



P.O. Box 927  
Roslyn, WA 98941

August 11, 2009

Kittitas County Board of Commissioners  
205 W 5th AVE Suite 108  
Ellensburg, WA 98926  
Sincerely,

Re: August 13, 2009 Hearing- Amendments to the Dept. of Ecology MOA and Proposed Partnership Rule.

Dear Commissioners,

We are writing to offer testimony and documents for the record of the hearing indicated above. As a citizens group based in Roslyn, WA we applaud the Department of Ecology's efforts to require our County to address the impact of new exempt wells on existing and senior water users in Upper County. We encourage you to stop resisting their attempts to bring these impacts under control.

For the record we offer two private settlement agreements bearing on protection of existing users and in stream flow and encourage you in any agreement with Ecology to avoid actions that conflict with these agreements. The documents are:

- 1) the Cooperative Agreement between the Washington Department of Fish and Wildlife, Yakama Nation and Trendwest Resorts, Inc. of December 4, 2000 and
- 2) Settlement Agreement Regarding MountainStar Master Planned Resort Cle Elum Urban Growth Area and Supporting Infrastructure and Services, by and between RIDGE and Trendwest Resorts (whose successor is Suncadia Development Co.)

Please note especially Paragraph 1.53.10 and Exhibit I of the RIDGE Settlement Agreement that prohibits Suncadia from transferring water rights to of providing water service for lands within the area identified in Paragraph 1.7 (and exhibit I), which lie generally East of Hwy 903 to the top of the Cle Elum Ridge between Cle Elum and Lake Cle Elum.

Sincerely,

Doug Kilgore  
President and Registered Agent

2 Attachments

RECEIVED

AUG 13 2009

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KITTITAS COUNTY BOARD OF COMMISSIONERS

*Cathy Kilk*  
*Brent*  
*PH file*

RECEIVED

APR 10

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FEDERAL BUREAU OF INVESTIGATION

**SETTLEMENT AGREEMENT REGARDING  
MOUNTAINSTAR MASTER PLANNED RESORT  
CLE ELUM URBAN GROWTH AREA  
AND  
SUPPORTING INFRASTRUCTURE AND SERVICES**

This Settlement Agreement ("Agreement") is entered into this \_\_\_\_ day of September, 2001 by and between Trendwest Resorts, Inc. ("Trendwest Resorts"), an Oregon corporation registered to conduct business in the state of Washington, Trendwest Investments, Inc. ("Trendwest Investments"), a Washington corporation, Trendwest Properties, Inc. ("Trendwest Properties"), a Washington corporation, MountainStar Resort Resources, Inc., a Washington corporation, and RIDGE ("RIDGE"), a Washington non-profit corporation. Trendwest Resorts, Trendwest Investments, Trendwest Properties, and MountainStar Resort Resources, Inc. are sometimes collectively referred to herein as "Trendwest." Trendwest and RIDGE are sometimes collectively referred to herein as "the Parties."

**RECITALS**

A. WHEREAS Trendwest Investments is the owner of certain real property consisting of approximately 6,217 acres located within Kittitas County, Washington, which property is more particularly described in the legal description attached as EXHIBIT A and incorporated herein by reference, and which, as discussed in the Recitals below, is proposed for development by Trendwest Resorts as the MountainStar Master Planned Resort (the "MPR Property"). The MPR ("MountainStar" or "Resort") for purposes of this Agreement shall mean the Trendwest MountainStar properties (as shown in Exhibit "A" attached) or the MPR development as described in this Recital, or both, as the context shall determine. Trendwest Investments is a wholly owned subsidiary of Trendwest Resorts.

B. WHEREAS Trendwest Investments is also the owner of certain real property consisting of approximately 1,200 acres located within the City of Cle Elum's Urban Growth Area ("Cle Elum UGA") in Kittitas County, Washington, which property is more particularly described in the legal description attached as EXHIBIT B and incorporated herein by reference, and which, as discussed in the Recitals below, is proposed for development by Trendwest as part of Cle Elum's UGA. For purposes of this Agreement, "UGA" shall be defined as Trendwest's properties within the Cle Elum UGA. The MPR Property and the UGA are sometimes collectively referred to herein as the "Trendwest Property."

C. WHEREAS Trendwest Properties is pursuing development of the UGA property for urban development as part of Cle Elum's UGA ("Cle Elum UGA"). Cle Elum is presently preparing an Environmental Impact Statement ("EIS") pursuant to the State Environmental Policy Act ("SEPA"), ch. 43.21C RCW, regarding Trendwest's proposed Master Plan for the UGA. For the purposes of this Agreement, Master Plan for the UGA shall be defined as the Master Plan for the Trendwest Property in the Bullfrog

Subarea, the Development Standards for that property and the Development Agreement for that property, as approved by the City of Cle Elum. The Draft EIS for the Cle Elum UGA ("UGA DEIS") was published in March 2001. For purposes of this Agreement, the UGA EIS shall be defined as the UGA Final EIS and the UGA Draft EIS, and Supplemental EIS (SEIS) as incorporated into the UGA Final EIS as may be approved by the City of Cle Elum. The SEIS shall be defined as that document prepared by the Washington State Department of Ecology (Ecology) regarding Trendwest's Change Applications.

D. WHEREAS RIDGE is a community organization of long standing, based in Roslyn, Washington and incorporated in 1989, whose stated mission is "To educate the public regarding forestry and land practices in Upper Kittitas County; to be a voice for citizens on maintenance of a sustainable ecosystem and economy; to monitor and seek enforcement of the Growth Management Act and other environmental laws in Upper Kittitas County." RIDGE has since its inception maintained an active role in public processes related to the management and development of the lands now known as the MPR and UGA.

1. Whereas the lands upon which the MPR and UGA are located contain valuable natural resources and amenities which the people and creatures of Upper Kittitas County and others have, in the past enjoyed and that these lands are documented to be of value in providing connectivity of wildlife habitat north and south across I-90 between Alpine Lakes Wilderness and Mount Rainier and east and west between Cle Elum River Corridor and the Teanaway River Valley.

2. Whereas RIDGE has entered into this Settlement Agreement with the purpose of realizing environmental benefits that will support a sustainable ecosystem in Upper Kittitas County and the Yakima River watershed. RIDGE has sought to advance the overall goal of achieving environmental benefits. Terms of this Settlement Agreement pursue RIDGE goals that include the following: (a) Retain and improve in-stream flows on Yakima River and its tributaries for protection of salmon; (b) Establish and protect habitat corridors that enable and enhance connectivity north and south across I-90 between Alpine Lakes Wilderness and Mount Rainier and east and west between Cle Elum River Corridor and the Teanaway River Valley; (c) Establish and protect open space with public access in Upper Kittitas County and in the Cle Elum River Valley; (d) Manage timber and wildlife within protected open-space on sustainable basis; (e) Protect City of Roslyn watershed in Domerie Creek from encroachment; (f) protect City of Roslyn water right from impairment; (g) Conduct development according to the best available planning and environmental standards and practices; (h) Protect the water quality in Yakima and Cle Elum River from degradation that could result from resort development; and (i) Mitigate possible impacts of resort construction and operation to maintain existing levels of environmental quality in Upper Kittitas County.

3. Whereas RIDGE has long sought to realize a sustainable economy in Upper Kittitas County and has entered into this Settlement Agreement in order to advance that purpose. Terms of this Settlement Agreement pursue RIDGE goals that

include the following: (a) Limit the scale of Trendwest development in Upper Kittitas County so that such development may be in balance with existing communities; (b) Establish and support employment standards and civil rights for workers involved in the construction and operation of the MPR and UGA; (c) Increase local residents' opportunities for employment resulting from MPR and UGA development; and (d) Protect the City of Roslyn and other Upper County Communities from the possibility of negative fiscal impacts arising out of Trendwest's development of the MPR and UGA.

4. Whereas RIDGE has long supported the preservation of the historic character of Roslyn and other Upper Kittitas County communities. Terms of this Settlement Agreement pursue RIDGE goals that include the following: (a) Protect the historic character and forested perimeter of the Cities of Roslyn and Ronald; (b) Retain local historic assets and materials as a public trust; (c) Support efforts aimed at historic preservation of buildings and other historic features; (d) Maintain the rural character of Upper Kittitas County; and (e) Protect Upper Kittitas County communities from impacts of traffic resulting from MPR and UGA construction and operation.

E. WHEREAS in March 1997 Trendwest Resorts submitted an application to Kittitas County to develop the MPR Property pursuant to RCW 36.70A.360, and the Master Planned Resort Policies in Kittitas County's Comprehensive Plan (chapter 2.4), as the MountainStar Master Planned 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 residential residences (including vacation and second homes), (iv) equestrian facilities, (v) an interpretive center, and (vi) open space.

F. WHEREAS pursuant to SEPA Kittitas County prepared a Draft EIS and Final EIS analyzing the probable significant adverse impacts of Trendwest's proposed "Conceptual Master Plan" for MountainStar. For purposes of this Agreement the Conceptual Master Plan shall be the graphic representation of the MPR development approved by Kittitas County on October 10, 2000 as Exhibit "B" of the Development Agreement, and as may be amended under the terms of the MPR Development Agreement. Following Administrative Appeals the BOCC found that the EIS was legally adequate by adopting Resolutions No. 2000-79 and 2001-57. For purposes of this Agreement, MPR EIS shall be defined as the Final EIS and the Draft EIS as incorporated into the Final EIS found legally adequate by Kittitas County through adoption of Resolutions 2000-79 and 2001-57.

G. WHEREAS on October 4, 2000 the BOCC voted unanimously to approve the MPR Approvals, and on October 10, 2000 executed the MPR Approval Documents on behalf of Kittitas County. For purposes of this Agreement the Development Agreement shall be defined as a Development Agreement between Trendwest and Kittitas County regarding the development of MountainStar, which incorporates Ordinances No. 2000-12, 2000-13, 2000-14, 2000-15, 2000-17, MountainStar Resort Conceptual Master Plan and Additional Development Standards and Design Guidelines, all as referenced in the Development Agreement Exhibits.

H. WHEREAS on October 27, 2000 RIDGE filed a “Land Use Petition and Petition for Declaratory Judgment” in Yakima County Superior Court challenging the Development Agreement between Trendwest and the County for MountainStar, the Site-Specific Rezone, the MPR Development Permit, and the Planned Action Ordinance, as well as challenging the legal adequacy of the MPR EIS under SEPA for purposes of the County’s adoption of those Ordinances. Yakima County Superior Court Judge Susan Hahn issued her “Memorandum Opinion re Appeal” on May 29, 2001 denying RIDGE’s LUPA Petition in its entirety. RIDGE has filed a Notice of Appeal with the Court of Appeals, Division 3, seeking review of Judge Hahn’s decision, which appeal is captioned RIDGE v. Kittitas County, et al., Court of Appeals Case No. 20318-2-III (the “LUPA Appeal”).

I. WHEREAS on December 8, 2000 RIDGE filed a Petition for Review with the Eastern Washington Growth Management Hearings Board (“Eastern Board”), challenging the BOCC’s compliance with the Growth Management Act (“GMA”), ch. 36.70A RCW, in adopting the MountainStar Subarea Plan and MPR Zoning District, and the County’s compliance with SEPA related to the adoption of those ordinances. Following a hearing on the merits, the Eastern Board issued a Final Decision and Order on June 7, 2001 finding that the County complied with the GMA and SEPA in adopting the MountainStar Subarea Plan and MPR Zoning District, except to the extent the Eastern Board concluded that the County failed to “coordinate” the MountainStar Subarea Plan with the City of Roslyn’s Comprehensive Plan. On June 8, 2001, Trendwest filed a Petition for Review in Kittitas County Superior Court seeking review of the Growth Board’s determination that the County failed to “coordinate” with Roslyn’s Comprehensive Plan, which appeal is captioned Trendwest Resorts, Inc., et al. v. Eastern Washington Growth Management Hearings Board, et al., Kittitas County Cause No. 01-2-00219-1. On July 5, 2001, RIDGE filed a Petition for Review in Thurston County Superior Court seeking review of the Growth Board’s FDO, which appeal is captioned RIDGE v. Eastern Washington Growth Management Hearings Board, et al., Thurston County Superior Court Cause No. 01-2-01222-1. On July 6, 2001, Kittitas County filed a Petition for Review in Kittitas County Superior Court seeking review of the Growth Board’s determination that the County failed to “coordinate” with Roslyn’s Comprehensive Plan, which appeal is captioned Kittitas County v. Eastern Washington Growth Management Hearings Board, et al., Kittitas County Cause No. 01-2-0271-9 (the “County GMA Appeal”). Trendwest, RIDGE, and Kittitas County’s respective appeals of the Growth Board’s FDO are collectively referred to herein as the “GMA Appeal.”

J. WHEREAS Trendwest is pursuing two water rights strategies for providing water supply to MountainStar. One strategy involves transfer of water rights acquired by Trendwest through the State water rights program. Change of use applications are currently pending before the Washington Department of Ecology (“Ecology”) for water rights owned by Trendwest to allow those water rights to be used on the Trendwest Property (the “Change Applications”). The second strategy involves an Exchange Contract with the United States Bureau of Reclamation (“Reclamation”). Both water supply strategies are analyzed to an extent in the MPR EIS. The transfer of water

rights through approval of the Change Applications by Ecology is Trendwest's preferred water supply alternative. Ecology is presently in the process of preparing a Supplemental EIS for Trendwest's Change Applications. Trendwest intends that the Change Applications will also provide for water necessary for development of the UGA Property.

K. WHEREAS the Parties acknowledge various governmental agencies and Puget Sound Energy are planning infrastructure projects in the Upper County and that such projects will, in part, support development in the MPR and UGA, and that other infrastructure and services are necessary for the MPR and UGA. The following projects, facilities and services shall be referenced herein as the "Infrastructure and Services Supporting the MPR and UGA": Cle Elum water treatment plant, including its related intake, storage and conveyance systems; waste water treatment plant ('Waste Water Treatment Plant'), including its related conveyance and outfall systems; County and state road improvements; County improvements to or expansions of the Solid Waste Transfer Station and services; expansion of the Roslyn-Cle Elum School District facilities and services; expansion of Puget Sound Energy's electrical substation and natural gas lines; fire, police, hospital and emergency services communications facilities and services; and cable, fiber optic lines, and other telecommunications facilities and services. Such projects, facilities and services shall be referenced herein as the "Infrastructure and Services Supporting the MPR and UGA."

L. WHEREAS the purpose of this Agreement is to settle all past, and present claims and controversies, and to avoid future claims and controversies between the Parties to this Agreement regarding the MPR Approvals and Trendwest's development of MountainStar, as well as to settle all claims, counterclaims and controversies between the Parties asserted in the GMA Appeal and the LUPA Appeal, as well as to settle all past and present claims and controversies, and avoid future claims and controversies between the Parties regarding the Cle Elum UGA and the UGA Property, as well as to settle all past and present claims and controversies, and avoid future claims and controversies regarding the Infrastructure and Services Supporting the MPR and UGA.

M. WHEREAS the Parties recognize that this Agreement anticipates a long-term cooperative relationship between Trendwest and RIDGE, and the Parties agree that they will approach that relationship and their individual performances under this Agreement in good faith. Where additional agreements are contemplated or become necessary, the Parties will cooperatively pursue such further agreements or, if required, seek appropriate mediation in order to implement the letter, and spirit and intent of this Agreement.

### AGREEMENT

NOW, WHEREAS, in consideration of the promises and mutual promises, covenants and undertakings herein, the Parties hereto have agreed and hereby agree as follows:

**1.0 Trendwest's Obligations.** Trendwest agrees to the following obligations (sometimes collectively referred to individually as a "Trendwest Obligation" or collectively as "Trendwest's Obligations"), which unless otherwise specified, below (including in Exhibit "H"), shall become effective upon the execution of this Agreement.

**1.1 Reduction of MPR and Cle Elum UGA Footprints.**

**1.1.1** Trendwest will add approximately four hundred thirty-eight (438) acres of New Open Space to the MPR, as shown on the Binding Project Map attached hereto as EXHIBIT C and incorporated by reference, and will add approximately one hundred twelve (112) acres of New Open Space to the Cle Elum UGA as also shown on the Binding Project Map (collectively the "New Open Space"). Due to their irregular shape, the acreage for the New Open Space pursuant to this Paragraph may be defined geographically rather than by legal description. The exact delineation of the boundaries of New Open Space will be field adjusted by mutual agreement, and the acreage figures may be recalculated as necessary to reflect the area of New Open Space that is mapped. The New Open Space will be designated mutually by RIDGE and Trendwest prior to recording of the conservation easements called for under Paragraphs 1.1.2 (New Open Space) and 1.3.7 (Stream "C" Corridor), below, of this Agreement into one of the Open Space classifications as defined in EXHIBIT D attached hereto and incorporated by reference; provided, however, that the New Open Space for the Cle Elum UGA shall be designated as Managed Open Space pursuant to the definition thereof in EXHIBIT D. The Parties acknowledge that the New Open Space in the UGA will be designated Managed Open Space and that the Stream "C" Corridor will be managed and designated pursuant to the terms set forth in Paragraph 1.3.7, below. As to the designation of the remaining New Open Space within the boundaries of the MPR, it is the intent of the Parties that lands contiguous with the Cle Elum River Corridor (as defined in the Cooperative Agreement) will generally be designated as Natural Open Space. Lands that extend away from the Cle Elum River Corridor will generally be designated as Managed Open Space taking into account the following site-specific considerations that may condition the designations: habitat management; infrastructure placement; and recreational opportunities. Any of the New Open Space may, in whole or in part, become part of the MountainStar Conservation Trust ("MCT"), as established under the December 4, 2000 "Cooperative Agreement Between the Washington Department of Fish and Wildlife ("WDFW"), Yakama Nation and Trendwest Resorts, Inc." ("Cooperative Agreement"), and may be applied towards meeting Trendwest's requirements for providing Open Space under the Cooperative Agreement.

**1.1.2** The New Open Space will be conveyed by a conservation easement(s) to the MCT or another mutually agreed upon entity. The conservation easement(s) shall be perpetual and irrevocable but may be subject to re-conveyance to Trendwest in the event of a prohibited RIDGE Legal Challenge or a Third-Party Legal Challenge pursuant to Paragraph 3.0, below, or in the event of termination of this Agreement pursuant to Paragraph 4.0, below. The conservation easement(s) shall be consistent with the applicable definitions for the various classes of Open Space set forth in EXHIBIT D. The Binding Project Map delineates the boundaries of Phases 1, 2 and 3



of the MPR, and the UGA. A conservation easement for the New Open Space contained within each respective phase of the MPR will be conveyed upon the recording of the first final plat for that phase (e.g. the New Open Space within the boundaries of Phase 1 will be conveyed upon the recording of the first final plat for Phase 1). The New Open Space within the UGA will be conveyed upon the recording of the first final plat for the UGA. RIDGE will have the right to approve the form of the conservation easement(s) conveyed for compliance with the terms and purposes of this Agreement, which approval cannot be unreasonably withheld.

The first final plat in the UGA or any phase of the MPR shall, for purposes of this Agreement, be defined as the first final plat recorded within that phase or the UGA, or the issuance of building permit or a certificate of occupancy for any hotel, shopping center or condominium or recreational vehicle park located within that phase or within the UGA, whichever should occur first, even if such hotel, shopping center, condominium or recreational vehicle park is not separately platted.

**1.2 Reduction of MPR Units.**

1.2.1 The Parties recognize that the Development Agreement and MPR Permit approved by the County for the MPR authorize Trendwest to develop 4,650 Master Planned Resort Accommodation Units (as that term is defined in Section 2.0 of the MPR Development Agreement), also referred to in this document as “Units” or “Accommodation Units.” Trendwest agrees to reduce the number of Units for the MPR as follows:

Type of Unit	County Approved	Settlement Terms	Reduction	%
Single Family Lots	3250	2695	555	17
Condominiums	850	790	60	7
Hotel Units*	550	300	250	45
Totals	4650	3785	865	18.6

\*If Hotel Units are subject to a condominium declaration, such Units may, for purposes of this Agreement, still be considered “Hotel Units” rather than “Condominiums.”

The Parties have agreed to limit the maximum number of Units to 3,785 Units, and agreed upon a maximum number of Units per phase of MPR development as indicated on the Binding Project Map. The maximum number of Units per MPR phase shall be as follows: Phase 1 = 1,700 Units; Phase 2 = 1,400 Units; and Phase 3 = 1,400 Units. Trendwest is bound by the overall cap (3,785 Units) established under this Agreement and recognizes that it will not be able to develop one or more of the MPR phases to the maximum number of Units set forth above.

1.2.2 The Parties further acknowledge that under the MPR Development Agreement Trendwest had, prior to execution of this Agreement, the right to seek modifications to the Conceptual Master Plan approved by the County for the

MPR, which amendments may include increasing the density or number of Units for the MPR above the 4,650 Master Planned Resort Accommodation Units authorized by the County. In agreeing to reduce the number of MPR Units to 3,785 Master Planned Resort Accommodation Units, Trendwest agrees not to seek any approvals from the County for greater than 3,785 Units. Trendwest will request, consistent with Paragraph 2.0, below, that the County modify the MPR Development Agreement and/or MPR Permit to reflect the reduction of Units consistent with this Paragraph, and agrees to be bound by the reduction of Units set forth in this Paragraph in the event the County declines to approve the requested modifications to the MPR Development Agreement and/or MPR Permit relating to the number of Units.

**1.2.3** The Parties acknowledge and agree that while Trendwest has agreed through this Agreement to provide New Open Space as provided in Paragraph 1.1, above, and to reduce the number of MPR Units as set forth in this Paragraph, and to all the other Trendwest Obligations under this Agreement, Trendwest otherwise retains complete control regarding the configuration and design of the MPR and UGA, including but not limited to, the timing of MPR and UGA development, the size of building footprints, lots sizes, and building sizes, as restricted only by the Applicable Law in the MPR Development Agreement, the MPR Permit and Conditions of Approval, any applicable provisions of this Agreement, any development agreement and/or permit approved by Cle Elum for the UGA, and any other legal or contractual requirements.

**1.3 Binding Project Map for the MPR and UGA.** Trendwest agrees to the following changes to the Conceptual Master Plan for the MPR approved by the County, and to the proposed master plan for the UGA to be approved by Cle Elum.

**1.3.1** Trendwest agrees to the Binding Project Map for the MPR and UGA as shown in EXHIBIT C. The Binding Project Map reflects Trendwest's commitment to the designation and location of New Open Space for the MPR, which shall be designated by the Parties pursuant to Paragraph 1.1.1, above, as "Natural," "Managed" and "Perimeter Buffer" Open Spaces as defined in EXHIBIT D, and New Open Space for the UGA (to be designated as Managed Open Space). The Binding Project Map is binding with regard to the following: the identification of New Open Space as described in Paragraph 1.1, above; the delineation of the MPR phase boundaries for Phases 1, 2 and 3, and the developable areas for the MPR and the UGA; the maximum Unit caps for the MPR and each phase thereof as described in Paragraph 1.2, above; the location of MPR hotel sites as described in Paragraph 1.3.3, below; the limitation on a Cle Elum River bridge crossing in the Stream "C" Corridor as described in Paragraph 1.3.5, below; the trail alignment between Number 9 Mine Road and Stream "C" as described in Paragraph 1.3.2, below; the preferred new bridge crossing across the Cle Elum River in the vicinity of the Old Winston Bridge, as described in Paragraph 1.3.5, below; the road alignment from Phase 2 to Phase 3 as described in Paragraph 1.3.6, below; the primary MPR access road off of Bullfrog Road, the secondary access road off of SR 903 at Number 9 Mine Road, and the proposed construction/maintenance entrance at the former "Gun Club Road" location, all as described in Paragraphs 1.3.4.2 and 1.3.4.4, below; location of the proposed secondary MPR entrance to Phase 2 as described

in Paragraph 1.3.4.2, below; the boundaries of the Stream "C" Corridor as described in Paragraph 1.3.7, below; and the current delineation of the Bullfrog Pond wetland and its associated buffers as discussed in Paragraph 1.9.4, below. All other information contained on the Binding Project Map is for information purposes only and shall not be binding under this Agreement. Trendwest agrees that General Site Plans, Site Development Plans and subdivision applications for the MPR, and development proposals for the UGA, will be consistent with the Binding Project Map, and that the total number of Units in developed areas will not exceed 3,785 Master Planned Resort Accommodation Units consistent with Paragraph 1.2, above, and will incorporate the Unit number caps for each phase as shown on the Binding Project Map.

**1.3.2** Trendwest agrees to locate the pedestrian/bike trail proposed for MPR Phase 1B in the road right-of-way from Number 9 Mine Road to the reservoir access road as shown on the Binding Project Map. West of the reservoir access road the pedestrian/bike trail will leave the right-of-way and follow behind the back lot lines (Lots 381-395 as identified on the date of this Agreement) until intersecting the Stream "C" open space. There shall be no trails constructed elsewhere in the buffers adjacent to the City of Roslyn between Number 9 Mine Road and Stream "C."

**1.3.3** Trendwest commits to the hotel sites identified on the Binding Project Map, and no others. The Parties understand and agree that the hotel sites shown as "bubbles" on the Binding Project Map are general areas in which the hotels may be located and that the exact locations of the hotel sites within the "bubbles" will be determined by Trendwest.

**1.3.4** Trendwest agrees that:

**1.3.4.1** Condition B-44 of Kittitas County Ordinance 2000-15 MPR Permit Conditions of Approval for the MPR will apply to the Number 9 Mine Road;

**1.3.4.2** The primary motor vehicle access to the MPR shall be off of Bullfrog Road. Trendwest will propose one secondary motor vehicle access at the Number 9 Mine Road. Trendwest will propose one secondary motor vehicle access road off of Bullfrog Road to serve the developable land between the Cle Elum River and the forty percent (40%) slope in Phase 1. Trendwest will propose only one (1) secondary motor vehicle access to MPR Phase 1 and Phase 2 from north of Ronald (as shown on the Binding Project Map). Trendwest will propose only one motor vehicle access to Phase 3 from Bullfrog Road. Such limitations and decisions on motor vehicle access are subject to agency approval. In the area described in this Paragraph, Trendwest shall actively oppose any motor vehicle access to the MPR other than emergency motor vehicle access and motor vehicle access described in this paragraph, 1.3.4.2. Trendwest will meet condition C-13 of MPR Development Agreement (Conditions of Approval). Trendwest agrees that neither it nor its contractors shall use Horvat Road for construction traffic.

**1.3.4.3** In the event Number 9 Mine Road is developed as an unrestricted secondary access road, Trendwest shall, subject to appropriate agency review and approval, install a left turn lane from SR 903 onto Number 9 Mine Road in Year 4 after the recording of the first final plat for the MPR. If the Number 9 Mine Road is developed as an unrestricted secondary access road but Trendwest, due to County or agency action, is unable to or prevented from installing the left turn lane, Paragraph 2.0 shall apply to arrive at a functional equivalent.

**1.3.4.4** Trendwest shall propose to Kittitas County a construction entrance at the former "Gun Club Road." After completion of construction, this entrance would be used during MPR operation only for employees, maintenance and emergency services, but shall not be used as an entrance for MPR guests and residents.

