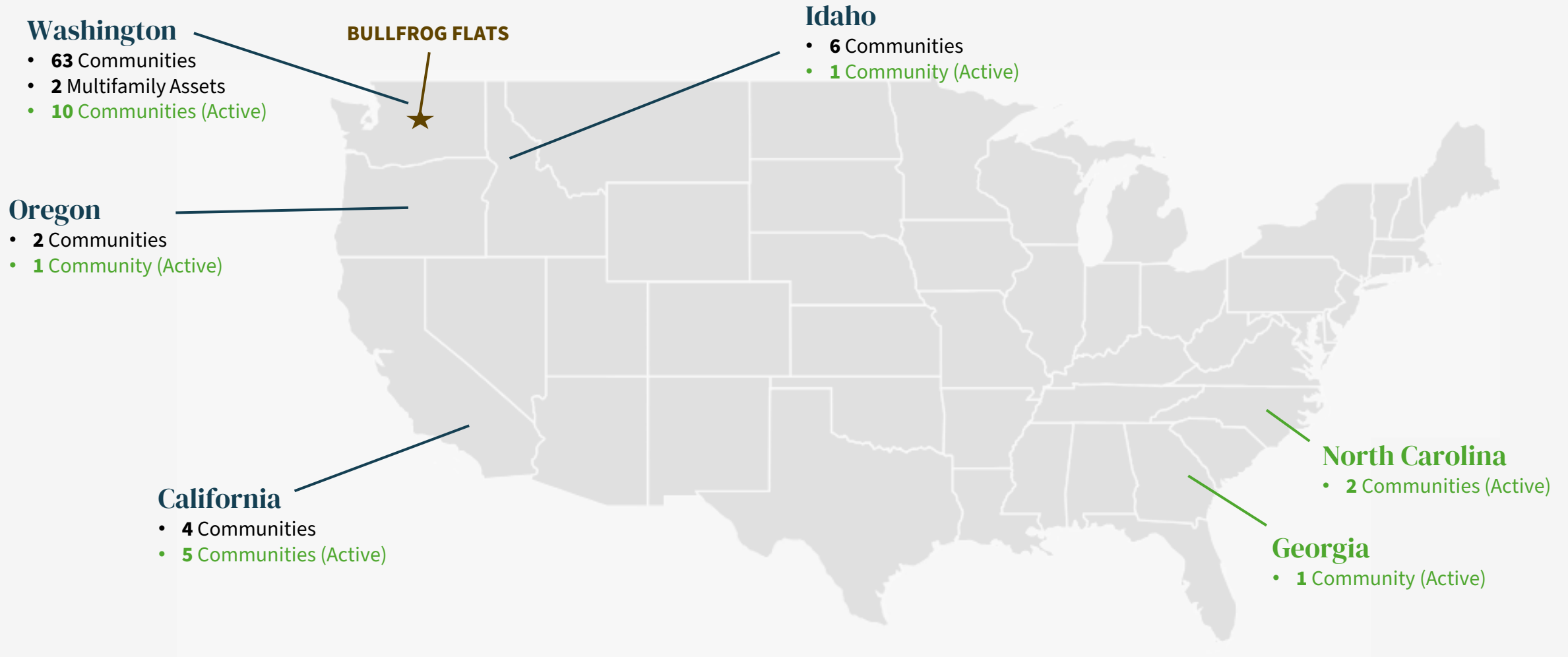
Oregon

- 2 Communities

California

- 4 Communities





Stoneridge

SILVERDALE, WA

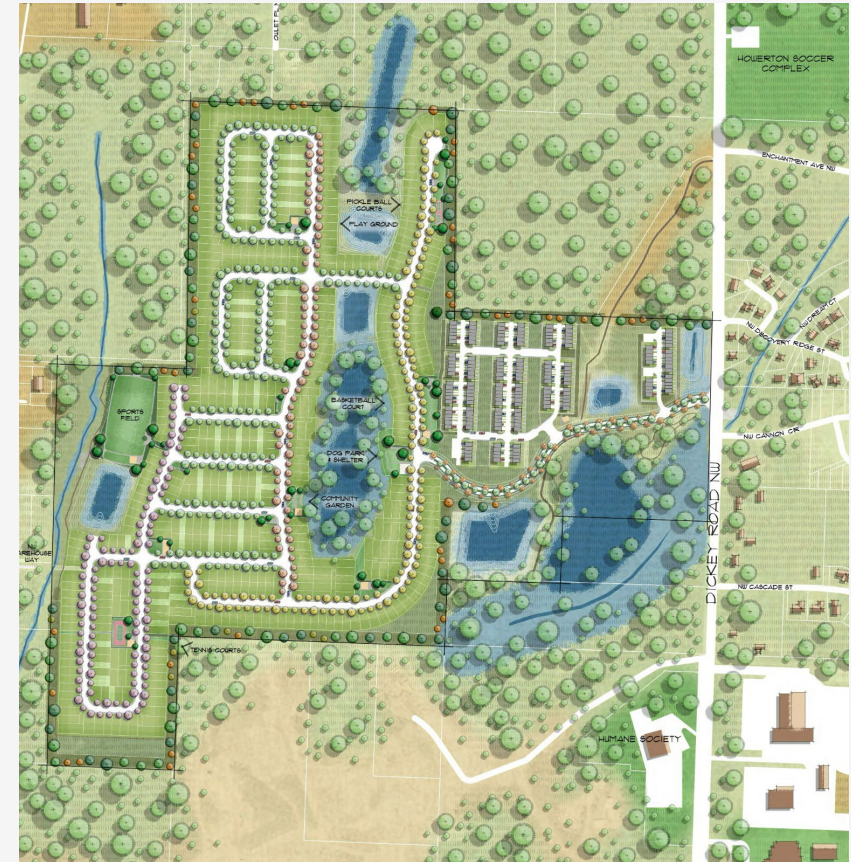
LOT COUNT: 761

ACREAGE: 138

PRODUCT TYPE: Single Family and Townhomes

Stoneridge is a 138-acre master planned community located in Kitsap County, Washington. The project received permitting approval through Kitsap County for the development of 761 units. By gaining approval for this project, Stoneridge converted a long-abandoned gravel mine into a residential neighborhood.

Blue Fern led the rezone to change the site's zoning designation of Urban Industrial with a Mineral Resource Overlay zone to a mix of Low Residential and Neighborhood Commercial. The approved plan offers a mix of 588 detached single-family lots and 173 attached single family lots with 76 affordable housing units.



El Dorado

SILVERDALE, WA

LOT COUNT: 500

ACREAGE: 93

PRODUCT TYPE: Single Family

El Dorado is a 500-lot single family residential detached community located above Dyes Inlet, just southeast of the City of Silverdale in unincorporated Kitsap County. Situated just south of Newberry Hill Road and roughly bisected by NW Eldorado Boulevard, this project was designed to provide housing options at the first-time buyer level.

The community includes community parks, 4,500 feet of walking trails, a dog run and a substantial amount of open space. The predominant lot size in this community is 4,000 square feet with most lot widths at 40 feet; the minimum lot size is just over 3,200 sf and the largest is about 8,900 square feet.



Blue Fern  Development

Thank you

Bullfrog Flats, LLC
18300 Redmond Way, Suite 120
Redmond, WA 98052

3/18/25


City of Cle Elum
119 West First Street
Cle Elum, WA 98922

Re: Financial Viability – Bullfrog Flats Development Project

To Whom it May Concern:

I am writing to confirm that I am a member of Bullfrog Flats, LLC, the “Applicant” for the Bullfrog Flats Development Project, and I have committed capital to purchase the Bullfrog Flats property in Cle Elum, Washington. Attached to this letter is a verification of deposit letter from my commercial bank dated March 18, 2025.

Thank you for your attention to this matter.

DocuSigned by:

01FBDC4026AC446...
Sincerely,

Michael Paulus
Member
Bullfrog Flats, LLC

Margarete Alves
National Risk Officer
Vice President

Wealth Management
555 California Street
35th Floor
San Francisco, CA 94104
Tel (415) 955-1582
Margarete.Alves@morganstanley.com

Morgan Stanley

March 18, 2025

City of Cle Elum
119 West First Street
Cle Elum, WA 98922

Re: Michael Paulus

To Whom it May Concern:

Please be advised that Michael Paulus (the “Client”), maintains the following brokerage account (the “Account”) at Morgan Stanley Smith Barney LLC (“Morgan Stanley”) which contains assets, including cash and marketable securities, valued, as of the close of business on March 17, 2025, in excess of \$100,000,000:

A/C Number	A/C Title
██████████	MICHAEL PAULUS

We are presenting the information contained herein pursuant to our Client’s request. It is valid as of the date of issuance. Morgan Stanley does not warrant or guarantee that such identified securities, assets or monies will remain in the Client’s Account. The Client has the ability to withdraw assets from the Account at any time.

Account ██████████ is currently being used to collateralize a Tailored Lending (“TL”) line of credit issued by Morgan Stanley Bank, N.A. and/or Morgan Stanley Private Bank, National Association. Notwithstanding any other representations in this letter, assets required to maintain the TL cannot be withdrawn unless Morgan Stanley Bank, N.A. and/or Morgan Stanley Private Bank, National Association agrees to release excess collateral or the TL is paid off. This letter does not create a security interest or convey collateral rights to any party.

Thank you for your time and consideration in this matter.

Sincerely,



Margarete Alves
National Risk Officer

c.c: Michael Paulus

**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, 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’ 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. 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 May 1, 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 June 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. Bullfrog Flats shall 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 dated _____, which is incorporated by reference herein.

1.3.8 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.

1.3.9 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) 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 (30) day period, then Bullfrog Flats must (1) commence satisfaction of the Existing Condition within the thirty (30) day period, (2) demonstrate diligent and good faith past efforts to attempt to timely satisfy the Extension Condition, and (3) identify 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 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 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.

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, and laws 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.

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 (i) there is new information indicating probable significant adverse environmental impacts of the Trendwest UGA Development not previously analyzed in a SEPA environmental document, 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. 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 9.2 of the Agreement is amended as follows (with deletions shown by strikethroughs, and additions shown by underlining):

Transfers Not Requiring City Consent. ~~Trendwest~~ Bullfrog Flats may enter into a transfer agreement to transfer or assign all or any portion ~~Trendwest's~~ Bullfrog Flats' interests, rights, obligations, and responsibilities under this Agreement and to release ~~Trendwest~~ Bullfrog Flats from its obligation and responsibilities without obtaining written consent from the City if such transfer relates to the transfer of:

* * * *

9.2.3 Any property that has been established as a separate legal parcel, but only to the extent that ~~Trendwest~~ Bullfrog Flats may transfer without City consent 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. The parties further acknowledge and agree that if a Master Plat parcel is transferred to a third-party to develop that parcel consistent with this Agreement, the party acquiring the Master Plat parcel will be entitled to all rights and benefits of this Agreement with respect to the development of that parcel (the "Parcel Rights"). The Parcel Rights include, by way of illustration only and without limitation, such items as the vesting and SEPA review provisions of this Agreement. As a condition of this type of transfer, Trendwest Bullfrog Flats shall remain responsible for all, obligations and responsibilities pursuant to the Conditions of Approval and this Agreement other than the Parcel Obligations.

8. 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. The parties hereby waive the right to trial by jury in any legal action or proceeding arising out of or relating in any way to a Dispute.

9. 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.

10. 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.

