

Return Address:

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3 **DEVELOPMENT AGREEMENT**
4 **RELATING TO THE DEVELOPMENT COMMONLY KNOWN AS**
5 **THE MISSION RIDGE EXPANSION**

6 **Grantors/Grantees:** Tamarack Saddle, LLC, a Washington limited liability company,
7 and Chelan County, a Washington municipal corporation
8 **Legal Description (abbreviated):** Sec. 19, T. 21 N., R. 20, E.W.M., and ptn. NE¼ Sec.
9 30, T. 21 N., R. 20, E.W.M., Chelan County, Washington. Additional legal on page __.
10 **Assessor's Tax Parcel ID#:** 21-20-19-000-000 and 21-20-30-100-050

11 THIS DEVELOPMENT AGREEMENT (“Agreement”) is dated, for reference
12 purposes, the ____ day of _____, 2020, by and between TAMARACK SADDLE,
13 LLC, a Washington limited liability company (hereinafter “Tamarack”) and Chelan
14 County, Washington, a Washington municipal corporation (the “County”), pursuant to
15 RCW 36.70B.180 - 210 and Chelan County Code (the “County Code”) Chapter 14.18.010
16 – 050 regarding the development and expansion of the master planned development project
17 commonly known as the “Mission Ridge Expansion” or “The Expansion.” Tamarack and
18 the County are sometimes referred to herein individually as “Party” and collectively as the
19 “Parties.”

RECITALS

1
2 A. To strengthen the public planning process and to reduce the economic costs
3 of development, the Legislature of the state of Washington enacted RCW 36.70B *et. seq.*
4 (the “Development Statute”), which authorizes the County to enter into an agreement
5 regarding the development of real property located within the County's jurisdiction with
6 any person having an ownership interest or control of such real property. The County
7 adopted Chapter 14.18.010 – 050 of the County Code to authorize development agreements
8 under the Development Statute for large, complex, or phased developments within the
9 County.
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12 B. Tamarack is the owner of the real property subject to the Expansion
13 consisting of approximately 502 acres located within Chelan County, as more particularly
14 described in the legal description attached as Exhibit A hereto and incorporated herein by
15 reference (the “Tamarack Property”).
16

17 C. Tamarack desires and intends to develop the Tamarack Property and The
18 Expansion consistent with RCW 36.70B *et. seq* and Chapter 14.18.010 – 050 of the County
19 Code with year-round uses and improvements. These uses and improvements include a
20 mixture of commercial, residential, and recreational opportunities, all as more particularly
21 described in the Mater Planned Resort Overlay and Development Agreement Application
22 attached as Exhibit B and incorporated by reference herein (the “Project Narrative”).
23

24 D. The County has determined that this Agreement is appropriate for the
25 Tamarack Property and The Expansion and therefore desires to enter this Agreement. This
26

1 Agreement establishes planning principles, development standards and procedures to
2 eliminate uncertainty in planning and to guide the orderly development of The Expansion
3 consistent with the County's Comprehensive Plan (the "Comprehensive Plan") and the
4 County Code¹ and to mitigate adverse environmental impacts; to ensure installation of
5 necessary on-site and off-site infrastructure and improvements; to provide for the
6 preservation of permanent open space; to make provision for on-site recreational amenities;
7 to provide for potential future proportionate funding of traffic improvements and other
8 public improvements; to provide for services appropriate to the development of The
9 Expansion; and to otherwise achieve the goals and purposes for which the Development
10 Statute was enacted. Furthermore, development of The Expansion pursuant to this
11 Agreement will result in substantial fiscal benefits to the County, including, but not limited
12 to fees, temporary and permanent local job creation, and tax revenues.