**1.3.5** Trendwest will not propose a bridge location across the Cle Elum River in the Stream "C" Corridor area as shown on the Binding Project Map. Trendwest is unable to commit to the location of road and utility corridors between Phases 1 and 2 due to uncertainty regarding easement acquisitions. Trendwest will propose, advocate and actively support a new bridge crossing only at the old Winston Bridge site. RIDGE agrees to actively support agency approval of a new bridge crossing at the Winston Bridge site. The Parties recognize that decisions regarding the bridge locations are subject to Yakama Nation and WDFW, and other agency, review, and Trendwest must comply with any agency decisions. Subject to agency approval, the "old" Bullfrog Bridge may be used only for utilities, trails, and maintenance/emergency vehicle access.

**1.3.6** In order to maximize the effectiveness of the wildlife corridor in the Domerie Creek basin, Trendwest will relocate the road as shown on the Binding Project Map at the time construction begins on the bridge crossing the Cle Elum. An underground utility corridor will cross this same general area to serve Phase 3 of MPR development.

**1.3.7** Upon the recording of the first final plat for Phase 2 of the MPR, Trendwest shall record a conservation easement protecting the Stream "C" Corridor depicted on the Binding Project Map. The conservation easement shall be based upon the general terms, reservations and restrictions set forth below.

**1.3.7.1 Nature of Easement.** The easement shall be a perpetual and irrevocable recording on the property, dedicating the property to (i) habitat and (ii) passive recreation purposes that will have minimal adverse impact on habitat; provided, however, that the conservation easement may be subject to reconveyance in the event of a prohibited RIDGE Legal Challenge or a Third-Party Legal Challenge as set forth in Paragraph 3.0, below, or in the event of termination of this Agreement under Paragraph 4.0, below.

**1.3.7.2 Ownership.** The fee title to the land shall remain in the ownership of Trendwest or its assigns. The easement shall be conveyed to the MCT or another mutually agreed upon entity.

**1.3.7.3 Public Access.** Kittitas County residents shall have equal access to the Stream "C" Corridor along with MountainStar Resort guests and residents. The Recreational User Statute (RCW 4.24.200, 4.24.210) shall apply to the use of the Stream "C" Corridor by any non-guest or non-resident of the MPR.

**1.3.7.4 Management.** Trendwest at its expense will manage this easement as part of the MountainStar Resort, providing appropriate security and maintenance.

**1.3.7.5 Habitat Restoration.** Trendwest will work with RIDGE, WDFW, the Yakama Nation, MountainStar residents and guests, and others interested in habitat restoration of this land, to develop a stewardship plan for this purpose. This effort shall be strictly voluntary, and shall not obligate Trendwest to any financial commitment for this purpose. Final decisions on a stewardship plan shall, subject to any required agency approval, be made by Trendwest but shall be consistent with the purposes of this Agreement.

**1.3.7.6 Open Space Classification.** Prior to conveyance of the conservation easement, this land shall generally be managed as Natural Open Space (as defined in EXHIBIT D attached hereto) subject to the restrictions and reservations set forth below to be included in the easement, with the exception that certain management protocols and activities as identified in the land stewardship plan for the Corridor will be necessary for habitat restoration that would not occur in Natural Open Space, such as the Cle Elum River corridor.

**1.3.7.7 Restrictions.** The easement will include a specific list of deed restrictions that constrain the use of the Stream "C" Corridor to protect habitat and recreation values of the Corridor. These restrictions will prohibit the following:

(1) Structures, except those necessary for the operation of MPR infrastructure, such as utilities and storm drainage (but not structures for water storage); and those that are appropriate to the purposes of the easement, such as casual recreation structures (e.g. picnic or rest areas, outlooks or exhibits)

(2) Motorized vehicles or equipment, except for maintenance and security vehicles in the Corridor, and except for those vehicles using the main MPR access road connecting Phase 1 and Phase 2.

(3) Overnight camping.

(4) Fires.

(5) Trails, except for one (1) trail as designated in the land stewardship plan for the area.

(6) Removal of live vegetation, except for the purposes identified in the land stewardship plan for the area.

(7) Impervious surfaces, except on the primary MPR access road.

(8) Mining or gravel extraction.

(9) Removal of dead or downed wood except for purposes of fire protection, public health and safety in conjunction with the land stewardship plan.

(10) Off-leash domestic pets.

(11) Stereos and radios audible to others beyond ten (10) feet) from the person with the stereo or radio.

**1.3.7.8 Reservations.** The conservation easement will reserve for Trendwest all rights accruing from its ownership of the land that are not restricted under the easement, and are not otherwise inconsistent with the purposes of the easement, including, but not limited to:

(1) The right to manage this area in accordance with the land stewardship plan for this area and the MPR Permit Conditions of Approval in a manner that is consistent with the purposes of this easement.

(2) The right to build structures necessary for the operation of the MPR infrastructure, such as utilities and storm drainage (but not water storage).

(3) The right to build and maintain one (1) main hard surfaced road and associated utility corridor connecting Phase 1 and Phase 2 of the MPR and designated in the land stewardship plan for the area. The right to build and maintain one (1) trail within the Stream "C" Corridor.

**1.3.7.9 Permitted Uses.** The use of the Stream C Corridor will be reserved for MPR owners, guests, and Kittitas County residents for the uses listed below.

(1) Hiking on designated trails.

(2) Mountain biking.

- (3) Cross-country skiing.
- (4) Picnicking.
- (5) Mushroom hunting.
- (6) Fishing, subject to appropriate regulation.

The general public may be granted more limited access rights.

**1.4 New Uses.** Trendwest agrees not to seek or accept approval for, or amendments to, the MountainStar Conceptual Master Plan to allow any of the following described uses on the MPR Property: (i) recreational and entertainment uses that are not integrated into the MPR, and that are designed and sized larger than necessary to serve MPR residents and their guests, lodging guests, and prospective purchasers/renters of MPR Units, including, but not limited to: an amphitheater larger than that analyzed in the MPR EIS; mechanized vehicle race tracks; permanent amusement parks, excluding amusement activities in the MPR Resort Center; water slide parks; stadiums; equestrian facilities larger than those analyzed in the MPR EIS; and casinos; (ii) trailer parks and recreational vehicle parks larger than those analyzed in the MPR EIS, provided that sewage from any permitted park is conveyed to the treatment facility that serves the MPR and that individual trailer and recreational vehicle spaces are considered Units for purposes of this Agreement, but not excluding storage for MPR guests and residents; and (iii) uses that are not typically associated with a master planned resort including industrial parks; shopping centers that exceed in size and scope the retail uses allowed by the current MPR Approvals and the current County MPR Policies; and jails, except for any holding facility(ies) or similar facility(ies) that may be required by local law enforcement agencies. This Paragraph 1.4 is to be construed in the event of ambiguity consistent with Paragraph 21.0, below, and shall not be construed in favor of one Party or the other.

**1.5 Water Supply.** Trendwest agrees to the following terms regarding water supply:

**1.5.1 Water Rights Processing.** Trendwest is seeking expedited processing of the Change Applications. RIDGE agrees to prepare and submit a letter to Ecology during the public comment period for the SEIS supporting the expedited processing of the Change Applications and explaining the environmental benefits associated with this Agreement.

**1.5.2 Reuse.** It is Trendwest's position that consumptive uses associated with the use of reclaimed wastewater may represent an increase of consumptive use over the consumptive use related to the water rights transferred under the Change Applications. Trendwest agrees to provide appropriate mitigation, as determined by Ecology, for increases in the consumptive use of water resulting from use of reclaimed wastewater by Trendwest.

### **1.5.3 Water Demand.**

**1.5.3.1** Trendwest will reduce Master Planned Resort Accommodation Units in the MPR as described in Paragraph 1.2 of this Agreement, thereby reducing the consumptive use demand.

**1.5.3.2** Trendwest will reduce the UGA golf course irrigated area from one hundred ninety (190) acres to ninety (90) acres. Trendwest will not propose any alternate project to a golf course that would *divert* more than 288.5 acre feet per year. This represents a reduction in diversion demand from the 403 acre feet per year analyzed (alternative 3) in the Site Engineering section of the UGA DEIS of 114.5 acre feet per year. This saved water may be used to maintain artificial lake circulation and will be directed to an infiltration facility. Total diversion quantity will be measured by metering. Trendwest agrees not to increase treated water diversion above the four hundred and fifty-two (452) acre feet per year identified in the UGA DEIS Alternative 3, as a result of such alternative project.

**1.5.3.3** Trendwest will accelerate the purchase or transfer of water rights for in stream flows under the Yakama Nation/WDFW Cooperative Agreement. Instead of providing Twenty Five Thousand Dollars (\$25,000.00) of water rights each year over a twelve (12) year period, Trendwest will commit to providing Fifty Thousand Dollars (\$50,000.00) of water rights per year for six (6) years.

**1.5.3.4** Trendwest will agree not to seek water rights or diversions from Domerie Creek.

**1.5.3.5** Trendwest agrees not to divert water from the Cle Elum River when stream flows are at or below levels recommended by the Bureau of Reclamation, Yakima Field Office, in consultation with the System Operations Advisory Committee (SOAC) or three hundred cubic feet per second, whichever is less, or from locations that would adversely affect wetlands or other aquatic resources, including salmonid habitat, as determined by the appropriate regulatory agencies.

**1.5.3.6** Trendwest will propose, advocate and actively support locating Cle Elum's municipal water intake on the Cle Elum River at a location having no adverse impacts on the Bullfrog Pond wetlands.

**1.5.3.7** Trendwest will negotiate an agreement with the City of Roslyn that will provide Roslyn with an additional water right to provide for growth in the Roslyn-Cle Elum School District resulting from the MPR and the UGA. The Parties agree that the quantity of the additional water right will be based for the first five (5) years upon modeling used in the UGA EIS to measure such impacts, and thereafter shall be adjusted based upon actual impacts as determined by monitoring as required in the MPR Development Agreement and the UGA Master Plan. In the event the City of Roslyn and Trendwest have not executed the agreement described in this



Paragraph 1.5.3.7 prior to the recording of the first final plat of the MPR or UGA, the negotiation shall be remanded to RIDGE and Trendwest, and the provisions of Paragraph 17.0 shall apply to arrive at a functional equivalent to this provision.

**1.5.3.8** Trendwest will negotiate an agreement with the City of Roslyn that will provide Roslyn with an additional water right to mitigate for increased water demands on Roslyn resulting from induced off-site development within Roslyn. The Parties agree that the quantity of the additional water right will be based for the first five (5) years upon modeling used in the UGA EIS to measure such impacts, and thereafter shall be adjusted based upon actual impacts as determined by monitoring as required in the MPR Development Agreement and UGA Master Plan. In the event the City of Roslyn and Trendwest have not executed the agreement described in this Paragraph 1.5.3.8 prior to the recording of the first final plat of the MPR or UGA, the negotiation shall be remanded to RIDGE and Trendwest, and the provisions of Paragraph 17.0 shall apply to arrive at a functional equivalent to this provision.

**1.5.3.9** To the extent not already mitigated under the terms of the Cooperative Agreement or through other agreements which Trendwest may enter into regarding the use of Trendwest water, Trendwest agrees to provide additional mitigation for induced off-site housing impacts, which may include the transfer of water rights to Ecology's Yakima River Trust Water Program or such other mitigation agreed to by Trendwest and the appropriate regulatory agency, to mitigate for consumptive uses of water associated with induced off-site housing outside Roslyn's service area. The Parties agree that the quantity of the additional water right will be based for the first five (5) years upon modeling used in the UGA EIS to measure such impacts, and thereafter shall be adjusted based upon actual impacts as determined by monitoring as required in the MPR Development Agreement and UGA Master Plan. If the appropriate regulatory agency does not agree to measure impacts in this manner, Paragraph 17.0 shall apply to arrive at a functional equivalent to this provision.

**1.5.3.10** Trendwest agrees not to transfer water rights to, or provide water service for, lands within the area identified in Paragraph 1.7 (Preservation of Off-Site Habitat and Open Space), below.

**1.5.3.11** Trendwest will provide mitigation as determined by the appropriate regulatory agencies for impacts from the change in seasonality of water rights proposed for transfer by Trendwest.

#### **1.5.4 Water Quality.**

**1.5.4.1** Trendwest will agree to monitor selected water quality parameters at selected baseline measuring stations as identified in Paragraph 1.5.4.2, below. If this monitoring demonstrates a degradation of these parameters between the two (2) monitoring locations identified in Paragraph 1.5.4.2 resulting from MPR and UGA development and operation, Trendwest will take corrective action to comply with all standards in the Washington Water Quality Standards (WAC 173-201a).

**1.5.4.2** Trendwest has collected baseline surface water quality data from a number of monitoring locations on-site as part of its MountainStar EIS analysis. Ecology selected the surface water quality parameters used in the MountainStar EIS analysis. Trendwest will continue collecting and analyzing data described in the MountainStar EIS at two (2) locations where baseline data was previously collected. Specifically, data collection shall continue at Cle Elum River mile 1 (located on the Cle Elum River just north of Interstate 90) and at Cle Elum River mile 7 (located near the City of Cle Elum's current diversion, where the Cle Elum River enters the Trendwest Property).

**1.5.4.3** The data collection specified in Paragraph 1.5.4.2, above, shall continue on a quarterly (i.e. seasonal) basis for a twenty (20) year period beginning with the recording of the first final plat for the MPR. Trendwest will make this monitoring data and any baseline information available to the public.

**1.5.5 Water Conservation.** Trendwest Agrees to:

**1.5.5.1** meet or, to the extent determined by Trendwest, exceed applicable federal, state and local water conservation guidelines;

**1.5.5.2** install and maintain water meters for all individual residential units and develop and implement a leak detection program for the MPR;

**1.5.5.3** undertake water audits every six (6) years (consistent with water system planning requirements) to determine overall MPR water usage and make results available to the Cities of Cle Elum and Roslyn, and the Town of South Cle Elum; and

**1.5.5.4** landscape plans should include drought-tolerant plantings at all public facilities, including golf courses.

**1.5.5.5** utilize computerized irrigation controls and high efficiency irrigation technology for golf courses as described in Trendwest's Golf Course Management Plan.

**1.5.6 Big Creek.**

**1.5.6.1** Trendwest will provide funding for upstream passage improvements at the Big Creek diversion as outlined in the WDFW proposal for Big Creek in an amount of Sixty Thousand Dollars (\$60,000.00); provided, however, that in lieu of a financial payment, Trendwest may substitute construction support as mutually agreed upon by Trendwest, RIDGE and WDFW. Upstream passage improvements include those intended to contribute to the restoration of fish runs in Big Creek. In the event these improvements cannot be pursued, the Parties may agree to substitute other identifiable measures to enhance tributary aquatic resources. Funds

and/or construction support will be disbursed as mutually agreed by the Parties and WDFW.

**1.5.6.2** In consideration for RIDGE's waiver of appeal rights regarding future proposed water rights transfer applications, agreements or contracts as set forth in Paragraph 3.3.3.2, below, Trendwest will contribute Sixty Thousand Dollars (\$60,000) for performance-based enhancements on Big Creek as outlined in the WDFW proposal for Big Creek; provided, however, that in lieu of a financial payment, Trendwest may substitute construction support as mutually agreed upon by Trendwest, RIDGE and WDFW. Performance-based enhancements are those intended to contribute to the restoration of fish runs in Big Creek. In the event these improvements cannot be pursued, the Parties may agree to substitute other identifiable measures to enhance tributary aquatic resources. Funds and/or construction support will be dispersed as mutually agreed by the Parties and WDFW.

**1.6 Reduction of Vesting Provisions.** Trendwest agrees as follows regarding the vested rights for Trendwest's development of the MPR and Trendwest's development of the UGA Property. These provisions, consistent with the provisions of Paragraph 2.0, below, shall be controlling in the event of any conflict with the Development Agreement for the MPR, or the development agreement to be adopted by Cle Elum for the UGA Property:

**1.6.1 MPR.** The Parties acknowledge that the MPR Development Agreement (Sections 4.1(a), (c) and (f)) between Trendwest and the County establishes vested rights for a period of thirty (30) years. Trendwest agrees to reduce the vesting period for the MPR from thirty (30) years to twenty (20) years for all of the Applicable Law (as defined in Section 4.1(c) of the Development Agreement), except for the County's Critical Areas Ordinance (Exhibit I to the Development Agreement). For the Critical Areas Ordinance, Trendwest agrees to reduce the vesting period from thirty (30) to fifteen (15) years.

**1.6.2 Cle Elum UGA.** The Parties acknowledge that Trendwest anticipates entering into a development agreement with the City of Cle Elum pursuant to RCW 36.70B.170 through -210. The development agreement will relate to Trendwest Properties' proposed development of the UGA Property. Trendwest agrees not to request, support or accept a vesting provision that exceeds fifteen (15) years for any development agreement entered into with Cle Elum regarding the UGA Property. In the event the term of any development agreement with Cle Elum regarding the UGA Property is extended beyond fifteen (15) years, Trendwest agrees not to request, support or accept any vested rights in such an extension that are inconsistent with this Agreement.

**1.6.3** Trendwest agrees not to request, support or accept any amendment to the following vesting and no-conflicting enactment provisions of the MPR Development Agreement that would expand Trendwest's Vested Rights under that Agreement: Section 4.1(a) (Vested Rights); Section 4.1(c) (Applicable Law); Section 4.1(f) (No Conflicting Enactments); provided, however, the Parties recognize that this

does not preclude Trendwest or the County applying statutes, rules or regulations adopted after the effective date of the MPR Development Agreement. Trendwest further agrees not to request, support or accept any amendments to the same or equivalent provisions included in the initial development agreement entered into with Cle Elum for the UGA.

## **1.7 Preservation of Off-Site Habitat and Open Space.**

**1.7.1** Trendwest will contribute One Hundred Fifty Thousand Dollars (\$150,000.00) to a land conservation trust ("Conservation Trust") to be established by RIDGE (outlined in Paragraph 1.7.2, below). RIDGE and Trendwest will work together for the acquisition of lands, property interests, options or development rights (other than lands the City of Roslyn may seek to acquire in Section 17 of Township 20 North, Range 15 East, W.M.) to preserve in perpetuity forested lands adjacent to Roslyn and Cle Elum for open space and public recreation area, and to provide habitat connectivity between Easton Ridge, the Domerie Creek watershed, and the Teanaway watershed. The Conservation Trust retains authority to make final decisions on acquisitions taking into account the advice and recommendations of the advisory group as set forth in Paragraph 1.7.2, below.

**1.7.2** An advisory group composed of RIDGE, Trendwest, other MCT participants, and the Cities of Cle Elum and Roslyn, subject to their agreement to participate, will advise and make recommendations to the Conservation Trust with respect to the acquisition of lands, property interests, options or development rights within the area described in Paragraph 1.7.2.1, below. The conceptual work plan for this advisory group shall include the following:

**1.7.2.1** Prioritize lands for acquisition within the area shown on the map attached hereto as EXHIBIT I and incorporated by this reference. The advisory group shall consider the following factors, among others, in prioritizing potential acquisitions: biology, funders' priorities, and recreation/public access. Identify objectives and agenda towards potential acquisitions.

**1.7.2.2** Identify funders and their protocols, structures, etc. Collect studies from different organizations. Conduct meetings with potential funders.

**1.7.2.3** Formulate acquisition plan based on coordination of funders/supporters and Conservation Trust goals.

**1.7.2.4** Raise funds, acquire lands/development rights.

**1.7.3** Within sixty (60) days of the execution of this Agreement, RIDGE will establish the Conservation Trust, and Trendwest and RIDGE will begin work on formulation of the advisory group and the work plan outlined in Paragraph 1.7.2, above. Trendwest will contribute the above-specified \$150,000.00 to the Conservation Trust organized by RIDGE upon the recording of the first final plat for the MPR or the UGA, whichever is sooner. The \$150,000.00 contributed by Trendwest shall be used for

no purpose other than the acquisition of lands, property interests, options or development rights for lands within the area shown on EXHIBIT I.

1.7.4 In order to enable RIDGE to establish the Conservation Trust pursuant to this Paragraph, and to provide resources needed to arrange, plan, appraise and otherwise organize the purposes of the Conservation Trust, Trendwest agrees to make two contributions to the Conservation Trust each in the amount of Twenty Five Thousand Dollars (\$25,000.00). The first of these contributions will be made within sixty (60) days of the execution of this Agreement, and the second contribution will be made on or before April 22, 2002. The Conservation Trust will provide Trendwest with a budget and final report of the planned expenditures (by category) for the initial contributions made pursuant to this Paragraph. In addition to these contributions, Trendwest may offer RIDGE in-kind support to facilitate establishment of the Conservation Trust.

1.8 **Employment Practices and Standards.** Trendwest agrees as follows with regard to employment practices and standards associated with development of the MPR and the Cle Elum UGA.

1.8.1 Trendwest will promulgate and enforce, and require its contractors and each tier of subcontractors to promulgate and enforce, a policy of non-discrimination concerning a potential employee or contractor's union status and/or RIDGE affiliation.

1.8.2 Trendwest will advertise and give written notice at libraries and post offices in Easton, Cle Elum, South Cle Elum, Ronald and Roslyn, and recruit locally (Kittitas County), to fill opportunities for contracting and employment, and will prefer local applicants provided they are qualified, available, and competitive in terms of pricing.

1.8.3 In the event that a group of Trendwest employees should seek union representation, Trendwest will not engage in "captive audience" meetings with employees concerning unionization, and will refrain from conducting "one-on-one" meetings with employees intended to pressure employees not to seek unionization.

1.8.4 Apprenticeship Opportunities and Coordination between Trendwest and the Cle Elum/Roslyn High School ("High School"). Trendwest will coordinate with the Cle Elum/Roslyn Vocational Program and the Washington State Apprenticeship Council ("WSAC") to integrate vocational opportunities throughout the construction and operation of the MPR and UGA into the programs, subject to the approval of the Cle Elum/Roslyn School District.

(a) The work plan of this program shall be integrated into the High School's "Pathways to Preparedness" program, and shall be an extension of this program's Industrial Occupations Path and the High School's "School to Work

Program” or similar programs mutually agreed upon by the Parties in the event the current programs are terminated.

(b) Students will have classroom time, supplied by the High School’s staff.

(c) Classroom time on the model of “Running Start” college programs will be utilized in order to support the curriculum required for the WAC program.

(d) The “Community Resource Training Program” (credit for unpaid time spent “job shadowing”) may be utilized to expose students in their junior year to a trade they are pursuing.

(e) The Diversified Occupations Release Program will be utilized to place students in paid positions offering on-the-job training for high school credit. Attached hereto as EXHIBIT E and incorporated by this reference is information summarizing the programs discussed in this Paragraph.

These programs shall be focused on the building trades and other occupations associated with MPR and UGA construction and operation.

**1.8.5** Trendwest and its contractors will pay its construction and operation workers according to prevailing wage standards for Kittitas County as established by the Washington Department of Labor and Industries.

**1.8.6** Trendwest will encourage its contractors and each tier of sub-contractors to provide health and welfare benefits. It is understood by the Parties that in some cases this action might not be feasible for small contractors with short-term employees. It is further understood by the Parties that employer contributions toward health and welfare benefits are included with wages or salaries to meet the prevailing wage standards.

**1.8.7** Trendwest agrees to continue its practice of providing medical benefits to all Trendwest employees who work thirty (30) or more hours per week.

**1.9** **Storm Water Management.** Trendwest agrees as follows with regard to storm water management for the MPR and the Cle Elum UGA.

**1.9.1** *MPR.* Trendwest will comply with standards detailed in the Final Draft 2001 Washington Department of Ecology Storm Water Management Manual for Western Washington prepared by Ecology, or as it might be amended by Ecology for application in Eastern Washington (“Manual”).

**1.9.2 Cle Elum UGA.** Trendwest agrees that its development in the Cle Elum UGA will be designed to urban standards as defined in the Manual defined in Paragraph 1.9.1, above.

**1.9.3** Trendwest will obtain a National Pollutant Discharge Effluent Standard ("NPDES") permits for construction of all phases of the MPR and the UGA.

**1.9.4** To provide protection for the Bullfrog Pond (depicted on the Binding Project Map) from potential storm water contamination, Trendwest agrees to construct a storm water treatment system using the "Stormfilter System"® or equivalent on the sections of the Bullfrog Road within the geomorphic flood plain east of the Cle Elum River.

**1.10 Protection of the Domerie Creek Watershed.** The Parties recognize the importance of protecting the Domerie Creek Watershed, which provides the sole water supply for the City of Roslyn. The Domerie Creek Watershed is depicted on the map attached hereto as EXHIBIT F, which is incorporated by this reference. Accordingly, Trendwest agrees to take the following steps in order to facilitate protection of the Domerie Creek Watershed:

**1.10.1** Trendwest will retain the parts of the Domerie Creek Watershed (EXHIBIT F) located in Section 11, 14 and 15 of Township 20 North, Range 15 East, W.M. of the Trendwest Property in an undeveloped Natural Open Space state (as defined in EXHIBIT D), except for an access road (as shown on EXHIBIT C) and its bridge (over Domerie Creek). The related utility corridor and trail shall be located by mutual agreement of the Parties within the sections named in this Paragraph 1.10.1.

**1.10.2** Except as provided in Paragraph 1.10.1, above, and except for roads required for emergency access and/or access easements providing other property owners access across the Trendwest Property, Trendwest will terminate existing trails and roads that access the Domerie Creek Watershed at the Trendwest Property line in Sections 11 and 15 of Township 20 North, Range 15 East, W.M.

**1.10.3** Trendwest will conduct an on-going educational effort for MPR guests, residents and employees to inform them of the protection and no-use policies in the City of Roslyn's watershed, including posting signs as necessary.

**1.10.4** Trendwest and RIDGE will work in partnership on efforts to enhance the quality of the habitat in the Domerie Creek Watershed; provided, however, any Trendwest expense in this regard shall be at the discretion of Trendwest.

**1.11 Clarification of MPR and UGA Development Agreements Regarding Proof of Water Availability.**

**1.11.1** In the MPR and the UGA, the only building permits for buildings that require potable water that may be issued without proof of permanent potable water are for model homes, sales offices and construction offices. Certificates of water availability issued by purveyors subject to conditions shall not be deemed a lack of permanent potable water. These model homes, sales offices and construction offices shall not be occupied as residences until such time as they are connected to sewer systems and water supply systems. Consistent with Paragraph 2.0, below, Trendwest agrees to abide by this provision regardless of whether or not the County approves an amendment to Section 5.1(j) of the MPR Development Agreement, and regardless of whether or not Cle Elum incorporates language consistent with this Paragraph into any development agreement for the Cle Elum UGA.

**1.11.2** Trendwest will not construct underground utilities or pave roads on the MPR or UGA in areas where water rights have not been transferred except for facilities associated with the Cle Elum water treatment plant, such as water supply and transmission lines and reservoirs.