11. 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 FOLLOWS]

**AGREEMENT BETWEEN THE CITY OF CLE ELUM AND
BULLFROG FLATS FOR THE
MITIGATION AND MONITORING OF TRANSPORTATION IMPACTS
ASSOCIATED WITH THE BULLFROG UGA DEVELOPMENT**

This Bullfrog Flats UGA Transportation Impacts Mitigation and Monitoring Agreement (“**Transportation Mitigation Agreement**”) is entered into by and between the City of Cle Elum, a Washington municipal corporation (“**City**”), and Bullfrog Flats LLC, a Washington limited liability company (“**Project Sponsor**” or “**Bullfrog Flats**”), (collectively the “**Parties**”), effective as of _____ (“**Effective Date**”). This Transportation Mitigation Agreement is intended as an amendment to and incorporated into a development agreement approved by the City in 2002 titled: “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”, (“**2002 Development Agreement**”) and is intended to replace and supersede the Transportation Monitoring Program Agreement for the Bullfrog UGA dated November 28, 2007 between Suncadia, LLC and the City of Cle Elum

RECITALS

A. On October 30, 2002, the City and Bullfrog Flats’ predecessor in interest, Trendwest Properties, Inc., and Trendwest Investments, Inc., entered into the 2002 Development Agreement, including conditions of approval authorizing development of property known as the “**Bullfrog UGA**” (the “**Project**”). The 2002 Development Agreement term was subsequently extended by the City and currently expires on October 30, 2027. The rights and obligations relating to development of the Bullfrog UGA contained in the 2002 Development Agreement were subsequently transferred from Trendwest to Sun 47 North. Sun 47 North and Bullfrog Flats have entered into an agreement for Bullfrog Flats to purchase the Bullfrog UGA property from Sun 47 North, dependent on the outcome of the City’s decisions on Bullfrog Flats’ applications for the Bullfrog UGA and request to extend the 2002 Development Agreement. Upon such transfer of the Bullfrog UGA property from Sun 47 North to Bullfrog Flats, Bullfrog Flats is desirous of stepping into all of the outstanding obligations of the 2002 Development Agreement that are currently the responsibility of Sun 47 North.

B. On September 19, 2024, the City issue a Notice of Complete Applications for Bullfrog Flats’ applications for a Master Plat, a Boundary Line Adjustment, Preliminary Plats for three phases (parcels Phase S-1, Phase S-2 and Phase J) of the Bullfrog UGA development originally approved in the 2002 Development Agreement, a Request to Assign the 2002 Development Agreement to Bullfrog Flats, and a Request to Extend the 2002 Development Agreement term until 2037, (the “**Applications**”). Bullfrog Flats’ stated intent is to pursue development of the Bullfrog UGA property consistent with the existing 2002 Development Agreement.

C. The 2002 Development Agreement included seven traffic mitigation measures (condition #85 A-G) that were included as part of the 2002 approval for the Bullfrog UGA. As of the date of this Agreement, some of those mitigation measures have been installed by others; some have not.

D. On November 28, 2008, Suncadia LLC, predecessor in interest to Sun 47 North and Bullfrog Flats, and the City of Cle Elum entered into a Transportation Monitoring Agreement for the Bullfrog UGA (the “**TMP**”) to satisfy condition #92 of the Conditions of Approval.

E. Pursuant to the provisions of the 2002 Development Agreement, including, but not limited to section 6 of the 2002 Development Agreement and condition #92 of the Conditions of Approval attached to the 2002 Development Agreement related to traffic monitoring, the City contracted with Transportation Engineering Northwest (“**TENW**”) to conduct new traffic counts and complete a new traffic impact analysis to determine whether the transportation mitigation measures identified in the 2002 Development Agreement require modification or whether additional traffic impact mitigation measures are warranted to address potential impacts from the proposed project based on current traffic conditions (the “**2024 TENW Analysis**”).

F. The 2024 TENW Analysis included new traffic counts at 27 intersections and calculated expected levels of service at each of those intersections under existing conditions and in 2032 and 2037, based on reasonable assumptions regarding Bullfrog UGA and other projected project-specific or general background growth. Based on the 2024 TENW Analysis, the Parties to this agreement have identified nine intersections that are expected to operate below adopted levels of service between 2024 and 2037, including those from the 2002 Development Agreement that have not yet been constructed and have recommended intersection improvements (“**Intersection Mitigation Measures**”) that would address projected level of service failures at those nine intersections. These Intersection Mitigation Measures do not include four new intersections required to provide access to the Project more fully described in Recital __ below and the connection to Douglas Munro Boulevard. These access intersections and the Douglas Munro Boulevard connection are the sole responsibility of the Project Sponsor to construct.

G. The 2024 TENW Analysis has also identified the proportionate share of traffic associated with the Project (“**Project Sponsor’s Proportionate Share**” or “**Project Share**”) and the background traffic or public share for each of these required transportation mitigation measures (“**Background Share**”). The intersections that are predicted to operate at levels of service below adopted standard and the year in which that failure is expected, based on the development assumptions in the 2024 TENW Analysis are as follows:

Year of Expected Failure	Intersection	Proposed Mitigation
2024 (existing condition)	#8—Ranger Station Rd/Miller Ave/W. Second St.	Turn restrictions
2024 (existing condition)	#12—N.Pine St./W. 1 st St.	Compact roundabout
2032	#9—N. Pine/W. 2 nd St (SR 903)	Compact roundabout
2032	#13—N.Stafford/W.2 nd (SR 903)	Compact roundabout
2032 or 2037*	#1—Bullfrog/I-90 EB Ramp	Compact roundabout
2032	#7—Denny/W. 2 nd (SR 903)	Turn restrictions

2032	#15—N.Oakes/W. 2 nd (SR 903)	Compact roundabout
2032	#21—Pennsylvania/1 st St	4-way stop
2037	#3—Bullfrog/Tumble Creek Dr.	Merge refuge lane

*Year depends on whether and how much business park development occurs: 2037 if no business park; 2032 if 50% business park.

H. Based on 2023 pre-design construction estimates, the estimated cost for the Intersection Mitigation Measures is as follows:

Intersection	Proposed Mitigation	2023-Pre-design Estimated Cost
#1—Bullfrog/I-90 EB Ramp ¹	Compact roundabout	\$1,370,000
#3—Bullfrog/Tumble Creek Dr.	Merge refuge lane	\$ 260,000
#7—Denny/W. 2 nd (SR 903)	Turn restrictions	\$ 130,000
#8—Ranger Station Rd/Miller Ave/W. Second St.	Turn restrictions	\$130,000
#9—N. Pine/W. 2 nd St (SR 903)	Compact roundabout	\$ 760,000
#12--N.Pine St./W. 1 st St.	Compact roundabout	\$ 970,000
#13—N.Stafford/W.2 nd (SR 903)	Compact roundabout	\$ 950,000
#15—N.Oakes/W. 2 nd (SR 903)	Compact roundabout	\$ 900,000
#21—Pennsylvania/1 st St	Four-way stop	\$ 40,000
Total:		\$5,510,000

These preliminary construction cost estimates used to calculate Project Sponsor's Proportionate Share payments and Background Share account contributions required by this Transportation Mitigation Agreement will be updated as described in Section 4 below.

I. The Project Sponsor's Proportionate Share payment for each Intersection Mitigation Measure varies depending on whether, how much of, and when (if ever) the business park portion of the project is developed. Based on the 2023 pre-design construction estimates and the two business park development assumptions in the 2024 TENW Analysis, the Project Sponsor's Proportionate Share of each Intersection Mitigation Measure is as follows:

Intersection	Project Share with 50% Business Park	Project Share with No Business Park
#1—Bullfrog/I-90 EB Ramp*	10.7%--\$ 146,590	10.6%--\$145,220
#3—Bullfrog/Tumble Creek Dr.	21.4%--\$ 55,640	15.4%--\$ 40,040
#7—Denny/W. 2 nd (SR 903)	19.7%--\$ 25,610	18.4%--\$ 23,920
#8—Ranger Station Rd/Miller Ave/W. Second St.	17.9%--\$ 23,270	11.9%--\$15,540
#9—N. Pine/W. 2 nd St (SR 903)	19.7%--\$ 149,720	13.2%--\$100,320

¹ Under Condition 85.G, Bullfrog Flats is entitled to seek contribution from the MPR development for its proportionate share of the impacts to this intersection. Bullfrog Flats acknowledges the City does not have authority to impose mitigation or require contribution from the MPR development, which is under the jurisdiction of Kittitas County.

#12--N.Pine St./W. 1 st St.	13.8%--\$ 133,860	9.2%--\$ 89,240
#13—N.Stafford/W.2 nd (SR 903)	17.4%--\$ 165,300	11.5%--\$109,250
#15—N.Oakes/W. 2 nd (SR 903)	16.4%--\$ 147,600	10.6%--\$ 95,400
#21—Pennsylvania/1 st St	13.9%--\$ 5,560	9.0%--\$ 3,600
Total:	\$853,150	\$ 622,500

*Level of service failure in 2032, if 50% Business Park. Level of service failure in 2037 if No Business Park.

J. The 2024 TENW Analysis identified a Project Share and a Background Share for each of the impacted intersections. The City and the Project Sponsor have agreed to a mitigation funding strategy that incorporates both proportionate share and transportation concurrency concepts by establishing a “**Transportation Account**” for each of the Intersection Mitigation Measures more fully described in Section 4 of this Transportation Mitigation Agreement. The Transportation Accounts may include funds from the following sources: (i) a Project Share, (ii) any public grant funds obtained for any of the Intersection Mitigation Measures (“**Grant Funds**”), (iii) any other funds from any reimbursement or credit mechanism that may be established pursuant to Section 7; (iv) any other funds obtained from traffic mitigation imposed on other development in the City (“**Other Development Traffic Mitigation**”), and (v) a Transportation Contribution by the Project Sponsor if required to cover the total cost to construct the Intersection Mitigation measure that will be eligible for subsequent reimbursement, if available from other sources pursuant to Section 7 below (collectively, “**Proportionate Share Method**”). This Proportionate Share Method is consistent with the transportation mitigation funding approach used in the 2002 Development Agreement, Condition #89.

K. The Parties acknowledge that the 2002 Development Agreement Condition #89, the Growth Management Act, Chapter 36.70A RCW and the City Comprehensive Plan all include the requirement for transportation concurrency, where the City cannot allow development to proceed if traffic from the proposed development would cause the level of service on city streets and intersections to fall below adopted acceptable levels of service, unless there is a plan or program providing sufficient certainty that the necessary intersection improvements will be constructed within six years of development approval. The City applied this same transportation concurrency concept to streets and intersections within the unincorporated areas of Kittitas County (“**County**”). Transportation concurrency allows the City to give the Project Sponsor the option of either waiting to construct a phase or subphase of the proposed development until the public share of the traffic mitigation measure is secured or, alternatively, the Project Sponsor may pay the Background Share of the required transportation mitigation and proceed with development. To adequately address concurrency requirements, the City and the Project Sponsor have agreed to an additional Project Sponsor contribution to be made into an account to ensure sufficient funds are available to construct the Intersection Mitigation Measures when required to satisfy concurrency (the “**Transportation Account Contribution**”) that will be eligible for subsequent reimbursement, if available from other sources pursuant to Section 7 below.

