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AMENDED and RESTATED DEVELOPMENT AGREEMENT

BY

AND

BETWEEN

KITTITAS COUNTY, WASHINGTON

AND

TRENDWEST RESORTS, INC. SUNCADIA LLC

AND

TRENDWEST INVESTMENTS, INC.

RELATING TO THE DEVELOPMENT COMMONLY KNOWN AS

MOUNTAINSTAR SUNCADIA MASTER PLANNED RESORT

(MOUNTAINSTAR SUNCADIA)

**AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN
KITITAS COUNTY, WASHINGTON, TRENDWEST RESORTS, INC.
AND TRENDWEST INVESTMENTS, INC. SUNCADIA LLC
RELATING TO THE DEVELOPMENT COMMONLY KNOWN AS
MOUNTAINSTAR SUNCADIA MASTER PLANNED RESORT**

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (“Agreement”) is entered into as of the ~~this 10th~~ 18th day of ~~October, 2000~~ March, 2008, by and between TRENDWEST RESORTS, INC. (“Trendwest Resorts”), an Oregon corporation registered to conduct business in the state of Washington, and TRENDWEST INVESTMENTS, INC. (“Trendwest Investments”), a Washington corporation, SUNCADIA LLC, a Delaware limited liability company (“Suncadia”) as successor in interest to Trendwest Resorts, Inc., an Oregon Corporation, Trendwest Investments, Inc., a Washington corporation, and MountainStar Development, LLC, a Delaware limited liability company (Trendwest Resorts and Trendwest Investments are sometimes collectively referred to herein as “Trendwest”; references hereinafter to Trendwest, MountainStar and/or the “Resort” shall be deemed to refer to Suncadia), and KITITAS COUNTY (the “County”), a Washington municipal corporation, pursuant to RCW 36.70B.180 - .210 and Chapter 15A.11, *Development Agreements*, of the Kittitas County Code (“County Code”). Trendwest and the County are sometimes referred to herein individually as “Party” and collectively as the “Parties.”

RECITALS

A. To strengthen the public planning process and to reduce the economic costs of development, the Legislature of the state of Washington enacted RCW 36.70B.170 - .210 (the “Development Agreement Statute”), which authorizes the County to enter into an agreement regarding the development of real property located within the County’s jurisdiction with any person having an ownership interest or control of such real property. The County adopted

Chapter 15A.11, *Development Agreements*, of the County Code to authorize development agreements under the Development Agreement Statute for large, complex or phased developments within the County.

B. ~~Trendwest Investments~~Suncadia is the owner of the Resort ~~certain real property~~ consisting of approximately 6,217 acres located within Kittitas County, the outer boundary of which property is more particularly described in the legal description attached as EXHIBIT A (Rev. 1) and incorporated herein by reference (the “Trendwest Property”). Trendwest Investments purchased the Trendwest Property on June 21, 2000 from JELD-WEN, iNC. (“JELD-WEN”), an Oregon corporation registered to conduct business in the state of Washington. Trendwest Investments is a wholly-owned subsidiary of Trendwest Resorts.

C. Trendwest Resorts is a public company in which JELD-WEN owns a controlling interest.

D. Trendwest desires and intends to develop the Trendwest Property pursuant to RCW 36.70A.360 as the MountainStar Master Planned Resort (“MountainStar” or “Resort”), including, but not limited to, (i) golf courses and other on-site indoor and outdoor recreational amenities, (ii) conference centers, (iii) hotels, condominiums, time-share units, resort chalets and single-family residences (including vacation and second homes), (iv) an equestrian facility, (v) an interpretive center, and (vi) open space, as more particularly described in Trendwest’s MountainStar Resort Conceptual Master Plan set forth in the County’s Final Environmental Impact Statement and as thereafter amended (more particularly described in Recital I(6) below).

E. The County has determined that this Agreement is appropriate for MountainStar and, therefore, desires to enter this Agreement. This Agreement establishes planning principles, development standards and procedures to eliminate uncertainty in planning and to guide the

orderly development of MountainStar consistent with the County's Comprehensive Plan (the "Comprehensive Plan") and Master Planned Resort Zoning District (as defined in Recital I(8) below); to mitigate probable significant, adverse environmental impacts; to ensure installation of necessary on-site and off-site infrastructure and improvements; to provide for the preservation of permanent open space; to make provision for trail facilities and other on-site recreational amenities; to provide proportionate funding for traffic improvements and other public improvements; to provide for services appropriate to the development of MountainStar; and to otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted. Furthermore, development of MountainStar pursuant to this Agreement would result in substantial fiscal benefits to the County.

F. Trendwest is entering into this Development Agreement to provide certainty for planning and development of MountainStar, to provide certainty with respect to environmental and fiscal conditions imposed on the development of MountainStar, and to guarantee the Comprehensive Plan designation, zoning designation and development standards for the development of MountainStar so that Trendwest can justify a major financial investment in MountainStar and the surrounding area, an investment that must be amortized over several decades of sales and operations at MountainStar. Trendwest could not undertake development of MountainStar without the assurances provided through this Agreement.

G. It is understood by the Parties that MountainStar is a private development and that Trendwest shall have full power over and exclusive control of MountainStar, subject only to the limitations and obligations of Trendwest under the County's Comprehensive Plan, the MountainStar Subarea Plan (as defined in Recital I(8) below), the County's Master Planned Resort Zoning District (as defined in Recital I(8) below), the MountainStar Resort Conceptual

Master Plan, as amended (as defined in Recital I(6) below), the Rezone (as defined in Recital I(8) below), the MPR Project Development Permit and MountainStar MPR Conditions (as defined in Recital I(6) below), the Applicable Law (as defined in Section 4.1(c) below), and this Agreement. The Parties further understand that neither this Agreement nor Trendwest's development of MountainStar shall be construed as creating any form of agency relationship, joint venture or partnership between Trendwest and the County.

H. In exchange for the benefits to the County described in Recital E above, together with the other public benefits that will result from the development of MountainStar, Trendwest will receive by this Agreement assurance that it is obtaining vested rights and may proceed with development of MountainStar in accordance with the Applicable Law (defined in Section 4.1(c) below), and, therefore, Trendwest desires to enter into this Agreement.

I. The Parties have undertaken various environmental review and planning actions relating to the development of MountainStar. These actions include, without limitation, the following:

1. Under the Growth Management Act ("GMA"), Ch. 36.70A RCW, counties "may permit master planned resorts which may constitute urban growth outside of urban growth areas as limited by this section." RCW 36.70A.360. On December 11, 1996, the County amended its Comprehensive Plan through Ordinance No. 96-20 to adopt planning policies to guide the development of Master Planned Resorts (the "Original MPR Policies") in Kittitas County. The Eastern Washington Growth Management Hearings Board ("Eastern Board") subsequently concluded by order dated March 28, 1997, that the Original MPR Policies did not comply with the GMA. By Ordinance No. 97-20 adopted by the Kittitas County Board of County Commissioners ("BOCC") on December 30, 1997, the BOCC adopted revised MPR

policies (the “Revised MPR Policies”) on remand from the Eastern Board. The Eastern Board concluded by order dated April 16, 1998 that the Revised MPR Policies complied with the requirements of the GMA except for RCW 36.70A.100. On remand the BOCC adopted Ordinance No. 98-20 on September 18, 1998, further amending the Revised MPR Policies on remand from the Eastern Board to meet the requirements of RCW 36.70A.100. By order dated November 18, 1998, the Board held that the Revised MPR Policies, as amended, fully complied with the GMA. The Eastern Board’s November 18, 1998 order was not appealed.

2. On March 5, 1997, the County and Trendwest executed a “Development Agreement Relating to Processing Master Planned Resort Application.” To the extent there is a conflict between the March 5, 1997 Development Agreement and this Agreement, this Agreement shall control.

3. On March 7, 1997, Trendwest submitted to the County a complete “MPR Application” seeking approval to develop MountainStar on the Trendwest Property. Under Washington law, Trendwest’s MPR Application vested to those policies and regulations, including the County’s Original MPR Policies in effect on March 7, 1997. The MPR Application requests the following approvals necessary for the development of MountainStar: (a) a site-specific amendment to the County’s Comprehensive Plan land use designation map changing the designation of the Trendwest Property to Master Planned Resort (the “Comprehensive Plan Amendment”); (b) a site-specific rezone of the County zoning map for the Trendwest Property to a Master Planned Resort Zoning District (the “Rezone”); and (c) a MPR Project Development Permit for the MountainStar Conceptual Master Plan. The comprehensive plan amendment to the land use designation map may include the adoption of a subarea plan for

the Trendwest Property to implement the County's Master Planned Resort Comprehensive Plan policies described in Recital I(1) above (the "MountainStar Subarea Plan").

4. On March 12, 1997, at the request of Trendwest, the County issued a Determination of Significance under the Washington State Environmental Policy Act, Ch. 43.21C RCW ("SEPA"), for Trendwest's MPR Application, thereby requiring preparation of an Environmental Impact Statement.

5. On July 28, 1999, the County published a Draft Environmental Impact Statement (the "MountainStar DEIS") pursuant to SEPA analyzing the environmental impacts of the proposed MountainStar Master Planned Resort.

6. On April 10, 2000, the County issued a Final Environmental Impact Statement for the MountainStar Master Planned Resort (the "MountainStar FEIS") pursuant to SEPA. The MountainStar FEIS includes the "MountainStar Conceptual Master Plan," which Trendwest has amended from time to time as planning and environmental review of MountainStar has progressed and to meet the requirements of the MountainStar MPR Conditions. A true and correct copy of the MountainStar Resort Conceptual Master Plan, as amended, is attached as EXHIBIT B and incorporated herein by reference.

7. The adequacy of the MountainStar EIS was appealed to the BOCC by RIDGE, Rebound, the City of Roslyn, the Yakama Nation and the Washington State Department of Fish and Wildlife ("WDFW"). Prior to the public hearing on the appeals, the appeals of the Yakama Nation and WDFW were withdrawn. A public hearing on the remaining appeals was heard by the BOCC on July 5, 6, 7 and 11, 2000. On July 12, 2000, the BOCC continued its public deliberations on the remaining appeals and voted 3-0 to deny the appeals. The BOCC

found and concluded that the MountainStar EIS satisfied all applicable legal requirements by Resolution No. 2000-79 dated July 24, 2000.

8. The County concurrently reviewed and processed the proposed: (a) Master Planned Resort Zoning District ordinance, implementing the County's Master Planned Resort Policies in the Comprehensive Plan; (b) Trendwest MPR Application; (c) MountainStar Subarea Plan; (d) Rezone; and (e) ordinance to process MountainStar as a "Planned Action" under SEPA (the "Planned Action Ordinance").