**1.12 Promotion of Historical Values of Roslyn.** Trendwest will donate the sum of Three Hundred Thousand Dollars (\$300,000.00) to a trust fund to promote the understanding and preservation of local history, including the influence of various cultures. This shall be done by funding projects including, but not limited to, the restoration of historic buildings and sites, the development of video and oral histories, the collection and preservation of artifacts and documents, the development of exhibits, and the coordination of efforts between entities dedicated to the afore-mentioned purposes. Two Hundred Thousand Dollars (\$200,000.00) of this amount will be donated upon the recording of Trendwest's first final plat for the MPR. The remaining \$100,00.00 will be donated in two Fifty Thousand Dollar (\$50,000.00) payments to be made on the second and third anniversaries of the first recorded plat for the MPR. A four (4) member Board of Trustees shall administer this fund. Trendwest shall appoint two (2) Trustees, and RIDGE shall appoint two (2) Trustees. The Trustees will solicit proposals for projects to be undertaken in Upper Kittitas County and will fund those projects that meet with their approval. All of the actions of the Trustees must be approved by a majority of its members. All projects funded by this trust shall be in keeping with, and shall be historically accurate to, Upper Kittitas County before 1950. In the event that the Trustees have not allocated all of the \$300,000.00 within four (4) years of its receipt of the first \$200,000.00 donation, the unallocated balance inclusive of interest shall be donated to the Northern Kittitas County Historical Society ("NKCHS"). The NKCHS, if it should receive these funds, shall be required to use or allocate these funds for the purposes described at the beginning of this Paragraph. The NKCHS shall be required to allocate all funds within two (2) years of its receipt of the donation. If at this point any remaining funds have not been allocated, such funds shall be returned to Trendwest to be spent for the original intent.



**1.13 Enhancement of Roslyn.** Trendwest agrees to donate to the City of Roslyn the sum of Three Hundred Forty-Four Thousand Dollars (\$344,000.00) at the rate of Eighty Six Thousand Dollars (\$86,000.00) per year for four (4) years with the first payment to be made by Trendwest upon the first anniversary of the recording of the first final plat for the MPR. These funds shall be utilized by Roslyn for capital improvements. The improvements to be funded shall be selected by the City of Roslyn based on the results of a survey or poll of Roslyn citizens and business owners. Trendwest and RIDGE shall mutually determine the content and methodology for such a survey or poll, and the analysis and interpretation of the results. The cost of such polling or survey shall be borne by Trendwest and shall not be deducted from the \$344,000.00 total.

**1.14 Roslyn Cemetery Buffering.** The Parties recognize that Trendwest owns certain real property located within the Roslyn corporate limits and immediately adjacent to the Roslyn cemetery in Section 17 of Township 20 North, Range 15 East, W.M. ("Trendwest's Section 17 Property"), but outside the boundaries of the MPR, which property is more particularly depicted in the aerial photograph attached hereto as EXHIBIT J and incorporated by reference. As soon as it should become available and prior to the conveyance of Trendwest's Section 17 Property, Trendwest shall provide RIDGE with the legal description of Trendwest's Section 17 Property. Upon the recording of the first final plat for the MPR, Trendwest agrees to donate Trendwest's Section 17 Property to the City of Roslyn in order to provide additional buffer between MPR development and the cemetery. Prior to conveying Trendwest's Section 17 Property to Roslyn, Trendwest shall execute a conservation easement(s) that precludes residential and commercial use of Trendwest's Section 17 Property. Upon conveyance to Roslyn, Trendwest's Section 17 Property shall be dedicated to provide open space and buffer and shall not be developed for residential or commercial uses; provided, however, that Parcel B of Trendwest's Section 17 Property, as shown on EXHIBIT J, immediately adjacent to the Roslyn Cemetery may be made available for future cemetery expansion twelve (12) years following the recording of the first final plat for the MPR. Trendwest agrees that it will not sell Trendwest's Section 17 Property to any buyer other than the City of Roslyn prior to the recording of the first final plat for the MPR. In the event the MPR Development Agreement and MPR Permit are terminated prior to the recording of the first final plat for the MPR, Trendwest will convey Trendwest's Section 17 Property to the City of Roslyn upon the recording of the first final plat for the UGA.

**1.15 Construction and Operation Impacts.** Trendwest agrees to the following in order to mitigate construction and operation impacts related to Trendwest's development of the MPR and the UGA Property:

**1.15.1** Trendwest will prohibit the burning of debris from individual lot clearing by contractors and lot owners. This prohibition shall also apply to any maintenance activities on individual lots.

**1.15.2** Land clearing debris shall be disposed of by the following methods, with priority given to non-burning methods:

(a) As determined by Trendwest, wood debris of appropriate size shall be made available as fire wood for use in common areas of the MPR and for appropriate off-site users.

(b) Chipping of land clearing debris for use as mulch for trails and landscaping on-site, and/or made available for off-site use.

(c) Haul of land clearing debris off-site for use as pulp, or other allowable use.

(d) Pile and abandon some of the forest residue to provide for wildlife habitat.

(e) Burning.

**1.15.3** Trendwest shall use the International Dark Sky Association (“IDA”) Zone EI standards for the MPR and UGA. The IDA Zone EI standards are recommended for “Areas with intrinsically dark landscapes. Examples are national parks, areas of outstanding natural beauty, areas surrounding major astronomical observatories, or residential areas where inhabitants have expressed a strong desire that all light trespass be strictly limited.” Trendwest shall incorporate the standards described in this Paragraph 1.15.3 in its MPR and UGA Design Guidelines and/or Covenants, Conditions and Restrictions.

**1.15.4** Construction work hours for the MPR and UGA construction shall be from 7:00 a.m. until 7:00 p.m. Monday through Saturday. Work on Sundays will be on an emergency basis only. Equipment servicing and maintenance times will be unrestricted.

**1.15.5** A path shall be constructed by Trendwest in the Cle Elum UGA to connect the SR 903 trail to the Bullfrog Road Bridge.

**1.15.6** Trendwest will include SR 903 west of Roslyn and before Horvat Road in the traffic monitoring plan for the MPR and UGA.

**1.15.7** Except for emergency work, no person shall, on or within five hundred (500) feet of any noise-sensitive property, operate or cause to be operated any equipment used in construction, repair, alteration, excavation, grading or demolition work on buildings, structures, streets, alleys or appurtenances thereto:

(a) with sound-control devices less effective than those provided on the original equipment; and

(b) with noise levels exceeding:

(i) 80 dB during any calendar day for more than three (3) consecutive or non-consecutive calendar days in a three hundred sixty five (365) day period. Noise determination tests shall be for at least ten (10) minutes, with any four (4) tests in consecutive or non-consecutive clock hours above the 80 dB level constituting an exceedance for that day; or

(ii) 90 dB during any clock hour for more than four (4) consecutive or non-consecutive clock hours. Tests shall be for at least ten (10) minutes, with any single test above the 90 dB level constituting an exceedance for that hour; or

(c) A noise sensitive property shall mean any non-Trendwest Property outside the MPR. The location for sound level measurements shall be on any receiving noise-sensitive property outside the MPR, provided that each test is taken from the same property, and the provisions in this section shall apply to that specific test location.

**1.16 Path from UGA to SR 903.** Trendwest and RIDGE shall work with the Cities of Roslyn and Cle Elum, Kittitas County, and the Washington State Department of Transportation (“WSDOT”) to create a non-motorized path along the SR 903 corridor from Roslyn to the Cle Elum/Roslyn schools and the future site of the proposed community center. RIDGE and Trendwest will begin this work as soon as this Agreement is executed by the Parties by jointly initiating a collective meeting of the above-mentioned parties.

**1.17 Maintenance of Public Recreation Facilities.** Trendwest agrees to engage in cooperative efforts with public agencies and others to assist in the maintenance of public recreation facilities in Upper Kittitas County. To facilitate those efforts, Trendwest will encourage MPR staff and guests to volunteer in the maintenance of public recreation facilities in Upper Kittitas County. This provision does not create a financial or staffing obligation by Trendwest unless agreed to by Trendwest.

**1.18 Roslyn Cemeteries.** Trendwest will not promote the Roslyn Cemeteries in its materials or communications. Trendwest will not operate bus tours to the Roslyn Cemeteries.

**1.19 Public Access.** Trendwest shall comply with MPR Permit Conditions of Approval C-12, B-31, B-32, B-34, B-40 and B-41 with regard to public access. All Cle Elum River access shall be offered on an equal basis to all Kittitas County residents, and MPR and UGA residents and guests. The Recreational User Statute (RCW 4.24.200, 4.24.210) shall apply to the use of all Cle Elum River access by any non-guest or non-resident of the MPR or UGA.

## **1.20 Golf Courses.**

**1.20.1** In the event Trendwest should propose golf courses other than the two (2) golf courses already sited in Phase 1 of the MPR, the Trendwest Golf Course Management Plan, with advisory input from RIDGE, shall be revised to incorporate best management practices for golf course management that minimize use of chemicals and emphasize water conservation.

**1.20.2** Trendwest will use electric (instead of gas) carts on all MPR and Cle Elum UGA golf courses. Trendwest may allow golfers to walk or use pull carts.

**1.21 Construction of Paragraph 1.0.** The Parties recognized that a fundamental and material condition to RIDGE's willingness to execute this Agreement and make the commitments specified herein, including among other things the waiver of appeals rights as set forth in Paragraph 3.0, is Trendwest's commitments to the Obligations set forth in Paragraph 1.0 of this Agreement. Accordingly, Paragraph 1.0 (with the exception of Paragraph 1.4), particularly Paragraphs 1.1 and 1.3.7 (New Open Space and the Stream "C" Corridor), Paragraph 1.19 (Cle Elum River access), Paragraph 1.5 (Water Supply), and Paragraph 1.9 (Storm Water Management), shall be broadly construed to protect RIDGE.

## **2.0 Amendments to MPR Approvals to Reflect Trendwest's Obligations.**

**2.1** The Parties recognize that certain of Trendwest's Obligations set forth in Paragraph 1.0, above, warrant modifications to the MPR Development Agreement and/or MPR Permit as previously approved by the County. Trendwest's Obligations in Paragraph 1.0, above, that warrant such modification include, but are not necessarily limited to: Paragraph 1.1 (Reduction of MountainStar Footprint); Paragraph 1.2 (Reduction of MountainStar Units); Paragraph 1.3 (Binding Project Map for the MPR); Paragraph 1.6 (Reduction of Vesting Periods/Provisions); Paragraph 1.9 (Storm Water Management); Paragraph 1.11 (Clarification of MPR and UGA Development Agreements Regarding Proof of Water Availability); and Paragraph 1.15.3 (IDA Zone E1 standards). The Parties may mutually agree that other Trendwest Obligations also warrant modification to the Development Agreement and/or MPR Permit. At least one hundred twenty days (120) prior to submission of the first preliminary plat application for the MPR, Trendwest agrees to submit a request to the Kittitas County Board of County Commissioners ("BOCC") to modify the MPR Development Agreement and/or MPR Permit to reflect Trendwest's Obligations. The Parties acknowledge that the BOCC retains discretion whether to approve any amendments to the MPR Development Agreement and/or MPR Permit. The BOCC's failure to approve any amendments requested by Trendwest shall not constitute a breach of this Agreement by Trendwest. This Agreement shall remain in full force and effect if the BOCC declines to amend the MPR Development Agreement and/or MPR Permit to reflect certain Trendwest Obligations under this Agreement.

2.2 Trendwest will comply with the requirements of this Agreement regardless of the BOCC's response (or lack thereof) to Trendwest's request for a conforming amendment. Except as otherwise provided in Paragraph 2.3, below, Trendwest shall comply with the Trendwest Obligations under this Agreement regardless of different terms or provisions in the MPR Development Agreement and MPR Conditions of Approval.

2.3 In the event that Trendwest's compliance with the MPR Development Agreement or MPR Conditions of Approval would compel a breach of one or more of its Obligations under this Agreement, or compliance with this Agreement would compel a breach of the MPR Development Agreement and/or MPR Conditions of Approval, and the County refuses to amend the MPR Development Agreement to remove or modify the conflicting provision from the MPR Development Agreement or MPR Conditions of Approval, then Trendwest shall comply with the provision of the MPR Development Agreement or MPR Conditions of Approval and the conflicting provision in this Agreement will be deemed invalid and the provisions of Paragraph 17.0 (Severability/Non-Severability), below, will be applied for the purpose of developing a functionally equivalent obligation to substitute for the invalid provision.

**3.0 Dismissal of Pending Litigation; RIDGE's Waiver of Appeal Rights; Protections from Third-Party Legal Challenges.** The Parties agree as follows:

**3.1 Definitions.**

3.1.1 "Legal Challenge." A "Legal Challenge" shall generally include any administrative appeals or judicial actions challenging an agency permit or agency approval related to MountainStar and/or the Cle Elum UGA development, whether brought against Trendwest, the County, Cle Elum, a State agency, or other service providers (as defined in Paragraph 3.1.3, below), including, but not limited to: planning decisions related to the MPR and UGA, water rights, Infrastructure and Services Supporting the MPR and UGA (as defined in Paragraph 3.1.3, below), and Subsequent Actions for the MPR as that term is defined in Section 4.1(e) of the Development Agreement between Trendwest and Kittitas County. A "Legal Challenge" does not include: (i) an administrative appeal or judicial action challenging an agency action or agency permit approving a transfer by Trendwest of any of its water rights to a Third-Party for use outside the MPR or UGA; and (ii) an action to enforce the terms of this Agreement pursuant to Paragraph 5.4, below.

3.1.2 "Third-Party." A "Third-Party" hereunder shall mean any organization, group, entity or person, other than RIDGE, the RIDGE related parties listed in paragraph 3.5.1, Trendwest, an owner of a real property interest within the MPR or UGA, the owner and/or operator of any MPR or UGA facilities (e.g. hotels, golf courses or other on-site MPR recreational amenities), or the owner and/or operator of any business located within the MPR or UGA.

**3.1.3 “Infrastructure and Services Supporting the MPR and UGA.”** The Parties acknowledge various governmental agencies and Puget Sound Energy are planning infrastructure projects in the Upper County and that such projects will, in part, support development in the MPR and UGA, and that other infrastructure and services are necessary for the MPR and UGA. The following projects, facilities and services shall be referenced herein as the “Infrastructure and Services Supporting the MPR and UGA”: Cle Elum water treatment plant, including its related intake, storage and conveyance systems; waste water treatment plant (“Waste Water Treatment Plant”), including its related conveyance and outfall systems; County and state road improvements; County improvements to or expansions of the Solid Waste Transfer Station and services; expansion of the Roslyn-Cle Elum School District facilities and services; expansion of Puget Sound Energy’s electrical substation and natural gas lines; fire, police, hospital and emergency services communications facilities and services; and cable, fiber optic lines, and other telecommunications facilities and services. Such projects, facilities and services shall be referenced herein as the “Infrastructure and Services Supporting the MPR and UGA.”

**3.2 Dismissal of Pending Legal Challenges.**

**3.2.1** The Parties recognize that appeals regarding the GMA Appeal have been filed by Trendwest and Kittitas County in Kittitas County Superior Court, and by RIDGE in Thurston County Superior Court, and that RIDGE has sought review of the LUPA Appeal by the Court of Appeals, Division 3. Within seven (7) days after the full execution of this Agreement by the Parties, the Parties agree to dismiss with prejudice their respective appeals in the GMA Appeal and the LUPA Appeal.

**3.2.2** The Parties further agree to seek jointly to persuade Kittitas County to dismiss its GMA Appeal, but also agree that dismissal of the Kittitas County appeal is not fundamental or necessary for this Agreement or its implementation. The Parties agree that if the County GMA Appeal is not dismissed, any RIDGE participation in that GMA Appeal and related appeal proceedings (including future judicial appellate proceedings or administrative proceedings related to any GMA statement of compliance prepared by the County) shall not be considered a RIDGE Legal Challenge that is prohibited by this Paragraph; provided, however, this exception to prohibited Legal Challenges applies only to the extent the County GMA Appeal issues are limited, as presently, to “coordination” and “consistency” between the County and Roslyn under RCW 36.70A.100. Trendwest agrees to continue discussions with Roslyn notwithstanding the fact the County GMA Appeal alleges that no further County “coordination” with Roslyn is required by the GMA.

**3.3 Waiver of Future Appeal Rights.** RIDGE hereby agrees to waive its future appeal rights as follows:

### 3.3.1 MPR.

3.3.1.1 RIDGE agrees not to bring, or to aid or abet any Third-Party to bring, any Legal Challenge relating to the MPR. RIDGE's waiver of appeal rights relating to the MPR shall include (i) any Subsequent Action (as defined in Section 4.1(e) of the Development Agreement), regardless of whether such Subsequent Action was analyzed in the MPR EIS, (ii) the construction of one new bridge crossing across the Cle Elum River, and the use of the old Bullfrog Bridge (according to Paragraph 1.3.5 of this Agreement), (iii) a third golf course (subject to the terms of Paragraph 1.20, above), and (iv) any request to modify the Conceptual Master Plan approved by the County consistent with the processes for such modifications set forth in Section 5 of the MPR Development Agreement and consistent with this Agreement. Trendwest agrees that any Subsequent Action must be consistent with the terms and conditions set forth in this Agreement. Trendwest further agrees, as provided elsewhere herein, not to seek or accept any modifications or amendments to the MPR Development Agreement or MPR Permit and Conditions of Approval that are inconsistent with the terms and conditions of this Agreement. Any alleged breach of the Trendwest commitments contained in this Paragraph must be addressed by RIDGE through the dispute resolution process set forth in Paragraph 5.0, below.

3.3.1.2 In further consideration for RIDGE's agreement to waive Legal Challenges, and in conjunction with the dispute prevention provisions set forth in Paragraph 5.0 of this Agreement, Trendwest agrees to conduct regular meetings with RIDGE. Such meetings shall start within sixty (60) days from the execution of this Agreement and occur quarterly until RIDGE and Trendwest mutually agree to less frequent meetings, but at least once a year during construction. Either Party may call for a meeting with reasonable written notice. The purpose of these meetings is to establish an open and collaborative process by which Trendwest will solicit comments from RIDGE regarding Trendwest's upcoming applications for General Site Plans, Site Development Plans, subdivisions, Subsequent Actions, and/or requests to modify the Conceptual Master Plan before such applications are submitted to the County for approval. Trendwest will consult with RIDGE regarding issues raised in any RIDGE comments submitted on the proposed applications. This process is not intended to be exclusive; Trendwest and RIDGE may include others in this process by mutual consent.

### 3.3.2 Cle Elum Urban Growth Area.

3.3.2.1 RIDGE agrees not to bring, or to aid or abet any Third-Party to bring, any Legal Challenge relating to Trendwest's master plan for the UGA that is adopted by Cle Elum and related infrastructure and services as analyzed in the UGA EIS, including, without limitation, but only by way of example, any Legal Challenge related to: (i) the legal adequacy of the EIS presently being prepared by the City of Cle Elum pursuant to SEPA related to Trendwest's proposed master plan for the Cle Elum UGA (the "UGA EIS"); (ii) any decisions by the City to annex all or portions of the Trendwest Property within the Cle Elum UGA, and any decisions by the Kittitas County Boundary Review Board related to such annexations; and (iii) any approvals or

land use permits for development proposals in the Cle Elum UGA, including, but not limited to, any development agreement executed by and between Cle Elum and Trendwest, subdivisions (including preliminary and final approval), re-subdivisions, building permits, certificates of occupancy, lot line adjustments, shoreline substantial development permits, forest practice permit applications, development of the Washington State Horse Park, expansion of the Roslyn/Cle Elum School District facilities, establishment of the community center, and establishment of a business park.

**3.3.2.2** While RIDGE is prohibited from filing Legal Challenges related to those projects identified in Paragraph 3.3.2.1, above, Trendwest agrees that RIDGE retains the right to appeal any new proposal in the UGA not analyzed in the UGA EIS.

**3.3.2.3** Trendwest agrees not to request, support or accept any development agreement or conditions of approval with Cle Elum for the UGA Property, or any future amendment to such a development agreement, that is inconsistent with the terms and conditions of this Agreement.

**3.3.2.4** Trendwest acknowledges that RIDGE believes the existing MPR and UGA EISs do not adequately analyze the Washington State Horse Park, community center, expansion of the Roslyn/Cle Elum School District Facilities, or Puget Sound Energy's expansion or construction of the electrical substation and natural gas line, and further acknowledges that those projects will require separate environmental review. Trendwest agrees to take no position as to whether the MPR and UGA EISs are legally adequate for those separate projects.

**3.3.2.5** For developments proposed by Trendwest within the Cle Elum UGA, and in conjunction with the dispute prevention provisions set forth in Paragraph 5.0 of this Agreement, Trendwest agrees to conduct a meeting(s) with RIDGE prior to submission of any such development applications. The purpose of the meeting(s) is to establish an open and collaborative process by which Trendwest will solicit comments from RIDGE regarding Trendwest's upcoming applications for development in the Cle Elum UGA. Trendwest will consult with RIDGE regarding issues raised in any comments submitted on the proposed application(s). This process is not intended to be exclusive; Trendwest and RIDGE may include others in this process by mutual consent.

**3.3.3 *Trendwest Water Rights Actions.*** The Parties acknowledge that Trendwest has identified two water supply strategies for providing potable water to MountainStar: Change Applications submitted to Ecology and an exchange contract with Reclamation. Trendwest is presently pursuing the water supply strategy through the Change Applications with Ecology. The Parties further recognize that these water supply strategies are also intended to provide water supply necessary for the development of Trendwest's UGA Property. Trendwest may pursue other or additional water rights transfers, contracts or agreements to provide water for the MPR and UGA. Accordingly, the Parties agree as follows:



**3.3.3.1** In consideration for Trendwest's Obligations set forth in Paragraph 1.0, above, RIDGE agrees not to bring, or to aid or abet any Third-Party to bring, any Legal Challenge related to decisions by Ecology on the pending Change Applications identified in EXHIBIT G and incorporated by this reference.

**3.3.3.2** In consideration for Trendwest's Obligations set forth in Paragraphs 1.0, especially including Paragraph 1.5.6.2, above, RIDGE also agrees not to bring, or to aid or abet any Third-Party to bring, any Legal Challenge regarding those future water rights transfer applications, agreements or contracts by Trendwest with state, federal, local entities or others that are necessary to supply the MPR and UGA as defined in the water balance set forth in the relevant EIS (MPR and/or UGA) as modified by this Agreement regarding the reduced number of units in the MPR and golf course acreage in the UGA.

**3.3.4 *Infrastructure and Services Supporting the MPR and UGA.*** Without limiting the generality of the list of Infrastructure and Services Supporting the MPR and UGA set forth in Paragraph 3.1.3, above, but subject to the exception described immediately below, RIDGE agrees not to bring, or to aid or abet any Third-Party to bring, any Legal Challenge related to Infrastructure and Services Supporting the MPR and UGA. As an exception to this waiver, RIDGE retains the right to file a Legal Challenge related to any expansion of sewer service areas outside existing service areas (as of the date of execution of this Agreement), the MPR, and existing designated urban growth areas and nodes as of the date of execution of this Agreement (including the Cle Elum and Roslyn urban growth areas, and the Ronald urban growth node), and service areas established through the planning processes for the regional wastewater treatment plant; provided, however, this exception shall become effective only after the Waste Water Treatment Plant has been permitted and is processing wastewater from either the MPR or the UGA, provided that any such Legal Challenge does not prohibit service to the other project (MPR or UGA).

**3.4 RIDGE's Retained Appeal Rights.** Trendwest agrees that notwithstanding the foregoing waiver of appeal rights, and in addition to the exception related to future service areas for a regional wastewater treatment facility described in Paragraph 3.3.4, above, RIDGE retains the following appeal rights:

**3.4.1** In the event the MPR Development Agreement and MPR Permit are terminated and the MPR Zoning remains in effect, RIDGE retains the right to appeal any decisions or approvals related to subsequent MPR proposals on the MPR Property;

**3.4.2** In the event the MPR Development Agreement and MPR Permit are terminated, and the County re-designates in its comprehensive plan and/or rezones the MPR Property to any comprehensive plan or zoning designation that is more intense than the comprehensive plan or zoning designations in effect immediately prior to

the adoption of the MPR Approvals, RIDGE retains the right to appeal such more intense designations.

3.4.3 In the event the MPR Development Agreement and MPR Permit are terminated and the County re-designates in its comprehensive plan and/or rezones the MPR Property to any other designation, RIDGE retains the right to challenge decisions and approvals related to subsequent development proposals under those designations.

3.4.4 RIDGE retains the right to appeal new proposals in the Cle Elum UGA that were not analyzed in the UGA EIS, as set forth in Paragraph 3.3.2.2, above.

3.4.5 The Parties recognize that it is not possible at the time this Agreement is executed to foresee and identify all potential Legal Challenges that in the future may affect development of the MPR and UGA, the Infrastructure and Services Supporting the MPR and UGA, or compliance with the development agreements and conditions of approval for those developments. Therefore, prior to instituting any Legal Challenge RIDGE believes in good faith is not within the appeal rights waived pursuant to this Agreement, RIDGE will consult with Trendwest. RIDGE agrees to consider Trendwest's opinion but may nonetheless elect to file its Legal Challenge. In such event, Trendwest may (i) submit the issue of whether the RIDGE Legal Challenge is consistent with this Agreement to the dispute resolution provisions set forth in Paragraph 5.0, below, and/or (ii) seek immediate dismissal of the Legal Challenge by the body to which the Challenge was submitted if the administrative or judicial rules for such appeal would require Trendwest to seek dismissal before the dispute resolution process under Paragraph 5.0, below, might be completed. If it is determined that RIDGE's Legal Challenge was precluded by this Agreement, Trendwest retains all of its remedies provided herein. If it is determined that RIDGE's Legal Challenge was allowed by this Agreement, this Agreement shall remain in full force and effect.

**3.5 Trendwest Remedies in the Event of a Prohibited Legal Challenge by RIDGE.** The Parties agree that if RIDGE brings any Legal Challenge prohibited under this Agreement, Trendwest may enforce the terms of this Agreement and may rely on this Agreement to seek dismissal of such Legal Challenge. Trendwest may also seek injunctive or other appropriate equitable relief. Alternatively, Trendwest may terminate this Agreement. In either event, damages or restitution may not be sought or recovered. In the event of termination of this Agreement as a result of a RIDGE Legal Challenge, Trendwest shall be deemed released of all Obligations hereunder and, in the event the County has modified provisions of the MPR Development Agreement and/or MPR Approvals as a consequence hereof, Trendwest may seek restoration of its vested rights and Unit allowances as originally approved by the County, and may further seek restoration of any other rights modified by the County as a consequence of this Agreement. Trendwest agrees not to seek repayment for any monetary payments made pursuant to Paragraphs 1.7 (Preservation of Off-Site Habitat and Open Space), 1.12 (Promotion of Historical Values of Roslyn), and 1.13 (Enhancement of Roslyn) of this

Agreement in the event of a Legal Challenge by RIDGE that is prohibited by this Agreement. However, in the event of a RIDGE Legal Challenge prohibited by this Agreement, if Trendwest elects to terminate this Agreement, Trendwest's Obligations under this Agreement shall be null and void and Trendwest shall be entitled to reconveyance of any New Open Space conveyed pursuant to Paragraph 1.1 of this Agreement, and Trendwest shall be entitled to seek full restoration of its rights as allowed under the MPR Development Agreement and MPR Permit. Further, in the event of any Legal Challenge by RIDGE prohibited by this Agreement, any recorded title memorandum, covenant, restriction or notice based on this Agreement shall be cancelled and removed from title through the sole request of Trendwest. In the event of a RIDGE Legal Challenge prohibited by this Agreement, Trendwest may also seek modifications to any development agreement with Cle Elum for the UGA that would have otherwise been in conflict with the terms and conditions of this Agreement.