L. As of the Effective Date of this Transportation Mitigation Agreement, the Parties understand that the City only has dedicated public funds to cover approximately \$700,000 (of which approximately \$170,000 has been allocated and spent on design and construction engineering) of the Background Share for Intersection #13, and thus the City can make no guarantee regarding the future availability or City receipt of Grant Funds to apply to the

Background Shares of the Intersection Mitigation Measures costs. Upon execution of this Transportation Mitigation Agreement, the Parties have agreed to work diligently and cooperatively to seek Grant Funds and Other Development Traffic Mitigation, where warranted to maximize opportunities for other sources of funds for those Background Shares and thus reducing the Transportation Account Contribution obligation of the Project Sponsor described in Section 7 below. Any effort to obtain other sources of funds for Background Share are subject to the legal requirements, procedures and limitations applicable to other source funding mechanisms.

M. The 2024 TENW Analysis makes certain assumptions regarding the expected pace of project development and analyzes existing conditions (2024) and two future year conditions (2032 and 2037), based on those pace of development assumptions. Actual project development may occur at a faster or slower pace than assumed in the 2024 TENW Analysis and the Parties recognize that the trips generated by the project may trigger level of service failure and the corresponding need for mitigation at a time that may vary from the specific years identified in the 2024 TENW Analysis. This Transportation Mitigation Agreement includes provisions regarding future year monitoring and traffic impact analysis to confirm impacts and mitigation timing based on the actual pace of project development in Section 10.

N. The City and the Project Sponsor have reviewed the results and the recommended Intersection Mitigation Measures in the 2024 TENW Analysis and have conferred with the County and the Washington State Department of Transportation (“WSDOT”) to obtain their input on the analysis and the mitigation measures that are identified for those intersections under the jurisdiction of the County and WSDOT. The City met with representatives from the County and WSDOT on November 21, 2024 to discuss preliminary findings and to answer questions. The City provided a copy of the preliminary 2024 TENW Analysis to the County and WSDOT on November 1, 2024. The City met again with the County and WSDOT on November 21, 2024 to discuss the analysis and answer additional questions. The County provided comments on December 5, 2024. TENW and the City made additional changes to the draft 2024 TENW Analysis in response to the County’s comments.

O. The proposed Bullfrog UGA project includes four (“**Site Access Intersections**”) at existing public rights of way that were included in the 2024 TENW Analysis, identified as follows:

1. Bullfrog Road southern access (#30 in the 2024 TENW Analysis)
2. Bullfrog Road central access (#29 in the 2024 TENW Analysis)
3. Bullfrog Road north access (#28 in the 2024 TENW Analysis)
4. SR 903 and Bala Dr. (#31 in the 2024 TENW Analysis)

In addition, the 2002 Development Agreement requires the Project Sponsor to construct a connection to Douglas Munro Boulevard. The Project Sponsor will be responsible for 100 percent of the costs to design and construct these four Site Access Intersections and the Douglas Munro Blvd connection, subject to review and approval by the City, the County and potentially WSDOT where Site Access Intersection construction will occur at least partially within the public rights of way controlled by those respective state and local jurisdictions.

NOW, THEREFORE, Bullfrog Flats and the City agree as follows:

AGREEMENT

1. **Recitals Incorporated.** Recitals A – O recited above are hereby incorporated into this Transportation Mitigation Agreement as substantive provisions and basis for interpretation of its terms.

2. **Site Access Intersections.** Bullfrog Flats shall be responsible for all costs to design and construct the Site Access Intersections and the Douglas Munro Blvd connection described in Recital F above. Bullfrog Flats shall be required to obtain Kittitas County, WSDOT and/or City review and approval of the Site Access Intersection design and construction, based on which jurisdiction(s) controls the affected rights of way. Site Access Intersections #2 (Center access) and #3 (North access), shall be constructed prior to final plat approval for Phase S-1, Phase S-2 and Phase J, whichever occurs first. Ongoing maintenance of any elements of the Site Access Intersections that exceed County or City Road standards, such as, without limitation, additional landscaping or lighting located in the public right of way shall be the responsibility of the Project Sponsor.

3. **Concurrency Alternative.** If an improvement is demonstrated to be necessary because of projected level of service failures at an intersection, but there are not sufficient funds available to provide the required Background Share of costs, the Project Sponsor may elect to pursue one of the following options:

3.1. Either the Project Sponsor may agree to wait to construct the next Phase of development until funds are available for the Background Share, or

3.2. The Project Sponsor may agree to pay the required Background Share as a Transportation Account Contribution and proceed with the next phase of development.

4. **Transportation Account Established.**

4.1. Prior to final plat approval for Phase S-1, Phase S-2, or Phase J, whichever occurs first, the Parties shall have fully executed this Transportation Mitigation Agreement, and the Project Sponsor shall deposit the following amounts: (1) \$157,130.00, representing the Project Sponsor's Proportionate Share of all of the 2024 Intersection Mitigation Measures based on the 2023 construction cost estimate into the Transportation Accounts established by the City; (2) \$942,870, representing the Background Share of the 2024 Intersection Mitigation Measures, based on 2023 construction cost estimates; (3) \$268,500, representing the approximate design costs for Intersection #7, #9, and #15 of the 2024 TENW Analysis (calculated as 15% of the 2023 construction cost estimates); and (4) any remaining amount necessary for the construction of Intersection #13 of the 2024 TENW Analysis, for which the City has received partial grant funding. These Transportation Account funds shall be used for the design and construction of the Intersection Mitigation Measures and other purposes as provided herein. The City shall administer the City's use of the Transportation Account as provided for herein.

4.2. The City may, after consultation with Project Sponsor and providing Project Sponsor an opportunity to review the anticipated costs, use funds from the Transportation Account for the following purposes: to cover the cost of design, permitting, right of way acquisition, and construction of the Intersection Mitigation Measures; to prepare funding applications in pursuit of grant funding to cover the cost of design, right of way acquisition for and construction of the Intersection Mitigation Measures; to prepare cost estimate updates and detailed accountings under this Transportation Mitigation Agreement; and to engage with consulting services as deemed necessary to help implement this Transportation Mitigation Agreement. Consulting services may include, but are not limited to, professional engineering, design, and construction services, financial services, and legal services.

4.3. With respect to the 2032 and 2037 Intersection Mitigation Measures, Project Sponsor shall have the option to deposit additional funds into the Transportation Account for these mitigation measures at any point before the 2032 and 2037 Intersection Mitigation Measures are triggered. The City and Project Sponsor have discussed the fact that the availability of such funds will aid the City's ability to apply for Grant Funds and other alternative funding mechanisms.

4.4. The construction cost estimates and, correspondingly, the Project Sponsor Proportionate Share and the Background Share shall be updated and, potentially additional deposits required, throughout the design, bidding, contract award and final acceptance of the Intersection Mitigation Measures as follows:

4.4.1. Within 30 days from the date the 2024, 2032 and 2037 Intersection Mitigation Measures are triggered as set forth in this Agreement, the Project Sponsor shall deposit additional funds into the Transportation Account so that the total funds in the Transportation Account are sufficient to cover 100% of the then-current construction cost estimate, as calculated and approved by the jurisdictional authority, for the triggered Intersection Mitigation Measure(s) (2024, 2032 or 2037). Following this deposit, the jurisdictional authority shall commence the design of the Intersection Mitigation Measure(s). The jurisdictional authority shall prepare a construction bid package and publish a bid advertisement for public works bidding for the Intersection Mitigation Measures that are triggered. The jurisdictional authority shall also prepare an updated construction cost estimate at the time the bid package is prepared.

4.4.2. Prior to notice and publication of the bid package, if the current construction estimate exceeds the construction cost estimate that was the basis of the prior Project Sponsor Proportionate Share payment and Transportation Account payment, the Project Sponsor shall deposit additional funds to provide 100% of the current construction cost estimate.

4.4.3. Within 30 days from the bid opening date for any Intersection Mitigation Measure(s), the Project Sponsor shall deposit into the Transportation Account any additional Project Sponsor's Proportionate Share for those Intersection Mitigation Measure(s) and any additional Transportation Account Contribution necessary to pay for the cost equal to the lowest responsible and responsive bid, plus twenty percent of the bid amount for construction

engineering and construction administration, plus contingency funding equal to ten percent of the construction bid (“**Contract Cost**”).

4.4.4. After the Intersection Mitigation Measure(s) has been accepted by jurisdictional authority’s governing body, the construction contract has been closed out and thus construction costs have been finalized, the City shall prepare a final detailed accounting for the constructed Intersection Mitigation Measure(s) and the respective Transportation Account(s). If the Intersection Mitigation Measure(s)’ final cost exceeds the Contract Cost for the Intersection Mitigation Measure(s), within 30 days from receipt of the final accounting, Project Sponsor shall pay both Project Sponsor's Proportionate Share and the Transportation Account Contribution (if required) for any amount of the final construction cost that exceeds the Contract Cost. If the Intersection Mitigation Measure(s) cost is below the Contract Cost for the Intersection Mitigation Measure(s), Project Sponsor shall be entitled to a reimbursement for any amount of that difference remaining in the Transportation Account that Project Sponsor paid above the Project Sponsor’s Proportionate Share.

4.5. If the City receives Grant Funds or proceeds from other alternative funding mechanisms intended to be used for construction of any of the Intersection Mitigation Measures that exceed the Background Share, the City may retain such money if all of the Intersection Mitigation Measures have been constructed, and if the terms of the Grant Funds or alternative funding mechanism allows City retention of these funds. Any such surplus funds shall not be applied to reduce Project Sponsor’s Proportionate Share obligations, nor eligible for refund to the Project Sponsor as described in Section 8below.

4.6. The City shall, no later than March 31st of each year, provide the Project Sponsor with a detailed accounting of the following:

4.6.1. The funds credited to the Transportation Accounts from (a) Project Sponsor Proportionate Share contributions, (b) Grant Funds, (c) Other Development Traffic Mitigation and (d) Project Sponsor Transportation Account Contribution;

4.6.2. The funds debited from the Transportation Accounts in the past fiscal year and for what purpose;

4.6.3. The Intersection Mitigation Measure(s) toward which those funds were directed;

4.6.4. The current status and planned completion date for the Intersection Mitigation Measures; and

4.6.5. The amount remaining in the Transportation Accounts.

4.6.6. This annual detailed accounting may also include an updated cost estimate of Intersection Mitigation Measures if such cost estimate update has been prepared as described in Section 4.2 above based on comparable public works construction projects from the prior year, to determine if the Transportation Account balance is adequate, or if additional contributions (both

Project Sponsor Proportionate Share and Transportation Account Contribution) are necessary to account for inflation and other cost escalation. Should additional contributions become necessary to ensure funding for the outstanding Intersection Mitigation Measures, the City shall provide the Project Sponsor with notice and an explanation of why additional contributions are necessary to complete construction of the Intersection Mitigation Measures. At the request of the Project Sponsor, the City agrees to meet and confer, and use reasonable efforts to value engineer the Intersection Mitigation Measure to reduce, if possible, additional contribution requirements. Any additional contributions required shall be deposited by the Project Sponsor by June 30th of each year, unless the Parties agree to a different deadline.