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16 E. Tamarack is entering into this Development Agreement to provide certainty
17 for planning and development of The Expansion, to provide certainty with respect to
18 environmental and fiscal conditions imposed on the development of The Expansion, and
19 to guarantee the Comprehensive Plan designation, zoning designation and development
20 standards for The Expansion so that Tamarack can justify a major financial investment in
21 The Expansion and the Tamarack Property, an investment that must be amortized over
22 several decades of sales and operations at The Expansion. Tamarack could not undertake
23 development of The Expansion without the assurances provided through this Agreement.
24
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¹See Exhibits E-L for reference to all applicable Chapters/Sections of the County Code

1 F. It is understood by the Parties that The Expansion is a private development
2 and that Tamarack shall have full power over and exclusive control of The Expansion,
3 subject only to the limitations and obligations of Tamarack under the County's
4 Comprehensive Plan, County Code, Applicable Law (defined below), and this Agreement.
5 The Parties further understand that neither this Agreement nor Tamarack's development of
6 The Expansion shall be construed as creating any form of agency relationship, joint venture
7 or partnership between Tamarack and the County.
8

9 G. The Parties have undertaken various environmental review and planning
10 actions relating to the development of The Expansion. These actions include, without
11 limitation, the following:
12

13
14 *[list of all relevant review, planning, and actions]*
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16

17 H. In exchange for the benefits to the County described above, together with
18 the other public benefits that will result from the development of The Expansion, Tamarack
19 will receive by this Agreement assurance that it is obtaining vested rights and may proceed
20 with development of The Expansion in accordance with the Development Statute, County
21 Code, and the Applicable Law, and, therefore, Tamarack desires to enter into this
22 Agreement.
23

24 I. On January 17, 2020, Tamarack submitted the Mission Ridge Expansion to
25 the County seeking approval of a Master Planned Development application, Development
26

1 Agreement, SEPA Checklist, and variations to building height requirements as authorized
2 by the Hearing Examiner to amend under Chelan County Code 11.89.050(5). To the extent
3 there is any conflict between the first submittal made on April 12, 2018, and appended on
4 June 20, 2018, the second submittal dated March 1, 2019, and the third submittal made on
5 January 17, 2020 herein referenced, the terms and conditions of the January 17, 2020
6 submittal shall control and be referenced herein as the “Mission Ridge Expansion MPR
7 Application.”
8

9 J. On _____, 2020, the County accepted the Mission Ridge Expansion
10 MPR Application as complete. Pursuant to Washington law and the agreement of the
11 Parties, the completed Mission Ridge Expansion MPR Application vested Tamarack and
12 the Mission Ridge Expansion MPR Application to those laws, policies, ordinances, and
13 regulations, in effect as of _____, 2020 (the “Vesting Date”).
14

15 K. Each Party acknowledges that it is entering into this Agreement voluntarily.
16

17 NOW, THEREFORE, in consideration of the promises, covenants, and provisions
18 set forth herein, the receipt and adequacy of which consideration is hereby acknowledged,
19 the Parties agree as follows:
20

21 **AGREEMENT**

22 **SECTION 1. EFFECTIVE DATE, VESTING DATE, AND TERM**

23 **1.1 Effective Date.** The Effective Date of this Agreement shall be the date of
24 mutual execution of this Agreement by the Parties.

25 **1.2 Vesting Date.** The Vesting date of this Agreement is _____, 2020,
26

1 pursuant to Recital J above.

2 **1.3 Term.** The term referenced in this Agreement (the “Term”) shall commence
3 upon the Effective Date and continue for a period of twenty-five (25) years.
4

5 **1.4 Modification, Extension, and Termination.** This Agreement may be
6 modified, extended, or terminated only upon the written agreement of Tamarack and the
7 County, or as otherwise required by law.

8 **SECTION 2. DEFINITIONS**

9 Unless the context requires a different meaning, any term or phrase used in this
10 Agreement that has its first letter capitalized shall have that meaning given to it by this
11 Agreement. Certain such terms and phrases are defined below; others are defined where
12 they appear in the text of this Agreement, including its Exhibits.
13

14 “Agreement” and “Development Agreement” shall mean this Development
15 Agreement by and Between Chelan County, Washington, and Tamarack Saddle, LLC
16 relating to the development commonly known as the Mission Ridge Expansion, as set forth
17 in the Preamble of this Agreement.
18

19 “Applicable Law” shall have the meaning set forth in Section 4.1(c) of this
20 Agreement.
21

22 “Approved Site Plan” shall mean an approved Preliminary Site Plan as set forth in
23 Section 5.1(f) of this Agreement.