**3.5.1** A RIDGE Legal Challenge shall be any Legal Challenge brought by the corporate entity of RIDGE, any of its current Officers and Directors at the time of the filing of the appeal in their individual capacities, or any Legal Challenge brought from the date of the signing of this Agreement to a date twelve (12) years after the recording of the first final plat of the MPR by a person in his or her individual capacity who has served as a RIDGE negotiator of this Agreement, or as an Officer or Director of RIDGE, during that period. In the event of a Legal Challenge filed by any former Negotiator or Officer or Director in their individual capacities, Trendwest shall provide the then current Board of Directors of RIDGE with ninety (90) days written notice of its intent to terminate this Agreement during which time the RIDGE Board may seek dismissal of the Legal Challenge and Trendwest will support RIDGE's intervention in the Legal Challenge for the purpose of seeking dismissal of the Legal Challenge. Trendwest may not exercise its remedies under this Agreement until the end of the ninety (90) day period. Trendwest may exercise its remedies under this Agreement after the expiration of the ninety (90) day period if the RIDGE Legal Challenge has not been dismissed at the time Trendwest exercises its remedies. For purposes of this Paragraph, a RIDGE Negotiator is Douglas H. Kilgore, Ellie Belew, Larry Susich, and Edmund Januszkiewicz. Nothing in this Paragraph creates any individual liability on the part of the persons identified as the RIDGE Negotiating Team or any current or future officer(s) and director(s) of RIDGE. RIDGE retains the right to appeal as set forth in Paragraphs 3.2.2, (Kittitas County's existing GMA appeal) and 3.4 (RIDGE's Retained Appeal Rights).

**3.5.2** If any Officer or Director of RIDGE, or anyone holding formal membership or affiliation in RIDGE files a prohibited Legal Challenge under this Agreement, the Board shall immediately terminate that Officer or Director from their position, and/or revoke any formal membership in and affiliation with RIDGE of anyone filing such Legal Challenge. RIDGE and Trendwest shall each annually provide to the other with a list of their respective Officers and Directors. The failure of either RIDGE or Trendwest to provide the corporate information identified in this Paragraph shall not constitute a breach of this Agreement.

**3.6 Protections from Third-Party Appeals.** The Parties recognize that they have mutual interests in avoiding any Third-Party Legal Challenges to the MPR or to the Cle Elum UGA, or to the Infrastructure and Services Supporting the MPR and UGA. In order to protect against Third-Party Legal Challenges, and to protect the mutual benefits to be derived by the Parties from this Agreement that would be jeopardized in the event of a Third-Party Legal Challenge, the Parties agree as follows.

**3.6.1** In the event a Legal Challenge is brought by any Third-Party, Trendwest shall have the right at its sole discretion, but subject to the provisions of Paragraph 3.6.2, below, to terminate this Agreement, or some of its Obligations set forth in Paragraph 1.0, above, if Trendwest determines that the Third-Party Legal Challenge substantially impairs the ability of Trendwest to construct or sell all or portions of the MPR or UGA, including plats or phases within the MPR or UGA, or substantially impairs Trendwest's ability to operate all or portions of the MPR. As limited by Paragraph 3.6.3, below, with regard to the Phasing of Trendwest's Obligations for the MPR and UGA as set forth in EXHIBIT H, which is attached hereto and incorporated by reference, Trendwest may exercise its right to terminate this Agreement or some of the Trendwest Obligations by first providing RIDGE with written notice of termination.

**3.6.1.1** To provide the Parties a reasonable opportunity to persuade the Third-Party to withdraw its Legal Challenge, or to obtain a dismissal or denial of the Legal Challenge, and subject to the exceptions set forth below, the right to terminate shall not be exercised by Trendwest for one hundred eighty (180) days after such notice.

(a) Provided, however, that for certain Third-Party Legal Challenges related to Trendwest's Water Rights Actions the right to terminate may only be exercised as follows: (i) for Third-Party Legal Challenges related to the Change Applications, the right to terminate shall not be exercised for a period of four hundred fifty five (455) days after notice from Trendwest following the filing of a Third-Party Legal Challenge from Ecology's decision regarding the Change Applications; (ii) for Third-Party Legal Challenges related to an Exchange Contract with Reclamation, the right to terminate shall not be exercised for a period of two (2) years following notice from Trendwest; and (iii) for Third-Party Legal Challenges related to any Trendwest Water Rights Action other than the Change Applications or Exchange Contract with Reclamation, including, but not limited to, applications for the temporary transfer of Trendwest water rights to Third-Parties, transfer applications other than the Change Applications identified in EXHIBIT G, or any other water right application, contract or agreement, the right to terminate shall not be exercised for four hundred fifty five (455) days following notice from Trendwest. The Parties expressly understand and agree that a Third-Party Legal Challenge filed by a downstream water user or any Reclamation water contract holder in the Yakima basin regarding the Change Applications or an Exchange Contract, or any Trendwest Water Rights Action other than the Change Applications or Exchange Contract with Reclamation, including, but not limited to, applications for the temporary transfer of Trendwest water rights to Third-Parties, transfer applications other

than the Change Applications identified in EXHIBIT G, or any other water right application, contract or agreement, shall not be deemed a Third-Party Legal Challenge that gives rise to Trendwest's right to terminate this Agreement or some of the Trendwest Obligations hereunder.

(b) Provided, further, that for certain Third-Party Legal Challenges that are to be heard in Federal Court the right to terminate may only be exercised by Trendwest for a period of two (2) years following notice from Trendwest.

The time periods contained in this Paragraph 3.6.1.1 shall be extended by an amount equal to any delays in the Legal Challenge stipulated to by Trendwest and accepted by the court or hearing body.

**3.6.1.2** The Parties will attempt to persuade the Third-Party to withdraw its Legal Challenge, and Trendwest will expeditiously seek dismissal of the Legal Challenge and will not object to intervention by RIDGE on Trendwest's behalf in such proceeding. Trendwest may at its sole discretion agree to extend the period between giving notice and termination as set forth above if reasonable progress is being made to obtain the withdrawal, dismissal or denial of the Third-Party Legal Challenge. Subject to the provisions in Paragraphs 3.6.2 and 3.6.3, below, and the Phasing of Trendwest's Obligations identified in EXHIBIT H, if the Third-Party Legal Challenge is not withdrawn, dismissed or denied with finality within the time periods set forth above, or within the time period as extended by Trendwest, Trendwest may terminate this Agreement or some of the Trendwest Obligations as identified on the notice of termination, subject to Paragraphs 3.6.2 through 3.6.5, below.

**3.6.2** Prior to exercising its right to terminate, and within the first sixty (60) days of the applicable time periods specified in Paragraph 3.6.1, above, Trendwest will, if requested by RIDGE, engage with RIDGE in mediation (but arbitration is not required) regarding the issue of whether and to what extent the Third-Party Legal Challenge substantially impairs the ability of Trendwest to construct or sell all or portions of the MPR or UGA, or substantially impairs Trendwest's ability to operate all or portions of the MPR, and the form, scope and timing of the Trendwest response to the Third-Party Legal Challenge. While the determination as to whether a Third-Party Legal Challenge substantially impairs Trendwest's ability to construct or sell all or portions of the MPR or UGA, or to operate all or portions of the MPR, as well as the decision to terminate this Agreement or some of the Trendwest Obligations, are within the sole discretion of Trendwest, Trendwest agrees to consider, prior to its decisions, the nature of the Third-Party Legal Challenge and its impact on the development of the MPR and/or the UGA, including but not limited to, the effect of the Legal Challenge on title, financing/lending, sales, permit processing, compliance with the MPR Conditions of Approval and any conditions of approval adopted by Cle Elum for the UGA, and provision of Infrastructure and Services Supporting the MPR and UGA. Subject to these considerations and as further limited below, Trendwest may choose, at its sole discretion, the form, sequence and timing of the termination of the Agreement or some of the Trendwest Obligations as deemed appropriate in light of the Third-Party Legal

Challenge. In the event Trendwest elects to terminate some of its Obligations under this Agreement in response to a Third-Party Legal Challenge and RIDGE believes that the Trendwest response is disproportionate to the impact of the Third-Party Legal Challenge on the development of the MPR or UGA, RIDGE may in its sole discretion terminate this Agreement. RIDGE's decision to terminate this Agreement would be subject to mediation as set forth in this Paragraph.

**3.6.3** In the event Trendwest determines that the Third-Party Legal Challenge warrants termination of this Agreement relating to the MPR, or in the event of termination of this Agreement by RIDGE pursuant to Paragraph 3.6.2, above, only Trendwest's prospective Obligations, including prospective payments as scheduled in this Agreement, may be terminated consistent with the Phasing of Trendwest's Obligations set forth in EXHIBIT H. Following the sooner of the recording of the final plat for the last subdivision in any phase of the MPR, the recording of the first final plat in the succeeding phase, or the sale of seventy five percent (75%) of the Units in Phase 1, the Trendwest Obligations relating to that Phase shall not be revocable in the event of a Third-Party Legal Challenge. For purposes of this Agreement the following transactions shall be considered equivalent to the sale of a Unit: sale of lots, sale of parcels with an identified Unit count, issuance of occupancy permits, whichever should occur first. For example, conveyance of New Open Space, the Unit cap for Phase 1, and payments to the trusts and Roslyn associated with Phase 1 (as detailed above) may not be revoked due to a Third-Party Legal Challenge after the recording of the final plat for the last subdivision in Phase 1, or after seventy five percent (75%) of the Units in Phase 1 have been sold, whichever is sooner, but any or all such Obligations may be terminated for the remainder of the MPR development. The same limitation shall upon the sooner of recording of the final plat for the last subdivision or the sale of seventy five percent (75%) of the Units for Phases 2 and/or 3, respectively. In the event Trendwest records a first final plat for Phase 2 of the MPR before the final plat for the last subdivision in Phase 1 is recorded, Trendwest's Obligations tied to Phase 1 as identified in Exhibit H shall be irrevocable upon the sale of fifty percent (50%) of the Units in Phase 1. As discussed in Paragraph 3.5, above, financial payments made by Trendwest pursuant to Paragraphs 1.7 (Preservation of Off-Site Habitat and Open Space), 1.12 (Promotion of Historical Values of Roslyn), and 1.13 (Enhancement of Roslyn), above, made prior to a Third-Party Legal Challenge giving rise to termination of this Agreement shall not be revocable. The final plat in the UGA or any phase of the MPR shall for purposes of this Agreement be defined as the final plat recorded within that phase or the UGA which subdivides all or substantially all the remaining land subject to platting within that phase.

**3.6.4** In the event Trendwest determines that the Third-Party Legal challenge warrants termination of some of Trendwest's Obligations relating to the MPR, Trendwest may only terminate prospective Obligations, including prospective payments as scheduled in this Agreement, consistent with the Phasing of Trendwest's Obligations set forth in EXHIBIT H (and in the manner generally described in Paragraph 3.6.3, above).

**3.6.5** Trendwest agrees not to bring aid or abet, or to encourage, any Third-Party to bring a Legal Challenge regarding the MPR, the UGA, Trendwest Water Rights Actions, and Infrastructure and Services Supporting the MPR and UGA. In the event Trendwest terminates this Agreement as a result of a Third-Party Legal Challenge and it is determined that Trendwest aided or abetted the Third-Party Legal Challenge giving rise to termination, RIDGE may enforce the terms of this Agreement, and may seek injunctive relief or other appropriate equitable relief.

**3.7** **Construction of Paragraph 3.0.** The Parties recognize that a fundamental and material condition to Trendwest's willingness to execute this Agreement and make the commitments specified herein, including among other things the reduction of Units for the MPR and the substantial financial contributions for property acquisitions and community improvements, is its ability to proceed with development of the MPR and the Cle Elum UGA without the threat of appeals or legal challenges from RIDGE or any Third-Party. Third-Party Legal Challenges could result in delays and increase the cost of development of the MPR and UGA to Trendwest thereby jeopardizing Trendwest's investment-backed expectations. Accordingly, this Paragraph and the definition of Legal Challenge shall be broadly construed to protect the MPR and the Cle Elum UGA, and Infrastructure and Services Supporting the MPR and UGA.

**4.0** **Termination.** The Parties agree that this Agreement may be terminated in whole or in part only under, and subject to, the following circumstances and provisions:

**4.1** This Agreement may be terminated in whole or in part by mutual agreement of the Parties.

**4.2** This Agreement is terminated pursuant to Paragraph 3.0, above, as a result of a prohibited RIDGE Legal Challenge or a Third-Party Legal Challenge.

**4.3** In the event the MPR Development Agreement and MPR Permit (which include the Conditions of Approval) are terminated, and any development agreement with Cle Elum, and development permits and conditions of approval for the UGA are terminated, this Agreement shall be deemed terminated. In the event of termination under this provision, the Phasing set forth in EXHIBIT H would apply and any Trendwest Obligations completed or due prior to the date of such termination would be irrevocable (e.g. open space conveyances and financial payments by Trendwest).

**4.4** In the event the development agreement with Cle Elum, and any related development permit and conditions of approval for the UGA are terminated but Trendwest proceeds with development of the MPR, the provisions or portions of provisions of this Agreement relating to the UGA will be terminated but all other provisions of the Agreement will remain in full force and effect. The provisions of the Agreement related to the UGA that would be terminated include: Paragraph 1.1 (New Open Space within the Cle Elum UGA boundaries as shown on the Binding Project Map and as described in EXHIBIT H); Paragraph 1.5.3.2 (reduction of size of UGA golf

course); Paragraph 15.5.3 (water audits for UGA water usage); Paragraph 1.6.2 (reduction of vesting for UGA); Paragraph 1.9.2 (storm water management standards for UGA); Paragraph 1.11 (clarification of the UGA development agreement regarding proof of water availability for the UGA); Paragraph 1.15.3 (IDA Zone EI "dark sky" standards for UGA); Paragraph 1.15.4 (construction hours for UGA); and Paragraph 1.16 (Path from UGA to SR 903).

**4.5** In the event the MPR Development Agreement and MPR Permit (which include the Conditions of Approval) are terminated, the provision of this Agreement related to the MPR shall be terminated but all other provisions or portions of provisions related to the UGA remain in full force and effect. The Trendwest Obligations for the UGA that would remain in full force and effect in such an event include those specifically listed in Paragraph 4.4, above, and those set forth on EXHIBIT H with regard to the UGA, which include the following provisions: Paragraph 1.7 (Preservation of Off-Site Habitat and Open Space); Paragraph 1.14 (Roslyn Cemetery Buffering); and Paragraph 1.15.5 (construction of path in Cle Elum UGA connecting SR 903 trail to the Bullfrog Road Bridge).

## **5.0 Dispute Prevention, Management and Resolution.**

**5.1 *Dispute Prevention Meetings.*** Beginning before the first construction season for the MPR or UGA, Trendwest and RIDGE will meet quarterly, or at other mutually agreed upon times, to review and discuss the status of specific matters regarding the implementation of this Agreement. Such meetings are not intended to negotiate or re-negotiate the terms of this Agreement or any new items. In the event of then perceived, or forecasted, problems or disputes related to the terms and conditions of this Agreement, the Parties pledge to exercise all possible conciliatory efforts in cooperative problem solving activities consistent with the processes identified in this Paragraph.

**5.2 *Informal Dispute Resolution.*** In the event a Party, acting in good faith, believes the other Party has violated, or is preparing to violate, the terms of this Agreement, or in the event a Party identifies an unforeseen circumstance outside the control of the Parties that the Party in good faith believes directly and adversely affects the terms and conditions in this Agreement, the aggrieved Party shall give written notice detailing the alleged or anticipated breach or unforeseen circumstance outside the control of the Parties. Written notice shall be provided consistent with the provisions in Paragraph 9.0, below. This notice requirement is intended to invite and facilitate an informal resolution by the Parties of any dispute prior to the institution of litigation. The Parties agree to enter into collaborative negotiations and cooperative problem solving within four (4) days of the receipt of a Party's written notice. Each Party agrees to provide the other Party with that information necessary to determine whether or not there has been a violation of this Agreement. In the event the written notice relates to an alleged breach of this Agreement, the alleged offending Party shall have sixty (60) days from the receipt of the written notice in which to cure the alleged breach. The initial collaborative efforts to resolve alleged or anticipated breaches of, or to address



unforeseen circumstance outside the control of the Parties directly and adversely affecting, this Agreement shall be conducted at the lowest level(s) of the Parties' organization(s). If such initial efforts are unsuccessful, the Parties agree to expeditiously identify and arrange for person(s) at higher organizational levels with authority and knowledge to attempt to resolve the dispute expeditiously. It is the Parties intent that such collaborative efforts can and should be completed within thirty (30) days from the receipt of a written notice.

**5.3 Formal Dispute Resolution.** In the event that the informal collaborative negotiations set forth in Paragraph 5.2, above, are unsuccessful at resolving an alleged or anticipated breach of this Agreement or arriving at an agreeable response to an unforeseen circumstance outside the control of the Parties directly and adversely affecting this Agreement within thirty (30) days of receipt of a written notice, the Parties agree to meet and agree upon a formal dispute resolution process for attempting to expeditiously resolve any remaining dispute(s). The formal dispute resolution processes may include, but are not necessarily limited to, mediation, and binding arbitration; provided, however, that except as provided in Paragraph 17.0, below, neither Party can be required to enter into, or accept, binding arbitration. Where the Parties have agreed to submit a dispute to binding arbitration, the arbitrator's decision in such arbitration shall be final and binding on both Parties. The Parties will mutually select the potential mediators or arbitrators. It is understood and agreed that the only issues that may be addressed at such dispute resolution processes are those terms and conditions of this Agreement.

**5.4 Legal Action to Enforce Agreement.** Except as provided in this section, below, a lawsuit to enforce the terms of this Agreement shall not be filed until the later of (a) the end of the sixty (60) day cure period set forth in Paragraph 5.2, above, or (b) the conclusion of any formal dispute resolution process agreed to by the Parties pursuant to Paragraph 5.3, above, provided however the non-breaching Party shall have the right to immediately seek temporary or preliminary injunctive relief (but not permanent) to prohibit the alleged breach until the completion of the formal and informal dispute resolution processes.

Issues arising out of unforeseen circumstance outside the control of the Parties directly and adversely affecting this Agreement shall be subject to the informal and formal dispute resolution processes set forth above for which the Parties will actively and in good faith attempt to resolve. However, neither Party may commence a lawsuit regarding disputes arising from an unforeseen circumstance outside the control of the Parties and a Party's refusal to modify or amend this Agreement to account for such an unanticipated unforeseen circumstance outside the control of the Parties. A lawsuit may be commenced pursuant to this Paragraph only relating to alleged breaches of this Agreement that have not been resolved through the informal and formal dispute resolution processes called for in this Paragraph. Notwithstanding the above, however, nothing in this Agreement shall prohibit either Party from seeking injunctive relief as set forth in Paragraph 16.0.

**5.5 Costs and Expenses.** Each Party will be responsible for their own costs for attorneys and related expenses throughout the informal dispute resolution process set forth in Paragraph 5.2, above, any formal dispute resolution process agreed to by the Parties pursuant to Paragraph 5.3, above, and any subsequent litigation instituted consistent with Paragraph 5.4, above. However, the Parties will equally share the cost of any third-party mediator or arbitrator agreed upon pursuant to Paragraph 5.3, above.

**6.0 Attorneys' Fees.** In any proceedings brought by either Party to enforce this Agreement, each Party shall bear its own attorneys' fees and costs.

**7.0 No Admission of Liability.** This Agreement is intended to compromise and settle certain past, present and future claims between the Parties regarding the MPR, the Cle Elum UGA, Trendwest Water Rights Actions, and the Infrastructure and Services Supporting the MPR and UGA, and is not intended to be an admission by any Party as to any fact or legal principle, including those related to contentions made by the Parties in the GMA Appeal and the LUPA Appeal.

**8.0 Agreement Not an Endorsement of MountainStar by RIDGE.** Nothing in this Agreement constitutes an authorization for Trendwest to represent to any other person that RIDGE endorses any aspect of the MPR or the development of Trendwest's UGA Property; provided, however, that Trendwest is not prohibited from representing the fact that the Parties have entered into this Agreement to resolve certain past, present and future disputes regarding development of MountainStar, the Cle Elum UGA, Trendwest's Water Rights Actions, and the Infrastructure and Services Supporting the MPR and UGA. As provided in Paragraph 21.0, below, RIDGE retains all rights to express opinions, submit comments and otherwise advocate its position in administrative proceedings for permits and approvals relating to the MPR and the Cle Elum UGA.

**9.0 Notices.** Any notice or communication required by this Agreement between Trendwest and RIDGE must be in writing, and may be given either personally 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 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 Trendwest Resorts, Trendwest  
Investments, or Trendwest Properties:

c/o Trendwest Resorts, Inc.  
109 S. First Street  
P.O. Box 887  
Roslyn, Washington 98941-0887  
Attn: George Cockill  
Telephone: (509) 649-3000  
Facsimile: (509) 649-3059

With copies to:

Cairncross & Hempelmann, P.S.  
Attn: John W. Hempelmann and  
Brian L. Holtzclaw  
524 Second Avenue  
Suite 500  
Seattle, Washington 98104-2323  
Telephone: (206) 587-0700  
Facsimile: (206) 587-2308

If to RIDGE:

RIDGE  
PO Box 927  
Roslyn, WA 98941

RIDGE Registered Agent  
Douglas Kilgore  
PO Box 622  
Roslyn, WA 98941

RIDGE Contact Person  
Edmund Januszkiewicz  
PO Box 370  
Roslyn, WA 98941  
Telephone: (509) 649-2205

With copies to:

David Bricklin  
Bricklin and Gendler  
1424 Fourth St.  
Suite 1015  
Seattle, WA 98101  
Telephone: (206) 621-8868  
Facsimile: (206) 621-0512

**10.0 No Third-Party Beneficiaries.** 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 signatory to this Agreement shall have any third-party beneficiary or other rights whatsoever under this Agreement. The Parties acknowledge that some benefits may be derived by the County, Cities of Cle Elum and Roslyn, and the citizens

of Upper Kittitas County, among others, from certain implementation of this Agreement. However, the Parties agree that the provisions of this Agreement do not create any third-party rights for persons or entities not signatories to this Agreement. No other person or entity not a Party to this Agreement may enforce the terms and provisions of this Agreement. RIDGE may, however, enforce the terms of this Agreement even where it is not the direct beneficiary of its terms, for example but not limited to with regard to payments to be made by Trendwest to third-parties.

**11.0 Authority.** The Parties each represent and warrant that they have full power and actual authority to enter into this Agreement and to carry out all actions required of them by this Agreement. All persons executing this Agreement in representative capacities represent and warrant that they have full power and authority to bind their respective corporations and/or partnerships and/or organizations.

**12.0 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties and their, successors and assigns; provided, however, that purchasers of individual lots (except for purchasers for which a Transfer Agreement requiring consent of Kittitas County must be approved pursuant to Section 9.2 of the MPR Development Agreement), and such purchasers, and their title companies and lenders, successors and assigns, shall have no rights or obligations arising from this Agreement and the terms of this Agreement shall not “run with the land” upon transfers or assignments to such purchasers; provided, further, that Trendwest agrees to record a covenant separate from this Agreement that shall make the following Trendwest Obligations covenants that “run with the land” and therefore binding on all successors and assigns, including purchasers of individual lots: Paragraphs 1.15.1 and 1.15.2 (prohibition on burning of debris from individual lots).

**13.0 Recording.** Trendwest shall record a Memorandum of this Agreement with the Kittitas County Auditor within ten (10) days following its complete execution by the Parties. Such Memorandum of this Agreement shall make clear that the Agreement does not apply to purchasers of individual lots, or such purchasers’ successors or their title companies or lenders, or the successors and assigns of such title companies or lenders.

**14.0 Complete Agreement.** This Agreement represents the entire agreement and understanding between the Parties, supersedes all prior agreements and understandings between the Parties and may be amended only by a writing duly executed by each Party hereto. Any person or entity acquiring all or a portion of Trendwest’s rights, obligations and responsibilities under the MPR Development Agreement (including the MPR Approvals and Subsequent Actions) for which a Transfer Agreement requiring consent of Kittitas County must be approved pursuant to Section 9.2 of the MPR Development Agreement, shall be a necessary party to any amendment of this Agreement.”

**15.0 Governing Law.** Any dispute between the Parties relating to this Agreement shall be governed by and construed in accordance with the laws of the state of Washington.

**16.0 Enforceability.** The Parties acknowledge that any willful and material breach of this Agreement will result in irreparable harm, and therefore, in addition to any other remedies that the Party would have, the non-breaching Party would be entitled to temporary, preliminary and permanent injunctions prohibiting the breaching Party from any such willful and material breach. The Parties agree that monetary damages from a breach of this Agreement would be difficult to ascertain and quantify and, therefore, specific performance is the proper remedy for any breach of this Agreement.

**17.0 Severability/Non-Severability.** The Parties view each and every provision of this Agreement as fundamental, material and necessary. If any provision is determined to be unlawful or unenforceable in any way or cannot be accomplished because of a mutual mistake of fact, impossibility, or other unforeseen circumstance outside the control of the Parties, the Parties will attempt to amend the Agreement to provide the functional equivalent of the Obligation that is unenforceable or which cannot be performed. If the Parties cannot reach agreement on a curative amendment, the matter will be submitted to the dispute resolution process set forth in Paragraph 5.0, above. Provided that if no resolution is arrived at by the parties using informal dispute resolution or mediation within one hundred twenty (120) days of written notice called for in Paragraph 5.2, then either Party may submit the matter to binding arbitration. Such binding arbitration shall utilize the following procedure. The Parties shall select an Arbitrator by mutual agreement. If a single arbitrator is not mutually selected the Parties shall request a list of five (5) available arbitrators from the Judicial Arbitration Mediation Service (JAMS) whereupon the Parties shall proceed to alternately strike one name from the list until only one name remains. That person shall be the Arbitrator selected. After selection of the Arbitrator, each Party shall submit one and only one proposed remedy. The Arbitrator shall select one (1) of the two (2) remedies proposed by the two Parties based on the Arbitrator's determination of the remedy which better provides the functional equivalent of the Trendwest Obligation which is unenforceable or which cannot be performed. If the provisions contained herein, specifically Paragraphs 3.0, above, through which RIDGE agrees that it will dismiss its current appeals and will not pursue or file certain future Legal Challenges, are determined to be unlawful or unenforceable in any way, those provisions will not be severed from this Agreement and this Agreement shall be null and void and no curative amendment shall be required, and any and all actions taken by the Parties to implement this Agreement shall be rescinded; provided, however, that if RIDGE elects to not file any such prohibited Legal Challenge, then despite a determination that the waiver of those appeal rights is unlawful or unenforceable, those provisions shall be deemed to be severed and this Agreement shall remain in full force and effect unless and until RIDGE files any such Legal Challenge.

**18.0 Counterparts.** This Agreement may not be signed in counterparts. Two (2) originals shall be executed, one each for RIDGE and Trendwest.

**19.0 Headings Not Controlling.** The paragraph headings included herein are included for reference only and are not a part of this Agreement. The headings shall not control or alter the meaning of this Agreement as set forth in the text.

**20.0 Independent Legal Counsel.** The Parties acknowledge that they have each entered into this Agreement after a full and complete opportunity to consult with and receive advice from their independent counsel as they deemed appropriate.