5. **Required Intersection Mitigation Measures.** The City and the Project Sponsor agree that the following Intersection Mitigation Measures, or an alternative intersection mitigation measure that may be approved by the City, the County and/or WSDOT (whichever public entity has jurisdiction over the intersection), are required to address projected level of service failures based in part due to traffic from the Bullfrog UGA development. The expected timing for these projected level of service failures and the need for these Intersection Mitigation Measures are as follows:

5.1. **2024 Existing Condition Intersection Mitigation Measures:**

#8 Ranger Station Rd/Miller Ave/W. Second St.	Turn restrictions
#12 N.Pine St./W. 1 st St.	Compact Roundabout

These 2024 Existing Condition Intersection Mitigation Measures shall be included as a condition of final plat approval for Parcels Phase S-1, Phase S-2 and Phase J, by establishing the Transportation Accounts for each of the Intersection Mitigation Measures with the Project Sponsor making the Project Sponsor’s Proportionate Share payment and the Transportation Account Contribution payments for these two 2024 Intersection Mitigation Measures as described in Section 4.1 above. The Transportation Account for these 2024 Intersection Mitigation Measures shall be established and all funds deposited prior to final plat approval by the City for Phase S-1, Phase S-2 or Phase J, whichever occurs first. Additionally, as further described in Section 4.1 above, at the time the Transportation Account is established for these 2024 Intersection Mitigation Measures, the City shall also establish a Transportation Account for each of the 2032 and 2037 Intersection Mitigation Measures described in Section 5.2 and 5.3, and the City shall deposit any funding received from the Project Sponsor for all 2032 and 2037 Intersection Mitigation Measures into those Transportation Accounts. Should the Project Sponsor elect to proceed with development of any other parcel or phase prior to final plat approval for Phase S-1, Phase S-2 and Phase J, the City reserves the right to require establishment of the Transportation Account and deposit of all of the funds described in this section prior to commencement of such alternative construction in addition to any other traffic impact mitigation that may be warranted by such alternative construction. The City shall be responsible for the design and construction of these 2024 Intersection Mitigation Measures, funded by the Transportation Account.

5.2. **2032 Intersection Mitigation Measures:**

#7 Denny/W. 2 nd (SR 903)	Turn restrictions
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#9 N. Pine/W. 2 nd St (SR 903)	Compact Roundabout
#13 N.Stafford/W.2 nd (SR 903)	Compact Roundabout
#15 N.Oakes/W. 2 nd (SR 903)	Compact Roundabout
#21 Pennsylvania/1 st St	Four-way Stop

These 2032 Intersection Mitigation Measures shall be included as a condition of final plat approval for Parcels Phase P1, Phase P2, Phase P3, Phase P4, and Phase M or binding site plan or building permit approval for Phase B or any of the business park parcels, by establishing the Transportation Account with Bullfrog Flats making the Proportionate Share payment and the Transportation Account Contribution payments for each of these 2032 Intersection Mitigation Measures prior to City approval of the first final plat or binding site plan for any of these phases. as further described in Section 4 above. The City shall be responsible for the design and construction of Intersection #7, #9, #13, and #15, funded by the Transportation Accounts. The City shall offer to the City of Roslyn all payments made into the Transportation Account by the Project Sponsor attributable to the Intersection #21 improvement, provided the City of Roslyn agrees to spend those funds on the four-way stop recommended in the 2024 TENW Analysis. These 2032 Intersection Mitigation Measures shall not be a condition of approval of the Affordable Housing units required by Condition 19 in the 2002 Development Agreement.

5.3. 2037 Intersection Mitigation Measures:

#3 Bullfrog Road and Tumble Creek Drive	Merge Refuge Lane
#1 Bullfrog Road/I-90 EB On-ramp	Compact Roundabout

The 2037 Intersection Mitigation Measures above shall be included as a condition of final plat approval for Parcels Phase P1, Phase P2, Phase P3, Phase P4, and Phase M or binding site plan or building permit approval for Phase B or any of the business park parcels, by establishing the Transportation Account with Project Sponsor making the Project Sponsor Proportionate Share payment and the Transportation Account Contribution payments for the 2037 Intersection Mitigation Measures as described in Section 4 above. Intersection #3 improvements must be reviewed and approved by Kittitas County, even if the Project Sponsor takes the lead in the design and construction of that Intersection Mitigation Measure. The City shall offer to the County all payments made into the Transportation Account by the Project Sponsor attributable to the Intersection #3 improvement, provided the County agrees to spend those funds on the merge refuge lane recommended in the 2024 TENW Analysis. WSDOT shall be responsible for the design and construction of Intersection #1, if warranted. The City shall offer to WSDOT all payments made into the Transportation Account by the Project Sponsor attributable to Intersection #1 improvements, provided WSDOT agrees to spend those funds on the compact roundabout recommended in the 2024 TENW Analysis or other adequate mitigation measure for that intersection approved by WSDOT. These 2037 Intersection Mitigation Measures shall not be a condition of approval of the Affordable Housing units required by Condition 19 in the 2002 Development Agreement.

6. Monitoring and Updated Impact Analysis to Determine the Timing of 2032 and 2037 Intersection Mitigation Measures. The need for and timing of the 2032 Intersections (#7, 9, 13, 15, and 21) and 2037 Intersections (#1 and #3) shall be reviewed and confirmed or

modified based upon the results of the traffic monitoring and impact analysis update described in Section 10. Funding for this traffic monitoring and impact analysis update shall either be the responsibility of the applicant for any future phase of Bullfrog UGA development for which applications are filed after October 30, 2027, or funded by the City out of the Transportation Account described in Section 4.2 above, if no application for future phases is pending when the City determines traffic monitoring is warranted to determine timing for 2032 or 2037 Intersection Mitigation Measures.

7. Possible Reimbursement or Credit for Transportation Account Contribution.

The Parties agree that a portion of Project Sponsor's Transportation Account Contributions are in excess of Project Sponsor's Proportionate Share and therefore eligible for reimbursement or credit. To the extent that the City spends funds from the Transportation Account Contribution for actual Intersection Mitigation Measure design, permitting, right of way, bidding and construction costs (excluding cost estimate updates, annual detailed accounting of the Transportation Account, updated monitoring and impact analysis and Grant Fund applications), the Parties agree to diligently pursue various legal mechanisms for reimbursement or credit for the Transportation Account Contribution amounts in excess of the Project Share. Possible reimbursement mechanisms may include but are not limited to latecomer's agreement, pursuant to Chapter 35.72, RCW; a local improvement district, pursuant to Chapter 35.43, RCW; tax increment financing ("TIF"), Chapter 39.114, RCW, Community Revitalization Financing, Chapter 39.89 RCW; revenue bonds or transportation impact fees, Chapter 82.02, RCW. However, nothing in this Transportation Mitigation Agreement shall be construed to require the City to establish any reimbursement or credit mechanisms unless and until the City has complied with all of the constitutional and statutory requirements for consideration of such mechanisms, and then only if the City determines, in its sole discretion, that the establishment of the reimbursement mechanism is consistent with those requirements. If the City establishes a reimbursement or credit mechanism, the Parties will develop procedures regarding the administration, accounting, and any other procedures or logistics to implement the reimbursement or credit mechanism.

8. Transportation Account Termination and Potential Refund. This

Transportation Mitigation Agreement, and the Parties' obligations hereunder, shall terminate on the earlier of the following: (i) completion of construction of all of the Intersection Mitigation Measures; or (ii) the expiration of the term of the 2002 Development Agreement as may be extended by separate City Council action (the "**Termination Date**"). Upon termination, the City shall have the right to retain funds to pay for any obligations incurred under this Transportation Mitigation Agreement prior to the Termination Date. Following payment of such obligations, if any funds remain in the Transportation Accounts on the Termination Date that are properly attributed to Project Sponsor's additional Transportation Account Contribution, the Project Sponsor shall be entitled to a refund of any amount attributed to Project Sponsor's additional Transportation Account Contribution. The Project Sponsor shall not be entitled to a refund of any Project Sponsor's Proportionate Share payment, any Grant Fund sources or any Other Development Traffic Mitigation Funds. As added incentive for the City to pursue public funds for the Intersection Mitigation Measures during the term of this Transportation Mitigation Agreement, the Parties agree that the City shall be entitled to retain any funds remaining in the Transportation Accounts that came from public sources, subject to any limitations contained in those public sources of funds.

9. **Limitation of Project Sponsor Responsibility.** By depositing the Project Sponsor's Proportionate Share into the Transportation Account in accordance with the terms of this Agreement, and subject to the provision above that address additional Project Sponsor contribution requirements to achieve transportation concurrency, the City agrees that Project Sponsor will satisfy its obligations to mitigate for the Project's transportation impacts for the Bullfrog UGA development as approved in the 2002 Development Agreement, including, without limitation, the first phase applications for subdivisions of Phase S-1, Phase S-2 and Phase J.

10. **Future Traffic Monitoring.** The Parties hereby agree that Condition # 92 from the 2002 Development Agreement regarding ongoing traffic monitoring requirements is hereby amended by deleting those requirements in the 2002 Development Agreement and superseding prior implementing agreements, including Attachment 5 to the 2002 Development Agreement, "Final Draft MountainStar MPR Transportation Monitoring Program" dated April 30, 2002 and the "Transportation Monitoring Program Agreement for the Bullfrog UGA" dated November 28, 2007, and replacing it with the traffic monitoring requirements contained in this section.

10.1. No additional traffic monitoring shall be required for construction and occupancy of all the residential units approved in the Phase S-1, Phase S-2 and Phase J subdivisions, provided Project Sponsor files and obtains final plat approval for those phases within five (5) years from the date of preliminary plat approval as provided by CEMC 16.30.040A and the conditions of the preliminary plat approvals for those phases.

10.2. No additional traffic monitoring shall be required for construction and occupancy of residential units or up to 450,000 square feet of commercial development in the business park parcels in any additional subdivision or binding site plan applications filed on or before October 30, 2027. Additional traffic monitoring and updated traffic impact assessment shall be required for any binding site plan or building permit application to construct more than 450,000 square feet of commercial development in the business park parcels, whether filed before or after October 30, 2027.

10.3. Annual traffic monitoring is not required.

10.4. Updated traffic monitoring and an updated traffic impact analysis may be required if the Project Sponsor, or its successor in interest, files an application for a major modification to the Bullfrog UGA development approved in the 2002 Development Agreement in the City's reasonable discretion. Costs associated with this update shall be the responsibility of the applicant for the major modification.

10.5. Updated traffic monitoring and an updated traffic impact analysis may be required for any preliminary subdivision or binding site plan applications filed after October 30, 2027. The appropriate scope of those updates, including but not limited to methods and locations for traffic counts and level of service standards to be applied to impose mitigation shall be determined by the City at the time of such applications. Costs associated with this update shall be the responsibility of the applicant for these future subdivisions or binding site plans. Once an updated traffic impact analysis for applications filed after October 30, 2027, has been prepared

and approved by the City, and traffic mitigation measures confirmed or modified, no additional traffic monitoring will be required for development consistent with those applications unless or until the term of the 2002 Development Agreement, as may be extended, has expired.

10.6. Updated traffic monitoring and an updated traffic impact analysis may, at the City's reasonable discretion, be required if or when the Project Sponsor asks to extend the 2002 Development Agreement from October 30, 2027, to October 30, 2032; if or when the Project Sponsor asks to extend the 2002 Development Agreement from October 30, 2032, to October 30, 2037; and if or when Project Sponsor requests any further extension of the 2002 Development Agreement beyond October 30, 2037.

10.7. The City may use Transportation Account funds to conduct updated traffic monitoring and an updated traffic impact analysis if deemed necessary to support Grant Fund applications.

11. **Dispute Resolution.** In the event that any dispute, controversy, disagreement or impasse arises out of or relates to this Agreement ("Dispute"), such dispute shall be resolved pursuant to Section 11.18 of the Second Amendment to the 2002 Development Agreement.

12. **Severability.** 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, then the remaining provisions of this Agreement or its applications to other situations shall continue in full force and effect

13. **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.