24 “BOCC” shall mean the Board of County Commissioners for Chelan County,
25 Washington.
26

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

2 “Commercial and Cultural Community and Entertainment Uses” shall mean the
3 approximately 110,000 square feet of commercial space and associated parking for day use
4 of The Expansion area. This will include a variety of commercial and entertainment uses
5 including, but not limited to, restaurants, skier services, retail and specialty shops, bars,
6 office space, real estate services, facilities to host recreational events such as weddings and
7 concerts, and conference facilities.
8

9 “Comprehensive Plan” shall mean the Chelan County Comprehensive Plan, as set
10 forth in Recital D of this Agreement.
11

12 “County” shall mean Chelan County, a Washington Municipal Corporation, as set
13 forth in the Preamble of this Agreement.
14

15 “Development Agreement Statute” shall mean RCW 36.70B.170 through .210, as
16 set forth in Recital A of this Agreement.
17

18 “Developed On-Site Recreational Facilities” means indoor and outdoor
19 recreational facilities and uses, and may include, but are not limited to, providing new ski
20 runs that will connect to the existing resort, Nordic trails, hiking and biking trails, and other
21 outdoor recreational activities for year-round enjoyment of the area. Other outdoor
22 recreation opportunities will be explored and may be developed within the resort
23 expansion. These opportunities may include popular and simple trail development for
24 mountain biking and hiking along with improved opportunities for ADA access to
25 mountain experiences. Opportunities for outdoor recreation such as camping, horseback
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1 riding, zip lines, Alpine coasters, may be added as uses within the resort expansion as
2 well.

3 “Development Standards” shall mean the standards controlling development of The
4 Expansion as more specifically described in Section 4.1(d) of this Agreement.

6 “Director of Community Development Services” or “Director” shall mean the
7 Planning Director for the County.

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

11 “Governmental Services” shall mean public services and facilities needed to support
12 The Expansion. This includes provisions for transportation-related facilities,
13 emergency/medical facilities, fire protection, law enforcement/security, waste disposal,
14 and utilities.

15 “Hearing Examiner” shall mean the person designated or authorized by the BOCC
16 to act as the Hearing Examiner for land use and entitlement decisions within Chelan
17 County.

19 “Implementing Entitlements” shall mean any and all lawfully required permits,
20 approvals, licenses, conveyances, dedications, permissions, authority, or other legal
21 entitlement necessary for the development of any and all uses, improvements, utilities,
22 conveyances, or construction upon or for the benefit of the Tamarack Property or The
23 Expansion.
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1 “Infrastructure” shall mean all Utilities, as defined in this Agreement, and roads
2 and bridges.

3 “Major Amendment” shall have the meaning set forth in Section 5.1(e) of this
4 Agreement.
5

6 “Master Planned Resort” means a self-contained and fully integrated master
7 planned development located in a setting of natural amenities, with a primary focus on
8 destination resort facilities consisting of recreational facilities, including, but not limited
9 to, short term visitor accommodations, residential development, commercial facilities,
10 governmental facilities, and cultural community and entertainment facilities, all as more
11 specifically described and incorporated herein on the attached Project Narrative at Exhibit
12 B. A Master Planned Resort may also enter into agreements for shared capital facilities
13 and utilities with outside service providers, including municipalities and special purpose
14 districts, in accordance with the provisions of RCW 36.70A.360, 1998 c 112 § 2.
15
16

17 “Master Planned Resort Accommodation Units” include the following:

18

	Condominiums, Townhomes and Duplexes (Total Units)	Single Family Detached Units	Hotel/ Lodge	Commercial Space/Skier Services	Employee housing
Phase 1	172	102		60,000	
Phase 2	162	50	57	20,000	40*
Phase 3	156	41		18,500	
Phase 4	131	41		11,500	40*
Phase 5	-	41			
Total	621	275	57	110,000	80*

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24 “Minor Amendment” shall have the meaning set forth in Section 5.1(d) of this
25 Agreement.
26

1 “Permitted Uses” shall mean those uses that are expressly permitted within The
2 Expansion as set forth in Section 4.1(d)(2) of this Agreement.