**21.0 Public Participation.** Consistent with Paragraph 8.0 (Agreement Not an Endorsement of MountainStar by RIDGE), above, the Parties agree that nothing in this Agreement shall be construed to limit the rights of RIDGE, and RIDGE formal and affiliated members, to make public comments, comment in public processes, contact and lobby public officials or otherwise make public statements. No such actions shall be considered "aiding and abetting" a Third-Party Legal Challenge wherever that phrase is used in this Agreement.

**22.0 No Invalidation.** Trendwest and RIDGE agree not to take any action to seek to invalidate or attempt to invalidate this Agreement, the Kittitas County Development Agreement and Conditions of Approval, the UGA Development Agreement, or UGA Conditions of Approval, provided, however, that Trendwest's termination of some or all of this Agreement pursuant to Paragraphs 3.0 and 4.0, and the exercise of RIDGE's appeal rights as set forth in Paragraphs 3.2.2 and 3.4, and RIDGE's right to terminate the entire Agreement as set forth in Paragraph 3.6.2, shall not constitute a breach of this Paragraph. Trendwest may seek or accept any modifications or amendments to the MPR and UGA Development Agreements and MPR and UGA Permits and Conditions of Approval consistent with the terms and conditions of this Settlement Agreement.

**23.0 Equal Participation In Drafting.** The Parties have participated, and had an equal opportunity to participate, in the drafting of this Agreement and the attached Exhibits. Any ambiguity shall not be construed against either Party based upon a claim that that Party drafted the ambiguous language.

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















## EXHIBIT A

### *Legal Description for MountainStar Property*

#### PARCEL A:

Lots 1A, 2A, 3A, 4A, 2B, 3B, and 4B as described and or delineated on the face of that certain Survey recorded June 13, 1995 under Auditor's File No. 582255 and filed in Book 21 of Surveys, Pages 44 and 45, Records of Kittitas County, State of Washington; being a portion of Section 11, Township 20 North, Range 14 East, W.M., Kittitas County, State of Washington;

AND

Lot B1 as described and/or delineated on that certain Survey as recorded September 18, 1996, in Book 22 of Surveys, Page 83, under Auditor's File No. 199609180020, records of Kittitas County, Washington; being a portion of the East Half of the Northwest Quarter and of the Northeast Quarter of the Northeast Quarter of Section 11, Township 20 North, Range 14 East, W.M., in the County of Kittitas, State of Washington.

#### PARCEL B:

Lots 1A, 2A, 3A, 4A, 1B, 2B, 3B and 4B, as described and/or delineated on the face of that certain Survey recorded May 23, 1995 under Auditor's File No. 581730 and filed in Book 21 of Surveys, Pages 28, and 29, Records of Kittitas County, State of Washington; being a portion of Section 13, Township 20 North, Range 14 East, W.M., Kittitas County, State of Washington.

#### PARCEL C:

Lots 1A, 2A, 3A, 4A, 1B, 2B, 3B and 4B, as described and/or delineated on the face of that certain Survey recorded May 23, 1995 under Auditor's File No. 581729 and filed in Book 21 of Surveys, Pages 26 and 27, Records of Kittitas County, State of Washington; being all of Section 14, Township 20 North, Range 14 East, W.M., Kittitas County, State of Washington.

#### PARCEL D:

Lots 2 and 4 as described and/or delineated on the face of that certain Survey recorded July 11, 1995 under Auditor's File No. 583027 and filed in Book 21 of Surveys, Page 64, Records of Kittitas County, State of Washington; being a portion of Section 15, Township 20 North, Range 14 East, W.M., Kittitas County, State of Washington.

(continued)

*Legal Description for MountainStar Property, cont.*

PARCEL E:

Lots 1, 2, 3 and 4 as described and/or delineated on the face of that certain Survey recorded May 23, 1995 under Auditor's File No. 581725 and filed in Book 21 of Surveys, Page 19, Records of Kittitas County, State of Washington; being all of Section 23, Township 20 North, Range 14 East, W.M., Kittitas County, State of Washington.

EXCEPT that portion of Lot 3 of said Survey lying Southerly and Westerly of the Yakima River.

PARCEL F:

Lots 1A, 2A, 3A and 4A as described and/or delineated on the face of that certain Survey recorded May 23, 1995 under Auditor's File No. 581724 and filed in Book 21 of Surveys, Page 18, Records of Kittitas County, State of Washington; being a portion of Section 24, Township 20 North, Range 14 East, W.M., Kittitas County, State of Washington.

PARCEL G:

Lots 1A, 2A, 3A, 4A, 1B, 2B, 3B and 4B as described and/or delineated on the face of that certain Survey recorded May 23, 1995 under Auditor's File No. 581723 and filed in Book 21 of Surveys, Page 17, Records of Kittitas County, State of Washington; being a portion of Section 25, Township 20 North, Range 14 East, W.M., Kittitas County, State of Washington.

PARCEL I:

Lots 1, 2, 3 and 4 as described and/or delineated on the face of that certain Survey recorded May 23, 1995 under Auditor's File No. 581728 and filed in Book 21 of Surveys, Page 25, Records of Kittitas County, State of Washington; being a portion of Section 18, Township 20 North, Range 15 East, W.M., Kittitas County, State of Washington

AND

All that portion of the East Half of the Southeast Quarter of Section 18, Township 20 North, Range 15 East, W.M., Kittitas County, State of Washington, lying Southerly of the following described line: Beginning at the Southeast Corner of said Section 18; thence North 0°44'15" East, along the East line of said Section 1,155.00 feet and the true point of beginning of said line; thence North 67°00'00" West, 11424.23 feet to the West line of said East Half of the Southeast Quarter and terminus of said line.

(continued)

*Legal Description for MountainStar Property, cont.*

PARCEL J:

Lots 1A, 2A, 1B, 2B, 3B, 4B, 1C, 1D, 2D, 3D and 4D as described and/or delineated on the face of that certain Survey recorded June 13, 1995 under Auditor's File No. 582254 and filed in Book 21 of Surveys, Pages 42 and 43, Records of Kittitas County, State of Washington; being a portion of Section 19, Township 20 North, Range 15 East, W.M., Kittitas County, State of Washington.

PARCEL K:

Lots 1A, 2A, 3A, 4A, 1B, 2B, 3B, 4B, 1C, 2C, 3C, 1D, 2D, 3D, 4D, 1E, 2E, 3E, 1F, 2F, 1G and 2G as described and/or delineated on the face of that certain Survey recorded May 23, 1995 under Auditor's File No. 581726 and filed in Book 21 of Surveys, Pages 20, 21 and 22 and as amended November 7, 1997 in Book 23 of Surveys, Pages 17, 18 and 19 under Auditor's File No. 199711070002, Records of Kittitas County, State of Washington; being a portion of Section 20, Township 20 North, Range 15, East, W.M., Kittitas County, State of Washington.

PARCEL L:

All that portion of the Southwest Quarter of Section 21, Township 20 North, Range 15 East, W.M., Kittitas County, State of Washington, lying Southwesterly of the Southwesterly line of State Highway 2-E (SR 903)

EXCEPT beginning at a point on the Southwesterly line of said State Highway, said point bearing North 47°42' West, 1031.14 feet from the South Quarter corner of said Section 21; thence South 28°00' West, 300 feet; thence North 62°00' West to the intersection with the East line of County Road known as Bullfrog Road; thence North along said East line to the intersection with the Southwesterly line of said State Highway; thence Southeasterly along said Southwesterly line to the point of beginning;

EXCEPT that portion of the Southwest Quarter of said Section 21, lying within the following described tract:

Beginning at the intersection of the Southwesterly right of way line of State Highway No. 903 with the Southeasterly boundary of the tract of land heretofore conveyed by the Northwestern Improvement Company to Fred W. Schulz under Deed dated September 10, 1938, which point bears North 48°14'23" West, 1,028.73 feet from the South Quarter corner of said Section 21; thence Southeasterly along the Southwesterly right of way line of said State Highway No. 903, 1,597 feet; thence Southwesterly at right angles thereto, 900 feet; thence Northwesterly parallel to the Southwesterly right of way line of said State Highway No. 903, 1,597 feet, more or less, to a point on the extension of the Southeasterly boundary of the said tract conveyed by the Northwestern Improvement

(continued)

*Legal Description for MountainStar Property, cont.*

Company to Fred W. Schulz; thence Northeasterly along said extension and boundary, 900 feet to the point of beginning;

EXCEPT that portion of the Southwest Quarter of said Section 21, described as follows: Beginning at the intersection of the centerline of the Burlington Northern Railroad Spur to No. 9 Mine and the Southwesterly margin of Cle Elum to Roslyn Highway No. 903; thence South  $36^{\circ}45'23''$  East along the said road margin 355.21 feet to the West margin of the Bullfrog Cutoff Road; thence South  $6^{\circ}08'50''$  West along said road margin 375.00 feet; thence North  $79^{\circ}30'46''$  West 800.92 feet to the West line of said Section 21; thence North  $0^{\circ}06'18''$  East, along said Section line 475.00 feet to the centerline of said Railroad Spur; thence North  $86^{\circ}35'06''$  East 615.36 feet to the point of beginning;

EXCEPT that portion of the Southwest Quarter of the Southwest Quarter of said Section 21, Township 20 North, Range 15 East, W.M., Kittitas County, State of Washington, described as follows:

Beginning at a point 291.99 feet North and 800.30 feet East of the Southwest corner of said Section, said point being on the Easterly right of way line of the County Road as established November 13, 1947 date of that deed recorded January 13, 1948, under Auditor's File No. 198871, Records of said County; thence North  $89^{\circ}44'$  East, parallel with the South line of said Section 548.30 feet to a point of the East line of said Subdivision; thence North  $00^{\circ}26'$  East, along said East line, 305 feet, more or less to a point 30 feet Southwesterly, when measured at right angles, from that tract of land conveyed by the Northwestern Improvement Company to Mike Pasa by the Deed dated June 20, 1934; thence north  $62^{\circ}00'$  West, 557.90 feet to the Easterly right of way of said County Road; thence South  $05^{\circ}51'$  West, along said right of way line, 572.20 feet to the point of beginning;

EXCEPT that portion of the Southwest Quarter of the Southwest Quarter of said Section 21, described as follows:

Beginning at a point 800.30 feet East of the Southwest corner of said Section; thence 291.99 feet North, said point being on the Easterly right of way line of the County Road as established November 13, 1947, date of deed recorded January 13, 1948, under Auditor's File No. 198871, Records of said County; thence North  $6^{\circ}8'50''$  East, along said right of way, 572.20 feet to the point of beginning; thence South  $62^{\circ}00'$  East, 557.90 feet; thence North  $0^{\circ}14'31''$  East, 32.40 feet; thence North  $62^{\circ}00'$  West, 557.90 feet; thence South  $6^{\circ}08'50''$  West, 32.40 feet to the point of beginning.

AND

(continued)



*Legal Description for MountainStar Property, cont.*

EXCEPT that portion of the Southwest Quarter of said Section 21, lying within the following described tract:

Beginning at the intersection of the Southwesterly margin of State Highway No. 903 with the Southeasterly boundary of a tract of land heretofore conveyed by Northwest Improvement Company to Fred W. Schulz under Deed dated September 10, 1938, which point bears North 47°46'25" West, 1,028.73 feet from the South Quarter corner of said Section 21; thence continuing South 61°39'23" East along said road margin 1,597 feet to the true point of beginning; thence continuing South 61°39'23" East, 901.16 feet to the intersection of said road margin and the Northwesterly margin of the Rocky Reach-Maple Valley No. 1 Bonneville Transmission Line; thence South 73°16'17" West along said Bonneville Line margin 585.77 feet; thence continuing along said Bonneville Line margin South 73°07'39" West, 824.58 feet; thence North 61°39'23" West, 1,603.62 feet; thence North 28°20'37" East, 706.0 feet to a point on the South fence line of the aforementioned Fred W. Schulz Tract; thence South 61°39'23" East along said Schulz fence line 100.0 feet to a point on the Westerly line of the Cle Elum-Roslyn Public School District No. 404 Tract as deeded by Northern Pacific Railway Company under Deed dated October 27, 1967; thence South 28°20'37" West along said school Westerly line 606.0 feet to the Southwest corner thereof; thence South 61°39'23" East along said school Southerly line 1,597 feet to a point which bears South 28°20'37" West from the true point of beginning, thence North 28°20'37" East, 900.0 feet to the true point of beginning.

PARCEL N:

That portion of Lot 1A lying Northwesterly of the Southwest boundary of the County Road known as Bullfrog Road, as described and/or delineated on the face of that certain Survey recorded May 23, 1995 under Auditor's No. 581722 and filed in Book 21 of Surveys, Pages 14, 15 and 16, records of Kittitas County, State of Washington; being a portion of Section 28, Township 20 North, Range 15 East, W.M., Kittitas County, State of Washington.

PARCEL O:

Lots 1A, 2A, 3A and 4A as described and/or delineated on the face of that certain Survey recorded May 23, 1995 under Auditor's File No. 581721 and filed in Book 21 of Surveys, Pages 12 and 13, Records of Kittitas County, State of Washington; being a portion of Section 29, Township 20 North, Range 15 East, W.M., Kittitas County, Sate of Washington.

(continued)

*Legal Description for MountainStar Property, cont.*

PARCEL P:

Lots 1A, 2A, 3A, 4A, 1B, 2B, 3B, 4B, 1C, 2C, 3C, 4C, 1D, 2D, 3D and 4D as described and/or delineated on the face that certain Survey recorded May 23, 1995 under Auditor's File No. 581720 and filed in Book 21 of Surveys, Pages 10 and 11, and as amended by that certain Amended Survey recorded October 11, 1996 under Auditor's File No. 199610110005 and filed in Book 22 of Surveys, Pages 96 and 97, Records of Kittitas County, State of Washington; being a portion of Section 30, Township 20 North, Range 15 East, W.M., Kittitas County, State of Washington.

PARCEL Q:

Lots 1, 2, 3 and 4 as described and/or delineated on the face of that certain Survey recorded June 13, 1995 under Auditor's File No. 582256 and filed in Book 21 of Surveys, Pages 46 and 47, Records of Kittitas County, State of Washington; being a portion of the North Half of Section 31, Township 20 North, Range 15 East, W.M., Kittitas County, State of Washington;

EXCEPT that portion of said Lots 1 and 2 conveyed to the State of Washington by deed dated February 25, 1999, recorded March 12, 1999 under Kittitas County Auditor's File No. 199903120019 described as follows:

All that portion of the hereinafter described Tract "A" lying southerly of a line beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) 432 + 00 on the LW Line Survey of SR 90, Easton to Cle Elum and 300 feet northerly therefrom; thence easterly parallel with said LW Line Survey to a point opposite HES 446 + 25; thence southerly to a point opposite said HES 446 + 25 and 110 feet northerly therefrom; thence easterly to a point opposite HES 450 + 00 on said LW Line Survey and 90 feet northerly therefrom thence easterly parallel with said LW Line Survey to a point opposite HES 456 + 00 and the end of this line description.

TRACT "A"

Lots 1 and 2, as described and/or delineated on that certain survey recorded June 13, 1995 under Auditor's File No. 582256 in Book 21 of Surveys, pages 46 and 47, records of Kittitas County, State of Washington; being a portion of the North Half of Section 31, Township 20 North, Range 15 East, W.M., EXCEPT that portion of said Lot 2 lying within the Northeast Quarter of Section 31.

## EXHIBIT B

### *Legal Description for UGA Property*

LOT 1 AS DESCRIBED AND/OR DELINEATED ON THE FACE OF THAT CERTAIN SURVEY RECORDED MAY 23, 1995 UNDER AUDITOR'S FILE NO. 581718 AND FILED IN BOOK 21 OF SURVEYS, PAGES 6 AND 7, RECORDS OF KITTITAS COUNTY, STATE OF WASHINGTON;  
BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 27, TOWNSHIP 20 NORTH, RANGE 15 EAST, W.M., KITTITAS COUNTY, STATE OF WASHINGTON;

TOGETHER WITH

LOTS 1A, 2A, 3A AND 4A AS DESCRIBED AND/OR DELINEATED ON THE FACE OF THAT CERTAIN SURVEY RECORDED MAY 23, 1995 UNDER AUDITOR'S FILE NO. 581722 AND FILED IN BOOK 21 OF SURVEYS, PAGES 14, 15 AND 16, RECORDS OF KITTITAS COUNTY, STATE OF WASHINGTON;  
BEING A PORTION OF SECTION 28, TOWNSHIP 20 NORTH, RANGE 15 EAST, W.M., KITTITAS COUNTY, STATE OF WASHINGTON;  
**EXCEPT** THAT PORTION OF SAID LOT 1A, LYING NORTHWESTERLY OF THE NORTHWESTERLY MARGIN OF BULLFROG ROAD; AND  
**EXCEPT** THAT PORTION OF SAID LOT 2A, LYING NORTHERLY OF STATE HIGHWAY 2-E (SR 903);

TOGETHER WITH

LOTS 1B, 2B, 3B AND 4B AS DESCRIBED AND/OR DELINEATED ON THE FACE OF THAT CERTAIN SURVEY RECORDED MAY 23, 1995 UNDER AUDITOR'S FILE NO. 581721 AND FILED IN BOOK 21 OF SURVEYS, PAGES 12 AND 13, RECORDS OF KITTITAS COUNTY, STATE OF WASHINGTON;  
BEING A PORTION OF SECTION 29, TOWNSHIP 20 NORTH, RANGE 15 EAST, W.M., KITTITAS COUNTY, STATE OF WASHINGTON;

TOGETHER WITH

LOTS 1E AND 1F AS DESCRIBED AND/OR DELINEATED ON THE FACE OF THAT CERTAIN SURVEY RECORDED MAY 23, 1995 UNDER AUDITOR'S FILE NO. 581720 AND FILED IN BOOK 21 OF SURVEYS, PAGES 10 AND 11, AND AS AMENDED BY THAT CERTAIN AMENDED SURVEY RECORDED OCTOBER 11, 1996 UNDER AUDITOR'S FILE NO. 199610110005 AND FILED IN BOOK 22 OF SURVEYS, PAGES 96 AND 97, RECORDS OF KITTITAS COUNTY, STATE OF WASHINGTON;  
BEING A PORTION OF SECTION 30, TOWNSHIP 20 NORTH, RANGE 15 EAST, W.M., KITTITAS COUNTY, STATE OF WASHINGTON;

(continued)

*Legal Description for UGA Property, cont.*

TOGETHER WITH

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

TOGETHER WITH

LOTS 1A, 2A, 3A, 4A AND LOT 1C AS DESCRIBED AND/OR DELINEATED ON THE FACE OF THAT CERTAIN SURVEY RECORDED FEBRUARY 21, 1997 UNDER AUDITOR'S FILE NO. 199702210003 AND FILED IN BOOK 22 OF SURVEYS, PAGE 178, RECORDS OF KITTITAS COUNTY, STATE OF WASHINGTON;  
BEING A PORTION OF THE NORTH HALF OF SECTION 32, TOWNSHIP 20 NORTH, RANGE 15 EAST, W.M., KITTITAS COUNTY, STATE OF WASHINGTON;

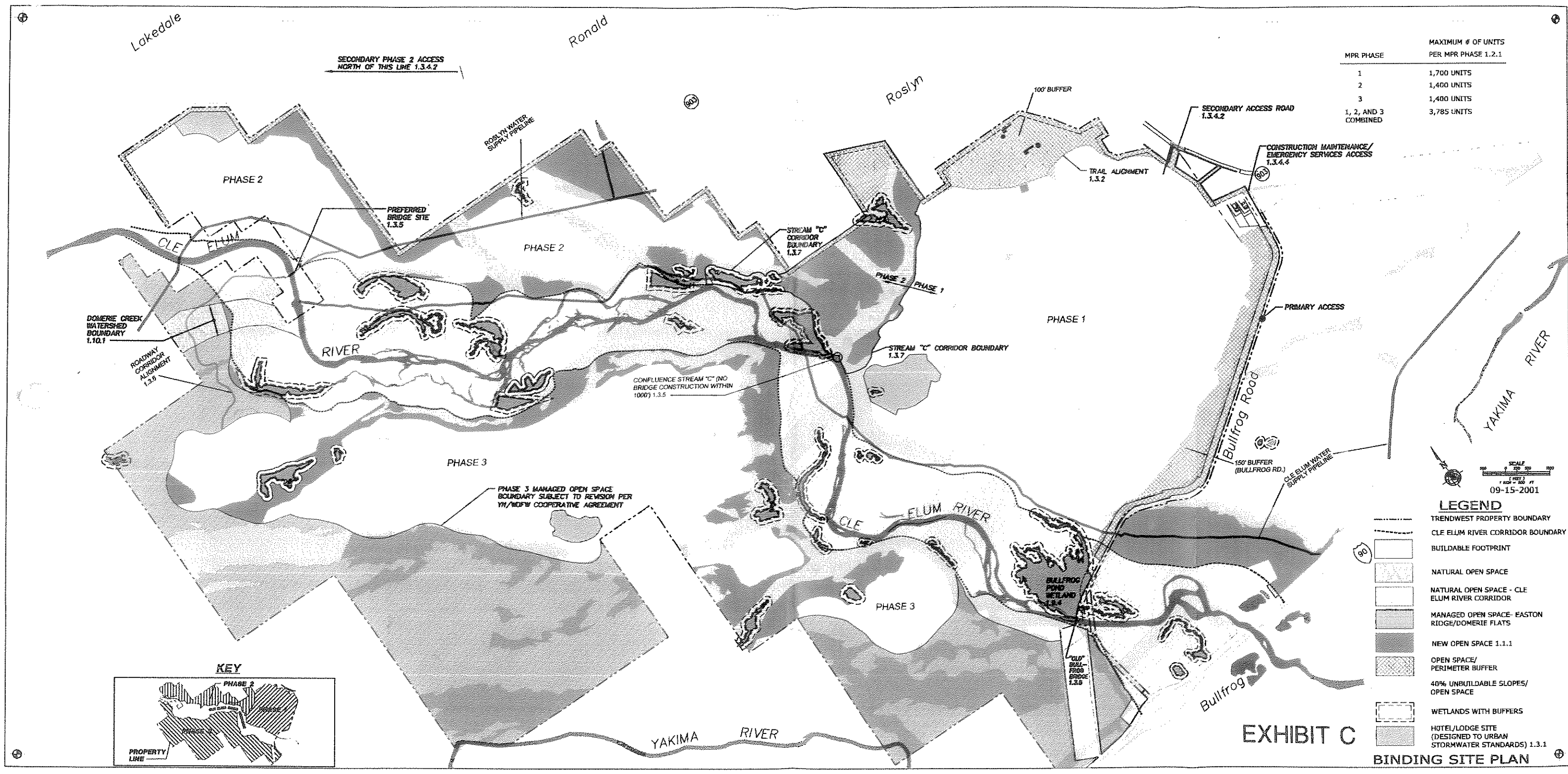
TOGETHER WITH

ALL THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 20 NORTH, RANGE 15 EAST, W.M., KITTITAS COUNTY, STATE OF WASHINGTON, LYING NORTHWESTERLY OF THE NORTHWESTERLY LINE OF PRIMARY STATE HIGHWAY NO. 2 (I-90).

**EXHIBIT C**

[Binding Project Map]



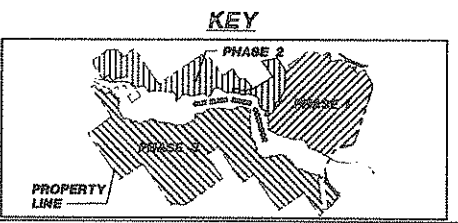


MPR PHASE	MAXIMUM # OF UNITS PER MPR PHASE 1.2.1
1	1,700 UNITS
2	1,400 UNITS
3	1,400 UNITS
1, 2, AND 3 COMBINED	3,785 UNITS

SCALE  
 1" = 500 FT  
 09-15-2001

- LEGEND**
- TRENDWEST PROPERTY BOUNDARY
  - CLE ELUM RIVER CORRIDOR BOUNDARY
  - BUILDABLE FOOTPRINT
  - NATURAL OPEN SPACE
  - NATURAL OPEN SPACE - CLE ELUM RIVER CORRIDOR
  - MANAGED OPEN SPACE- EASTON RIDGE/DOMERIE FLATS
  - NEW OPEN SPACE 1.1.1
  - OPEN SPACE/ PERIMETER BUFFER
  - 40% UNBUILDABLE SLOPES/ OPEN SPACE
  - WETLANDS WITH BUFFERS
  - HOTEL/LODGE SITE (DESIGNED TO URBAN STORMWATER STANDARDS) 1.3.1

**EXHIBIT C**  
**BINDING SITE PLAN**



## EXHIBIT D

### *Definitions of Open Space Categories for the New Open Space within the MountainStar Property and Trendwest's UGA Property*

#### Natural Open Space

This is open space dedicated primarily to wildlife habitat and recreational opportunities compatible with wildlife objectives. It includes all of Planning Area 11 on the MPR Conceptual Master Plan and the geomorphic floodplain in the UGA. These areas include the Cle Elum River corridor, on-site tributaries, and a major portion of the wetlands, the most environmentally sensitive areas on the property. It will include the parts of the Domerie Creek Watershed located in Section 11, 14 and 15 of Township 20 North, Range 15 East, W.M of the Trendwest Property. Motorized vehicles, building structures, vegetation disturbance, domestic animal use and human use will be subject to appropriate prohibitions and limitations. This open space shall be dedicated permanently and irrevocably by a conservation easement; provided, however, New Open Space is revocable as provided in Paragraph 3.0.

#### Managed Open Space

This is open space also dedicated to wildlife habitat and recreational opportunities compatible with wildlife objectives. It includes all of Planning Areas 9 and 10 on the MPR Conceptual Master Plan (Domerie Flats and Easton Ridge). It will include about 112 acres of New Open Space within Trendwest's UGA Property adjacent to the geomorphic floodplain. This open space may be more intensely managed or changed by selective logging, thinning or vegetation removal to establish better habitat conditions conducive to selected species, and to establish more useable area for recreation purposes. Though no residential development will occur on this open space, limitations on structures, motorized vehicles, domestic animal use and human use will be less restrictive than in the Natural Open Space. This open space shall be dedicated permanently and irrevocably by conservation easement; provided, however, New Open Space is revocable as provided in Paragraph 3.0.

#### Perimeter Buffer Open Space

This is open space dedicated primarily to buffering MPR uses from immediately adjacent lands. It includes those lands generally designated as buffers on the MPR Conceptual Master Plan on the perimeter boundary of the MPR. Trails and service roads may occur in this open space, though they will be developed as closely as practical to MPR developed lands rather than to adjacent properties. Some vegetation management may occur for fire protection purposes or habitat enhancement. This open space shall be dedicated permanently and irrevocably by conservation easement; provided, however, New Open Space is revocable as provided in Paragraph 3.0.



Note: The two approved golf courses in the MPR are not included in this Agreement's open space calculations. The open space ratio given in the MPR EIS considers them developed property. They include 295 acres.