14. **Counterparts; Electronic Signatures.** This Agreement may be executed in counterparts. Each Party agrees that this Agreement may be electronically signed, and that any electronic signature appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

15. **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.

Signatures:

Bullfrog Flats LLC

City of Cle Elum

1. Definitions

1.1. 2002 Development Agreement. 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.

1.2. 2024 TENW Analysis. Updated traffic counts and traffic impact analysis prepared by Transportation Engineering Northwest dated December, __, 2024.

1.3. Applications. Bullfrog Flats' submitted applications dated _____ for a Master Plat, a Boundary Line Adjustment, Preliminary Plats for three phases (parcels Phase S-1, Phase S-2 and Phase J) of the Bullfrog UGA development originally approved in the 2002 Development Agreement, a Request to Assign the 2002 Development Agreement to Bullfrog Flats, and a Request to Extend the 2002 Development Agreement term until 2037.

1.4. Background Share. The percentage of total traffic at an intersection requiring mitigation associated with background growth or identified projects other than the Bullfrog UGA development.

1.5. Bullfrog UGA. Real property authorized to be developed according to the 2002 Development Agreement, entered into on October 30, 2002, between the City and Bullfrog Flats' predecessor in interest, Trendwest Properties, Inc., and Trendwest Investments, Inc.

1.6. County. Kittitas County.

1.7. City. City of Cle Elum.

1.8. Contract Cost. The cost equal to the lowest responsible and responsive bid, plus twenty percent of the bid amount for construction engineering and construction administration, plus contingency funding equal to ten percent of the construction bid.

1.9. Effective Date. Date of execution for the Transportation Mitigation Agreement.

1.10. Grant Funds. Any public grant funds obtained for any of the Intersection Mitigation Measures.

1.11. Intersection Mitigation Measures. Nine intersections identified in the 2024 TENW Analysis that are expected to operate below adopted levels of service between 2024 and 2037 and recommended intersection improvements that would address projected level of service failures at those nine intersections.

1.12. Other Development Traffic Mitigation. Other funds obtained from traffic mitigation imposed on other development in the City.

1.13. Parties. The City of Cle Elum and Bullfrog Flats.

1.14. Project Sponsor or Bullfrog Flats. Bullfrog Flats LLC, a Washington limited liability company.

1.15. Project Sponsor's Proportionate Share or Project Share. The percentage of total traffic at an intersection requiring mitigation associated with the Bullfrog UGA development.

1.16. Proportionate Share Method. Funding strategy that includes the Project Share, any public grant funds obtained for any of the Intersection Mitigation Measures, any other funds obtained from traffic mitigation imposed on other development in the City and a Transportation Account Contribution that may be eligible for subsequent reimbursement, if available from other sources.

1.17. Site Access Intersections. Four site access intersections included in the proposed Bullfrog UGA project that were identified in the 2024 TENW Analysis: (1) Bullfrog Road southern access (#30 in the 2024 TENW Analysis); (2) Bullfrog Road central access (#29 in the 2024 TENW Analysis); (3) Bullfrog Road north access (#28 in the 2024 TENW Analysis); (4) SR 903 and Bala (#31 in the 2024 TENW Analysis).

1.18. TENW. Transportation Engineering Northwest.

1.19. Termination Date. The date when the Transportation Mitigation Agreement, and the Parties' obligations hereunder, terminate.

1.20. Transportation Account. Account where funds are credited from (a) Project Sponsor Proportionate Share contributions, (b) Grant Funds, (c) Other Development Transportation Mitigation, and (d) Project Sponsor Transportation Account Contribution.

1.21. Transportation Account Contribution. Additional contribution from the Project Sponsor to be put into an account to ensure sufficient funds are available to construct the Intersection Mitigation Measures when required to satisfy concurrency.

1.22. Transportation Mitigation Agreement. The Bullfrog Flats UGA Transportation Impacts Mitigation and Monitoring Agreement entered into by and between the City of Cle Elum, a Washington municipal corporation and Bullfrog Flats intended as an amendment to and incorporated into the 2002 Development Agreement.

1.23. WSDOT. The Washington Department of Transportation.

Attachment A							
Table Summary of Intersection Mitigation Measures							
Year of Failure	Intersection	Jurisdiction	Proposed Mitigation	2002 Mitigation	2023-Predesign Estimated Cost	Project Share % with 50% Business Park	Project share with No Business Park
2024							
	#8 — Ranger Station Rd/Miller Ave/W. Second St.	WSDOT/ City of Cle Elum	Turn Restrictions	—	\$ 130,000	17.9% — \$ 23,270	11.9% — \$15,540
	#12 — N.Pine St./W. 1 st St.	City of Cle Elum	Compact Roundabout	#85 E — Not Completed	\$ 970,000	13.8% — \$ 133,860	9.2% — \$ 89,240
2032							
	#7 — Denny/W. 2 nd (SR 903)	WSDOT/ City of Cle Elum	Merge Refuge Lane	—	\$ 130,000	19.7% — \$ 25,610	18.4% — \$ 23,920
	#9 — N. Pine/W. 2 nd St (SR 903)	WSDOT/ City of Cle Elum	Compact Roundabout	—	\$ 760,000	19.7% — \$ 149,720	13.2% — \$100,320
	#13 — N.Stafford/W.2 nd (SR 903)	WSDOT/ City of Cle Elum	Compact Roundabout	#85 D — Not Completed ²	\$ 950,000	17.4% — \$ 165,300	11.5% — \$109,250
	#15 — N.Oakes/W. 2 nd (SR 903)	WSDOT/ City of Cle Elum	Compact Roundabout	—	\$ 900,000	16.4% — \$ 147,600	10.6% — \$ 95,400
	#21 — Pennsylvania/1st St	WSDOT/ City of Roslyn	4-Way Stop	—	\$ 40,000	13.9% — \$ 5,560	9.0% — \$ 3,600
2037							
	#1 — Bullfrog/I-90 EB Ramp	WSDOT	Compact Roundabout	#85 G — Not Completed	\$ 1,370,000	10.7% — \$ 146,590	10.6% — \$145,220
	#3 — Bullfrog/Tumble Creek Dr.	Kittitas County	Merge Refuge Lane	—	\$ 260,000	21.4% — \$ 55,640	15.4% — \$ 40,040
					Total = \$ 5,510,000	Total = \$853,150	Total = \$622,500

² City has been awarded partial grant funding for this intersection.

**AGREEMENT BETWEEN THE CITY OF CLE ELUM AND
THE PROJECT SPONSOR FOR THE
MITIGATION OF WATER SYSTEM IMPACTS
ASSOCIATED WITH THE BULLFROG UGA DEVELOPMENT**

This Bullfrog Flats UGA Water System Impacts and Mitigation Agreement (“**Agreement**”) is entered into by and between the City of Cle Elum, a Washington municipal corporation (“**City**”), and Bullfrog Flats LLC, a Washington limited liability company (“**Bullfrog Flats**” or “**Project Sponsor**”), effective as of _____ (“**Effective Date**”). This Agreement is intended as an amendment to and incorporated into a development agreement approved by the City in 2002 titled 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 dated October 30, 2002, (“**2002 Development Agreement**”).

RECITALS

- A. On October 30, 2002, the City and Bullfrog Flats’ predecessor in interest, Trendwest Properties, Inc., and Trendwest Investments, Inc., entered into the 2002 Development Agreement, including conditions of approval authorizing development of property known as the “**Bullfrog UGA**” (the “**Project**”). The 2002 Development Agreement term was subsequently extended by the City and currently expires on October 30, 2027. The rights and obligations relating to development of the Bullfrog UGA contained in the 2002 Development Agreement were subsequently transferred from Trendwest to Sun 47 North. Sun 47 North and Bullfrog Flats have entered into an agreement for The Project Sponsor to purchase the Bullfrog UGA property from Sun 47 North, dependent on the outcome of the City’s decisions on Bullfrog Flats’ applications for the Bullfrog UGA and on Bullfrog Flats’ request to extend the 2002 Development Agreement. Upon such transfer of the Bullfrog UGA property from Sun 47 North to Bullfrog Flats, Bullfrog Flats is desirous of stepping into all of the outstanding obligations of the 2002 Development Agreement that are currently the responsibility of Sun 47 North.
- B. On September 19, 2024, the City issued a Notice of Complete Applications for The Project Sponsor’ applications for a Master Plat, a Boundary Line Adjustment, Preliminary Plats for three phases (parcels Phase S-1, Phase S-2 and Phase J) of the Bullfrog UGA development originally approved in the 2002 Development Agreement, a Request to Assign the 2002 Development Agreement to Bullfrog Flats, and a Request to Extend the 2002 Development Agreement term until 2037, (the “**Applications**”). Bullfrog Flats’ stated intent is to pursue development of the Bullfrog UGA property consistent with the existing 2002 Development Agreement.
- C. Under a previously executed Water Supply System Project Development Agreement dated June 19, 2001, by and among the City of Cle Elum, the Town of South Cle Elum, and Trendwest (the “**Water Supply DA**”), New Suncadia, LLC, Trendwest’s immediate

successor-in-interest, was responsible for paying a share of the cost of new regional water supply system (“**Water System**”) improvements that would serve the Suncadia Master Planned Resort (“**MPR**”) Property, as well as all costs necessary to transport water to the Bullfrog UGA property.

- D. The June 19, 2001 Agreement Relating to Water Supply for The Bullfrog Flats UGA governs transfer of water rights necessary to serve the property, which has not yet occurred. The Project Sponsor may transfer the water rights to the City in phases, and shall convey the rights, title and interest to these rights by one or more Statutory Warranty Deeds. If transferred in phases, the transferred water right shall be sufficient for the associated phase demands, including Qi, instantaneous flow rate (maximum peak hour rate) and Qa, annual volume.
- E. Potential impacts to the City’s water system resulting from the construction of the proposed Project were previously analyzed as part of the City’s previous SEPA review for the Project and other proposed development of the Bullfrog UGA. As part of its review of Bullfrog Flats’ Applications, the City has issued an Addendum to the 2002 Final Environmental Impact Statement issued on March 18, 2002 (“**2025 Addendum**”). The 2025 Addendum includes a Water System Analysis memorandum (“**Water System Analysis**”) that evaluates the City’s current water system capacity and ability to serve the Project, applying current Department of Health standards and regulations and consistent with the City’s final draft of its Water System Plan. Collectively, these SEPA review documents constitute the “**Environmental Documents**”.
- F. The Environmental Documents determined that meeting the demands of the Project and other future development in Pressure Zone 3 would require construction of a new reservoir in Pressure Zone 3 (“**New Reservoir**”), an additional filter train with two million gallons per day (MGD) of capacity (“**Filter Train**”), and Pressure Zone 3 water pump in the existing Water System treatment plant (“**Zone 3 Water Pump**”) (each, a “**Water System Improvement**” and, collectively, the “**Water System Improvements**”). The Zone 3 Water Pump is required now to serve any development within Pressure Zone 3, while the New Reservoir and Filter Train will be required to serve future development within Pressure Zone 3.
- G. The total estimated cost for designing and constructing all of the Water System Improvements based on Year 2024 cost estimates (including fifteen percent for design engineering, fifteen percent for construction engineering and construction administration, plus twenty percent contingency funding) is \$9,709,000.
- H. Bullfrog Flats’ predecessor in interest, Sun Communities, LLC (“**Sun**”), acquired from their predecessor in interest a beneficial interest in a Water Tank Easement Agreement recorded under Kittitas County Auditor’s File No. 202112100039 (the “**Water Tank Easement Agreement**”) for the construction of the New Reservoir required as a part of the Water System Improvements, valued at approximately \$500,000 (the “**Water Tank Easement Cost**”).¹ Bullfrog Flats obtained the Water Tank Easement Agreement as a successor in interest to Sun. As discussed below, the parties contemplate that Bullfrog Flats will assign to the City its rights in the Water Tank Easement Agreement as part of the Water System Improvements.