9. Beginning on July 5, 2000, the BOCC and the County's Planning Commission jointly conducted a series of public hearings regarding Trendwest's MPR Application, the MountainStar Subarea Plan, the Rezone, the proposed Planned Action Ordinance, and the adoption of this Agreement as required by RCW 36.70B.200. EIS appeal hearings were conducted before the BOCC as detailed Recital I(7) above. Consolidated public hearings were conducted by the BOCC and the Planning Commission on July 12, July 13, July 17, July 20, July 24, and August 8, 2000. The Planning Commission conducted public meetings in connection with the foregoing on August 21 and August 22, 2000. The Planning Commission issued its written Recommendation and Findings of Fact at a public meeting on August 28, 2000. The Planning Commission recommended that the BOCC approve the Master Planned Resort Zoning District, MountainStar Subarea Plan and Rezone. The Planning Commission also recommended: (a) approval of an MPR Project Development Permit for the MountainStar Conceptual Master Plan, subject to the conditions recommended by the Planning Commission (the "MountainStar MPR Conditions"); (b) adoption of the proposed Planned Action Ordinance for MountainStar; and (c) adoption of this Agreement.

10. The BOCC formally accepted receipt of the Planning Commission's Recommendation and Findings of Fact at a public meeting on August 29, 2000. On September 18 and 20, 2000, the BOCC held continued public hearings to consider the Planning Commission's recommendations regarding the Master Planned Resort Zoning District, Trendwest's MPR Application, the MountainStar Subarea Plan, the Rezone, and the Planned Action Ordinance. The BOCC approved the MountainStar Subarea Plan and Master Planned Resort Zoning District on October 10, 2000, by Ordinance Nos. 2000-12 and 2000-13, respectively, which are attached as EXHIBITS C and D and incorporated herein by reference. On that same date, the BOCC effected the Rezone through Ordinance No. 2000-14, which is attached as EXHIBIT E and incorporated herein by reference. On that same date, the BOCC issued an MPR Project Development Permit for the MountainStar Resort Conceptual Master Plan, as amended, subject to (a) the MountainStar MPR Conditions recommended by the Planning Commission, as amended by the BOCC, and (b) the execution of a Development Agreement between the County and Trendwest on terms and conditions satisfactory to the County, by Ordinance No. 2000-15, which is attached as EXHIBIT F and incorporated herein by reference. Finally, by Ordinance No. 2000-17 adopted on that same date, the BOCC approved the Planned Action Ordinance, authorizing MountainStar to be processed as a Planned Action under SEPA. A true and correct copy of Ordinance No. 2000-17 is attached as EXHIBIT G and incorporated herein by reference. (The MountainStar Resort Conceptual Master Plan (as amended), the Rezone, the MPR Project Development Permit and MountainStar MPR Conditions, the MountainStar Subarea Plan, and the Planned Action Ordinance are sometimes collectively referred to herein as the "MPR Approvals.")

J. On October 10, 2000, concurrent with the BOCC's consideration of the Master Planned Resort Zoning District, Trendwest's MPR Application, the Rezone, the MountainStar Subarea Plan and the Planned Action Ordinance, the BOCC conducted a duly noticed public meeting regarding the proposed adoption of this Agreement. The BOCC authorized execution of this Agreement by Ordinance No. 2000-16 adopted on October 10, 2000.

K. By developing MountainStar in accordance with this Agreement, such development shall be in compliance with the GMA, the County's Comprehensive Plan, the County's Master Planned Resort Zoning District, and all other growth management ordinances, resolutions, rules, regulations, policies, standards, and directives of the County.

L. Each Party acknowledges that it is entering into this Agreement voluntarily.

M. Section 1.3 of the Development Agreement requires the parties to review its provisions within two years of its Effective Date and every five years thereafter, which reviews have not heretofore taken place; provided that, pursuant to Section 6, the Parties have previously entered into the following amendments:

- Ordinance 2001-14, dated September 4, 2001, amending C-34
- Resolution 2006-170, dated December 5, 2006, allowing for the use of binding site plans
- Resolution 2007-11, dated February 12, 2007, amending C-42
- Resolution 2007-119, dated September 18, 2007, amending C-45 and C-46

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N. Pursuant to Section 6 hereof, the Parties desire to amend and restate this Agreement.

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

AGREEMENT

Section 1. EFFECTIVE DATE AND TERM

1.1 Effective Date. This Agreement shall become effective upon the date the BOCC approves the MPR Approvals as defined in Recital I(10) of this Agreement (the “Effective Date”). The “Applicable Law” to which MountainStar shall be subject to and vested is set forth in Section 4.1(c) below. The Effective Date shall be inserted in the introductory paragraph preceding the Recitals.

1.2 Term. The term of this Agreement (the “Term”) shall commence upon the Effective Date and continue for a period of thirty (30) years.

1.3 Review and Modification. Trendwest and the County shall review the terms of this Agreement within two (2) years from the Effective Date and every five (5) years thereafter to consider possible amendments thereto. This Agreement may be modified, extended or terminated upon the written agreement of Trendwest and the County.

Section 2. DEFINITIONS

Unless the context requires a different meaning, any term or phrase used in this Agreement that has its first letter capitalized shall have that meaning given to it by this Agreement. Certain such terms and phrases are defined below; others are defined where they appear in the text of this Agreement, including its Exhibits.

"Affected Jurisdiction or Public Body" shall mean a public entity whose public service facilities are impacted by the development of MountainStar. As of the Effective Date of this

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Agreement, Affected Jurisdictions and Public Bodies to which this Agreement applies are as follows: Kittitas County, Kittitas County Sheriff, the City of Cle Elum, the City of Roslyn, the Town of South Cle Elum, the Consolidated Communications Agency for Kittitas County (KITTCOM), Kittitas County Fire Protection District No. 7, the Cle Elum-Roslyn School District, Hospital District No. 2 and the Washington State Department of Transportation (WSDOT). Additional Affected Jurisdictions and Public Bodies may be added to this Agreement only with the mutual agreement of the Parties.

“Agreement” and “Development Agreement” shall mean this *Development Agreement by and Between Kittitas County, Washington, and Trendwest Resorts, Inc., and Trendwest Investments, Inc. Relating to the Development Commonly Known as MountainStar Master Planned Resort*, as set forth in the Preamble of this Agreement and authorized under Ordinance No. 2000-16.

“Applicable Law” shall have the meaning set forth in Section 4.1(c) of this Agreement.

“BOCC” shall mean the Board of County Commissioners for Kittitas County, Washington.

“CC&Rs” shall mean covenants, conditions and restrictions.

“County” shall mean Kittitas County, Washington, as set forth in the Preamble of this Agreement.

“Comprehensive Plan” shall mean the Kittitas County Comprehensive Plan, as set forth in Recital E of this Agreement.

“Critical Areas Regulations” shall mean Chapter 17A, *Critical Areas*, of the Kittitas County Code, attached as EXHIBIT I of this Agreement.

“Design Guidelines” shall mean the general design goals the County and Trendwest have agreed upon for the MountainStar Master Planned Resort as described in EXHIBIT J attached hereto and incorporated herein by this reference, as amended from time to time.

“Design Review Committee” or “DRC” shall mean the committee established by Trendwest pursuant to EXHIBIT J to administer and enforce various Development Standards and Design Guidelines set forth hereunder and in applicable CC&Rs for MountainStar.

“Developed On-Site Recreational Facilities” means indoor and outdoor recreational facilities and uses, and may include, but are not limited to, golf courses (including accessory structures and facilities, such as clubhouses, practice facilities, and maintenance facilities), tennis courts, swimming pools, sports complexes, cross country skiing, hiking and nature trails, bicycle paths, equestrian facilities, skating arenas, bowling alleys and theaters.

“Development Agreement Statute” shall mean RCW 36.70B.170 through .210, as set forth in Recital A of this Agreement.

“Development Standards” shall mean the standards controlling development of the MountainStar Master Planned Resort, as more specifically described in Section 4.1(d) of this Agreement.

“Director of Community Development Services” or “Director” shall mean Planning Director.

“Division” means a smaller area within a Phase, may include one or more parcels or subdivisions of land, and can also be described as a “subphase.”

“Eastern Board” shall mean the Eastern Washington Growth Management Hearings Board, as set forth in Recital I(1) of this Agreement.

“Effective Date” shall have that meaning set forth in Section 1.1 of this Agreement.

“General Site Plan” shall have that meaning set forth in Section 5.1(a) of this Agreement.

“GMA” shall mean the Washington State Growth Management Act, Ch. 36.70A RCW, as set forth in Recital I(1) of this Agreement.

“Infrastructure” shall mean all Utilities, as defined in this Agreement, and roads and bridges.

“JELD-WEN” shall mean JELD-WEN, iNC., an Oregon corporation registered to conduct business in the state of Washington, as set forth in Recital B to this Agreement.

“Master Planned Resort” means a self-contained and fully integrated planned unit development, located in a setting of significant natural amenities, with a primary focus on destination resort facilities consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities, but which may include other residential uses within its boundaries if such other residential uses are integrated into and support the on-site recreational nature of the resort. A Master Planned Resort may also enter into agreements for shared capital facilities and utilities with outside service providers, including municipalities and special purpose districts, in accordance with the provisions of RCW 36.70A.360, 1998 c 112 § 2.

“Master Planned Resort Accommodation Units” means resort accommodations of any kind whatsoever with the exception of (i) campgrounds and (ii) recreational vehicles sites without power and water. Master Planned Resort Accommodation Units includes, but is not limited to, (i) Short-Term Visitor Accommodations (as defined below), and (ii) all individually-owned chalets, cabins, condominiums, single-family detached and multi-family attached residences or other accommodations not meeting the definition of Short-Term Visitor Accommodations as defined below.

“Master Planned Resort Zoning District” shall mean the development regulations adopted by the BOCC through Ordinance No. 2000-13 as set forth in Recital I(8) of this Agreement.

“MountainStar,” “MPR” or “Resort” shall mean the MountainStar Master Planned Resort (now the Suncadia Master Planned Resort) and all improvements to be constructed thereon as described in the MountainStar Resort Conceptual Master Plan, the Rezone, the MPR Project Development Permit and MountainStar MPR Conditions, and the Subsequent Actions.

“MountainStar EIS” shall mean collectively the Draft Environmental Impact Statement (“DEIS”) prepared by the County for MountainStar pursuant to SEPA and published on July 28, 1999 and the Final Environmental Impact Statement (“FEIS”) prepared by the County for MountainStar pursuant to SEPA and published on April 10, 2000, as set forth in Recitals I(5) and I(6) of this Agreement.

“MountainStar MPR Conditions” shall mean those conditions of approval on the MPR Development Permit for MountainStar imposed by the BOCC through Ordinance No. 2000-15 and attached to this Agreement as EXHIBIT F, as set forth in Recital I(10) of this Agreement, as amended.

“MountainStar Resort Conceptual Master Plan” shall mean the conceptual master plan for the MountainStar Master Planned Resort attached as EXHIBIT B, as set forth in Recital I(6) of this Agreement.

“MountainStar Subarea Plan” shall mean the subarea plan to the Kittitas County Comprehensive Plan to implement the County’s Master Planned Resort policies for the development of MountainStar on the Trendwest Property, as set forth in Recital I(3) of this Agreement.

“MPR Application” shall mean Trendwest’s development application submitted March 7, 1997, requesting County approval to develop the Trendwest Property as a Master Planned Resort, as set forth in Recital I(3) of this Agreement.

“MPR Approvals” shall mean collectively the (a) MountainStar Resort Conceptual Master Plan, (b) the Rezone; (c) the MPR Project Development Permit and MountainStar MPR Conditions, (d) the MountainStar Subarea Plan, and (e) the Planned Action Ordinance, as set forth in Recital I(10) of this Agreement.