## EXHIBIT E

# Take the right steps in your pathway to preparedness!

- Step 1: Evaluate yourself: strengths, weakness, likes, dislikes.
- Step 2: List occupational choices
- Step 3: Choose a pathway
- Step 4: Talk with parents and meet with an academic advisor
- Step 5: Determine remaining graduation requirements
- Step 6: Choose additional courses from those recommended
- Step 7: Register for classes

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# Pathways & Related Occupations

Washington State has developed five career pathways to help students focus their education. Those five pathways are:

- Arts & Communication
- Business & Marketing
- Engineering & Scientific
- Health & Human Services
- Industrial

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## Industrial Occupations

### Mechanics

People in mechanics occupations use specialized mechanical skills to repair and maintain automobiles, power saws, watches, and other mechanical devices.

### Construction

People in construction occupations usually have specialized skills that they use when working with people from other building trades. They may build and maintain roads, houses, office buildings, and other structures.

- Bricklayers
- Carpenters
- Cement Masons
- Construction Laborers
- Floor and Carpet Layers
- Glaziers
- Highway Maintenance Workers
- Insulation Workers
- Irrigation Technicians
- Painters/Paper Hangers
- Plasterers/Drywall Installers
- Plumbers
- Roofers

### Timber Products

People in timber products occupations work with wood in various stages of production

- Cabinetmakers
- Chokesetters
- Fallers and Buckers
- Pulp and Paper Workers
- Sawmill/Plywood Laborers
- Woodworking Machine Operators

## **Building Maintenance**

People in building maintenance occupations clean, repair, and maintain the interior and exterior of buildings

- Building Maintenance Workers
- Domestic Service Providers
- Janitors
- Pest Control Workers

## **Transportation Occupations**

People in transportation occupations operate transportation equipment to move freight and passengers either directly or indirectly.

- Air Traffic Controllers
- Bus and Taxi Drivers
- Deckhands
- Dispatchers
- Forklift Operators
- Garbage Collectors
- Local Truck Drivers

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# Recommended Courses

Choose your additional courses—those that are above and beyond the courses required for graduation—from the list within your pathway.

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## Industrial

### Entry Level

- Accounting
- Advanced Woods
- Applied Math
- Auto Mechanics
- AutoCAD
- Beginning Woods
- Biology I
- Business Communication
- Business Math/Marketing
- Composition/Literature
- Integrated Math I
- Physical Science
- Pre-algebra

### Skilled Level

- Accounting
- Adv. Computer Topics
- Advanced Woods
- Applied Math
- Auto Mechanics
- AutoCAD
- Beginning Woods
- Biology I
- Business Communication
- Business Math/Marketing
- Computer Applications
- Integrated Math 1
- Integrated Math 2
- Journalism
- Multimedia
- Physical Science
- Spanish 1
- Spanish 2
- Speech

### Professional Level

- Adv. Computer Topics
- Advanced Woods
- Auto Mechanics
- AutoCAD
- Beginning Woods
- Biology 1
- Biology 2
- Business Communication
- Chemistry
- Computer Applications
- Construction
- Integrated Math 1
- Integrated Math 2
- Integrated Math 3

- Integrated Math 4
- Literary Background
- Modern British/American Literature
- Multimedia
- Physical Science
- Pre-calculus
- Spanish 1
- Spanish 2
- Spanish 3

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### **Diversified Occupations & Community Resource Training**

*Course work and on-the-job experience may meet occupation educational or elective requirements. Students who are interested in the D.O. or CRT programs described below, must make arrangements with the instructor and complete any necessary paperwork. Enrollment by application process only: see the instructor.*

#### **Diversified Occupations (.5-1.0 credit)**

Prerequisite: Eleventh-Twelfth grade standing and permission of the instructor  
 Diversified Occupations (D.O.) is a course that prepares the student for work after high school. Subject areas studied include: job applications, how to prepare a professional resume, job interview skills, pitfalls of credit cards, investment strategies, etc. This class is required for students who wish to take D.O. Release.

#### **Diversified Occupations Release (.5-1.0 credit)**

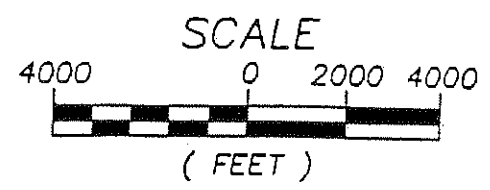
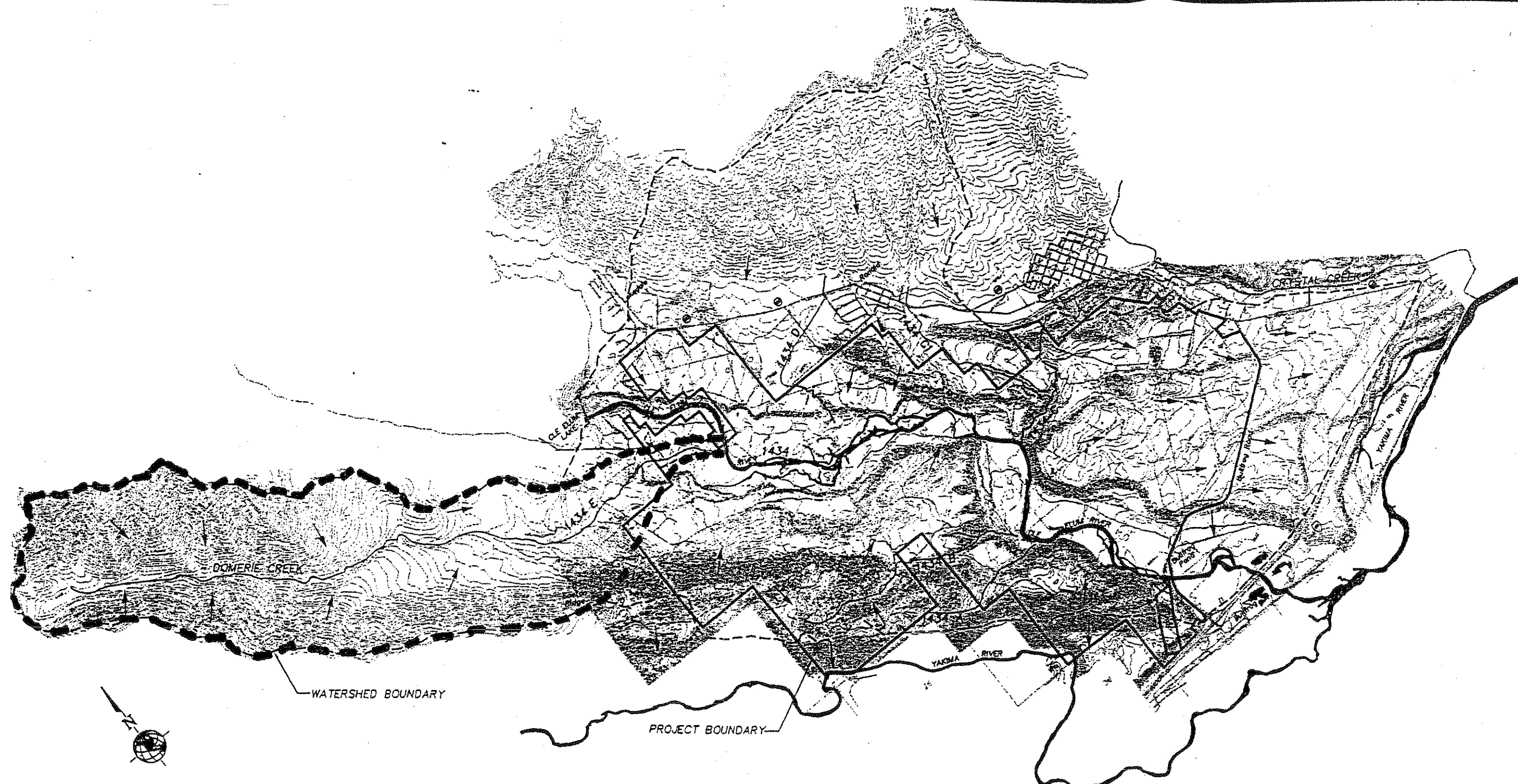
Prerequisite: Instructor approval. Co-requisite: D.O. Class  
 D.O. Release allows a student to earn "on the job" credit while attending high school. A minimum number of hours at work are required to earn a semester credit. This credit MUST be taken simultaneously with the D.O. classroom offering. "Earn while you learn" with D.O. Release.

#### **Community Resource Training (.5-1.0 credit)**

Prerequisite: Eleventh-Twelfth grade standing and instructor permission  
 Students participate in an apprentice-type program. They are released for one period per day to receive both training from community volunteers and experience in their chosen areas of interest. The place of training is considered to be a school classroom with the community trainer a volunteer teacher. This is an excellent opportunity to participate and experience possible career opportunities in your area of choice.

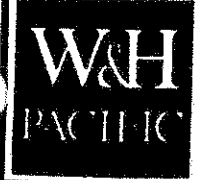
**EXHIBIT F**

[Map depicting Domerie Creek Watershed]



MountainStar Master  
Planned Resort

Exhibit F  
Domerie Creek Watershed



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## EXHIBIT G

### TRENDWEST YAKIMA RIVER WATER RIGHTS

**Prior Claimant:** Pautzke Bait Company -  
Hundley Ranch

**Court Claim Number:** 01724

**Change Applications:** CS4-YRB07CC01724@3 (MPR)  
CS4-01724(C)CTCL (UGA)

**Amended Applications:**

**Priority Date:** October 30, 1884

**Point of Diversion:** NW 1/4 SW 1/4 NW 1/4 of Section 3, Twp. 17N, Range 18E, Willamette Meridian (WM).

**Place of Use:** 67 acres located in S 1/2 SE 1/4 of Section 3, Twp. 17N, Range 18E, WM.

**Period of Use:** April 1 to October 15 for irrigation, continuous for stockwater

**Annual Quantity:** 1,609.0 ac-ft for irrigation, 6.88 ac-ft for stockwater

**Instantaneous Quantity:** 6.59 cfs for irrigation, 0.29 cfs for stockwater

**Prior Claimant:** Pautzke Bait Company -  
Riverside Ranch (south portion)

**Court Claim Number:** 01724

**Change Applications:** CS4-YRB07CC01724@2 (MPR)  
CS4-01724(B)CTCL (UGA)

**Amended Applications:**

**Priority Date:** October 30, 1884

**Point of Diversion:** NW 1/4 SW 1/4 NW 1/4 of Section 3, Twp. 17N, Range 18E, WM.

**Place of Use:** 78 acres located in NW 1/4 SW 1/4 NW 1/4 of Section 3, Twp. 17N, Range 18E, WM.

**Period of Use:** April 1 to October 15

**Annual Quantity:** 967.2 ac-ft

**Instantaneous Quantity:** 3.9 cfs

**Prior Claimant:** Pautzke Bait Company -  
Riverside Ranch (north portion)

**Court Claim Number:** 01724

**Change Applications:** CS4-YRBO7CC01724@1 (MPR)  
CS4-01724(A)CTCL (UGA)

**Amended Applications:**

**Priority Date:** May 6, 1893

**Point of Diversion:** SE 1/4 SW 1/4 NE 1/4 3 of Section 29, Twp. 18N, Range 18E, WM.

**Place of Use:** 146 acres located in N 1/2 of Section 3, Twp. 17N, Range 18E, WM.

**Period of Use:** April 1 to October 15 for irrigation, continuous for stock water

**Annual Quantity** 1,825.0 ac-ft from April 1 to October 15 for irrigation and stock water; 375.0 ac-ft from October 16 to March 31 for stock water.

**Instantaneous Quantity:** 12.9 cfs from April 1 to October 15 for irrigation and stock water; 1.14 cfs from October 16 to March 31 for stock water.

## TRENDWEST TRIBUTARY WATER RIGHTS

### Teanaway River

**Prior Claimant:** Don & Gloria Walker  
**Court Claim Number:** 02255  
(A) 04465  
(A) 04493  
**Change Applications:** CS4-YRB03CC02255 (MPR)  
CS4-02255(A)CTCL  
**Amended Applications:**  
**Current Use:** Irrigation of 63 acres  
Stockwater  
**Period of Use:** May 1 to September 15  
**Annual Quantity:** 340.2 acre-feet (irrigation) 1 acre-feet (stockwater)  
**Instantaneous Quantity:** 1.26 cubic feet per second  
**Priority Date:** June 30, 1883  
**Point of Diversion:** Sec. 26, Twp. 20 N., Range 16 E.  
**Place of Use:** Sec. 26, Twp. 20 N., Range 16 E.

**Prior Claimant:** Don & Gloria Walker  
**Court Claim Number:** 02255  
(A) 04465  
(A) 04493  
**Change Applications:** CS4-YRB03CC02255@1 (MPR)  
CS4-02255(B)CTCL  
**Amended Applications:**  
**Current Use:** Irrigation of 70 acres  
Stockwater  
**Period of Use:** May 1 to September 15  
**Annual Quantity:** 378.0 acre-feet (irrigation) 1 acre-feet (stockwater)  
**Instantaneous Quantity:** 1.40 cubic feet per second  
**Priority Date:** June 30, 1883  
**Point of Diversion:** Sec. 26, Twp. 20 N., Range 16 E.  
**Place of Use:** Sec. 26, Twp. 20 N., Range 16 E.

**Prior Claimant:** Don & Gloria Walker

**Court Claim Number:** 02255  
(A) 04465  
(A) 04493

**Change Applications:** CS4-YRB03CC02255@2 (MPR)  
CS4-02255(C)CTCL (UGA)

**Amended Applications:**

**Current Use:** Irrigation of 4.0 acres  
**Period of Use:** May 1 to September 15  
**Annual Quantity:** 21.6 acre-feet  
**Instantaneous Quantity:** 0.08 cubic feet per second  
**Priority Date:** June 30, 1883  
**Point of Diversion:** Sec. 26, Twp. 20 N., Range 16 E.  
**Place of Use:** Sec. 26, Twp. 20 N., Range 16 E.

**Prior Claimant:** Don & Gloria Walker

**Court Claim Number:** 02255  
(A) 04465  
(A) 04493

**Change Applications:** CS4-YRB03CC02255@3 (MPR)  
CS4-02255(D)CTCL (UGA)

**Amended Applications:**

**Current Use:** Irrigation of 34 acres  
**Period of Use:** May 1 to September 15  
**Annual Quantity:** 183.60 acre-feet  
**Instantaneous Quantity:** 0.68 cubic feet per second  
**Priority Date:** June 30, 1890  
**Point of Diversion:** Sec. 26, Twp. 20 N., Range 16 E.  
**Place of Use:** Sec. 26, Twp. 20 N., Range 16 E.

**Prior Claimant:** Don & Gloria Walker  
**Court Claim Number:** 02255  
(A) 04465  
(A) 04493  
**Change Applications:** CS4-YRB03CC02255@4  
CS4-02255(E)CTCL (UGA)  
**Amended Applications:**  
**Current Use:** Irrigation of 12.8 acres  
**Period of Use:** May 1 to September 15  
**Annual Quantity:** 69.12 acre-feet  
**Instantaneous Quantity:** 0.26 cubic feet per second  
**Priority Date:** June 30, 1898  
**Point of Diversion:** Sec. 26, Twp. 20 N., Range 16 E.  
**Place of Use:** Sec. 26, Twp. 20 N., Range 16 E.

**Prior Claimant:** Don & Gloria Walker  
**Court Claim Number:** 02255  
(A) 04465  
(A) 04493  
**Change Applications:** CS4-YRB03CC02255@5 (MPR)  
CS4-02255(F)CTCL (UGA)  
**Amended Applications:**  
**Current Use:** Irrigation of 4.0 acres  
**Period of Use:** May 1 to September 15  
**Annual Quantity:** 21.6 acre-feet  
**Instantaneous Quantity:** 0.08 cubic feet per second  
**Priority Date:** June 30, 1898  
**Point of Diversion:** Sec. 26, Twp. 20 N., Range 16 E.  
**Place of Use:** Sec. 26, Twp. 20 N., Range 16 E.

**SWAUK CREEK**

**Prior Claimant:** Kenneth Hartman, et al.  
**Court Claim Number:** 01685  
**Change Applications:** CS4-YRB04CC01685@1 (MPR)\*  
CS4-01685(C)CTCL (UGA)#

**Amended Applications:**

**Current Use:** Irrigation of 24.21 acres  
**Period of Use:** April 1 to October 15  
**Annual Quantity:** 181.58 acre-feet  
**Instantaneous Quantity:** 1.04 cubic feet per second  
**Priority Date:** June 30, 1878  
**Point of Diversion:** Sec. 27, Twp. 20 N., Range 17 E.  
**Place of Use:** Sec. 28 Twp. 20 N., Range 17 E.

\* Original transfer application was for water rights appurtenant to 12.45 acres. The application does not include portion of the water right purchased in June 2001.

# Original transfer application was for water rights appurtenant to 3.34 acres. The application does not include portion of the water right purchased in June 2001.

**Prior Claimant:** Kenneth Hartman, et al.  
**Court Claim Number:** 01685  
**Change Applications:** CS4-YRB04CC01685 (MPR)\*\*  
CS4-01685(D)CTCL (UGA)##

**Amended Applications:**

**Current Use:** Irrigation of 70.79 acres  
**Period of Use:** April 1 to October 15  
**Annual Quantity:** 530.92 acre-feet  
**Instantaneous Quantity:** 3.0 cubic feet per second  
**Priority Date:** September 20, 1889  
**Point of Diversion:** Sec. 27, Twp. 20 N., Range 17 E.  
**Place of Use:** Sec. 28 Twp. 20 N., Range 17 E.

\*\* Original transfer application was for water rights appurtenant to 46.69 acres. The application does not include portion of the water right purchased in June 2001.

## Original transfer application was for water rights appurtenant to 12.52 acres. The application does not include portion of the water right purchased in June 2001.

**First Creek**  
**(Swauk Creek Subbasin)**

**Prior Claimant:** J.P Roan (FCWUA)  
**Court Claim Number:** 00648  
**Change Applications:** CS4-YRB04CC00648 (MPR)  
CS4-00648(A)CTCL (UGA)

**Amended Applications:**

**Current Use:** Irrigation of 46.07 acres  
**Period of Use:** April 1 to October 15  
**Annual Quantity:** 231.3 acre-feet  
**Instantaneous Quantity:** 1.8 cubic feet per second  
**Priority Date:** November 2, 1877  
**Point of Diversion:** Sec. 30, Twp. 20 N., Range 18 E.  
**Place of Use:** Sec. 17, 20 & 21 Twp. 20 N., Range 18 E.

**Prior Claimant:** James Nelson, et al. (FCWUA)  
**Current Use:** Irrigation of 25.49 acres  
**Period of Use:** April 1 to October 15  
**Annual Quantity:** 128.5 acre-feet  
**Instantaneous Quantity:** 1.0 cubic feet per second  
**Priority Date:** November 2, 1877  
**Point of Diversion:** Sec. 30, Twp. 20 N., Range 18 E.  
**Place of Use:** Sec. 17, 20 & 21 Twp. 20 N., Range 18 E.

**Prior Claimant:** J.P Roan (FCWUA)  
**Court Claim Number:** 00648  
**Change Applications:** CS4-YRB04CC00648@1 (MPR)  
CS4-00648(B)CTCL (UGA)

**Amended Applications:**  
**Current Use:** Irrigation of 104.16 acres  
**Period of Use:** April 1 to October 15  
**Annual Quantity:** 522.9 acre-feet  
**Instantaneous Quantity:** 3.2 cubic feet per second  
**Priority Date:** June 1, 1881  
**Point of Diversion:** Sec. 30, Twp. 20 N., Range 18 E.  
**Place of Use:** Sec. 17, 20 & 21 Twp. 20 N., Range 18 E.

**Prior Claimant:** James Nelson, et al. (FCWUA)  
**Current Use:** Irrigation of 57.63 acres  
**Period of Use:** April 1 to October 15  
**Annual Quantity:** 290.5 acre-feet  
**Instantaneous Quantity:** 1.8 cubic feet per second  
**Priority Date:** June 1, 1881  
**Point of Diversion:** Sec. 30, Twp. 20 N., Range 18 E.  
**Place of Use:** Sec. 17, 20 & 21 Twp. 20 N., Range 18 E.



Big Creek  
(Easton Subbasin)

<b>Prior Claimant:</b>	<b>Earl E. &amp; Valerie K. Gentry</b>
<b>Court Claim Number:</b>	00755
<b>Change Applications:</b>	CS4-YRB02CC00755@2 (MPR) CS4-00755(A)CTCL (UGA)
<b>Amended Applications:</b>	
<b>Current Use:</b>	Irrigation of 81.5 acres
<b>Period of Use:</b>	May 1 to September 1
<b>Annual Quantity:</b>	393.0 acre-feet
<b>Instantaneous Quantity:</b>	1.53 cubic feet per second
<b>Priority Date:</b>	June 30, 1887
<b>Point of Diversion:</b>	Sec. 28, Twp. 20 N., Range 14 E.
<b>Place of Use:</b>	Sec. 28, Twp. 20 N., Range 14 E.

## EXHIBIT H

### Phasing of MPR and UGA Obligations

As per Paragraph 1.0, all of Trendwest's Obligations, unless otherwise specified in this Exhibit or elsewhere in this Agreement, shall become effective upon execution of this Agreement.

#### In Addition, Trendwest Obligations Triggered by Recording of First Final Plat for MPR Phase 1:

- Conveyance of conservation easements for New Open Space for MPR Phase 1 as shown on Binding Project Map (Paragraph 1.1)
- Trendwest contribution of \$150,000 to the Conservation Trust organized by RIDGE for preservation of off-site habitat and open space (Paragraph 1.7)
- Trendwest contribution of \$300,000 (payable as scheduled in Paragraph 1.12) to a trust fund for the promotion of Roslyn historic values
- Trendwest donation of \$344,000 to Roslyn for capital improvements (payable as scheduled in Paragraph 1.13)
- Acceleration of water payments under Cooperative Agreement (Paragraph 1.5.3.3)
- Donation of Trendwest's Section 17 Property (Paragraph 1.14)
- Location of pedestrian/bike trail and related buffers for Phase 1B as shown on Binding Project Map (Paragraph 1.3.2)
- Stormwater treatment system for portions of Bullfrog Road located within geomorphic floodplain (Paragraph 1.9.4)
- Encourage volunteerism maintenance of public recreation facilities (Paragraph 1.17)
- Timing of left-turn lane off of State Hwy 903 into MPR at Number 9 Mine Rd. begins (Paragraph 1.3.4.3)

#### In Addition Trendwest Obligations Triggered by Recording of First Final Plat for MPR Phase 2:

- Conveyance of conservation easements for New Open Space for MPR Phase 2 (including the recording of a conservation easement for the Stream "C" Corridor) as shown on Binding Project Map (Paragraphs 1.1 and 1.3.7)

#### In Addition Trendwest Obligations Triggered by Beginning Construction of New Bridge across Cle Elum River:

- Relocation of road in Domerie Creek Basin (Paragraph 1.3.6)

*In Addition, Trendwest Obligations Triggered by Recording of First Final Plat for MPR Phase 3:*

- New Open Space for MPR Phase 3 as shown on Binding Project Map (Paragraph 1.1)
- Relocation of road in Domerie Creek Basin (Paragraph 1.3.6)

*In Addition, Trendwest Obligations Triggered by Recording of the First Final Plat for the UGA:*

- New Open Space in the UGA per the Binding Project Map (Paragraph 1.1)
- Payment of \$150,000 to the Conservation Trust organized by RIDGE (Paragraph 1.7.3)
- Donation of Trendwest's Section 17 Property to Roslyn upon recording of first UGA plat if Trendwest terminates MPR Phase 1 (Paragraph 1.14)
- Trail connection with SR 903 to Bullfrog Bridge (Paragraph 1.15.5)

**EXHIBIT I**

[Map showing area boundaries for potential land acquisitions by Conservation Trust]

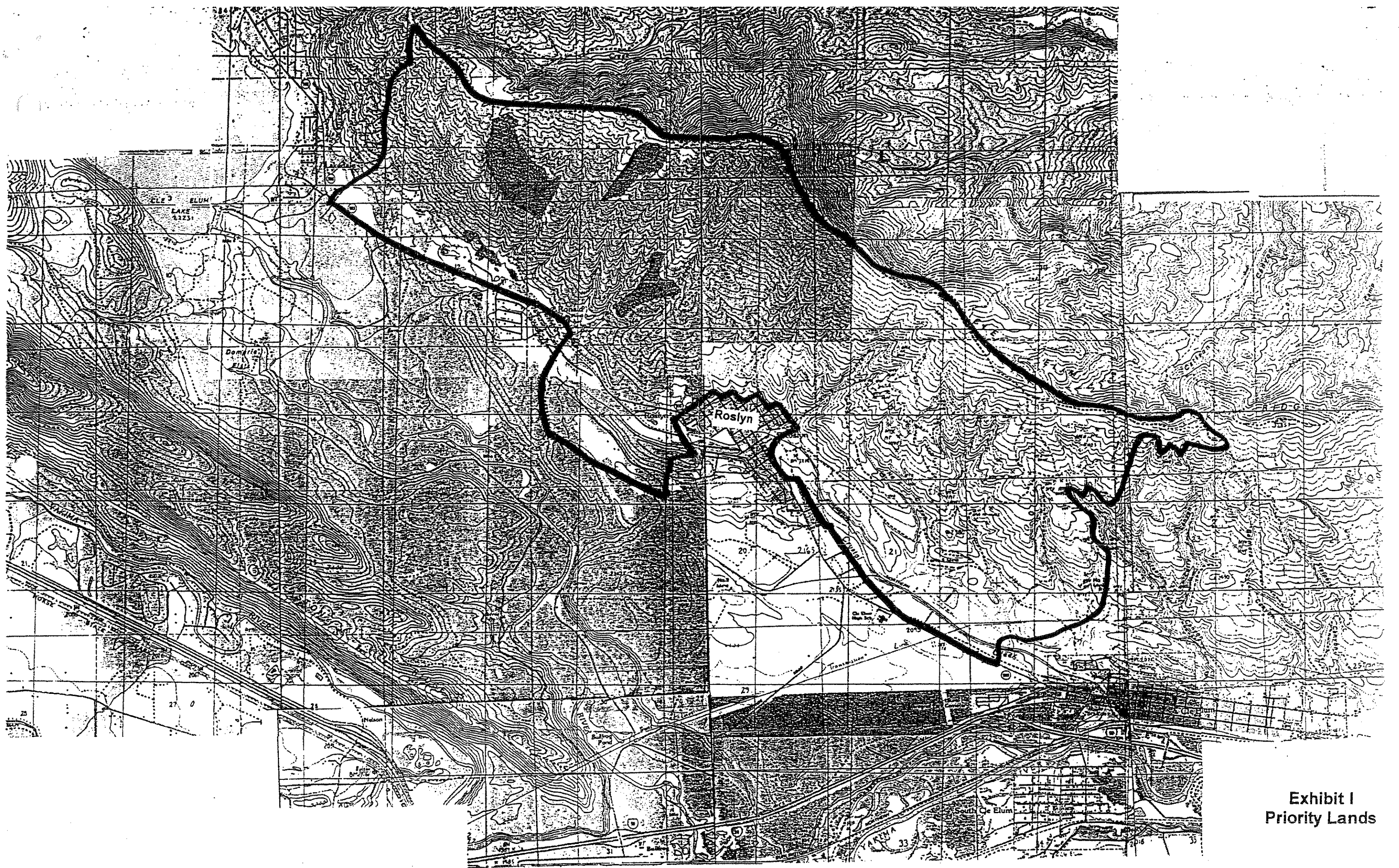


Exhibit I  
Priority Lands



Exhibit J  
Trendwest Property  
Section 17

**COOPERATIVE AGREEMENT  
BETWEEN THE  
WASHINGTON DEPARTMENT OF FISH AND WILDLIFE,  
YAKAMA NATION  
AND  
TRENDWEST RESORTS, INC.**

**December 4, 2000**

**COOPERATIVE AGREEMENT**  
**BETWEEN THE**  
**WASHINGTON DEPARTMENT OF FISH AND WILDLIFE,**  
**YAKAMA NATION**  
**AND**  
**TRENDWEST RESORTS, INC.**

**December 4, 2000**

This Cooperative Agreement is between the Washington Department of Fish and Wildlife ("WDFW"); the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation"); and Trendwest Resorts, Inc. ("Trendwest"). For purposes of this Agreement, "Trendwest" means Trendwest Resorts, Inc. and any affiliated companies, including Trendwest Properties, Inc., (Trendwest Properties), Trendwest Investments, Inc. (Trendwest Investments), and any entities formed by Trendwest or a successor-in-interest for purposes of owning, managing or developing the Trendwest Property.