¹ See Water Tank Easement Agreement at § 6.

- I. The Water System Analysis discusses two methodologies for satisfying the Project Sponsor’s obligations to pay its fair share of the Water System Improvements: Average Day Demand (“ADD”) or Maximum Day Demand (“MDD”). The Project Sponsor’s proportionate share of the Water System Improvements under these methodologies is 63% and 64%, respectively.
- J. The City concludes that the actual total cost of designing and constructing all of the Water System Improvements (the “Water System Improvements Cost”) should be apportioned using the MDD methodology, due to maximum day demands triggering the improvements. Accordingly, the Project Sponsor’s proportionate share of the cost of the Water System Improvements is 64%. The dollar amount of the Project Sponsor’s proportionate share shall be hereafter referred to as the “**Project Sponsor’s Proportionate Share.**”
- K. Because the City owns, operates, and has familiarity with the Water System, the parties desire for the City to complete the construction of the Water System Improvements. Because the Zone 3 Water Pump is required now to serve the first phase of the Project and the parties wished to advance the design and construction of that improvement, the parties entered into a Cost Reimbursement Agreement executed December 11, 2024 (“**Zone 3 Pump Agreement**”), which governs the payment of that improvement.
- L. For the Water System Improvements, the Project Sponsor desires, with the City’s concurrence, to place funds into a separate line item or in a separate account, the “**Water System Account,**” to pay for the improvements. The City agrees to place all water connection charges collected in Pressure Zone 3 into the Water System Account ~~to be used~~² only to pay for the Water System Improvements as provided herein. Any additional contributions from the Project Sponsor required per the terms of this Agreement or the Zone 3 Pump Agreement, shall also be placed in the Water System Account ~~to be used~~² only to pay for the Water System Improvements. The parties further intend to use reasonable best efforts to seek public funds or pursue other available legal mechanisms to reimburse the Project Sponsor for any payments made by Project Sponsor in excess of Project Sponsor’s Proportionate Share (“**Additional Water System Account Contributions**”) as described in the Agreement section below.

NOW, THEREFORE, The Project Sponsor and the City agree as follows:

AGREEMENT

1. **Recitals Incorporated.** Recitals A – L recited above are hereby incorporated into this Agreement.
2. **Assignment of Water Tank Easement Agreement.** To facilitate the City’s timely construction of the New Reservoir, the Project Sponsor will assign to the City its rights in the Water Tank Easement Agreement to provide the City with the property rights necessary to construct the New Reservoir. Such assignment shall be made at no cost to the City and shall occur within 30 days after the City has provided notice that the need for the New Reservoir

²~~The language shown in brackets herein and in other Sections is tentative and subject to change.~~

has been triggered, as described in Section 4 below. Because the Water Tank Easement Cost is included in the total Water System Improvement Cost, and Project Sponsor is required to assign the Water Tank Easement Agreement to the City, it is appropriate to reduce Project Sponsor' Proportionate Share by the Water Tank Easement Cost of \$500,000.

- 3. Payment of Zone 3 Water Pump.** Because the Zone 3 Water Pump is required now to serve the first phase of the Project and the parties wished to advance the design and construction of that improvement, the parties entered into a Cost Reimbursement Agreement executed December 11, 2024 (i.e., the Zone 3 Pump Agreement), which governs the payment of that improvement. All Sections and terms of this Agreement shall apply to the Zone 3 Water Pump, including but not limited to the terms regarding potential legal mechanisms for reimbursement for any Additional Water System Account Contribution.

- 4. Triggers for the Filter Train and the New Reservoir.** Because the existing water treatment plant is a regional infrastructure component, triggers are tied to regional demands, rather than independently to project demands. As such, “triggers” for the New Reservoir and Filter Train are set forth below. The City will annually review system capacity for these two Water System Improvements and will determine if any of the identified triggers have been reached.
 - a. The need for the Filter Train is “triggered” when potable water production (actual measured plus projected water supply demand for a phase of the Project for which a preliminary plat or other approval has been applied for) equals 4.0 million gallons per day for three or more days within a 12-month period, as determined pursuant to current Washington State Department of Health regulations and standards.

 - b. The need for the New Reservoir is “triggered” if Zone 3 storage requirement (actual demand plus ~~that~~ projected water storage demand for a phase of the Project for which a preliminary plat or other approval has been applied for) is within-greater than 85% of existing capacity in the existing Zone 3 reservoir, including evaluation of equalizing storage, standby storage, and fire suppression storage, as determined pursuant to current Washington State Department of Health regulations and standards; provided that the City will attempt in good-faith to make adjustments to the allocation of storage throughout the City’s Water System in order to maximize the remaining capacity of the existing Zone 3 Reservoir.

- 5. Water System Account Established.** The Water System Account funds shall be used for the design and construction of the Water System Improvements and other purposes as provided herein. The City shall administer the City’s use of the Water System Accounts as provided for herein.
 - a. The City may, after consultation with Project Sponsor and providing Project Sponsor an opportunity to review the anticipated costs, use funds from the Water System Account for the following purposes: to cover the cost of design, permitting, and construction of the Water System Improvements; to prepare funding applications in pursuit of grant funding to cover the cost of design, permitting, and construction of

the Water System Improvements; to prepare cost estimate updates and detailed accountings under this Agreement; and to engage with consulting services as deemed necessary to help implement this Agreement. Consulting services may include, but are not limited to, professional engineering, design and construction services, financial services, and legal services.

- b. Connection fees collected by the City from development of the Project (not including capital reimbursement charges under CEMC Ch. 13.14) shall be placed in the Water System Account ~~[with the intent to be used/~~to be used] only for the purposes described herein.
- c. Connection fees collected by the City from other developers/property owners in Pressure Zone 3 after the effective date of this Agreement, as well as proceeds from City bonds, interfund loans, grants, and other funding sources issued or obtained for the purpose of funding the Water System Improvement Costs, shall be placed or deposited in the Water System Account.
- d. The construction cost estimates shall be updated and, potentially, additional deposits required throughout the design, bidding, contract award and final acceptance of the Water System Improvements as follows:
 - i. Within 30 days from the date a Water System Improvement (i.e., New Reservoir or Filter Train) is triggered as set forth in Section 4, Project Sponsor shall deposit funds into the Water System Account sufficient to cover the cost of design and bid preparation for the Water System Improvement(s), in an amount to be determined by the City (“Initial Water System Account Contribution”). Following this deposit, the City shall commence the design of the Water System Improvement(s). The City shall prepare a construction bid package and publish a bid advertisement for public works bidding for the Water System Improvements that are triggered. The City shall also prepare an updated construction cost estimate at the time the bid package is prepared.
 - ii. Prior to notice and publication of the bid package, Project Sponsor shall deposit additional funds, if any, necessary to bring the balance of the Water System Account to an amount equal to 100% of the current construction cost estimate.
 - iii. Within 30 days from the bid opening date for any Water System Improvement(s), the Project Sponsor shall deposit into the Water System Account any Additional Water System Account Contribution, if any, necessary to bring the balance of the Water System Account to an amount equal to the lowest responsible and responsive bid, including sales tax, plus fifteen percent of the bid amount for construction engineering and construction administration, plus contingency funding equal to ten percent of the construction bid (“**Contract Cost**”).

- e. The City shall, no later than March 31st of each year, provide the Project Sponsor with a detailed accounting of the following: the funds available in the Water System Account and the characterization of those funds (e.g., collected water connection charges, Additional Water System Account Contributions, and other alternative funding); the funds debited from the Water System Account in the past fiscal year and for what purpose; the Water System Improvements toward which those funds were directed; the current status and planned completion date for the Water System Improvements; and amounts remaining in the Water System Account.
- f. This annual detailed accounting may also include an updated cost estimate of the Water System Improvement(s) if such cost estimate update has been prepared based on comparable public works construction projects from the prior year, to determine if the Water System Account balance is adequate, or if additional contributions are necessary to account for inflation and other cost escalation. Should additional contributions become necessary to ensure funding for the outstanding Water System Improvement, the City shall provide Project Sponsor with notice and an explanation of why additional contributions are necessary to complete construction of the Water System Improvement. At the request of the Project Sponsor, the City agrees to meet and confer, and use reasonable efforts to value engineer the Water System Improvement to reduce, if possible, additional contribution requirements. Any additional contributions required shall be deposited by the Project Sponsor by June 30th of each year, unless the Parties agree to a different deadline.
- g. If, after the Water System Improvement(s) has been completed, the amount in the Water System Improvement Account is insufficient to fully pay the Water System Improvement Cost, within 30 days from receipt of notice from the City of that fact, the Project Sponsor shall pay an Additional Water System Contribution (if required) to bring the balance of the Water System Account to the amount remaining to be paid towards the Water System Improvement Cost. If there are funds remaining in the Water System Improvement Account after all Water System Improvements are completed, the Project Sponsor shall be entitled to be reimbursed from the Water System Improvement Account up to the total of its Additional Water System Contributions.
- h. As an added incentive for the City's efforts to apply for grants and pursue any other available, alternative funding mechanism to cover the Construction Costs to the maximum extent possible, if the City receives grants or proceeds from other alternative funding mechanisms intended to be used to pay the Contract Costs that exceed the Project Sponsor's Proportionate Share, the City may retain such money for other Water System maintenance or improvements provided all of the Water System Improvements have been constructed.

6. Possible Reimbursement or Credit for Additional Water System Contributions and Alternative Funding Sources. The parties agree that the Project Sponsor's Additional Water System Contributions are eligible for reimbursement. The parties also acknowledge that pursuing sources of funding the Contract Costs that exceed the Project Sponsor's

Proportionate Share, rather than relying on the Project Sponsor's Additional Water System Contributions, may be advantageous to all interested parties by ensuring timely completion of the Water System Improvements. Various legal mechanisms for reimbursement or credit may include, but are not limited to, collection of water system connection on other new development in the City that benefits from the Water System Improvements as provided under RCW 35.92.025; interfund loans; latecomer's agreement, pursuant to Chapter 35.92, RCW; a local improvement district, pursuant to Chapter 35.43, RCW; tax increment financing ("TIF"), Chapter 39.114, RCW; Community Revitalization Financing, Chapter 39.89 RCW; revenue bonds, reduced connection charges, Cle Elum Municipal Code 13.12.100(C); or such other legally appropriate mechanisms for reimbursement or credit. The City will work in good faith with Project Sponsor to explore and implement these mechanisms as appropriate and to pursue grants and other funding sources to pay for the Contract Costs above the Project Sponsor's Proportionate Share.