“MPR Project Development Permit” shall mean Ordinance No. 2000-15 attached as EXHIBIT F, approving Trendwest’s MPR Application together with the MountainStar MPR Conditions associated therewith, as described in Recital I(10) of this Agreement.

"Open Space" means any land that is retained in a substantially natural condition (including road right-of-ways retained in a substantially natural condition) or that is improved for outdoor recreational uses, such as golf courses, cross country skiing, hiking or nature trails, equestrian and bicycle paths, or land that is specifically required to be preserved pursuant to (i) the MountainStar Resort Conceptual Master Plan, or the MPR Project Development Permit and MountainStar MPR Conditions; (ii) permanent conservation easement; (iii) deed covenant, condition or restriction running with the land on residential lots; or (iv) a similar method. Open Space includes water bodies such as ponds, rivers and streams, lands protected as important natural features, such as vegetation cover or slopes, and lands used as buffers. Open space also includes land that is managed by Trendwest for recreational, habitat enhancement and forestry purposes in accordance with a land stewardship plan developed by Trendwest and approved by the BOCC; provided, however, that such plan may be limited by the terms of conservation easements or other appropriate instruments conveyed by Trendwest to third parties to further

restrict the use of specified open space areas, such as the Cle Elum River Corridor (Planning Area 11 in the MountainStar EIS). Open Space does not include: (i) those portions of residential lots not specifically protected by a permanent conservation easement, deed covenant, condition or restriction, or similar method; (ii) streets; and (iii) parking areas.

“Original MPR Policies” shall mean those Comprehensive Plan policies relating to the development of Master Planned Resorts adopted by the BOCC through Ordinance No. 96-20, as set forth in Recital I(1) of this Agreement.

"Permitted and Conditional Uses" shall mean those uses that are permitted or permitted with conditions within MountainStar set forth in Section 4.1(d)(2) of this Agreement.

“Phase” means one of the three phases within which the resort is being developed and, together, comprising the ~~an~~ area encompassed by the MountainStar Resort Conceptual Master Plan and identified by specific boundaries which are ~~is~~ to be developed on a coordinated basis and used as a major element of MountainStar. It may include different land uses and one or more ~~Subphases~~ Divisions.

“Planned Action Ordinance” shall mean Kittitas County Ordinance No. 2000-17 attached as EXHIBIT G, by which the BOCC authorized MountainStar to be processed as a planned action under SEPA, as set forth in Recital I(10) of this Agreement.

“Planning Commission” shall mean the Kittitas County Planning Commission.

“Planning Director” shall mean the Director of ~~the County’s Planning Department~~ Community Development Services, or his or her designee.

“Processing Fees” shall have that meaning as set forth in Section 4.1(g)(3) of this Agreement.

“Proportionate Share” shall mean that share as defined in the MountainStar MPR Conditions.

“Revised MPR Policies” shall mean those Comprehensive Plan policies relating to Master Planned Resorts adopted by Ordinance Nos. 97-20 and 98-20, as set forth in Recital I(1) of this Agreement.

“Rezone” shall mean the site-specific rezone of the County zoning map for the Trendwest Property to the Master Planned Resort Zoning District, pursuant to Ordinance No. 2000-14 as set forth in Recital I(3) of this Agreement.

“SEPA” shall mean the Washington State Environmental Policy Act, Ch. 43.21C RCW, as set forth in Recital I(4) of this Agreement.

“Short-Term Visitor Accommodations” means the following Master Planned Resort Accommodation Units: (i) hotel or motel units; (ii) time-share and fractionally-owned units; (iii) recreational vehicle sites with power and water; and (iv) vacation and second homes as defined below. A vacation or second home is a Short-Term Visitor Accommodation for all purposes under this Agreement unless its owner(s) or occupant(s), or any one of them, is either (i) registered to vote at such unit’s MountainStar address or (ii) receives its/their Kittitas County annual property tax assessment for such unit at such unit’s MountainStar address, in which case such unit shall be considered a permanent residence for all purposes under this Agreement.

“Site Development Plan” shall have that meaning set forth in Section 5.1(a) of this Agreement.

“Subphase” or “Division” means a smaller area within a Phase, and may include one or more subdivisions of land.

“Subsequent Actions” shall have that meaning set forth in Section 4.1(e) of this Agreement.

“Term” shall mean thirty (30) years commencing upon the Effective Date of this Agreement, as set forth in Section 1.2 of this Agreement.

“Transfer Agreement” shall have the meaning set forth in Section 9 of this Agreement.

“Trendwest” shall mean Suncadia and/or collectively Trendwest Resorts, Inc. and Trendwest Investments, Inc., as set forth in the Preamble of this Agreement.

“Trendwest Investments” shall mean Trendwest Investments, Inc., a Washington corporation, as set forth in the Preamble of this Agreement.

“Trendwest Property” shall mean the property ~~owned by Trendwest Investments~~located within the boundary of the Resort and more particularly described in the legal description attached as EXHIBIT A, as set forth in Recital B of this Agreement.

“Trendwest Resorts” shall mean Trendwest Resorts, Inc., an Oregon corporation registered to conduct business in the state of Washington, as set forth in the Preamble of this Agreement.

“Utilities” shall include, but not be limited to, all (i) stormwater and drainage systems and facilities, (ii) sewer systems and facilities, (iii) water systems and facilities (including, but not limited to, pumping and treatment stations, storage reservoirs or tanks, and transmission lines), (iv) electrical substations and transmission lines, (v) telecommunications systems and facilities (including, but not limited to, telephone exchanges and lines, cable, and fiber optic), and (vi) natural gas.

“Vesting Date” shall have the meaning set forth in Section 4.1(a) of this Agreement.

“Visitor-Oriented Amenities” means the following uses designed to support the users of MountainStar: (i) restaurants, cafes, delicatessens, pubs, taverns and cocktail bars, and entertainment associated with such uses, (ii) meeting facilities for meetings of all types, conferences, and religious worship and church uses, (iii) on-site retail and commercial services limited to those types and levels of use designed to support the recreation and convenience needs of the users and employees of MountainStar and which do not duplicate the full range of retail and commercial services available in adjacent communities, and (iv) recreation businesses and facilities. The retail sale of gasoline and diesel fuels shall be prohibited at MountainStar and therefore does not constitute a Visitor-Oriented Amenity or a permissible on-site retail or commercial service for any purpose under this Agreement.

Section 3. OBLIGATIONS OF TRENDWEST AND THE COUNTY

3.1 Obligations of Trendwest.

(a) **Generally.** The Parties acknowledge and agree that the County’s agreement to perform and abide by the covenants and obligations of the County set forth herein is material consideration for Trendwest’s agreement to perform and abide by the covenants and obligations of Trendwest set forth herein.

(b) MPR Project Development Permit and MountainStar MPR

Conditions. Except as otherwise specifically agreed to by the County, Trendwest shall comply with all conditions as set forth in the MPR Project Development Permit and MountainStar MPR Conditions, as approved by the BOCC, and attached as EXHIBIT F to this Agreement.

3.2 Obligations of County. The Parties acknowledge and agree that Trendwest’s agreement to perform and abide by the covenants and obligations of Trendwest set forth herein is

material consideration for the County's agreement to perform and abide by the covenants and obligations of the County set forth, herein.

Section 4. STANDARDS, LAWS AND PROCEDURES GOVERNING MOUNTAINSTAR

4.1 Permitted Uses; Applicable Law.

(a) **Vested Rights.** Trendwest shall have the vested right to develop MountainStar pursuant to the Applicable Law as set forth in Section 4.1(c). Trendwest's rights shall vest as of the Effective Date of this Agreement (the "Vesting Date"); provided, however, that nothing herein shall limit the County's authority to require additional SEPA review in connection with applications for Subsequent Actions, including General Site Plans and Site Development Plans, pursuant to Sections 4.1(i) and 5.1 of this Agreement; provided further, however, that the County shall reserve authority to impose new or different regulations on Trendwest's development of MountainStar to the extent required by a serious threat to public health and safety; and provided further, however, the parties agree that Trendwest's vested rights under this Agreement may be modified, and that the County may modify the MountainStar MPR Conditions or impose mitigation as part of a Subsequent Action based on statutes, rules, regulations, official policies, and standards other than the Applicable Law, under the following circumstances:

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(1) When the County reasonably believes in good faith that County approval of a Subsequent Action for MountainStar under the terms of this Agreement would result in a decision by a State or Federal administrative agency, or a Court of competent jurisdiction, that the County eligibility for funding, grants, program eligibility or other resources sought by the County would be impaired (for example, if approval of any portion

of development would prohibit the County from being eligible under the National Flood Insurance Program or result in higher premium rates to the County or it's property owners);

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(2) When the County reasonably believes in good faith that County approval of a Subsequent Action for MountainStar under the terms of this Agreement would result in a decision by a State or Federal administrative agency, or a Court of competent jurisdiction, that the County unlawfully failed to comply with the Endangered Species Act or other State or Federal laws or regulations in approving the Subsequent Action; or

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(3) When a State or Federal statute or regulation would impose cumulative standards for compliance on an area wide or countywide basis. Modifications under this section shall only be to the extent necessary to address the applicant's proportionate share of such cumulative standard (for example, if new federal water quality standards are adopted with cumulative in-stream standards, stormwater standards for MountainStar may be adjusted to reflect Trendwest's proportional share for correction of the diminished water quality, if any).

(The parties acknowledge that the examples included in the preceding exceptions are illustrative only and that review of the MountainStar proposal and the MountainStar EIS disclose no problem such as those described in the examples. Since the MountainStar proposal precludes development in the geomorphic floodplain, since there is no "taking" of a listed species or its habitat, and since the Master Drainage Plan for MountainStar avoids discharges to streams, the examples included in the exceptions are used solely to describe the type of issue to which the exception could apply.)

The County's modification actions under the exceptions listed above shall be limited to the minimum necessary to avoid the consequences described in the exceptions. The parties agree that the County shall advise Trendwest when the County believes any such circumstances arise and consult with Trendwest regarding the proposed modifications. The parties agree to pursue the dispute resolution procedures provided for in this Agreement and the MountainStar MPR Conditions to resolve any dispute regarding modifications under these exceptions to Trendwest's vested rights. For any of these exceptions to Trendwest's vested rights to the Applicable Law under this Agreement, Trendwest shall have the right, at its sole discretion and expense, to contest any claim or allegation, or to appeal any administrative decision or judicial determination, that would authorize or require the County to modify Trendwest's vested rights under this Agreement. Trendwest may also, at its discretion, agree to indemnify the County for the financial consequences of any final and binding decision of an administrative agency or court of competent jurisdiction in lieu of the County modifying Trendwest's vested rights under this Agreement in response to any such final and binding decision.

(b) Permitted Uses and MPR Approvals for MountainStar. The (i) Permitted Uses of MountainStar, (ii) the density and intensity of the use of the Trendwest Property, (iii) the maximum height, bulk and size of proposed buildings, (iv) the provisions for reservation or dedication of land for open space and other common purposes, (v) the location of public utilities, (vi) and other terms and conditions of development applicable to MountainStar shall be as set forth in the MPR Approvals and this Agreement, including the Development Standards set forth in Section 4.1(d) of this Agreement.