3 “Phase” means one of the five (5) phases within which The Expansion is being
4 developed.
5

6 “Planning Director” shall mean the Director of Community Development Services,
7 or his or her designee.

8 “Processing Fees” shall have that meaning as set forth in Section 4.1(c)(3) of this
9 Agreement.
10

11 “Proportionate Share” shall mean any cost sharing as defined in The Expansion
12 MPR Conditions.

13 “Proposed Site Plan” shall have that meaning set forth in Section 5.1(a) of this
14 Agreement.
15

16 “Recreational Facilities” shall mean new ski runs that will connect to the existing
17 resort, Nordic trails, hiking and biking trails, and other outdoor recreational activities for
18 year-round enjoyment of the area. Trail development for mountain biking and hiking along
19 with improved opportunities for ADA access to mountain experiences and opportunities for
20 outdoor recreation such as camping, horseback riding, zip lines, Alpine coasters, shall also
21 constitute Recreational Facilities.
22

23 “Residential Units” shall include residential units designed for full time living,
24 vacation homes, and for short term visitor accommodations. Residential Units shall also
25 include on-site housing for employees provided for by a dormitory-style structure.
26

1 “SEPA” shall mean the Washington State Environmental Policy Act. Ch. 43.21C
2 RCW.

3 “Short-Term Visitor Accommodations” means dwelling units of all types that
4 may be utilized as vacation homes or short-term visitor accommodations. All short-term
5 visitor accommodations will be managed by the Tamarack or its assigns. As described in
6 the Project Narrative, a 57-unit lodge is also proposed as part of Phase 2. This approach is
7 consistent with Chelan County Code.
8

9 “Subphase” or “Division” means a smaller area within a Phase, and may include
10 one or more subdivisions of land.
11

12 “Subsequent Actions” shall have that meaning set forth in Section 4.1(d)(10(a) of
13 this Agreement.
14

15 “Tamarack” shall mean Tamarack Saddle, LLC, a Washington limited liability
16 company as set forth in the Preamble of this Agreement.
17

18 “Tamarack Property” shall mean the property located within the boundary of The
19 Expansion and more particularly described in the legal description attached as **Exhibit A**
20 of this Agreement.
21

22 “Term” shall mean twenty-five (25) years commencing upon the Effective Date.

23 “The Expansion MPR Permit Conditions” shall mean those conditions of approval
24 on the MPR Development Permit for The Expansion imposed by the BOCC and attached
25 to this Agreement as Exhibit D.
26

1 “Utilities” shall include, but not be limited to, all (i) stormwater and drainage
2 systems and facilities, (ii) sewer systems and facilities, (iii) water systems and facilities
3 (including, but not limited to, pumping and treatment stations, storage reservoirs or tanks,
4 and transmission lines), (iv) electrical substations and transmission lines, (v)
5 telecommunications systems and facilities (including, but not limited to, telephone
6 exchanges and lines, cable, and fiber optic), and (vi) natural gas.
7

8 “Vesting Date” shall be the date contained in Section 1.2 above and shall have the
9 meaning set forth in Section 4.1(a) of this Agreement.
10

11 **SECTION 3. OBLIGATIONS OF TAMARACK AND THE COUNTY**

12 **3.1 Obligations of Tamarack.**

13 (a) **Generally.** The Parties acknowledge and agree that the County's
14 agreement to perform and abide by the covenants and obligations of the County set forth
15 herein is material consideration for Tamarack's agreement to perform and abide by the
16 covenants and obligations of Tamarack set forth herein.
17

18 (b) **MPR Overlay District Application Permit.** Except as otherwise
19 specifically agreed to by the County, Tamarack shall comply with all conditions as set forth
20 in the MPR Overlay District Application Permit (the “MPR Permit”), The Expansion MPR
21 Permit Conditions, and this Agreement.
22

23 **3.2 Obligations of County.** The Parties acknowledge and agree that
24 Tamarack's agreement to perform and abide by the covenants and obligations of Tamarack
25 set forth herein is material consideration for the County's agreement to perform and abide
26

1 by the covenants and obligations of the County set forth herein.