- a. The City will work in good faith with Project Sponsor to establish a capital reimbursement charge comparable to the charge currently set forth in CEMC Ch. 13.14. If established, the capital reimbursement charge shall be used as one mechanism to reimburse Project Sponsor until the amount of its Additional Water System Contributions are fully reimbursed.
- b. Another legal mechanism that the City will explore is an interfund loan, based on the sewer connection charges collected from the Project. To aid in a potential interfund loan, the City shall place all sewer connection charges collected from the Project in a separate line item or account. The City will work in good faith with Project Sponsor to explore the option of an interfund loan that would utilize those sewer connection charges to fund the amounts in excess of the Project Sponsor's Proportionate Share that may be necessary for the Water System Improvements.
- c. Nothing in this Agreement shall be construed to require the City to agree to the establishment of any reimbursement or funding mechanisms unless and until the City has complied with all of the constitutional and statutory requirements for consideration of such mechanisms, and only if the City then determines, in its sole discretion, that establishment of such mechanisms and the associated costs are consistent with those requirements. If the City establishes a reimbursement or funding mechanism, the parties will develop procedures regarding the administration, accounting, and any other procedures or logistics to implement the reimbursement or funding mechanism.

7. City Obligations.

- a. The City and Project Sponsor will work cooperatively to achieve the mutual goal of completing any required Water System Improvements for a particular phase of the Project in time to correspond with completion of said phase. The Project Sponsor shall provide a minimum of three years notice prior to completion of said phase such that the City can complete planning, engineering, and construction of said Water System Improvements. All required Water System Improvements necessary to serve a particular phase of the Project shall be completed prior to the

first certificate of occupancy issuance for that particular phase, based on the “triggers” set forth above.

- b. Subject to reasonable terms, the City will grant any easements over, on or under City-owned property necessary for the Project Sponsor to connect the Project to the City’s Water System as required by the City. In addition, the City will cooperate with Project Sponsor in good faith to assist Project Sponsor with obtaining easements from other property owners, including the Cle Elum-Roslyn School District, for such purposes.
- 8. Water System Account Termination.** The Water System Account shall terminate on the earlier of the following: 1) the City’s completion of construction of all the Water System Improvements, or 2) the expiration of the term of the 2002 Development Agreement as may be extended by separate City Council action (“**Termination Date**”). The City shall have the right to retain funds to pay for any obligations incurred under this Water System Mitigation Agreement prior to the Termination Date. Following payment of such obligations, the Project Sponsor shall then be entitled to a refund, up to any amount of Project Sponsor’s Additional Water System Account Contributions not previously reimbursed, of any balance remaining in the Water System Account, exclusive of accrued interest and exclusive of any grants or proceeds from other alternative funding mechanisms intended to be used for construction of the Water System Improvements.
- 9. Limitation of the Project Sponsor Responsibility.** By making the payments required by this Agreement, the City agrees that Project Sponsor will satisfy its obligations to mitigate for the Project’s impacts on the City’s Water Supply System for the Bullfrog UGA development as approved in the 2002 Development Agreement, including, without limitation, the first phase applications for subdivisions of Phase S-1, Phase S-2 and Phase J.
- 10. Dispute Resolution.** In the event that any dispute, controversy, disagreement or impasse arises out of or relates to this Agreement (“Dispute”), such dispute shall be resolved pursuant to Section 11.18 of the Second Amendment to the 2002 Development Agreement.
- 11. Severability.** 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, then the remaining provisions of this Agreement or its applications to other situations shall continue in full force and effect
- 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.
- 13. Counterparts; Electronic Signatures.** This Agreement may be executed in counterparts. Each Party agrees that this Agreement may be electronically signed, and that any electronic signature appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

14. 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.

[Signature Page Follows]

Signatures:

Bullfrog Flats LLC

City of Cle Elum

**AGREEMENT BETWEEN THE CITY OF CLE ELUM AND
THE PROJECT SPONSOR FOR THE
MITIGATION OF WATER SYSTEM IMPACTS
ASSOCIATED WITH THE BULLFROG UGA DEVELOPMENT**

This Bullfrog Flats UGA Water System Impacts and Mitigation Agreement (“**Agreement**”) is entered into by and between the City of Cle Elum, a Washington municipal corporation (“**City**”), and Bullfrog Flats LLC, a Washington limited liability company (“**Bullfrog Flats**” or “**Project Sponsor**”), effective as of _____ (“**Effective Date**”). This Agreement is intended as an amendment to and incorporated into a development agreement approved by the City in 2002 titled 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 dated October 30, 2002, (“**2002 Development Agreement**”).

RECITALS

- A. On October 30, 2002, the City and Bullfrog Flats’ predecessor in interest, Trendwest Properties, Inc., and Trendwest Investments, Inc., entered into the 2002 Development Agreement, including conditions of approval authorizing development of property known as the “**Bullfrog UGA**” (the “**Project**”). The 2002 Development Agreement term was subsequently extended by the City and currently expires on October 30, 2027. The rights and obligations relating to development of the Bullfrog UGA contained in the 2002 Development Agreement were subsequently transferred from Trendwest to Sun 47 North. Sun 47 North and Bullfrog Flats have entered into an agreement for The Project Sponsor to purchase the Bullfrog UGA property from Sun 47 North, dependent on the outcome of the City’s decisions on Bullfrog Flats’ applications for the Bullfrog UGA and on Bullfrog Flats’ request to extend the 2002 Development Agreement. Upon such transfer of the Bullfrog UGA property from Sun 47 North to Bullfrog Flats, Bullfrog Flats is desirous of stepping into all of the outstanding obligations of the 2002 Development Agreement that are currently the responsibility of Sun 47 North.
- B. On September 19, 2024, the City issued a Notice of Complete Applications for The Project Sponsor’ applications for a Master Plat, a Boundary Line Adjustment, Preliminary Plats for three phases (parcels Phase S-1, Phase S-2 and Phase J) of the Bullfrog UGA development originally approved in the 2002 Development Agreement, a Request to Assign the 2002 Development Agreement to Bullfrog Flats, and a Request to Extend the 2002 Development Agreement term until 2037, (the “**Applications**”). Bullfrog Flats’ stated intent is to pursue development of the Bullfrog UGA property consistent with the existing 2002 Development Agreement.
- C. Under a previously executed Water Supply System Project Development Agreement dated June 19, 2001, by and among the City of Cle Elum, the Town of South Cle Elum, and Trendwest (the “**Water Supply DA**”), New Suncadia, LLC, Trendwest’s immediate

successor-in-interest, was responsible for paying a share of the cost of new regional water supply system (“**Water System**”) improvements that would serve the Suncadia Master Planned Resort (“**MPR**”) Property, as well as all costs necessary to transport water to the Bullfrog UGA property.

- D. The June 19, 2001 Agreement Relating to Water Supply for The Bullfrog Flats UGA governs transfer of water rights necessary to serve the property, which has not yet occurred. The Project Sponsor may transfer the water rights to the City in phases, and shall convey the rights, title and interest to these rights by one or more Statutory Warranty Deeds. If transferred in phases, the transferred water right shall be sufficient for the associated phase demands, including Qi, instantaneous flow rate (maximum peak hour rate) and Qa, annual volume.
- E. Potential impacts to the City’s water system resulting from the construction of the proposed Project were previously analyzed as part of the City’s previous SEPA review for the Project and other proposed development of the Bullfrog UGA. As part of its review of Bullfrog Flats’ Applications, the City has issued an Addendum to the 2002 Final Environmental Impact Statement issued on March 18, 2002 (“**2025 Addendum**”). The 2025 Addendum includes a Water System Analysis memorandum (“**Water System Analysis**”) that evaluates the City’s current water system capacity and ability to serve the Project, applying current Department of Health standards and regulations and consistent with the City’s final draft of its Water System Plan. Collectively, these SEPA review documents constitute the “**Environmental Documents**”.
- F. The Environmental Documents determined that meeting the demands of the Project and other future development in Pressure Zone 3 would require construction of a new reservoir in Pressure Zone 3 (“**New Reservoir**”), an additional filter train with two million gallons per day (MGD) of capacity (“**Filter Train**”), and Pressure Zone 3 water pump in the existing Water System treatment plant (“**Zone 3 Water Pump**”) (each, a “**Water System Improvement**” and, collectively, the “**Water System Improvements**”). The Zone 3 Water Pump is required now to serve any development within Pressure Zone 3, while the New Reservoir and Filter Train will be required to serve future development within Pressure Zone 3.
- G. The total estimated cost for designing and constructing all of the Water System Improvements based on Year 2024 cost estimates (including fifteen percent for design engineering, fifteen percent for construction engineering and construction administration, plus twenty percent contingency funding) is \$9,709,000.
- H. Bullfrog Flats’ predecessor in interest, Sun Communities, LLC (“**Sun**”), acquired from their predecessor in interest a beneficial interest in a Water Tank Easement Agreement recorded under Kittitas County Auditor’s File No. 202112100039 (the “**Water Tank Easement Agreement**”) for the construction of the New Reservoir required as a part of the Water System Improvements, valued at approximately \$500,000 (the “**Water Tank Easement Cost**”).¹ Bullfrog Flats obtained the Water Tank Easement Agreement as a successor in interest to Sun. As discussed below, the parties contemplate that Bullfrog Flats will assign to the City its rights in the Water Tank Easement Agreement as part of the Water System Improvements.

¹ See Water Tank Easement Agreement at § 6.

- I. The Water System Analysis discusses two methodologies for satisfying the Project Sponsor’ obligations to pay its fair share of the Water System Improvements: Average Day Demand (“ADD”) or Maximum Day Demand (“MDD”). The Project Sponsor’ proportionate share of the Water System Improvements under these methodologies is 63% and 64%, respectively.
- J. The City concludes that the actual total cost of designing and constructing all of the Water System Improvements (the “Water System Improvements Cost”) should be apportioned using the MDD methodology, due to maximum day demands triggering the improvements. Accordingly, the Project Sponsor’ proportionate share of the cost of the Water System Improvements is 64%. The dollar amount of the Project Sponsor’ proportionate share shall be hereafter referred to as the “**Project Sponsor’s Proportionate Share.**”
- K. Because the City owns, operates, and has familiarity with the Water System, the parties desire for the City to complete the construction of the Water System Improvements. Because the Zone 3 Water Pump is required now to serve the first phase of the Project and the parties wished to advance the design and construction of that improvement, the parties entered into a Cost Reimbursement Agreement executed December 11, 2024 (“**Zone 3 Pump Agreement**”), which governs the payment of that improvement.
- L. For the Water System Improvements, the Project Sponsor desires, with the City’s concurrence, to place funds into a separate line item or in a separate account, the “**Water System Account,**” to pay for the improvements. The City agrees to place all water connection charges collected in Pressure Zone 3 into the Water System Account [with the intent to be used/to be used]² only to pay for the Water System Improvements as provided herein. Any additional contributions from the Project Sponsor required per the terms of this Agreement or the Zone 3 Pump Agreement, shall also be placed in the Water System Account [with the intent to be used/to be used] only to pay for the Water System Improvements. The parties further intend to use reasonable best efforts to seek public funds or pursue other available legal mechanisms to reimburse the Project Sponsor for any payments made by Project Sponsor in excess of Project Sponsor’s Proportionate Share (“**Additional Water System Account Contributions**”) as described in the Agreement section below.

NOW, THEREFORE, The Project Sponsor and the City agree as follows:

AGREEMENT

- 1. **Recitals Incorporated.** Recitals A – L recited above are hereby incorporated into this Agreement.
- 2. **Assignment of Water Tank Easement Agreement.** To facilitate the City’s timely construction of the New Reservoir, the Project Sponsor will assign to the City its rights in the Water Tank Easement Agreement to provide the City with the property rights necessary to construct the New Reservoir. Such assignment shall be made at no cost to the City and shall occur within 30 days after the City has provided notice that the need for the New Reservoir

² The language shown in brackets herein and in other Sections is tentative and subject to change.

has been triggered, as described in Section 4 below. Because the Water Tank Easement Cost is included in the total Water System Improvement Cost, and Project Sponsor is required to assign the Water Tank Easement Agreement to the City, it is appropriate to reduce Project Sponsor' Proportionate Share by the Water Tank Easement Cost of \$500,000.