(c) Applicable Law. The rules, regulations, official policies, standards and specifications applicable to MountainStar shall be those set forth in the MPR Approvals and this

Agreement, including the Development Standards set forth in Section 4.1(d) of this Agreement (“Applicable Law”). To the extent not addressed by the MPR Approvals or by this Agreement, the Applicable Law shall also include approved Subsequent Actions, those provisions of Chapters 36.70A (Growth Management) and 58.17 RCW (Plats, Subdivisions, and Dedications) and the Kittitas County Code, attached hereto as EXHIBITS K, L and H, respectively, and incorporated herein, the County’s Comprehensive Plan (including Chapter 2.4 related to Master Planned Resorts), all uncodified County ordinances and resolutions, as well as all other federal, state and County rules, regulations, official policies, standards and specifications in force and effect on the Vesting Date. Except as otherwise specifically provided herein, all references in this Agreement to federal, state and County laws, rules, regulations, official policies, standards and specifications shall be governed by and construed as Applicable Law in accordance with this section to which Trendwest is vested pursuant to Section 4.1(a) above.

(d) **Development Standards.** The Development Standards set forth below shall apply to the development of MountainStar. Trendwest may choose to impose additional, more restrictive development standards through CC&Rs or other methods. The following Development Standards shall apply to the development of MountainStar:

(1) **Consistency With Applicable Law and Development**

Agreement. Development of MountainStar shall comply with (i) all Applicable Law and (ii) the terms and conditions of this Agreement.

(2) **Permitted and Conditional Uses.** The following uses are

permitted and conditional uses within MountainStar:

(a) The following are permitted uses within MountainStar:

- (i) Short-Term Visitor Accommodations as defined herein;

(ii) Master Planned Resort Accommodation Units as defined

herein;

(iii) Developed On-Site Recreational Facilities as defined

herein;

(iv) Campgrounds and recreational vehicle sites with power and

water;

(v) Visitor-Oriented Amenities as defined herein;

(vi) Cultural and educational facilities of all kinds, including,

but not limited to, interpretative centers and exhibits, and indoor and outdoor theaters;

(vii) Roadways and bridges, including privately owned and

maintained roadways and bridges;

(viii) Industrial uses and capital facilities, utilities and services to

the extent necessary to maintain and operate MountainStar;

(ix) Temporary and/or permanent structures to serve as

MountainStar sales office(s); and

(x) Any other like or similar uses deemed by the Planning

Director to be consistent with the purpose and intent of the MPR Approvals and RCW

36.70A.360.

(b) The following is a conditionally permitted use within

MountainStar, which use shall be reviewed and approved in accordance with Chapter 17.60 of

the Kittitas County Code, *Conditional Uses*:

(i) Campgrounds and recreational vehicle sites without power

and water.

(3) **Phasing.** The development of MountainStar and all associated infrastructure, including roads and bridges, and capital facilities, utilities and services (including water supply and wastewater treatment facilities and services), may be approved and constructed and/or bonded in Phases or Subphases. Development may be reviewed, approved and permitted individually through the General Site Plan and Site Development Plan approval processes set forth in Section 5.1 of this Agreement. All development approvals shall be consistent with the MPR Approvals and this Agreement.

(4) **Open Space Required.** A cumulative total of at least eighty percent (80%) of the Trendwest Property shall be preserved as Open Space. Pursuant to Site Development Plans approved under Section 5.1 of this Agreement, fifty percent (50%) Open Space shall be met for each Phase. These cumulative and individual Phase Open Space percentage requirements do not need to be satisfied within the boundaries of any particular Phase. Instead, the land provided to meet such Open Space requirements may be located within, contiguous to, or adjacent to land proposed for development within one or more Phases. For example, Open Space provided in the Cle Elum River Corridor may be used to satisfy Open Space requirements for one or more Phases that do not themselves contain at least at least fifty percent (50%) Open Space or a cumulative total of eighty percent (80%) Open Space. The initial Phase of development shall include the designation of the Cle Elum River Corridor as Open Space.

(5) **Visitor-Oriented Amenities.** Visitor-Oriented Amenities shall be provided with the first Phase of MountainStar in an amount approved through a General Site Plan and/or Site Development Plan under Section 5.1 below to serve Short-Term Visitor

Accommodations and Master Planned Resort Accommodation Units constructed with such first Phase.

(6) **Short-Term Visitor Accommodations.** Trendwest will market MountainStar as a Master Planned Resort. A minimum of two hundred (200) units of Short-Term Visitor Accommodations, as defined in Section 2 above, shall be provided with the first Phase of MountainStar. Short-Term Visitor Accommodations shall constitute more than seventy percent (70%) of all built and occupied Master Planned Resort Accommodation Units at full build-out of MountainStar. A cumulative total of more than 50% of all built and occupied Master Planned Resort Accommodation Units shall be Short-Term Visitor Accommodations during the build-out of MountainStar. Subject to the foregoing, individual development Phases or Subphases of MountainStar, with the exception of the first Phase, may include Master Planned Resort Accommodation Units of which less than fifty percent (50%) are Short-Term Visitor Accommodations if such Phase is consistent with the MountainStar Resort Conceptual Master Plan and the MPR Project Development Permit and MountainStar MPR Conditions. This responsibility shall include monitoring and reporting practices and procedures determined acceptable to the Planning Director.

(7) **Developed On-Site Recreational Facilities.**

(i) **First Phase.** Developed On-Site Recreational Facilities must be included with the first Phase of the development of MountainStar in accordance with a General Site Plan and/or Site Development Plan approved pursuant to Section 5.1 below. The construction of such Developed On-Site Recreational Facilities shall be completed pursuant to a staging plan approved as part of the Site Development Plan for the first Phase.

(ii) Subsequent Phases. Developed On-Site Recreational

Facilities associated with subsequent Phases of MountainStar shall be constructed in accordance with the staging plan of a Site Development Plan(s) approved pursuant to Section 5.1 below.

(iii) Developed On-Site Recreational Facilities Built Over

Multiple Phases/Subphases. The Parties recognize that certain Developed On-Site Recreational Facilities (e.g., golf courses) may be proposed for construction to begin with a particular Phase or Subphase of development and completed in a subsequent Phase or Subphase. The construction of such Developed On-Site Recreational Facilities shall be completed consistent with a staging plan in a Site Development Plan approved by the County under Section 5.1 below.

(8) Retail/Commercial Services. Retail and commercial services

shall be limited to those types and levels of use designed to support the recreation and convenience needs of the users and employees of MountainStar and shall not duplicate the full range of retail and commercial services available in adjacent communities. Retail and commercial services offered on the resort shall be designed to discourage use from non-resort users by locating such services well within the site rather than on its perimeter.

(9) Compatibility With Site and Adjacent Land Uses. The County

shall ensure that MountainStar is compatible with the site and adjacent land uses through implementation of the following measures and guidelines:

(i) Development of MountainStar must comply with all

County development regulations for critical areas set forth in Title 17A, *Critical Areas*, of the Kittitas County Code (the “Critical Areas Regulations”), a copy of which is attached as EXHIBIT I and incorporated herein by reference.

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(ii) To the maximum extent feasible, vegetation within riparian corridors, and wetlands regulated under the Critical Areas Regulations, shall be retained in their natural form; provided, however, that roads and bridges, utilities and trails may pass through riparian corridors and regulated wetlands provided that any such crossings of regulated wetlands are subject to appropriate requirements for restoration or replacement of impacted wetlands.

(iii) Improvements and activities within MountainStar shall be located and designed to minimize any significant adverse effects on other uses in the surrounding area through establishing and maintaining on-site buffers between MountainStar and adjacent areas consistent with the Revised MPR Policies. Trails, utilities, passive recreational uses and private open space may be included within buffers.

(10) Additional Development Standards and Design Guidelines.

Additional Development Standards and Design Guidelines associated with the construction of MountainStar are attached hereto as EXHIBIT J.

(11) Density. The overall density (the average number of Master Planned Resort Accommodation Units per acre) of the Trendwest Property shall not exceed one (1) Master Planned Resort Accommodation Unit per acre; provided, however, that it is anticipated that the developed portions of the Trendwest Property will achieve much higher densities than set forth above in order to maximize Open Space.

(e) Subsequent Actions. Trendwest may apply for other land use actions, approvals, agreements, permits or entitlements (collectively, the “Subsequent Actions”) necessary or desirable to the development of MountainStar. Except to the extent additional environmental review has resulted in the imposition of new conditions pursuant to Sections 4.1(i) or 5.1(c), applications for Subsequent Actions shall be vested pursuant to Section 4.1(a) to

Applicable Law as set forth in Section 4.1(c) of this Agreement. Subsequent Actions include County approval of General Site Plans and/or Site Development Plans for individual Phases or Subphases of the development of MountainStar to implement the MountainStar Resort Conceptual Master Plan. The specific processes for review and approval of General Site Plans and Site Development Plans are set forth in Section 5.1 below. Subsequent Actions also include, without limitation, the following: building permits; certificates of occupancy; lot line or boundary adjustments; subdivisions (including preliminary and final plat approval); resubdivisions; amendments to, or repeal of, this Agreement, the MPR Approvals or Subsequent Actions; forest practice permit applications; and shoreline substantial development permits pursuant to the Shorelines Management Act, Ch. 90.58 RCW. The County reserves the right to deny or condition applications for Subsequent Actions that are inconsistent with Applicable Law or this Agreement.

(f) **No Conflicting Enactments.** Except as otherwise specifically set forth in this Agreement, the County, including but not limited to the exercise by the BOCC of the County's police power or its taxing power, shall not apply to MountainStar or the Trendwest Property any ordinance, resolution, rule, regulation, standard, directive, condition or other measure (each, individually, a "County Law") that is in conflict with the Applicable Law (including this Agreement) or that reduces the rights provided by this Agreement unless agreed to in writing by Trendwest or imposed by the County through the exercise of its substantive SEPA authority pursuant to Sections 4.1(a) and 4.1(i) of this Agreement. Without limiting the generality of the foregoing, any County Law shall be deemed to conflict with Applicable Law, including this Agreement, if it would accomplish any of the following results, either through any Subsequent Action or through the imposition of any condition of approval, by specific reference

to MountainStar in any other enactment, or as part of a general enactment that applies to or affects MountainStar:

(1) otherwise limit or reduce the density of MountainStar, or any part

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thereof;

(2) otherwise change any land use designation or Permitted or

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Conditionally Permitted Use of the Trendwest Property;

(3) limit or control the location of buildings, structures, clearing,

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grading, or other improvements of MountainStar in a manner that is inconsistent with or more restrictive than the limitations in the Applicable Law;

(4) limit or control the availability of public utilities, services or

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facilities or any privileges or rights to public utilities, services or facilities (e.g., water rights, water connections, sewage capacity rights, sewer connections) for MountainStar, provided that nothing in this subsection shall be interpreted to limit the authority of any public utility, service or facility provider that is not a party to this Agreement to require anything legally necessary or appropriate prior to any commitment to provide such utilities, facilities and/or services;

(5) require the issuance of additional permits or approvals by the

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County other than those required by the Applicable Law;

(6) establish, enact, or increase in any manner applicable to

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MountainStar, whether directly by the BOCC or other County election, or impose against the development of MountainStar, any fees, taxes (including, without limitation, general, special and excise taxes), assessments, liens or other financial obligations other than (i) those specifically permitted by this Agreement, and as provided in the MPR Project Development Permit and MountainStar MPR Conditions, and (ii) any County-wide taxes or applicable taxing district and

assessments (including an authorized County-wide tax or assessment on master planned resorts generally if there are two or more master planned resorts approved pursuant to RCW 36.70A.360 in Kittitas County); or

(7) limit the processing of applications for, or the obtaining of,

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Subsequent Approvals.