**PART A - RECITALS**

1. This Agreement relates to approximately 7,400 acres owned by Trendwest Investments ("Trendwest Property", depicted on the map attached hereto as Exhibit A) proposed for development in connection with the following two projects: (1) approximately 6,200 acres as the MountainStar Master Planned Resort ("MountainStar" or "Resort") and (2) approximately 1,200 acres in connection with the development of the Cle Elum Urban Growth Area ("Cle Elum UGA"). MountainStar will be developed by Trendwest Resorts. The Cle Elum UGA portion of the Trendwest Property will be developed by Trendwest Properties. Trendwest is planning these as separate, independent projects, either of which can proceed without the other. The Trendwest Property and its allocation between the two projects referenced above are shown on the map attached hereto as Exhibit A.

2. WDFW seeks to protect and conserve fish and wildlife and to pursue a "no net loss" policy of productive fish and wildlife habitat in connection with the development of the Trendwest Property. The Yakama Nation has treaty-protected interests and other contemporary concerns about development of the Trendwest Property. The Yakama Nation supports WDFW's policy goal regarding loss of fish and wildlife habitat.

3. Trendwest, as an environmentally-sensitive resort developer, is interested in working with WDFW and the Yakama Nation to prevent loss of fish habitat and to pursue a goal of no net wildlife habitat loss, as described in this Agreement, in connection with the development of the Trendwest Property. Trendwest will cooperate to further the no net loss goal through (i) the on-site preservation of open space and



restoration of habitat in those portions of the Trendwest Property proposed for the Resort and (ii) the off-Resort actions and enhancements described in this Agreement.

4. The parties acknowledge that the MountainStar EIS included a cumulative impacts analysis for both the Resort and Cle Elum UGA projects. The parties agree to use this cumulative impacts analysis, and other available information, to determine appropriate on-site and off-site mitigation and enhancement measures in connection with the development of the Trendwest Property.

5. The parties hereby express their desire to establish a cooperative relationship to accomplish their mutual objectives for the Trendwest Property in general and the Cle Elum River Corridor in particular. The parties acknowledge Trendwest's interest in using the Cle Elum River Corridor and other Managed Open Space areas on the MountainStar Property for the recreational purposes of resort guests, as well as the need to pursue ecological objectives for the MountainStar portion of the Trendwest Property in the context of Trendwest's primary interest in promoting the appropriate recreational use of undeveloped areas of the Trendwest Property.

6. The parties hereby express their desire to compromise claims regarding the environmental impacts of Trendwest's proposed development activities on the Trendwest Property as provided in this Agreement.

7. This Agreement addresses cumulative environmental impacts associated with the development of the Trendwest Property disclosed in the MountainStar EIS. Nevertheless, the parties reserve their respective positions as to whether the MountainStar EIS discussed adequate mitigation in connection with those impacts. The parties make no admissions regarding such issues other than that they have agreed that mitigation of those impacts and protection and enhancement of open space and fish and wildlife enhancement should be the subject of this Agreement. In particular, Trendwest's implementation of the mitigation and enhancement measures included in this Agreement will not be deemed an admission by Trendwest that such measures could have been appropriately imposed by Kittitas County in connection with the Resort by the County or imposed by the County or the City of Cle Elum in connection with the Cle Elum UGA project.

## PART B -- DEFINITIONS

For purposes of this Agreement, the term --

(1) "Accommodation Unit" means any chalet, cabin, condominium, single-family detached and multi-family attached residence, hotel or motel unit, time-share unit or recreational vehicle site with power and water located, on the Trendwest Property.

(2) "Cle Elum River Corridor" means the Geomorphic Floodplain area comprised of approximately 1,215 acres of land and depicted on the map attached hereto as Exhibit B. The Cle Elum River Corridor was studied in

Planning Area 11 in the MountainStar EIS, which consists of approximately 1,589 acres of land, of which approximately 1,543 acres will be preserved as permanent open space.

(3) "Conservation Values" means the scenic, cultural, natural resource and recreation values of the Cle Elum River Corridor, as described in Exhibit C, attached hereto and incorporated by reference.

(4) "Consumptive Use" means the estimated or actual annual amount of water diverted pursuant to the water right, reduced by the estimated annual amount of return flows.

(5) "Geomorphic Floodplain" refers to the physical floodplain and includes those areas occupied by a river during post-glacial (Holocene) times and that are subject to inundation by high flows and lateral migration of the modern river.

(6) "Initial Trustees" means the members of the Board of Trustees or their successors appointed by Trendwest, WDFW and the Yakama Nation to fill the three initial trustee positions set forth in Part C.1.

(7) "Land Stewardship Plan" means the plan developed by Trendwest for management of open space areas of the Trendwest Property to achieve specific ecological objectives, including -

(a) retaining and restoring healthy aquatic and upland ecosystems, including native plant and animal communities;

(b) maintaining and enhancing forest health, including species and age diversity and reducing fire hazards and risk of catastrophic fire; and

(c) protecting and enhancing fish and wildlife habitat, focusing specifically on species of special concern such as elk, threatened and endangered species and anadromous fish.

(8) "Managed Open Space" means those portions of the Trendwest property located on the west side of the Cle Elum River and studied in Planning Areas 9 and 10 in the MountainStar EIS, which consists of approximately 1,179 acres of land, of which approximately 1,171 acres will be preserved as permanent open space.

(9) "MPR Approval" means final approval by all appropriate federal, state and local government agencies for all permits necessary to initiate development of the MountainStar Resort, including water rights changes of use, and exhaustion of all appeals or other claims arising under or related to the permits or other approvals.

(10) "UGA Approval" means final approval by all appropriate federal, state and local government agencies for all permits necessary to initiate development by Trendwest within the Cle Elum UGA, including water rights

changes of use, and exhaustion of all appeals or other claims arising under or related to the permits or other approvals.

(11) "West Side Open Space" means undeveloped portions of the Trendwest Property managed by Trendwest or a successor-in-interest and described as "Managed Open Space" in Chapter 2.2.6 of the MountainStar FEIS. A map from the MountainStar EIS showing proposed West Side Managed Open Space areas is attached hereto as Exhibit D.

## **PART C - CLE ELUM RIVER CORRIDOR**

**1. MountainStar Conservation Trust.** -- (a) Trendwest, WDFW and the Yakama Nation agree to participate in the formation and management of a non-profit corporation to be known as the MountainStar Conservation Trust (Trust). The Trust will be expressly empowered to undertake the activities described in this Agreement.

(b) A three-member Board of Trustees will govern the Trust. The Board will consist of --

- (i) one member appointed by Trendwest;
- (ii) one member appointed by WDFW; and
- (iii) one member appointed by the Yakama Nation.

(c) The Board may agree to increase its size, but only upon a majority vote of the Board and unanimous approval of the Initial Trustees, as documented by an instrument bearing the signatures of each of the Initial Trustees.

(d) Trendwest will be responsible for preparing articles of incorporation and bylaws for the Trust, subject to the review and approval of WDFW and the Yakama Nation, which cannot be unreasonably withheld. The articles of incorporation and bylaws will provide that the Board of Trustees make decisions by consensus of all the Trustees except as otherwise provided in this Agreement. Decisions to assure compliance with conservation easement provisions, including legal action to enforce easement terms, may be authorized by a majority vote of the Initial Trustees.

## **2. MountainStar Conservation Trust Purposes.** --

(a) On the Trendwest Property, the purposes of the Trust are --

- (1) to own a Conservation Easement as described below over the Cle Elum River Corridor;
- (2) to own Conservation Easement(s) as described below over West Side Open Space areas; and
- (3) to monitor and take action to enforce compliance with restrictions on use contained in the Conservation Easements.

(b) Off the Trendwest Property, the purposes of the Trust are --

(1) to acquire water rights in the upper Yakima River Basin --

(A) to increase instream flows to protect and enhance anadromous fish and other aquatic resources in the upper Yakima River and its tributaries; or

(B) to reduce consumptive uses of water in the upper Yakima River and its tributaries for the benefit of downstream uses; and

(2) to undertake other activities to protect and enhance scenic, cultural, natural resource and recreation values within Kittitas County. These may include owning and managing Conservation Easements and other interests in property to protect and enhance open space and fish and wildlife habitat. For purposes of this paragraph, the Trust will have as a priority the acquisition of riparian and other significant habitat that contributes to the fish and wildlife of the upper Yakima River Basin.

(c) In general, the purposes of the Trust will include --

(1) activities that are necessary to secure and maintain status as a qualified conservation organization within the meaning of the Internal Revenue Code;

(2) educational and interpretive programs related to environmental education; and

(3) such other activities as the Initial Trustees by unanimous approval may deem appropriate.

(d) **General Limitation.** -- The Trust will have the capacity to monitor and protect its interests in property, to execute and enforce contracts and other legal obligations, and to bring legal actions regarding its Conservation Easements or other interests in real property. The Trust is prohibited, however, from taking any action, including commenting or filing appeals, or opposing, hindering, challenging or otherwise attempting to delay the timely development of the MPR or UGA portions of the Trendwest Property; and provided further, that the Trust will be prohibited from bringing legal actions against Trendwest related to Trendwest's Land Stewardship Plan except to the extent implementation of the Plan is inconsistent with Conservation Easements held by the Trust on portions of the Trendwest Property.

**3. Conservation Easement.** -- Trendwest will convey to the Trust a Conservation Easement for the Cle Elum River Corridor. The Conservation Easement will contain express deed restrictions and a reservation of specific rights by Trendwest as provided in this section. Trendwest will convey the MPR portion of the Conservation Easement to the Trust, comprising approximately 1,071 acres, no later than 90 days following

MPR Approval. Trendwest will convey the Cle Elum UGA portion of the Conservation Easement to the Trust, comprising approximately 144 acres, no later than 90 days following Cle Elum UGA Approval. WDFW and the Yakama Nation will have the right to approve the form of the Conservation Easement conveyed to the Trust for compliance with the terms and purposes of this Agreement, which cannot be unreasonably withheld.

(a) **General Provisions.** -- The Conservation Easement will require that Trendwest manage the Cle Elum River Corridor at its own expense and in a manner that protects the Conservation Values of the Cle Elum River Corridor, consistent with the terms and conditions of the Conservation Easement. Management of the Cle Elum River Corridor by Trendwest will include providing maintenance, security and interpretive and educational programs. Any interests in real property held by the Trust may not be conveyed to Trendwest or its successor-in-interest except by unanimous approval of the Trust Board, and the articles of incorporation may not be amended to eliminate this provision except by unanimous approval of the Initial Trustees. Upon any unanticipated dissolution of the Trust or its Board, the interests in real property and funds held by the Trust will be conveyed and transferred to a qualified conservation organization, to be selected by unanimous approval of the Initial Trustees, that agrees to hold such interests in real and personal property for purposes consistent with the Conservation Easement and its restrictions, as well as the reservation of rights by Trendwest described below.

(b) **Restrictions.** -- The Easement will include a specific list of deed restrictions that constrain the use of the Cle Elum River Corridor Property to protect the Conservation Values of the Cle Elum River Corridor and as provided in this section. These restrictions will include the following:

(1) no residential units;

(2) no motorized vehicles used for recreation or other purposes unrelated to governmental or property management functions or not otherwise required in MPR Condition C-13, contained in Kittitas County's "MountainStar Conditions for Approval" (October 10, 2000);

(3) no riprapping of river banks, except that riprap may be placed to the extent necessary in association with bridge and utility crossings of the Cle Elum River built in accordance with the reservation described in subsection (c)(2)(C), or if riprap is required to prevent major erosion in the vicinity of the Bullfrog Gravel Pit.

(4) no impermeable trails or other ground surfaces unless authorized under subsection (c)(2)(C) of this part or otherwise agreed to by the Trust;

(5) no mining or gravel extraction in the Cle Elum River floodplain; and

(6) no forest management activity, firewood harvest or other removal of

dead or down wood except for purposes of fire protection, public health or safety, or other purpose approved by the Trust Board that is described in the Land Stewardship Plan.

(c) **Reservations.** -- The Conservation Easement will reserve for Trendwest all rights accruing from its ownership of the Cle Elum River Corridor that are not restricted under subsection (b) or otherwise inconsistent with the purposes of this Agreement, including, but not limited to --

(1) the right to manage the Cle Elum River Corridor in accordance with the Land Stewardship Plan and MPR permit conditions, and consistent with the Conservation Easement and this Agreement; and

(2) the right to use the Cle Elum River Corridor for the following purposes:

(A) equestrian use and other recreational activities, except at times and locations where such activities would cause significant or material harm to or interference with salmon passage, spawning or rearing in the Cle Elum River;

(B) construction of interpretative, equestrian activity and other casual recreation structures, picnic facilities and permeable recreation trails, at locations described in the Land Stewardship Plan and which do not cause significant or material harm to or interference with salmon passage, spawning or rearing in the Cle Elum River;

(C) construction and maintenance of bridge and utility crossings of the Cle Elum River and associated bridge approaches, at locations described in a County-approved site development plan or other legally operative document(s), which do not cause significant or material harm to or interference with salmon passage, spawning or rearing in the Cle Elum River and which, to the fullest extent practicable, avoid adverse impacts on stream and floodplain morphology; provided, however, that such bridges, bridge approaches, utility crossings and associated structures, including riprapping, will not materially constrict the stream channel or impede the flow of ordinary high water; and provided further that this reservation will be subject to all federal, state and local laws applicable to permitting and approving the location and construction of such bridge and utility crossings and to approval by the Yakama Nation, which approval cannot be unreasonably withheld; and

(D) construction and operation of a welcoming and interpretative facility serving the interests of the Trust and Trendwest's property promotion at a location east of Bullfrog Road that does not cause significant or material harm to or interference with salmon passage, spawning or rearing in the Cle Elum River, the selection of which will be chosen by Trendwest and approved by WDFW and the Yakama Nation,

which cannot be unreasonably withheld.

**4. Planning Area 11 Management.** - Trendwest agrees to manage the area contained in Planning Area 11 located outside the conservation easement area under the same restrictions that apply to the area within Planning Area 11 that is subject to the conservation easement described in section 3. Management activities in these areas will be consistent with the objectives for the Land Stewardship Plan contained in Part B(6).

#### PART D - FUNDING

**1. Nature of Trust Funding From Trendwest.** - Trendwest and the Trust will work cooperatively to solicit public funding for the Trust, so that the Trust might benefit from the marketing resources and expertise of Trendwest. Trendwest also will contribute financially to the Trust as provided in this section. The goal of Trendwest's funding commitment is to ensure that the Trust has a minimum of \$70,000 in available funding (in year 2000 dollars) for each year of operation.

(a) The amount of Trendwest's annual contribution to the Trust, in the first 15 years of operation of the Trust, will be as follows:

Year	Unit Assessment Equivalent	Trendwest Grant	Trendwest Loan	Repayment	TOTAL
1	\$ 12,000	\$25,000	\$ 33,000	--	\$ 70,000
2	18,000	25,000	27,000	--	70,000
3	24,000	25,000	21,000	--	70,000
4	30,000	25,000	15,000	--	70,000
5	36,000	25,000	9,000	--	70,000
6	42,000	25,000	3,000	--	70,000
7	48,000	25,000	--	(\$ 3,000)	70,000
8	54,000	25,000	--	( 9,000)	70,000
9	60,000	25,000	--	(15,000)	70,000
10	66,000	25,000	--	( 21,000)	70,000
11	72,000	25,000	--	( 27,000)	70,000
12	72,000	25,000	--	( 27,000)	70,000
13	72,000	--	--	( 2,000)	70,000
14	72,000	--	--	( 2,000)	70,000
15	72,000	--	--	( 2,000)	70,000
Total	\$ 750,000	\$ 300,000	\$ 108,000	\$ 108,000	\$ 1,050,000

(b) "Accommodation Unit Assessment Equivalent" Funding to Trust. -- Beginning with the first year of the existence of an established Trust as contemplated by this Agreement, and continuing in perpetuity thereafter,

Trendwest will contribute funding to the Trust that is equivalent to a "Accommodation Unit Assessment" as provided in this subsection.

(i) The initial "Accommodation Unit Assessment Equivalent" will be \$12 per year for each accommodation unit. This assessment equivalent will be adjusted for inflation every five years, based on changes in the Consumer Price Index for All Urban Consumers, West Region, published by the Bureau of Labor Statistics, U.S. Department of Labor (the "CPI-U"). The Accommodation Unit Assessment Equivalent will be adjusted by the percentage by which the CPI-U, West Region, has increased or decreased in the previous five-year period.

(ii) The Accommodation Unit Assessment Equivalent will apply to accommodation units approved on both the Resort and Cle Elum UGA portions of the Trendwest Property.

(iii) The Trendwest Accommodation Unit Assessment Equivalent funding obligation will commence as accommodation units are qualified as provided in this section, subject to the minimum financial guarantees described in this Part.

(iv) For individually-owned chalets, cabins and single-family detached residences, an Accommodation Unit will be considered "qualified" for purposes of this section when the sale of an individual affected lot has been closed. For all other accommodation units, an Accommodation Unit will be considered "qualified" for purposes of this section when all necessary certificates of occupancy with respect to such unit have been issued.

(v) The parties assume for purposes of this Agreement that a total of 6,000 accommodation units will be qualified by the County or the City of Cle Elum in the combined MountainStar and Cle Elum UGA portions of the Trendwest Property during the first 15 years of the operation of the Trust, at a rate of 1,000 units in the first year and 500 units per year during each year thereafter. Trendwest agrees that its Accommodation Unit Assessment Equivalent funding obligation will be based (on a cumulative basis) on actual units qualified or a total 500 new units qualified each year for twelve years, whichever is greater. Thereafter, the Accommodation Unit Assessment Equivalent will continue in perpetuity, based on the actual number of total accommodation units qualified or 6,000 units qualified, whichever is greater. The Accommodation Unit Assessment Equivalent amounts also will be subject to inflationary adjustments every five years as provided in subsection (a)(i).

(vi) Trendwest will be solely responsible for determining how the Accommodation Unit Assessment Equivalent will be collected for payment to the Trust. For example, the amount may or may not be



collected as the result of an actual assessment levied by Trendwest on individual accommodation units located on the Trendwest Property. In any event, payments under this subsection will be appropriately secured by Trendwest.

(c) **Interest-Free Loans.** -- Trendwest will loan to the Trust the amount shown in subsection (a) if the Accommodation Unit Assessment Equivalent is the same as or less than the amount shown in subsection (a). Trendwest may, if the Accommodation Unit Assessment Equivalent exceeds the amount projected in subsection (a), make adjustments in the amounts loaned or in the schedule of repayment equivalent to the surpluses and their date of receipt. Any loans provided by Trendwest under this subsection will be interest free. Repayment will occur according the schedule shown in subsection (a) unless acceleration occurs due to the possible surpluses described above.

(d) **Direct Grant Funding.** -- Trendwest also will contribute direct funding to the Trust in the form of grants totaling up to \$300,000, at a rate of \$25,000 each year, over the first twelve years of the operation of the Trust. Grant funds provided under this subsection may be expended only as payment of the purchase price for the acquisition of water rights as provided in Part C.2(b) of this Agreement unless the Trust Board votes unanimously to expend some or all of the grant funds provided under this subsection on other Trust purposes.

**2. Permissible Uses of Trendwest Funding.** -- Subject to the limitation described in Section 1(d) in connection with the use of Trendwest grant dollars to acquire water rights, the Trust can spend Trendwest-contributed funds only for the following purposes:

(a) administration of the Trust, including retention of an executive director;

(b) fundraising;

(c) monitoring and enforcement of its Conservations Easements (both on the Resort site and off the Resort site) and other off-site property rights; and

(d) acquisition of other conservation easements, development rights, water rights or other interests in real property in the upper Yakima River Basin for the enhancement of fish and wildlife habitat, and for the preservation of floodplains, open space and instream flows. After the first two years of the operation of the Trust, the Trust must spend at least 75 percent of its funds on acquisition or maintenance of real property interests.

## PART E - WEST SIDE OPEN SPACE

### 1. Open Space Preservation. --

(a) The parties acknowledge that portions of the MountainStar property located on the west side of the Cle Elum River ("West Side") will be developed

during the Resort build-out period in accordance with the MountainStar permit conditions. The parties also expect and intend that significant portions of the West Side be retained as Managed Open Space in order to meet the recreational and other needs of the Resort and to function as important wildlife habitat. Excluding the protected Cle Elum River Corridor, there are approximately 2,336 acres located on the West Side of the MountainStar portion of the Trendwest Property. Trendwest will maintain no fewer than 1,171 acres located on the west side of the Resort portion of the Trendwest Property as Managed Open Space at full Resort build-out.

(b) Except as otherwise provided in the Conservation Easement(s) described below, West Side Open Space areas will be managed by Trendwest in accordance with the Land Stewardship Plan. In order to retain appropriate flexibility to adaptively address the needs of both the Resort and fish and wildlife, however, the parties agree that the precise location of West Side Open Space will be determined during MountainStar build-out in conjunction with the County's approval of site development plans submitted by Trendwest for individual Resort phases or sub-phases. With the agreement of the Trust Board, and subject to County approval if necessary, West Side Open Space requirements under this Part may be satisfied on an acre-for-acre basis through the acquisition by Trendwest and conveyance to the Trust of ownership or conservation easements to lands adjacent to the Trendwest property; provided, however, that nothing herein will alter Trendwest's obligations related to acquisition by the Trust of ownership or development rights to at least 1,500 acres of land off the resort property as provided below. Likewise, site development plans submitted by Trendwest for a particular Resort phase or sub-phase will be consistent with Trendwest's overall West Side Open Space commitment.

(c) As Kittitas County identifies and approves West Side Open Space areas pursuant to individual site development plans for particular Resort phases or sub-phases, Trendwest will promptly convey Conservation Easements in a form consistent with this Agreement for such West Side Open Space areas to the Trust. Each Conservation Easement will include appropriate deed restrictions and reservations of rights by Trendwest that preclude the construction of housing units or golf courses within such Managed Open Space areas, but which allow Managed Open Space areas to be fully utilized for other recreational (e.g. equestrian and hiking trails) and forest practice activities consistent with the Land Stewardship Plan. The form of such Conservation Easement(s) will be subject to approval by Trendwest, WDFW and the Yakama Nation, which cannot be unreasonably withheld, prior to County approval of the first MountainStar phase or sub-phase that includes West Side Open Space.

2. **Evaluation Process.** -- Progress toward the goal of no net impact to fish and wildlife habitat, taking into account all Resort site and off-site enhancement measures, will be evaluated at least every five years during Resort build-out. The evaluation will

include review by a Technical Advisory Team ("TAT") established by Trendwest and composed of WDWF, the Yakama Nation, and other agencies or entities with relevant interests and expertise chosen by Trendwest. Following each evaluation, Trendwest and the TAT will meet and confer to consider adaptive management measures, such as amendments to the Land Stewardship Plan or the determination of the precise location of Managed Open Space areas to be proposed in subsequent phases or sub-phases of MPR construction, that could be taken to help ensure that the original intentions of the Plan are achieved, and to take advantage of reasonable and prudent improvements in that Plan that could improve the Plan's ability to achieve its purposes. However, all final decisions, including with respect to amendments to the Land Stewardship Plan that are not otherwise inconsistent with this Agreement, and the location of Managed Open Space areas within MountainStar, will be made by Trendwest.

**3. Trust Acreage Targets.** -- In addition to the cooperative approach to evaluating the success of Trendwest's stewardship efforts pursuant to its Land Stewardship Plan, the parties agree that a general goal for the Trust (or Trendwest as provided below) will be to acquire ownership or development rights in at least 1,500 acres of land off the Trendwest Property during the period of full MountainStar build-out, subject to the following intermediary targets and conditions:

(a) Trendwest will increase the Accommodation Unit Assessment Equivalent if the Trust (or Trendwest) does not make satisfactory progress towards off-site mitigation, measured by the success of the Trust (or Trendwest) in acquiring land and interests in land, including water rights, that further the purposes of the Trust. Trendwest will increase the Accommodation Unit Assessment by 50 percent if, after five years from MPR Approval, the Trust has not acquired fee ownership or conservation easements including development rights to at least 250 acres of off-site lands. Trendwest will increase the Accommodation Unit Assessment Equivalent by an additional 50 percent if, after ten years following MPR Approval the Trust has not acquired fee ownership or such conservation easements to a cumulative total of at least 500 acres of off-site lands. Additional 50-percent increases may occur 15 years following County approval of MountainStar if on the same basis a cumulative total of at least 750 acres of off-site lands has not been acquired, and 20 years following County approval if on the same basis a cumulative total of at least 1,000 acres has not been acquired.

(b) For purposes of meeting this Trust off-site acreage goal, a conservation easement acquired by the Trust (or Trendwest) off the Trendwest Property will count toward the 1,500-acre acquisition goal if the easement furthers the purposes of the Trust. The source of funds (e.g. Trust, Trust contributor or granting agency, Trendwest) for such acquisitions will be irrelevant for purposes of determining the extent of Trendwest's obligations under this Part. Expenditures by the Trust (or Trendwest) to acquire water rights using funds provided by Trendwest in excess of the amount provided under Part D.1(c) will

be credited as acquisition of acreage at a rate to be agreed to by the Trust and Trendwest at or before such acquisition.

(c) Water rights and off-site acreage acquired (outright or through conservation easements) by Trendwest may be credited directly to acreage targets of the Trust if they are transferred by Trendwest to the Trust without further consideration.

(d) If at any time, and regardless of the source of funding, the Trust has acquired fee ownership or conservation easements to 1,500 off-site acres, the perpetual funding obligation of Trendwest will revert (if previously adjusted under subsection (a)) to the "annual assessment" amount described in Part D.1, including inflationary adjustments as appropriate.

(e) Any or all rights of WDFW or the Yakama Nation to seek an increase in funding under this Agreement pursuant to this Part may be assigned to the Trust.

(f) All the provisions related to increases in Trendwest funding support for the Trust described in subsection (a) will not apply if the Trust acquires ownership of, or the development rights for, the Heart K Ranch.