- 3. Payment of Zone 3 Water Pump.** Because the Zone 3 Water Pump is required now to serve the first phase of the Project and the parties wished to advance the design and construction of that improvement, the parties entered into a Cost Reimbursement Agreement executed December 11, 2024 (i.e., the Zone 3 Pump Agreement), which governs the payment of that improvement. All Sections and terms of this Agreement shall apply to the Zone 3 Water Pump, including but not limited to the terms regarding potential legal mechanisms for reimbursement for any Additional Water System Account Contribution.
- 4. Triggers for the Filter Train and the New Reservoir.** Because the existing water treatment plant is a regional infrastructure component, triggers are tied to regional demands, rather than independently to project demands. As such, “triggers” for the New Reservoir and Filter Train are set forth below. The City will annually review system capacity for these two Water System Improvements and will determine if any of the identified triggers have been reached.

 - a. The need for the Filter Train is “triggered” when potable water production (actual measured plus projected water supply demand for a phase of the Project for which a preliminary plat or other approval has been applied for) equals 4.0 million gallons per day for three or more days within a 12-month period, as determined pursuant to current Washington State Department of Health regulations and standards.
 - b. The need for the New Reservoir is “triggered” if Zone 3 storage requirement (actual demand plus that projected water storage demand for a phase of the Project for which a preliminary plat or other approval has been applied for) is within 85% of existing capacity, including evaluation of equalizing storage, standby storage, and fire suppression storage, as determined pursuant to current Washington State Department of Health regulations and standards; provided that the City will attempt in good-faith to make adjustments to the allocation of storage throughout the City’s Water System in order to maximize the remaining capacity of the existing Zone 3 Reservoir.
- 5. Water System Account Established.** The Water System Account funds shall be used for the design and construction of the Water System Improvements and other purposes as provided herein. The City shall administer the City’s use of the Water System Accounts as provided for herein.

 - a. The City may, after consultation with Project Sponsor and providing Project Sponsor an opportunity to review the anticipated costs, use funds from the Water System Account for the following purposes: to cover the cost of design, permitting, and construction of the Water System Improvements; to prepare funding applications in pursuit of grant funding to cover the cost of design, permitting, and construction of the Water System Improvements; to prepare cost estimate updates and detailed

accountings under this Agreement; and to engage with consulting services as deemed necessary to help implement this Agreement. Consulting services may include, but are not limited to, professional engineering, design and construction services, financial services, and legal services.

- b. Connection fees collected by the City from development of the Project (not including capital reimbursement charges under CEMC Ch. 13.14) shall be placed in the Water System Account [with the intent to be used/to be used] only for the purposes described herein.
- c. Connection fees collected by the City from other developers/property owners in Pressure Zone 3 after the effective date of this Agreement, as well as proceeds from City bonds, interfund loans, grants, and other funding sources issued or obtained for the purpose of funding the Water System Improvement Costs, shall be placed or deposited in the Water System Account.
- d. The construction cost estimates shall be updated and, potentially, additional deposits required throughout the design, bidding, contract award and final acceptance of the Water System Improvements as follows:
 - i. Within 30 days from the date a Water System Improvement (i.e., New Reservoir or Filter Train) is triggered as set forth in Section 4, Project Sponsor shall deposit funds into the Water System Account sufficient to cover the cost of design and bid preparation for the Water System Improvement(s), in an amount to be determined by the City (“Initial Water System Account Contribution”). Following this deposit, the City shall commence the design of the Water System Improvement(s). The City shall prepare a construction bid package and publish a bid advertisement for public works bidding for the Water System Improvements that are triggered. The City shall also prepare an updated construction cost estimate at the time the bid package is prepared.
 - ii. Prior to notice and publication of the bid package, Project Sponsor shall deposit additional funds, if any, necessary to bring the balance of the Water System Account to an amount equal to 100% of the current construction cost estimate.
 - iii. Within 30 days from the bid opening date for any Water System Improvement(s), the Project Sponsor shall deposit into the Water System Account any Additional Water System Account Contribution, if any, necessary to bring the balance of the Water System Account to an amount equal to the lowest responsible and responsive bid, including sales tax, plus fifteen percent of the bid amount for construction engineering and construction administration, plus contingency funding equal to ten percent of the construction bid (“**Contract Cost**”).

- e. The City shall, no later than March 31st of each year, provide the Project Sponsor with a detailed accounting of the following: the funds available in the Water System Account and the characterization of those funds (e.g., collected water connection charges, Additional Water System Account Contributions, and other alternative funding); the funds debited from the Water System Account in the past fiscal year and for what purpose; the Water System Improvements toward which those funds were directed; the current status and planned completion date for the Water System Improvements; and amounts remaining in the Water System Account.
- f. This annual detailed accounting may also include an updated cost estimate of the Water System Improvement(s) if such cost estimate update has been prepared based on comparable public works construction projects from the prior year, to determine if the Water System Account balance is adequate, or if additional contributions are necessary to account for inflation and other cost escalation. Should additional contributions become necessary to ensure funding for the outstanding Water System Improvement, the City shall provide Project Sponsor with notice and an explanation of why additional contributions are necessary to complete construction of the Water System Improvement. At the request of the Project Sponsor, the City agrees to meet and confer, and use reasonable efforts to value engineer the Water System Improvement to reduce, if possible, additional contribution requirements. Any additional contributions required shall be deposited by the Project Sponsor by June 30th of each year, unless the Parties agree to a different deadline.
- g. If, after the Water System Improvement(s) has been completed, the amount in the Water System Improvement Account is insufficient to fully pay the Water System Improvement Cost, within 30 days from receipt of notice from the City of that fact, the Project Sponsor shall pay an Additional Water System Contribution (if required) to bring the balance of the Water System Account to the amount remaining to be paid towards the Water System Improvement Cost. If there are funds remaining in the Water System Improvement Account after all Water System Improvements are completed, the Project Sponsor shall be entitled to be reimbursed from the Water System Improvement Account up to the total of its Additional Water System Contributions.
- h. As an added incentive for the City's efforts to apply for grants and pursue any other available, alternative funding mechanism to cover the Construction Costs to the maximum extent possible, if the City receives grants or proceeds from other alternative funding mechanisms intended to be used to pay the Contract Costs that exceed the Project Sponsor' Proportionate Share, the City may retain such money for other Water System maintenance or improvements provided all of the Water System Improvements have been constructed.

6. Possible Reimbursement or Credit for Additional Water System Contributions and Alternative Funding Sources. The parties agree that the Project Sponsor's Additional Water System Contributions are eligible for reimbursement. The parties also acknowledge that pursuing sources of funding the Contract Costs that exceed the Project Sponsor's Proportionate Share, rather than relying on the Project Sponsor's Additional Water System

Contributions, may be advantageous to all interested parties by ensuring timely completion of the Water System Improvements. Various legal mechanisms for reimbursement or credit may include, but are not limited to, collection of water system connection on other new development in the City that benefits from the Water System Improvements as provided under RCW 35.92.025; interfund loans; latecomer's agreement, pursuant to Chapter 35.92, RCW; a local improvement district, pursuant to Chapter 35.43, RCW; tax increment financing ("TIF"), Chapter 39.114, RCW; Community Revitalization Financing, Chapter 39.89 RCW; revenue bonds, reduced connection charges, Cle Elum Municipal Code 13.12.100(C); or such other legally appropriate mechanisms for reimbursement or credit. The City will work in good faith with Project Sponsor to explore and implement these mechanisms as appropriate and to pursue grants and other funding sources to pay for the Contract Costs above the Project Sponsor's Proportionate Share.

- a. The City will work in good faith with Project Sponsor to establish a capital reimbursement charge comparable to the charge currently set forth in CEMC Ch. 13.14. If established, the capital reimbursement charge shall be used as one mechanism to reimburse Project Sponsor until the amount of its Additional Water System Contributions are fully reimbursed.
- b. Another legal mechanism that the City will explore is an interfund loan, based on the sewer connection charges collected from the Project. To aid in a potential interfund loan, the City shall place all sewer connection charges collected from the Project in a separate line item or account. The City will work in good faith with Project Sponsor to explore the option of an interfund loan that would utilize those sewer connection charges to fund the amounts in excess of the Project Sponsor's Proportionate Share that may be necessary for the Water System Improvements.
- c. Nothing in this Agreement shall be construed to require the City to agree to the establishment of any reimbursement or funding mechanisms unless and until the City has complied with all of the constitutional and statutory requirements for consideration of such mechanisms, and only if the City then determines, in its sole discretion, that establishment of such mechanisms and the associated costs are consistent with those requirements. If the City establishes a reimbursement or funding mechanism, the parties will develop procedures regarding the administration, accounting, and any other procedures or logistics to implement the reimbursement or funding mechanism.

7. City Obligations.

- a. The City and Project Sponsor will work cooperatively to achieve the mutual goal of completing any required Water System Improvements for a particular phase of the Project in time to correspond with completion of said phase. The Project Sponsor shall provide a minimum of three years notice prior to completion of said phase such that the City can complete planning, engineering, and construction of said Water System Improvements. All required Water System Improvements necessary to serve a particular phase of the Project shall be completed prior to the

first certificate of occupancy issuance for that particular phase, based on the “triggers” set forth above.

- b. Subject to reasonable terms, the City will grant any easements over, on or under City-owned property necessary for the Project Sponsor to connect the Project to the City’s Water System as required by the City. In addition, the City will cooperate with Project Sponsor in good faith to assist Project Sponsor with obtaining easements from other property owners, including the Cle Elum-Roslyn School District, for such purposes.
- 8. Water System Account Termination.** The Water System Account shall terminate on the earlier of the following: 1) the City’s completion of construction of all the Water System Improvements, or 2) the expiration of the term of the 2002 Development Agreement as may be extended by separate City Council action (“**Termination Date**”). The City shall have the right to retain funds to pay for any obligations incurred under this Water System Mitigation Agreement prior to the Termination Date. Following payment of such obligations, the Project Sponsor shall then be entitled to a refund, up to any amount of Project Sponsor’s Additional Water System Account Contributions not previously reimbursed, of any balance remaining in the Water System Account, exclusive of accrued interest and exclusive of any grants or proceeds from other alternative funding mechanisms intended to be used for construction of the Water System Improvements.
- 9. Limitation of the Project Sponsor Responsibility.** By making the payments required by this Agreement, the City agrees that Project Sponsor will satisfy its obligations to mitigate for the Project’s impacts on the City’s Water Supply System for the Bullfrog UGA development as approved in the 2002 Development Agreement, including, without limitation, the first phase applications for subdivisions of Phase S-1, Phase S-2 and Phase J.
- 10. Dispute Resolution.** In the event that any dispute, controversy, disagreement or impasse arises out of or relates to this Agreement (“Dispute”), such dispute shall be resolved pursuant to Section 11.18 of the Second Amendment to the 2002 Development Agreement.
- 11. Severability.** 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, then the remaining provisions of this Agreement or its applications to other situations shall continue in full force and effect
- 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.
- 13. Counterparts; Electronic Signatures.** This Agreement may be executed in counterparts. Each Party agrees that this Agreement may be electronically signed, and that any electronic signature appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

14. 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.

[Signature Page Follows]

Signatures:

Bullfrog Flats LLC

City of Cle Elum