(g) **Exceptions to “No Conflicting Enactments.”** Notwithstanding the “no conflicting enactments” provisions of Section 4.1(f) above, the following provisions shall apply:

(1) **Uniform Codes.** The County may apply the then-current Washington State Building Code, Chapter 19.27 RCW, and other uniform construction codes to new applications for building permits necessary for the development of MountainStar throughout the Term of this Agreement, provided that any such uniform code shall apply to MountainStar only to the extent that the code has been adopted by the County for application on a county-wide basis.

(2) **Life/Safety Road Standards.** The County may impose the then-current road standards necessary to address life/safety issues and concerns in accordance with the provisions of EXHIBIT J, provided that any such life/safety road standard shall apply to MountainStar only to the extent such standard has been adopted by the County for application on a county-wide basis.

(3) **Processing Fees.** Fees charged by the County which solely represent the reasonable costs to the County for County staff time and resources spent reviewing and processing Subsequent Approvals are referred to in this Agreement as “Processing Fees.” The County may charge Trendwest the applicable Processing Fees that are operative and in force and effect at the time such fees are customarily required by the County to be paid. In addition,

Trendwest and the County shall enter into a staffing and cost reimbursement agreement(s) which provides for Trendwest funding of additional County staff or consultant services necessary to permit the expeditious processing of applications for Subsequent Actions without adversely affecting the timely review of other approvals requested by third parties unrelated to this Agreement.

(4) **Results of Monitoring.** The County may impose additional mitigation, may revise required timeframes or scopes of required mitigation, or may otherwise impose additional conditions reasonably necessary to address the significant impacts identified in the various monitoring reports required by the MPR Project Development Permit and MountainStar MPR Conditions. If the results of monitoring demonstrate that impacts which are the subject of mitigation conditions required by the MPR Project Development Permit or MountainStar MPR Conditions no longer require such mitigation conditions, or that such impacts could be satisfactorily addressed through less stringent mitigation conditions, the County may waive or modify such mitigation conditions or required timeframes as appropriate.

(h) **No Restrictions or Limitations on the Rate or Timing of Development.** Except as provided in the MPR Project Development Permit and MountainStar MPR Conditions, and Applicable Law, the County shall have no authority to restrict or limit the rate and/or timing of development for MountainStar. In the event a County Law (as defined in Section 4.1 (f)) is enacted, whether by action of the BOCC, the Planning Commission or County staff, or by initiative or referendum, issuance of a Subsequent Action or any other means, which relates to growth rate, timing, phasing or sequencing of new development or construction in the County or, more particularly, development and construction of all or any part of MountainStar, such County Law shall not apply to MountainStar or any portion thereof.

(i) **Further SEPA Review.** In accordance with the Planned Action Ordinance, the County's environmental review of any Subsequent Action pursuant to SEPA shall utilize the MountainStar EIS to the fullest extent permitted by law. Under the Planned Action Ordinance, the County retains substantive SEPA authority to address probable significant adverse environmental impacts not analyzed in the MountainStar EIS. In addition, further SEPA review may be required in connection with General Site Plans and Site Development Plans submitted by Trendwest which propose deviations from the MountainStar Resort Conceptual Master Plan or from approved General Site Plans or Site Development Plans in accordance with Section 5.1 below. Conditions resulting from such further SEPA review may be based on then-current adopted County SEPA policies. Costs associated with any additional SEPA review required by the County pursuant to this Agreement shall be borne by Trendwest.

4.2 Timing of Construction and Completion. Except as provided in a Site Development Plan approved pursuant to Section 5.1 below or Applicable Law, there is no requirement that Trendwest initiate or complete development of MountainStar within any particular period of time, and the County shall not impose such a requirement on any Subsequent Action. Subject to the foregoing, the Parties agree that Trendwest shall be able to develop MountainStar in accordance with Trendwest's own time schedule in light of market conditions, and that Trendwest shall determine the order in which Phases of MountainStar shall be developed.

Section 5. COOPERATION-IMPLEMENTATION

5.1 General Site Plan and Site Development Plan Process.

(a) **Purpose.** The planning and approval process for the development of MountainStar is intended to proceed from the general to the specific, generally in the following

sequence: (i) MountainStar Resort Conceptual Master Plan; (ii) General Site Plan; (iii) Site Development Plan(s); and (iv) platting (if required). The MountainStar Resort Conceptual Master Plan, as approved and conditioned through the MPR Project Development Permit and MountainStar MPR Conditions, together with the Development Agreement, are intended to provide the general, conceptual development plan for MountainStar. It is anticipated that field conditions, market factors, environmental constraints and opportunities, design considerations and other similar factors will cause the MountainStar Resort Conceptual Master Plan and Development Agreement to change and be refined from time to time. Such changes and refinements may be included in implementing the General Site Plans and Site Development Plans described below, as well as in preliminary and final plats and building permits.

The MountainStar Resort Conceptual Master Plan, Development Agreement and the MPR Project Development Permit and MountainStar MPR Conditions shall be implemented through submission to and approval by the County of General Site Plans and Site Development Plans in accordance with this Section 5.1.

General Site Plans may be submitted to the County in the discretion of Trendwest, but shall not be a prerequisite to the submittal by Trendwest of a Site Development Plan for County approval. The boundaries of a General Site Plan shall be determined by Trendwest, and may encompass a Resort area which includes one or more proposed Phases, a group of Subphases, a Subphase, or a discrete element of the Resort. A General Site Plan may be geographically broader than a subsequent, related Site Development Plan (e.g. a General Site Plan may encompass an entire Phase while a subsequent, related Site Development Plan may encompass only a single Subphase within such Phase). A General Site Plan is a planning tool which provides a frame of reference that is more detailed than the MountainStar Resort

Conceptual Master Plan, but is less detailed than a subsequent, related Site Development Plan. An approved General Site Plan provides the County with additional information with which to evaluate a subsequent, related Site Development Plan(s), while also providing Trendwest with County approval and planning certainty with respect to matters such as areas and types of land use, general location of roadways, open space, recreational facilities and amenities, and overall relationship to adjacent areas of MountainStar.

A Site Development Plan may address an area covered by a General Site Plan, or a smaller area. General Site Plans and Site Development Plans shall be submitted to, reviewed and approved by the County in accordance with this Section 5.1.

(b) **General Site Plan Which Is Consistent With Conceptual Master Plan and the Development Agreement.** A General Site Plan that is consistent with the approved MountainStar Resort Conceptual Master Plan and the Development Agreement shall be submitted to the Planning Director and reviewed and approved by the Planning Director in accordance with this Section 5.1(b). Before approving a General Site Plan, the Planning Director shall provide public notice and submit such proposed General Site Plan to the Environmental Health Director, Building Inspector, Fire Marshall, County Engineer, Sheriff, Solid Waste Department and any other County offices or officials deemed appropriate for their review and comment. A General Site Plan shall be approved by the Planning Director if the Planning Director finds that such General Site Plan is consistent with: (i) the MPR Approvals, including the MountainStar Resort Conceptual Master Plan; (ii) this Agreement; and (iii) Applicable Law.

(c) **General Site Plan Which Deviates From Conceptual Master Plan or the Development Agreement.** In recognition that site-specific implementation of the MountainStar Resort Conceptual Master Plan and the Development Agreement will be affected

by market, environmental and field conditions, or other factors, throughout the Term of this Agreement, the BOCC or, as provided herein, the Director may approve a General Site Plan that includes deviations from the Conceptual Master Plan and the Development Agreement in accordance with the provisions of this Section 5.1(c). A General Site Plan that does not deviate significantly from the Conceptual Master Plan or Development Agreement ~~shall~~may be reviewed and approved by the ~~BOCC~~Director in the manner set forth in Section 5.1(b) above, and the BOCC shall be copied with the decision. For all purposes under this Section 5.1, insignificant deviations from the Conceptual Master Plan or the Development Agreement proposed in a General Site Plan may include, but shall not be limited to: (i) the location of roads, trails and utilities, (ii) Developed On-Site Recreational Facilities and Visitor-Oriented Amenities, provided the overall scale and intensity of such facilities and amenities shall not significantly exceed the scale and intensity of such facilities and amenities analyzed in the MountainStar EIS, ~~and~~ (iii) the location, quantity and type of Master Planned Resort Accommodation Units, provided overall housing density at full build-out shall not exceed 4,650 Master Planned Resort Accommodation Units, and (iv) changes allowed under Section 4.1(g)(2) and Section 6.1. If, notwithstanding the foregoing, the ~~BOCC~~Director determines that a proposed General Site Plan deviates significantly from the Conceptual Master Plan or the Development Agreement, then the General Site Plan shall be reviewed and acted upon by the BOCC following ~~Planning Commission~~Community Development Services review and recommendations and, should the BOCC so elect, the review and recommendation of the Planning Commission ~~regarding approval of such General Site Plan.~~ In order to approve a deviation from the Conceptual Master Plan or Development Agreement proposed in a General Site Plan, the Director or BOCC, as the case maybe, shall find that the probable significant adverse environmental impacts associated with

such deviation are the same as, or are not significantly greater than, those impacts analyzed in the MountainStar EIS. In the event the BOCC finds that any such significant deviation is likely to have new, probable significant adverse impacts that are not mitigated, or impacts significantly greater than those analyzed in the MountainStar EIS, the County shall conduct further environmental review under SEPA and may impose additional mitigation conditions as deemed necessary, consistent with the Planned Action Ordinance. All approved deviations shall be documented by the County, and, unless such documentation indicates to the contrary, shall be allowed for Subsequent Actions without further review or approval or statements required under Sections 5.1(g)(3) or 5.1(h)(11)–or amending action under Section 6.2.

(d) **Review and Approval of Site Development Plan.** A Site Development Plan shall be reviewed and approved by the County in the same manner as General Site Plans pursuant to Sections 5.1(b) and 5.1(c) above; provided, however, that: (i) a Site Development Plan which is consistent with the MountainStar Resort Conceptual Master Plan and the Development Agreement or an approved General Site Plan ~~shall be reviewed and approved by the Planning Director;~~ (ii) and a Site Development Plan which deviates from the Conceptual Master Plan or the Development Agreement or, alternatively, and if applicable, from an approved General Site Plan in an insignificant way(s) ~~shall~~ may be reviewed and approved by the ~~BOCC without Planning Commission review~~ Director; and (iii) a Site Development Plan which deviates from the Conceptual Master Plan or the Development Agreement or, alternatively, and if applicable, from an approved General Site Plan in significant way(s) shall be reviewed and acted upon by the BOCC following ~~Planning Commission review~~ the process set forth in Section 5.1(c) above.