(g) Trendwest will receive credit towards accomplishment of the Trust acreage goal described in section 3 -

(i) for each acre of West Side Open Space in excess of Trendwest's minimum West Side Open Space acreage commitment of 1,171 acres that is preserved by Trendwest in the manner described in section 1; and

(ii) if demonstrated through the Land Stewardship Plan evaluation process described in section 2 (in a manner to be agreed to by the parties), for fish and wildlife habitat improvements within the MPR portion of the Trendwest Property that are in excess of those predicted in the original Land Stewardship Plan.

## **PART F - HUMAN-WILDLIFE INTERACTIONS**

**1. Indemnification.** - (a) Except to the extent otherwise provided in subsection (b), Trendwest will hold harmless and indemnify WDFW to the maximum extent permitted by law from any and all injury or damage claims not the result of WDFW negligence related to incidents involving wildlife on the MPR portion of the Trendwest Property.

(b) To the maximum extent permitted by law, Trendwest will impose covenants, conditions and restrictions (CC&Rs) on Resort property owners requiring such owners to agree not to make any claims against WDFW related to damages or harms caused by wildlife or large game animals within the MPR portion of the Trendwest Property. The CC&Rs also will advise property owners to whom the CC&Rs apply that issues, conflicts or concerns they may have with

wildlife should be addressed to Trendwest, which will work with WDFW as described in Section 2.

**2. Wildlife Management.** -- Trendwest, in cooperation with WDFW, will develop and implement MountainStar wildlife management protocols to be memorialized in a memorandum of agreement between Trendwest and WDFW. These protocols will contemplate, in circumstances other than those which present or appear to present an imminent threat to human safety, that lethal force will be used against such wildlife only as a last resort and then only following consultation with WDFW (if such consultation is possible under the circumstances). Except where needed to respond to what appears to present an immediate threat to human safety, WDFW, on behalf of Trendwest, will primarily be responsible for relocating or lethally removing wildlife from the MPR portion of the Trendwest Property. Trendwest agrees to reimburse WDFW for its reasonable costs, including staff, associated with such wildlife relocation or removal, or other response costs incurred by WDFW arising from human-wildlife conflicts within the resort. Trendwest agrees to pay to WDFW the civil restitution amount prescribed in RCW 77.21.070 for any wildlife it unilaterally uses lethal force against in contravention of this section. Trendwest will not be responsible for the payment of any civil restitution amount if lethal removal is used for reasons and in a manner contemplated by the management protocols developed by Trendwest in consultation with WDFW regarding wildlife management.

#### **PART G - OFF-SITE DEVELOPMENT POLICIES**

**1. Offsite Housing.** -- Trendwest may need to assist other developers in the mitigation of Trendwest housing impacts. Trendwest will condition its assistance to minimize environmental impacts from the development of this housing. For example, one condition would be that development must occur outside of the floodplain.

**2. Construction Impacts.** -- Trendwest will agree not to purchase sand, gravel or construction aggregate for the MPR or the Cle Elum UGA that have been mined from a Geomorphic Floodplain area if such products can feasibly be obtained from alternative sources. Trendwest will include the same condition in contracts with contractors and subcontractors supplying sand, gravel and construction aggregate to Trendwest and, to the fullest extent practicable, will encourage Resort and UGA property owners to purchase sand, gravel and construction aggregate that have been mined outside Geomorphic Floodplain areas. The parties agree to support efforts by Trendwest, within the constraints otherwise imposed by law, to find alternative sources for sand, gravel and construction aggregate and, if necessary, to develop processing facilities for such products.

## PART H – DEVELOPMENT APPLICATION APPROVALS

1. **WDFW and Yakama Nation Appeals.** – As consideration for the commitments made by Trendwest under this Agreement, --

(a) WDFW and the Yakama Nation will agree not to challenge the adequacy of Kittitas County's EIS for MountainStar. Based on an assumption that the EIS for the Cle Elum UGA will in good faith attempt to adequately describe impacts and alternatives and respond to comments provided by WDFW or the Yakama Nation in the DEIS process, and provided that development proposals in the Cle Elum UGA generally are consistent with assumptions about development contained in the MountainStar EIS cumulative impact analysis, WDFW and the Yakama Nation also agree that they will not file appeals or otherwise challenge the adequacy of the EIS being prepared in connection with the Cle Elum UGA by the County and the City of Cle Elum with regard to the adequacy of the EIS related to water supply, fish and wildlife and floodplain resources. WDFW and the Yakama Nation agree, that in commenting on the DEIS for the UGA, they will meet with Trendwest if requested to discuss comments and possible responses. WDFW and the Yakama Nation agree not to challenge any methodology employed in connection with the Cle Elum UGA EIS that is functionally equivalent to that used in connection with the MountainStar EIS regarding water supply, fish and wildlife and floodplain resources; and

(b)(i) WDFW and the Yakama Nation agree, subject to (ii), below, to withdraw pending and forego future legal challenges to permitting for, or timely development of, the MPR if the development is consistent with this Agreement.

(ii) With respect to water right matters, the Yakama Nation agrees to forego appeals of the decisions of the Washington State Department of Ecology ("Ecology") on those water rights change of use or transfer applications identified in Exhibit E, subject to the resolution of concerns raised during Ecology's review and processing of the change of use applications to the satisfaction of the Yakama Nation; provided further that nothing herein can be construed to bind or obligate WDFW or the Yakama Nation with regard to material changes to those applications or other water rights matters; provided further that nothing herein can be construed to bind or obligate Ecology in any manner whatsoever.

2. **General Conditions.** - Trendwest's obligations under this Agreement are contingent on MPR Approval.

## PART I -- GENERAL PROVISIONS

1. The parties recognize that this Agreement anticipates a long-term cooperative relationship between Trendwest, WDFW and the Yakama Nation, and the parties agree that they will approach that relationship and their individual performances under this Agreement in good faith. Where additional agreements are contemplated or become clearly necessary, the parties will cooperatively pursue such further agreements or, if needed, seek appropriate mediation that seeks to implement the letter and purposes of

this Agreement. Disputes arising under this Agreement will be addressed first by informal processes where the dispute is identified and the party explains why it believes a dispute exists.

2. The parties agree that specific performance is a proper remedy for violations of this Agreement where damages cannot be readily ascertained. In the event of a dispute, each party will bear its own attorneys' fees and costs.

3. The parties recognize that WDFW is an agency of the State of Washington and has only those powers and authorities expressly granted or necessarily implied by statute, and that the parties intend that this Agreement be interpreted in ways that do not violate any limits on WDFW powers, and that it be interpreted to avoid any violation of state law or *ultra vires* actions by WDFW. WDFW specifically reserves its authority under state laws relating to hydraulic project approvals, and will process any future applications by Trendwest in good faith according to generally applicable law and the material facts then presented.

4. This Agreement is subject to the requirements of applicable federal, state, tribal law and treaties. Nothing herein will act to waive, abrogate, diminish, define or interpret the Treaty rights of the Yakama Nation.

5. This Agreement is intended to compromise and settle certain issues between and among the parties and is not intended by any party to be an admission as to any fact or legal principle.

6. Nothing in this Agreement will constitute authorization to Trendwest to represent to any other person that the Yakama Nation endorses any aspect of the MountainStar Master Planned Resort or the development of Trendwest properties within the Cle Elum UGA.

7. This Agreement does not invalidate any and all prior agreements among or between the parties except as expressly specified therein. No amendment, modification or waiver of any of the provisions of this Agreement, or subsequent agreements, which the parties have agreed or negotiated concerning the agreement, will go into effect unless set forth in a separate written instrument signed hereinafter by the parties to be bound thereby.

8. Nothing herein is intended to create a cause of action or other rights for third parties not signatories to the Agreement nor is any such party intended to be a third party beneficiary of the Agreement. Nothing in this agreement waives the sovereign immunity otherwise held by any party to this Agreement. Nothing in this agreement will act or be interpreted to grant or restrict the jurisdiction that federal or state courts otherwise may have over matters relating to the Yakama Nation.

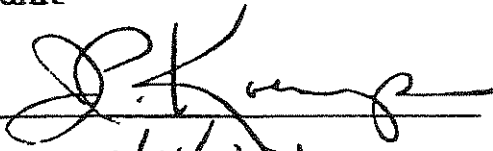
9. No party would be liable for, or considered to be in breach of or default under this agreement on account of any delay or failure to perform as required under the Agreement as a result of any cause or condition beyond the party's control.

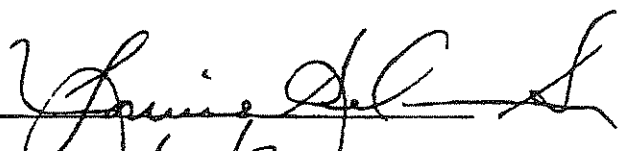
10. This Agreement is binding upon and inures to the benefit of the parties and their respective heirs, personal representatives, assigns and other successors-in-interest.

11. This Agreement is drafted jointly by the parties following negotiations among them. It will be construed according to its terms and not for or against any party. Unless the parties otherwise agree, the Agreement will be rendered null and void if any provision of the final Agreement is held to be invalid or unenforceable for any reason.

Washington Department of Fish and  
Wildlife

Yakama Nation

By:   
Dated: 1/4/2001

By:   
Dated: 12/20/2000

Trendwest Resorts, Inc.


By:   
Dated: 12/27/2000

Exhibit A - Trendwest Property (map)

Exhibit B - Cle Elum River Corridor (map)

Exhibit C - Conservation Values

Exhibit D - West Side Open Space

Exhibit E - Trendwest Yakima River Water Rights



## EXHIBIT C -- CONSERVATION VALUES

The Cle Elum River Corridor is depicted in Exhibit B to the Cooperative Agreement between the Washington Department of Fish and Wildlife, Yakama Nation, and Trendwest, and consists of approximately 1,215 acres of land, of which approximately 1,169 acres will be preserved as permanent open space through a Conservation Easement (Easement). The purpose of the Easement is to preserve and protect possesses scenic, cultural, natural resource and recreation values (collectively, "conservation values") in the Cle Elum River Corridor, which are of great importance to the people of Kittitas County, residents of the State of Washington, the Yakama Nation, and Trendwest. The terms of the easement are to be construed so that, at a minimum, the following conservation values are preserved and protected:

**Fish and Fish Habitat.** -- The Cle Elum River and its tributaries within the Cle Elum River Corridor support a number of resident and anadromous fish species. Anadromous species include spring chinook salmon and may include steelhead trout. Resident fish include rainbow trout, cutthroat, eastern brook trout, bull trout, and mountain whitefish. The river provides habitat that is important for fish passage, spawning and rearing. Fish habitat within the Cle Elum River Corridor is relatively intact and water quality is excellent. Instream habitat in the Cle Elum River Corridor is classified as a Washington State Priority Habitat.

Fish passage, spawning and rearing is related to the magnitude and timing of flows in the Cle Elum River and its tributaries and the degree to which the flows conform to the regimes in which the species were presumptively evolved.

The alluvial floodplain of the Cle Elum River Corridor is a matrix of gravels and finer materials transported by the flow of the river from upstream sources. Significant river channel migration occurs in the Cle Elum River Corridor. As the channels migrate, gravel deposits are left in place. The spaces between the rocks in the gravel deposits serve as pathways for subsurface water flow. Interactions between the river the hyporheic zone benefit the river by moderating streamflow and water quality, especially temperature, and by producing food important to salmonids and other native fishes. The continuation of the fluvial processes that drive channel migration and shape the floodplain, and the limitation of

anthropogenic changes to those processes, is fundamental to the protection of fish habitat.

**Wildlife and Wildlife Habitat.** -- The entire Trendwest Property includes habitat for a vast array of wildlife species, including 90 species of birds and 60 mammal species. Certain types of species are found only in the Cle Elum River Corridor, while others use the Cle Elum River Corridor only occasionally. Within the Cle Elum River Corridor, bird species include bald eagle, great blue heron, osprey, and several species of hummingbirds, jays, sparrows, warblers and woodpeckers. Mammals include beaver, deer, elk, porcupine, raccoon and skunk. The Cle Elum River Corridor includes aquatic habitat for amphibians such as bull frogs, newts, salamanders and tree frogs. During spring and fall migration, migratory waterfowl, including Canada geese and a variety of ducks, use the Cle Elum River Corridor. The Cle Elum River Corridor is essential habitat for elk, which use the Corridor as winter habitat and as a migration route to habitat outside of the corridor. Riparian habitat in the Cle Elum River Corridor is classified as a Washington State Priority Habitat.

**Plants.** -- Riparian forests within the Cle Elum River Corridor are dominated by deciduous tree species (hardwoods) such as red alder, black cottonwood, quaking aspen, and willows. Riparian conifer forests including grand fir and western red cedar are often adjacent to hardwood zones. The understory includes a wide variety of native and exotic shrubs such as red osier dogwood, hawthorns, young willows, and a variety of berries.

**Wetlands.** -- The majority of wetlands on the Property are associated with the Cle Elum River Corridor.

**Recreation.** -- The Cle Elum River Corridor is used for a variety of non-motorized recreational activities.

**Cultural Resources.** -- The Cle Elum River Corridor has been used by Native American predecessors to the Yakama Nation for at least the last 10,000-12,000 years. Native villages and camps are known to have been located along the Cle Elum River and the Cle Elum River Corridor includes sites of great spiritual, historical, and cultural importance to the Yakama Nation.

# EXHIBIT E - TRENDWEST WATER RIGHTS

## TRENDWEST YAKIMA RIVER WATER RIGHTS

**Prior Claimant:** Pautzke Bait Company  
**Court Claim Number:** 01724  
**Use:** Irrigation of 291 acres and stock water

### Total Trendwest/Pautzke Water Rights

Annual Quantity 6,052.1 ac-ft  
Instantaneous Quantity 27.67 cfs

### Pautzke Bait Company – Hundley Ranch

**Priority Date:** October 30, 1884  
**Point of Diversion:** NW 1/4 SW 1/4 NW 1/4 of Section 3, Twp. 17N, Range 18E, Willamette Meridian (WM).  
**Place of Use:** 67 acres located in S 1/2 SE 1/4 of Section 3, Twp. 17N, Range 18E, WM.  
**Period of Use:** April 1 to October 15 for irrigation, continuous for stock water  
**Annual Quantity:** 1,614.9 ac-ft for irrigation, 6.88 ac-ft for stock water  
**Instantaneous Quantity** 6.87 cfs for irrigation, 0.29 cfs for stock water

### Pautzke Bait Company – Riverside Ranch (south portion)

**Priority Date:** October 30, 1884  
**Point of Diversion:** NW ¼ SW 1/4 NW 1/4 of Section 3, Twp. 17N, Range 18E, WM.  
**Place of Use:** 78 acres located in NW 1/4 SW 1/4 NW 1/4 of Section 3, Twp. 17N, Range 18E, WM.  
**Period of Use:** April 1 to October 15  
**Annual Quantity** 967.2 ac-ft  
**Instantaneous Quantity** 3.9 cfs

### Pautzke Bait Company – Riverside Ranch (north portion)

**Source:** Yakima River  
**Priority Date:** May 6, 1893

Point of Diversion: SE 1/4 SW 1/4 NE 1/4 3 of Section 29, Twp. 18N, Range 18E, WM.

Place of Use: 146 acres located in N 1/2 of Section 3, Twp. 17N, Range 18E, WM.

Period of Use: April 1 to October 15 for irrigation, continuous for stock water

Annual Quantity 1,825.0 ac-ft from April 1 to October 15 for irrigation and stock water; 375.0 ac-ft from October 16 to March 31 for stock water.

Instantaneous Quantity 12.9 cfs from April 1 to October 15 for irrigation and stock water; 1.14 cfs from October 16 to March 31 for stock water.

Source: Reecer Creek

Priority Date: May 30, 1890

Point of Diversion: SW 1/4 SE 1/4 SW 1/4 of Section 34, Twp. 17N, Range 18E, WM.; and N 1/4 corner of Section 3, Twp. 17N, Range 18E, WM.

Place of Use: 146 acres located in N 1/2 of Section 3, Twp. 17N, Range 18E, WM.

Period of Use: April 1 to October 31

Annual Quantity 1,270.0 ac-ft

Instantaneous Quantity 4.0 cfs

## TRENDWEST TRIBUTARY WATER RIGHTS

### Teanaway River

Prior Claimant: Don & Gloria Walker

Court Claim Number: 02255  
(A) 04465  
(A) 04493

Current Use: Irrigation of 137 acres  
Stock water

Period of Use: May 1 to September 15

Annual Quantity: 739.80 acre-feet (irrigation)

Instantaneous Diversion Rate: 2.74 cubic feet per second

Priority Date: June 30, 1883

Point of Diversion: Sec. 26, Twp. 20 N., Range 16 E.

Place of Use: Sec. 26, Twp. 20 N., Range 16 E.

**Prior Claimant:** Don & Gloria Walker  
**Court Claim Number:** 02255  
(A) 04465  
(A) 04493  
**Current Use:** Irrigation of 34 acres  
**Period of Use:** May 1 to September 15  
**Annual Quantity:** 183.60 acre-feet  
**Priority Date:** June 30, 1890  
**Point of Diversion:** Sec. 26, Twp. 20 N., Range 16 E.  
**Place of Use:** Sec. 26, Twp. 20 N., Range 16 E.

**Prior Claimant:** Don & Gloria Walker  
**Court Claim Number:** 02255  
(A) 04465  
(A) 04493  
**Current Use:** Irrigation of 16.8 acres  
**Period of Use:** May 1 to September 15  
**Annual Quantity:** 90.72 acre-feet  
**Instantaneous Diversion Rate:** 0.34 cubic feet per second  
**Priority Date:** June 30, 1898  
**Point of Diversion:** Sec. 26, Twp. 20 N., Range 16 E.  
**Place of Use:** Sec. 26, Twp. 20 N., Range 16 E.

### Swauk Creek

**Prior Claimant:** K. Hartman  
**Court Claim Number:** 01685  
**Current Use:** Irrigation of 20.0 acres  
**Period of Use:** April 1 to October 15  
**Annual Quantity:** 150.0 acre-feet  
**Instantaneous Diversion Rate:** 0.89 cubic feet per second  
**Priority Date:** June 30, 1878  
**Point of Diversion:** Sec. 27, Twp. 20 N., Range 17 E.  
**Place of Use:** Sec. 28 Twp. 20 N., Range 17 E.

**Prior Claimant:** K. Hartman  
**Court Claim Number:** 01685  
**Current Use:** Irrigation of 55 acres  
**Period of Use:** April 1 to October 15  
**Annual Quantity:** 412.5 acre-feet  
**Instantaneous Diversion Rate:** 2.44 cubic feet per second  
**Priority Date:** September 20, 1889  
**Point of Diversion:** Sec. 27, Twp. 20 N., Range 17 E.  
**Place of Use:** Sec. 28 Twp. 20 N., Range 17 E.

**First Creek**  
**(Swauk Creek Subbasin)**

**Prior Claimant:** J.P Roan (FCWUA)  
**Court Claim Number:** 00648  
**Current Use:** Irrigation of 46.07 acres  
**Period of Use:** April 1 to October 15  
**Annual Quantity:** 231.3 acre-feet  
**Instantaneous Diversion Rate:** 1.8 cubic feet per second  
**Priority Date:** November 2, 1877  
**Point of Diversion:** Sec. 30, Twp. 20 N., Range 18 E.  
**Place of Use:** Sec. 17, 20 & 21 Twp. 20 N., Range 18 E.

**Prior Claimant:** J.P Roan (FCWUA)  
**Court Claim Number:** 00648  
**Current Use:** Irrigation of 104.16 acres  
**Period of Use:** April 1 to October 15  
**Annual Quantity:** 522.9 acre-feet  
**Instantaneous Diversion Rate:** 3.2 cubic feet per second  
**Priority Date:** June 1, 1881  
**Point of Diversion:** Sec. 30, Twp. 20 N., Range 18 E.  
**Place of Use:** Sec. 17, 20 & 21 Twp. 20 N., Range 18 E.

**Prior Claimant:** James Nelson (FCWUA)  
**Court Claim Number:** 00648

**Current Use:** Irrigation of 25.49 acres  
**Period of Use:** April 1 to October 15  
**Annual Quantity:** 128.5 acre-feet  
**Instantaneous Diversion Rate:** 1.0 cubic feet per second  
**Priority Date:** November 2, 1877  
**Point of Diversion:** Sec. 30, Twp. 20 N., Range 18 E.  
**Place of Use:** Sec. 17, 20 & 21 Twp. 20 N., Range 18 E.

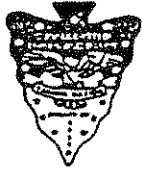
**Prior Claimant:** James Nelson (FCWUA)  
**Court Claim Number:** 00648  
**Current Use:** Irrigation of 57.63 acres  
**Period of Use:** April 1 to October 15  
**Annual Quantity:** 290.5 acre-feet  
**Instantaneous Diversion Rate:** 1.8 cubic feet per second  
**Priority Date:** June 1, 1881  
**Point of Diversion:** Sec. 30, Twp. 20 N., Range 18 E.  
**Place of Use:** Sec. 17, 20 & 21 Twp. 20 N., Range 18 E.

**Big Creek**  
**(Easton Subbasin)**

**Prior Claimant:** Earl E. and Valerie K. Gentry  
**Court Claim Number:** 00755  
**Current Use:** Irrigation of 75.0 acres  
**Period of Use:** May 1 to September 1  
**Annual Quantity:** 360.0 acre-feet  
**Instantaneous Diversion Rate:** 1.50 cubic feet per second  
**Priority Date:** June 30, 1887  
**Point of Diversion:** Sec. 28, Twp. 20 N., Range 14 E.  
**Place of Use:** Sec. 28, Twp. 20 N., Range 14 E.

**Prior Claimant:** Earl E. and Valerie K. Gentry (Ellison)  
**Court Claim Number:** 00755  
**Current Use:** Irrigation of 6.0 acres  
**Period of Use:** May 1 to September 1  
**Annual Quantity:** 31.25 acre-feet  
**Instantaneous Diversion Rate:** .12 cubic feet per second  
**Priority Date:** June 30, 1887  
**Point of Diversion:** Sec. 28, Twp. 20 N., Range 14 E.  
**Place of Use:** Sec. 28, Twp. 20 N., Range 14 E.





ROADS, IRRIGATION, AND  
LAND COMMITTEE

OFFICIAL ACTION

DATE: 12-20-00

( ) ROADS ( ) IRRIGATION ( ) LAND

TOPIC: Cooperative Agreement between YN, Trendwest, and WDFW

RECEIVED  
DEC 20 2000 3:50 PM

TRIBAL COUNCIL  
Y.N.

ACTION REQUESTED: Review and request consideration and approval by Tribal Council of Cooperative Agreement between the Yakama Nation, Trendwest, and Washington Department of Fish and Wildlife.

FORMAL ACTION TAKEN: Committee has reviewed Cooperative Agreement between the Yakama Nation, Trendwest, and Washington Department of Fish and Wildlife, and recommends signature by Chairman and referral to Exec Bd for T-10 Resolution and ratification in January by Tribal Council.

DECISION: APPROVED (x) DISAPPROVED ( ) TABLED ( )

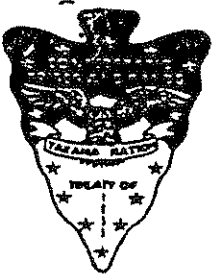
VOTE: TOTAL: 3 FOR: 2 AGAINST: 0 ABSTAINED:       

MEMBERS	COMMITTEE ACTIVITY			
	ROLL CALL	MOTION	SECOND	VOTE
HARRIS TEO, JR. ----- C	P			
E. ARLEN WASHINES ----- S	P	@		for
WILLIAM YALLUP, SR. ----- M	A			
JACK FIANDER ----- M	A			
Ex Officio: <u>Terry Maninick</u>	P		TD	for

COMMITTEE ACTION NUMBER: #20-01

Certification: [Signature]  
CHAIRMAN

NOTES:



RESOLUTION

T-027-01

WHEREAS, the Yakama Nation is a federally recognized Nation pursuant to the Treaty of 1855 (12 Stat. 951), and

WHEREAS, the Yakama Tribal Council is the governing body of the Confederated Tribes and Bands of the Yakama Nation of the Yakama Reservation, by the authority delegated by Resolution T-38-56, and

WHEREAS, Trendwest, Inc. proposes to construct a Master Planned Resort in the Upper Yakima River Basin, within the Ceded Area of the Yakama Nation, and

WHEREAS, Yakama Nation staff and counsel, working under the guidance of the Yakama Tribal Council to protect Yakama Nation resources and resolve issues with Trendwest, have developed a Cooperative Agreement with Trendwest and the Washington Department of Fish and Wildlife (WDFW), and

WHEREAS, the Cooperative Agreement protects the habitat of the Cle Elum River by placing all lands owned by Trendwest in the Cle Elum River flood plain within a perpetual conservation easement which would be owned by a trust with trustees appointed by the Yakama Nation, Trendwest, and WDFW, and

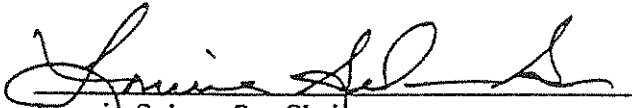
WHEREAS, Trendwest would fund the trust to acquire water rights and conservation easements on critical habitats in the Upper Yakima River Basin to mitigate for impacts of the resort, and

WHEREAS, The Yakama Nation would agree not to appeal local land use and environmental permit decisions on the resort and would agree not to appeal pending water right decisions on the resort so long as concerns raised by the Yakama Nation are met to the Nation's satisfaction.


NOW THEREFORE, BE IT RESOLVED, by the Executive Board of the Yakama Tribal Council, acting under authority delegated by Section III-A of the Rules of Procedures, approved by Yakama Tribal Council Resolution T-10-61, dated July 13, 1960, and meeting at the Governmental Headquarters of the Yakama Nation, Toppenish, Washington, that the Yakama Nation shall enter into the Cooperative Agreement with Trendwest and WDFW described above subject to ratification by the Yakama Tribal Council in regular session.

BE IT FURTHER RESOLVED, that the Yakama Nation does not waive, alter, or otherwise diminish its sovereign immunity, whether expressed or implied, by virtue of enacting this resolution, except as otherwise expressly stated herein, nor does the Yakama Nation waive, alter, or otherwise diminish any rights, privileges, remedies or services guaranteed by the Treaty of 1855.

DONE AND DATED on this 20<sup>th</sup> day of December, 2000, by the undersigned members of the Executive Board of the Yakama Tribal Council.

  
\_\_\_\_\_  
Lonnie Selam, Sr., Chairman  
Yakama Tribal Council

  
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Jerry Meninick, Vice-Chairman  
Yakama Tribal Council

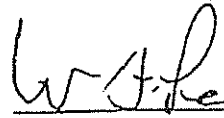
  
\_\_\_\_\_  
Patricia Martin, Secretary  
Yakama Tribal Council

CERTIFICATE OF PRESIDENT  
OF TRENDWEST RESORTS, INC.  
an Oregon Corporation

I certify that I am the duly elected and acting President of Trendwest Resorts, Inc. (the "Company"), a duly organized and existing Oregon corporation.

I further certify that J. Michael Moyer is the duly appointed Senior Vice President of the Company and as such has full authority to sign the Cooperative Agreement between Yakima Indian Nation, Washington State Department of Fish and Wildlife, and Trendwest Resorts, Inc., pertaining to the development of MountainStar Resort property in Kittitas County, Washington, on behalf of the Company.

Dated: December 27, 2000



William F. Pearce, President