(e) **Amendment to Conceptual Master Plan, Development Agreement or**

Approved General Site Plan or Site Development Plan. Proposed amendments to the MountainStar Resort Conceptual Master Plan, the Development Agreement or an approved General Site Plan or Site Development Plan shall be submitted to the Planning Director for referral to the Environmental Health Director, Building Inspector, Fire Marshall, County Engineer, Sheriff, Solid Waste Department and any other County offices or officials deemed appropriate for their review and comment. The comments on a proposed amendment to the Conceptual Master Plan shall be reviewed forwarded by the Planning Director to be reviewed and acted upon by the BOCC following Planning Commission review and recommendations and additional environmental review, if appropriate, in the manner set forth in Section 5.1(c) above. The Planning Director may review and approve a proposed amendment to an approved General Site Plan to address market, environmental or other field conditions, provided such amendment is consistent with the Conceptual Master Plan. The Planning Director may review and approve a proposed amendment to an approved Site Development Plan to address market, environmental or other field conditions, provided such amendment is consistent with the Conceptual Master Plan or, alternatively, and if applicable, with an approved General Site Plan. If the Planning Director finds that a proposed amendment to an approved General Site Plan deviates significantly from the Conceptual Master Plan, then the proposed amendment shall be reviewed and acted upon by the BOCC following Planning Commission review and recommendations and additional environmental review, if appropriate, in the manner set forth in Section 5.1(c) above. If the Planning Director finds that a proposed amendment to an approved Site Development Plan deviates significantly from the Conceptual Master Plan or, alternatively, and if applicable, from an approved General Site Plan, then the proposed amendment shall be reviewed and acted upon

by the BOCC following Planning Commission review and recommendations and additional environmental review, if appropriate, in the manner set forth in Section 5.1(e) above and reviewed as set forth in Sections 5.1(b), (c) and (d) and in Section 6.

(f) **Effect of Approval.** Approval by the County of a General Site Plan will constitute County approval of the general site plan set forth in such General Site Plan, including but not limited to matters such as areas and types of land use, general location of roadways, open space, recreational facilities and amenities, and overall relationship to adjacent areas of MountainStar. Approval by the County of a Site Development Plan will constitute County approval of the specific site plan set forth in such Site Development Plan, and shall serve as authorization to construct Utilities provided for in that Site Development Plan and other improvements that do not require building or construction permits under the County Code. Approval of a Site Development Plan shall also serve as authorization for the submission of building permit applications for structures that do not require approval of a plat application, if such plat application was not submitted for review and approval concurrent with the Site Development Plan. Approved General Site Plans and Site Development Plans which include deviations from the MountainStar Resort Conceptual Master Plan shall be deemed to have amended such Conceptual Master Plan to the extent of such deviations.

(g) **Submittal Requirements for General Site Plan.** A proposed General Site Plan shall include the following:

- (1) A vicinity map showing the planning area and its relationship to surrounding areas;
- (2) A map of the applicable site drawn to an appropriate scale depicting the following:

(i) Arrangement of land uses by type (Master Planned Resort Accommodation Units, including Short-Term Visitor Accommodation Units, Visitor-Oriented Amenities, Developed On-Site Recreational Facilities, Open Space and other Permitted and Conditionally Permitted Uses);

(ii) Elevation contours at intervals appropriate for site terrain;

(iii) The location and type of any Developed On-Site Recreational Facilities;

(iv) The location of Open Space areas; and

(v) The general location of road right-of-ways.

(3) A statement identifying any deviation(s) between such plan and the

MountainStar Conceptual Master Plan or the Development Agreement;

(4) Any appropriate environmental documentation; and

(5) At the option of Trendwest, preliminary boundaries and lot lines for parcels and lots.

(h) **Submittal Requirements for Site Development Plan.** A proposed Site Development Plan for the entire MountainStar project, or Phase or Subphase thereof, shall include the following:

(1) A vicinity map showing the location of the Resort area encompassed within such plan;

(2) A map of the applicable site drawn to an appropriate scale depicting the following:

(i) Arrangement of land uses by type (Master Planned Resort Accommodation Units, including Short-Term Visitor Accommodation Units, Visitor-Oriented

Amenities, Developed On-Site Recreational Facilities, Open Space and other Permitted Uses), including descriptions of land use and approximate percentage of land in each use category;

(ii) Boundaries and lot lines for all parcels and lots;

(iii) Elevation contours at intervals drawn to an appropriate

scale for the Resort area encompassed within the plan;

(iv) Names and dimensions of public roads bounding or near

the site;

(v) Preliminary engineering plans, including site grading, road

improvements, drainage and public utilities extensions;

(vi) Location of all buildings identified by type of use;

(vii) Location and number of off-street parking areas, including

type of surfacing; and the approximate number of spaces to be provided;

(viii) The location, type and dimensions, and names of roads and

driveways;

(ix) The location, type and dimensions of Developed On-Site

Recreational Facilities;

(x) The locations and calculations of the total area of Open

Space and percentages; and

(xi) Proposed location of fire protection facilities.

(3) A statement describing the development plan in relationship to

adjacent development and natural features;

(4) A description of the Master Planned Resort Accommodation Units

(including Short-Term Visitor Accommodation Units), Visitor-Oriented Amenities, Developed

On-Site Recreational Facilities, Open Space and other Permitted and Conditionally Permitted

Uses proposed by Trendwest for the Resort area encompassed within the Site Development Plan;

(5) A description of plans for landscaping (including tree planting) and restoring natural areas affected by construction and the preserving Open Space;

(6) Provisions to ensure permanence and maintenance of Open Space (a sample format for addressing Open Space requirements is attached hereto as EXHIBIT M and incorporated herein);

(7) A description outlining future land ownership patterns within the development, including any planned homeowners' associations, and proposed CC&Rs, if any;

(8) Proposed plans for: (i) water supply, including demand and supply assumptions and methodologies used to develop such plan; (ii) water supply storage and distribution systems; (iii) sewage collection, treatment and disposal; (iv) surface water management; and (v) solid waste management;

(9) A staging plan describing the timing or sequence of construction for all the elements of the Site Development Plan, including Developed On-Site Recreational Facilities and Visitor-Oriented Amenities;

(10) Results of monitoring as required by the MountainStar MPR Conditions and Section 4.1(g)(4) above as of the date of submittal of the Site Development Plan;

(11) A statement identifying any deviation(s) between such plan and the MountainStar Resort Conceptual Master Plan or the Development Agreement or, alternatively, and if applicable, an approved General Site Plan; and

(12) Any appropriate environmental documentation.

(i) **Application for Building Permit Accompanying Proposed Site**

Development Plan. If a proposed Site Development Plan (or an amendment to an approved Site Development Plan) also includes an application for a building permit for a building requiring potable water, satisfactory evidence pursuant to RCW 19.27.097(1) of an adequate water supply for the intended use of each such building shall be provided to the County, which evidence may be in the form of a water right permit from the Department of Ecology, a letter from an approved water purveyor stating the ability to provide water, or another form the Environmental Health Director deems sufficient to verify the availability of an adequate water supply; provided, however, that building permits may be issued without proof of permanent potable water for structures other than Master Planned Resort Accommodation Units that will not be occupied full-time (e.g. model homes constructed for marketing purposes and sale(s) office), which may, if necessary, be served by temporary sources of water.

5.2 Subdivision Applications.

(a) Applications to subdivide property within MountainStar shall be submitted consistent with this Agreement and the requirements of Title 16 KCC, *Plats, Subdivisions, Dedications*, and Ch. 58.17 RCW. Plat applications may be submitted and processed concurrently with review of a Site Development Plan under Section 5.1 above. Plat applications may be submitted for all or a portion of the proposed MountainStar development covered by a Site Development Plan.

(b) Notwithstanding any provision of Title 16 KCC, *Subdivisions*, seemingly to the contrary, a plat application submitted to implement development of all or a portion of a Site Development Plan seeking preliminary and/or final plat approval shall be approved by the BOCC upon a finding that any such application is consistent with: (i) the MPR Approvals; (ii)

an approved Site Development Plan; (iii) the requirements of Chapter 58.17 RCW regarding plats, subdivisions and dedications; and (iv) the terms and conditions of this Agreement. In the event the BOCC determines that any plat application submitted to implement the development of all or a portion of Site Development Plan is inconsistent with the terms and conditions of (i) the MPR Approvals; (ii) an approved Site Development Plan; (iii) the requirements of Chapter 58.17 RCW regarding plats, subdivisions and dedications, or (iv) the terms and conditions of this Agreement, then the BOCC shall require Trendwest to revise such plat application, MountainStar Resort Conceptual Master Plan, the Development Agreement, General Site Plan or Site Development Plan as may be necessary to ensure consistency. Approval of any subdivision application related to MountainStar shall include written findings as required by RCW 58.17.110.

(c) A preliminary plat application may be approved by the BOCC without evidence of an adequate water supply to meet the needs of such proposed subdivision, provided that such evidence must be provided to the BOCC prior to final plat approval. Appropriate provisions shall have been made for the public health, safety and general welfare, including with respect to proposed sewage disposal and water supply systems, including potable water supplies, in accordance with RCW 58.17.110 with respect to any final plat that is consistent with Applicable Law, this Agreement and the MountainStar MPR Conditions.

5.3 Infrastructure, Surety Bonding or Other Assurances. Infrastructure identified by Trendwest in an approved Site Development Plan must be provided and available for use before the issuance of the first certificate of occupancy for Master Planned Resort Accommodation Units included within such plan. For purposes of final plat approval or issuance of building permits, infrastructure may be guaranteed through surety bonding or other financial

assurance device (e.g. letter of credit) acceptable to the County. The estimated costs of providing all such guaranteed Infrastructure shall be reviewed and approved by the ~~Planning Director~~ County Public Works Director or designee. Surety bonding or other acceptable financial device (e.g. letter of credit) provided to the County shall be in an amount equal to at least one hundred ten percent (110%) percent of such estimated costs as determined by Trendwest's architects and engineers. The County shall have the right, at its expense, to retain its own architects and engineers to verify Trendwest's estimated costs hereunder.

5.4 Permit Issuance. Building permits and other Subsequent Actions required for the development of MountainStar shall be issued only after the County building official confirms with the Planning Director that the work to be performed under the building permit or Subsequent Action substantially conforms with an approved Site Development Plan.

5.5 Processing of Subsequent Actions.

(a) Upon submission by Trendwest of all appropriate applications and processing fees for any Subsequent Action necessary for MountainStar, the County shall promptly and diligently commence and complete all steps necessary to act on the application for a Subsequent Action including, without limitation, (i) the notice and holding of all required public hearings, and (ii) granting the Subsequent Action application as set forth below.

(b) The County's obligations under Sections 4.1(e) and 5.1 of this Agreement are conditioned on Trendwest's timely provision to the County of all documents, applications, plans, and other information necessary for the County to meet such obligations and Trendwest entering into a staffing and cost reimbursement funding agreement pursuant to Section 4.1(g)(3) above. It is the express intent of Trendwest and the County to cooperate and work diligently and in good faith to obtain any and all Subsequent Actions.

(c) The County may deny an application for a Subsequent Action only if (i) such application does not comply with Applicable Law, (ii) such application is inconsistent with the MPR Project Development Permit and MountainStar MPR Conditions, or (iii) the County is unable to make all findings related to the Subsequent Action required by state law. The County may approve an application for such a Subsequent Action subject to any conditions necessary to bring the Subsequent Action into compliance with Applicable Law or to make the Subsequent Action consistent with the MountainStar Resort Conceptual Master Plan, and the MPR Project Development Permit and MountainStar MPR Conditions, so long as such conditions comply with Section 4.1(c) of this Agreement. If the County denies any application for a Subsequent Action, the County must specify in making such denial the modifications required to obtain approval of the application. Any such specified modifications must be consistent with Applicable Law (including Section 4.1(c) of this Agreement), and the County shall approve the application if subsequently resubmitted for the County's review if it complies with the specified modifications.

5.6 Eminent Domain Power. The County shall cooperate with Trendwest in implementing the MountainStar Resort Conceptual Master Plan, the MPR Project Development Permit and MountainStar MPR Conditions, and the Subsequent Actions. If the following conditions are met, the County's obligation to cooperate with Trendwest to allow it to comply with a MountainStar MPR Condition, provision of Applicable Law, or requirement in connection with an application for a Subsequent Action shall include the lawful use by the County of its eminent domain power: (i) the use of such power shall be limited to conditions related to traffic impacts (e.g. required improvements to a public road); (ii) Trendwest shall have first made every reasonable effort to comply with such condition, law or application requirement without the

exercise by the County of its power of eminent domain; (iii) Trendwest shall have considered reasonable modifications to the development of MountainStar that could eliminate the need for the County to exercise its power of eminent domain in connection with such condition, law or application requirement; and (iv), if applicable, the County has chosen not to waive or amend the requirements of such condition, law or application requirement. Trendwest shall be responsible for its Proportionate Share of any and all costs (including real property acquisition costs) incurred by the County in the exercise of its power of eminent domain hereunder.

5.7 Other Governmental Permits. Trendwest shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental agencies in connection with the development of, or the provision of services to, MountainStar. The County shall cooperate with Trendwest in its efforts to obtain such permits and approvals.

Section 6. AMENDMENT

This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the Parties or their successors in interest, in accordance with this Agreement as follows, provided that, except to the extent any amendment pertains to any Parcel Obligation(s) which has been assigned or transferred by Trendwest, "successors in interest" shall not include and shall not require the consent of any person or entity acquiring property or rights within the MPR:

6.1 Insubstantial Amendments. Any amendment to this Agreement that does not relate to (i) the Term of this Agreement, (ii) Permitted or Conditionally Permitted Uses for MountainStar and the Trendwest Property, (iii) provisions for reservation or dedication of land, (iv) conditions, terms, restrictions, or requirements for discretionary decisions in connection with Subsequent Actions, (v) the density or intensity of use of MountainStar, (iv) the development

standards for MountainStar, or (vii) monetary contributions by Trendwest, shall not, except to the extent otherwise required by law, require notice or public hearing before the Parties may execute an amendment to this Agreement. The County retains the authority to review and approve insubstantial amendments in an open public meeting.

6.2 Amendments of the MPR Approvals or Subsequent Actions. No amendment of the MPR Approvals or any Subsequent Action shall require amendment to this Agreement. Instead, any such amendment automatically shall be deemed to apply to MountainStar and made subject to this Agreement. Nothing in this subsection shall modify the limitations applicable to such amendments established by this Agreement.

6.3 Parties Required to Amend. Where a portion of Trendwest's rights or obligations have been transferred pursuant to a "Transfer Agreement" as defined in Section 9 below, the signature of the person to whom such rights or obligations have been transferred shall not be required to amend this Agreement unless such amendment would materially alter the rights or obligations of such transferee; provided, however, that any such transferee shall be provided with thirty (30) days' prior written notice of any amendment to this Agreement.

Section 7. COOPERATION IN THE EVENT OF LEGAL CHALLENGE

7.1 Cooperation. In the event of any administrative, legal or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of any provision of the MPR Approvals, this Agreement, or any Subsequent Action, the Parties shall cooperate in defending such action or proceeding to settlement or final judgment, including all appeals. Each Party shall select its own legal counsel and retain such counsel at its own expense; provided, however, that Trendwest will reimburse the County for the costs of its legal

defense of any claim in court (as opposed to administrative or quasi-judicial administrative body) that the County lacked authority to enter into this Agreement or any material provision thereof.

Section 8. DEFAULT

8.1 Defaults. Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of sixty (60) days following written notice from the other Party (unless the Parties have mutually agreed in writing to extend this period) shall constitute a default under this Agreement. Noncompliance by Trendwest with the MountainStar MPR Conditions or any one of them shall not constitute a default hereunder. Noncompliance by Trendwest with any MountainStar MPR Condition shall be resolved in accordance with the processes and procedures for same set forth in such MountainStar MPR Conditions. Any notice of default shall specify the nature of the alleged default and, where appropriate, the manner in which the alleged default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within the 60-day period, then the commencement of actions to cure the alleged default within the 60-day period, and diligent prosecution of actions necessary to complete the cure of the alleged default after the 60-day period, shall be deemed to be a cure within the 60-day period. Upon a default of this Agreement that is not cured as provided above, the non-defaulting Party may institute legal proceedings to enforce the terms of this Agreement. If the default is cured, then no default exists and the noticing Party shall take no further action.

8.2 Enforced Delay; Extension of Time of Performance. Notwithstanding anything to the contrary contained herein, neither Party shall be deemed to be in default where delays in performance or failures to perform are due to war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions

imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, extended appeals, or similar basis for excused performance which is not within the reasonable control of the Party to be excused. Upon the request of either Party, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon. In the event such delays preclude development of MountainStar in an economically feasible manner consistent with the MountainStar Resort Conceptual Master Plan and the other MPR Approvals, the parties agree to negotiate in good faith to revise or terminate this Agreement.

Section 9. ASSIGNMENT; TRANSFER; NOTICES

9.1 Assignment of Interests, Rights and Obligations. Trendwest shall have the right to assign or transfer all or any portion of its interests, rights, obligations or responsibilities under this Agreement, including the MPR Approvals and the Subsequent Actions, to third parties acquiring an interest in MountainStar or the Trendwest Property, or any portion thereof, including, without limitation, purchasers or long-term ground lessees of individual lots, parcels, or any lots, condominiums, timeshares, homes or facilities comprising a portion of MountainStar. Such assignments or transfers shall be made pursuant to a written agreement (“Transfer Agreement”) with consent as described in Section 9.2 below, or, if applicable, without consent as described in Section 9.3 below.

9.2 Transfer Agreements Requiring Consent.

(a) Trendwest may enter into a written agreement (“Transfer Agreement”) to transfer or assign all or any portion of Trendwest’s interests, rights, obligations and responsibilities under this Agreement, including the MPR Approvals and the Subsequent Actions, and to release Trendwest from its obligations and responsibilities pursuant to this

Agreement, and the MPR Approvals and Subsequent Actions, but only after obtaining written consent from the County as described in this section, unless such transfer falls within those types of transfers not requiring consent pursuant to Section 9.3 below. Such Transfer Agreement may: (i) release Trendwest from obligations under this Agreement, including the MPR Approvals and Subsequent Actions, that pertain to that portion of MountainStar being transferred, provided the transferee expressly assumes such obligations and responsibilities; (ii) transfer to the transferee vested rights to improve that portion of MountainStar being transferred, and (iii) address any other matter deemed by Trendwest or the County to be necessary or appropriate in connection with the transfer or assignment.

(b) Such Transfer Agreement shall not take effect unless and until the County has consented in writing to such transfer. The County's consent shall not be unreasonably withheld, conditioned, or delayed. To the extent any Transfer Agreement relates to mitigation measures designed to specifically benefit an Affected Jurisdiction or Public Body, the County shall not give its consent to such transfer until it has first consulted with such Affected Jurisdiction or Public Body regarding such transfer. Written notice of the proposed Transfer Agreement shall be mailed, first-class, to the County and any Affected Jurisdiction or Public Body in the matter set forth in Section 9.4 below at least forty-five (45) days in advance of the proposed date of transfer. Failure by the County to respond within forty-five (45) days after receipt of a request made by Trendwest for such consent shall be deemed to be the County's approval of the Transfer Agreement in question. The County may refuse to give its consent to a Transfer Agreement only if there is a material reason for such refusal, including without limitation, (i) the transferee's failure to perform under a similar development agreement or (ii) a failure to demonstrate adequate financial capability to perform the obligations proposed to be

assumed by such transferee. The County shall be entitled to contract at Trendwest's expense with third parties to assist with a reasonable due diligence review of a proposed Transfer Agreement. County determinations shall be made by the BOCC and are appealable to the Kittitas County Superior Court by Trendwest or an Affected Jurisdiction or Public Body. The effective date of a Transfer Agreement that is subject of an appeal to the Kittitas County Superior Court by an Affected Jurisdiction or Public Body shall not be stayed unless the Affected Jurisdiction or Public Body has timely secured appropriate judicial relief enjoining such Transfer Agreement from becoming effective.

(c) Any Transfer Agreement shall be binding on Trendwest, the County and the transferee. Upon approval of a Transfer Agreement by the County, Trendwest shall be released from those obligations and responsibilities assumed by the transferee therein.

(d) Trendwest shall be free from any and all liabilities accruing on or after the date of any assignment or transfer with respect to those obligations assumed by a transferee pursuant to an approved Transfer Agreement. No breach or default hereunder by any person that assumes any portion of Trendwest's obligations under this Agreement pursuant to an approved Transfer Agreement shall be attributed to Trendwest, nor may Trendwest's rights hereunder or under the MPR Approvals be canceled or diminished in any way by any such breach or default.

(e) No breach or default hereunder by Trendwest shall be attributed to any person succeeding to any portion of Trendwest's rights or obligations under this Agreement, nor shall such transferee's rights be cancelled or diminished in any way by any such breach or default.

9.3 Transfer Agreements Not Requiring Consent.

(a) The provisions of Section 9.2 above notwithstanding, a Transfer Agreement shall not require County consent or County consultation with an Affected Jurisdiction or Public Body if such agreement relates to the transfer of: (i) any single residential parcel conveyed to a purchaser, (ii) any condominium, time-share or fractionally-owned unit conveyed to a purchaser, (iii) any property transferred as fewer than twenty (20) lots in a single transaction to a single builder, or (iv) any property that has been established as a separate legal parcel for a golf course, commercial, open space, park, hotel, or other use agreed to by Trendwest and the County as long as Trendwest or its assigns retain all obligations and responsibilities pursuant to this Agreement, and the MPR Approvals and Subsequent Actions, except for those obligations and responsibilities that can be fulfilled exclusively within the boundaries of, and by the development upon, the parcel or parcels transferred ("Parcel Obligation"). Parcel Obligations include, by way of illustration and without limitation, such items as individual lot landscaping or buffering requirements, building setback, height or design requirements, wood-burning stove prohibitions, and access and infrastructure to be constructed solely within the boundaries of the parcel and intended to serve only the building(s) or uses located within that parcel. To be eligible for a transfer without consent pursuant to this subsection, Trendwest or its assigns shall retain all obligations and responsibilities pursuant to the MPR Approvals and Subsequent Actions (other than those that can be fulfilled exclusively within the boundaries of, and by the development on, the individual parcel), including, by way of illustration and without limitation, such items as overall project impact monitoring, public facility and fiscal impact mitigation (except for parcels transferred to a single builder hereunder), overall infrastructure necessary to serve more than one parcel of the Resort development, and offsite traffic mitigation.

(b) The transferee in such a transaction and its successors shall be deemed to have no obligations under this Agreement other than the Parcel Obligations, provided that the transferee shall be bound by all conditions in the MPR Project Development Permit and MountainStar MPR Conditions deemed applicable by Trendwest and the County and embodied in CC&Rs, and shall continue to benefit from the vested rights provided by this Agreement for the duration of the Term. Nothing in this section shall exempt any property transferred from payment of applicable fees and assessments or compliance with applicable conditions of approval.

9.4 Notices. Any notice or communication required by this Agreement between the County and Trendwest must be in writing, and may be given either personally, electronically with evidence or receipt or by express delivery service, return receipt requested. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or if delivery is made electronically or by express delivery service, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any Party may at any time, by giving ten (10) days written notice to the other Party, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to the County, to: Kittitas County Board of Commissioners
 Kittitas County
 Kittitas County Courthouse
 205 West 5th, Room 110

Ellensburg, Washington 98926
Telephone: (509) 962-7508
Facsimile: (509) 962-7679
Email: boce@co.kittitas.wa.us

With copies to:

~~Planning~~ Director of Community Development Services
Kittitas County
411 N. Ruby Street, Suite 2
Ellensburg, Washington 98926
Telephone: (509) 962-7506
Facsimile: (509) 962-7697
Email: cds@co.kittitas.wa.us

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Prosecuting Attorney
Kittitas County
Kittitas County Courthouse
205 West 5th, Room 213
Ellensburg, Washington 98926
Telephone: (509) 962-7520
Facsimile: (509) 962-7022
Email: prosecutor@co.kittitas.wa.us

If to ~~Trendwest Resorts or
Trendwest Investments~~ Suncadia, to:

~~e/o Trendwest Resorts, Inc.~~ Suncadia LLC
~~4244 Bullfrog Road, Suite 1~~
~~Cle Elum, Washington 98922~~
~~109 S. First Street~~
~~P.O. Box 887~~
~~Reslyn, Washington 98941-0887~~
Attn: ~~J. Michael Moyer~~ Managing Director
Telephone: (509) 649-3000
Facsimile: (509) 649-3059
Email:

With copies to:

~~Cairncross & Hempelmann, P.S.~~
~~70th Floor, 701 Fifth Avenue~~
~~Seattle, WA 98104 7016~~
Attn: ~~John W. Hempelmann~~
Telephone: (206) 587-0700
Facsimile: (206) 587-2308

Hillis, Clark, Martin & Peterson, P.S.
500 Galland Building
1221 Second Avenue
Seattle, Washington 98101

Attn: Steven R. Rovig
Telephone: 206-623-1745
Facsimile: 206-623-7789
Email: srr@hcmp.com

Lathrop, Winbauer, Harrel, Slothower & Denison et
al, LLP
201 W. 7th
P.O. Box 1088
Ellensburg, WA 98926
Attn: F. Steven Lathrop
Telephone: (509) 925-6916
Facsimile: (509) 962-8093
Email: steve@lwhsd.com

Section 10. MISCELLANEOUS

10.1 Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this Agreement, and the preamble paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.

10.2 Severability. If any term or provision in this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, Trendwest may, in Trendwest's sole discretion, terminate this Agreement by providing written notice of termination to the County.

10.3 Other Necessary Acts. Each Party shall execute and deliver to the other all other further instruments and documents that are reasonably necessary to carry out and implement the

MPR Approvals and the Subsequent Actions and that are necessary to provide to the other Party the full and complete enjoyment of its rights and privileges under this Agreement.

10.4 Other Miscellaneous Terms. The singular shall include the plural, the masculine gender shall include the feminine; “shall” is mandatory; “may” is permissive.

10.5 Covenants Running with the Land. Subject to Section 9 of this Agreement, all of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to Washington law. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon MountainStar, as appropriate, runs with the Trendwest Property and, subject to Section 9 of this Agreement, is binding upon each successive owner of all or a portion of the Trendwest Property during its ownership of such property.

10.6 Remedies. In addition to the remedies set forth in the MountainStar MPR Conditions, either Party may, in addition to any other rights or remedies, institute an equitable action to cure, correct, or remedy any default; enforce any covenant or agreement herein; enjoin any threatened or attempted violation thereof; enforce by specific performance: the obligations and rights of the parties hereto; or obtain any remedies consistent with the foregoing and the purpose of this Agreement. In no event shall either Party be entitled to recover from the other Party, either directly or indirectly, damages, costs or attorneys’ fees in any legal or equitable action.

10.7 Washington Law. This Agreement shall be construed and enforced in accordance with the laws of the state of Washington.

10.8 Attorneys' Fees. In the event of any litigation or arbitration between the Parties regarding an alleged breach of this Agreement, neither Party shall be entitled to any award of attorneys' fees.

10.9 Covenant of Good Faith and Fair Dealing. Each Party shall use its best efforts and take and employ all necessary actions to ensure that the rights secured by the other Party through this Agreement can be enjoyed and neither Party shall take any action that will deprive the other Party of the enjoyment of the rights secured through this Agreement.

10.10 No Third-Party Beneficiaries. Except as expressly provided for and limited in (i) Section 4.1(g)(4), *Results of Monitoring* and (ii) Section 9.2, *Transfer Agreements Requiring Consent*, conveying certain limited rights upon Affected Jurisdictions and Public Bodies, this Agreement is for the benefit of the Parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third-party beneficiary or other rights whatsoever hereunder.

10.11 Conflicts. In the event of a conflict, the terms and conditions set forth in the MountainStar MPR Conditions shall prevail over the terms and conditions of this Agreement, and the terms and conditions of this Agreement shall prevail over the terms and conditions of other MPR Approvals and Applicable Law.

Section 11. ENTIRE AGREEMENT, COUNTERPARTS AND EXHIBITS

This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of fifty nine (59) pages, two (2) notary acknowledgement pages and 13 Exhibits, which constitute in full, the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All

waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of the County and Trendwest. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

- Exhibit A Legal Description for Trendwest Property, as amended by Exhibit A (Rev. 1) Suncadia Master Planned Resort Legal Description (dated March 18, 2008)
- Exhibit B MountainStar Resort Conceptual Master Plan, as amended and dated September, 2000
- Exhibit C MountainStar Subarea Plan (Ordinance No. 2000-12)
- Exhibit D Master Planned Resort Zoning District (Ordinance No. 2000-13)
- Exhibit E Rezone (Ordinance No. 2000-14)
- Exhibit F MPR Project Development Permit and MountainStar MPR Conditions (Ordinance No. 2000-15)
- Exhibit G Planned Action Ordinance (Ordinance No. 2000-17)
- Exhibit H Kittitas County Code
- Exhibit I County Critical Areas Regulations
- Exhibit J Additional Development Standards and Design Guidelines, as amended by Exhibit J (Rev. 1) dated March 18, 2008
- Exhibit K Chapter 36.70A RCW
- Exhibit L Chapter 58.17 RCW
- Exhibit M Sample Open Space Calculation Form, as amended by Exhibit M (Rev. 1) dated March 18, 2008

Section 12. RECORDATION OF DEVELOPMENT AGREEMENT

Trendwest shall record an executed copy of this Agreement with the Kittitas County Auditor, pursuant to RCW 36.70B.190, no later than ten (10) days after the County executes this Agreement. Lengthy exhibits to this Agreement, including Exhibit H, *Kittitas County Code*, shall not be required to be recorded together with this Agreement; provided, however, that exhibits not recorded with this Agreement shall be maintained by the Kittitas County Planning Department and remain available for public inspection and copying during regular business hours throughout the Term of this Agreement. In some instances, ordinances approved by the County may not have been codified as of the Effective Date of this Agreement. In such instances, the codified versions of such ordinances shall be added to Exhibit H and delivered to Trendwest as they are codified by the County.

IN WITNESS WHEREOF, this Agreement has been entered into by and between Trendwest and the County as of the day and year first above written.

KITTITAS COUNTY

By: _____ Mark McClain
Its: Chairman

By: _____ Alan Crankovich David B. Bowen
Its: _____ Vice-Chairman

By: _____ David B. Bowen Alan Crankovich
Its: _____ Commissioner

Approved As To Form:

~~James Hurson~~ Neil A. Caulkins, Deputy Prosecuting Attorney

SUNCADIA, LLC, a Delaware limited liability company

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By: Easton Ridge Investors, LLC,
a Delaware limited liability company,
its Managing Member

By: Ronald D. Olstad
Its: Managing Director

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By: Del E. Goehring,
Its: Senior Vice President - Finance

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~~TRENDWEST RESORTS, INC., an Oregon Corporation~~

By: _____
Its: _____

~~TRENDWEST INVESTMENTS, INC., a Washington Corporation~~

By: _____
Its: _____

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STATE OF WASHINGTON _____)
) ss.
County of Kittitas _____)

I certify that I know or have satisfactory evidence that MARK McCLAIN, is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Chairman of the Kittitas County Board of County Commissioners, to be the free and voluntary act of such county for the uses and purposes mentioned in the instrument.

GIVEN under my hand and official seal this _____ day of _____, 2008.

Printed Name: _____
Notary Public in and for the State of Washington
My commission expires: _____

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STATE OF WASHINGTON _____)
) ss.
County of Kittitas _____)

I certify that I know or have satisfactory evidence that ALAN A. CRANKOVICH, is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Vice Chairman of the Kittitas County Board of County Commissioners, to be the free and voluntary act of such county for the uses and purposes mentioned in the instrument.

GIVEN under my hand and official seal this _____ day of _____, 2008.

Printed Name: _____
Notary Public in and for the State of Washington
My commission expires: _____

STATE OF WASHINGTON _____)
) ss.
County of Kittitas _____)

I certify that I know or have satisfactory evidence that DAVID B. BOWEN, is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as Commissioner of the Kittitas County Board of County Commissioners, to be the free and voluntary act of such county for the uses and purposes mentioned in the instrument.

GIVEN under my hand and official seal this _____ day of _____, 2008.

Printed Name:

Notary Public in and for the State of Washington

My commission expires:

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STATE OF WASHINGTON _____)
_____) ss.
County of Kittitas _____)

On this day, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Ronald D. Olstad, to me known to be the Managing Director of Easton Ridge Investors, LLC, a Delaware limited liability company, the Managing Member of Suncadia, LLC, a Delaware limited liability company, the company that executed the foregoing instrument, and acknowledged that the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

GIVEN under my hand and official seal this _____ day of _____, 200*.

Printed Name:

Notary Public in and for the State of Washington

My commission expires:

STATE OF WASHINGTON _____)
_____) ss.
County of Kittitas _____)

On this day, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Del E. Goehring, to me known to be the Senior Vice President – Finance of Easton Ridge Investors, LLC, a Delaware limited liability company, the Managing Member of Suncadia, LLC, a Delaware limited liability company, the company that executed the foregoing instrument, and acknowledged that the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

GIVEN under my hand and official seal this _____ day of _____, 200*.

Printed Name:

Notary Public in and for the State of Washington

My commission expires:

← --- Formatted: Justified

[ACKNOWLEDGEMENTS]