2 **SECTION 4. STANDARDS, LAWS, AND PROCEDURES GOVERNING THE**
3 **EXPANSION**

4 **4.1 Permitted Uses; Applicable Law.**

5 (a) **Vested Rights.** Tamarack shall have the vested legal right to
6 develop The Expansion pursuant to the Applicable Law, as set forth in Section 4.1(c).
7 Tamarack's rights shall vest as of the Vesting Date; provided however, that nothing herein
8 shall limit the County's authority to require additional SEPA review in connection with
9 applications for Subsequent Actions pursuant to Sections 4.1(e) and Section 5 generally of
10 this Agreement. The Parties agree the County shall reserve authority to impose new or
11 different regulations on Tamarack's development of The Expansion to the extent required
12 by a serious threat to public health and safety. The Parties further agree that Tamarack's
13 vested rights under this Agreement may be modified, and that the County may modify the
14 MPR Permit, The Expansion MPR Conditions, or impose mitigation as part of a
15 Subsequent Action based on statutes, rules, regulations, official policies, and standards
16 *other than* the Applicable Law, under the following *limited* circumstances:

17 (1) When the County reasonably believes in good faith that
18 County approval of a Subsequent Action for The Expansion under the terms of this
19 Agreement would result in a decision by a State or Federal administrative agency, or a
20 Court of competent jurisdiction, that the County eligibility for funding, grants, program
21 eligibility or other resources sought by the County would be impaired;

22 (2) When the County reasonably believes in good faith that

1 County approval of a Subsequent Action for The Expansion under the terms of this
2 Agreement would result in a decision by a State or Federal administrative agency, or a
3 Court of competent jurisdiction, that the County unlawfully failed to comply with the
4 Endangered Species Act or other State or Federal laws or regulations in approving the
5 Subsequent Action; or
6

7 (3) When a State or Federal statute or regulation would impose
8 cumulative standards for compliance on an area wide or countywide basis. Modifications
9 under this section shall only be to the extent necessary to address the applicant's
10 proportionate share of such cumulative standard (for example, if new federal water quality
11 standards are adopted with cumulative in-stream standards, stormwater standards for The
12 Expansion may be adjusted to reflect Tamarack's proportional share for correction of the
13 diminished water quality, if any). The County's modification actions under the exceptions
14 listed above shall be limited to the *minimum necessary* to avoid the consequences described
15 in the exceptions. The parties agree that the County shall advise Tamarack when the County
16 believes any such circumstances arise and consult with Tamarack regarding the proposed
17 modifications and shall provide to Tamarack upon request all documentation and other
18 evidence the County has to support its good faith belief. The parties agree to pursue the
19 dispute resolution procedures provided for in this Agreement to resolve any dispute
20 regarding modifications under these exceptions to Tamarack's vested rights. For any of
21 these exceptions to Tamarack's vested rights to the Applicable Law under this Agreement,
22 Tamarack shall have the right, at its sole discretion and expense, to contest any claim or
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1 allegation, or to appeal any administrative decision or judicial determination that would
2 authorize or require the County to modify Tamarack's vested rights under this Agreement.
3 Tamarack may also, at its discretion, agree to indemnify the County for the financial
4 consequences of any final and binding decision of an administrative agency or court of
5 competent jurisdiction in lieu of the County modifying Tamarack's vested rights under this
6 Agreement in response to any such final and binding decision.
7

8 **(b) Permitted Uses and MPR Permit for The Expansion.** The (i)
9 Permitted Uses of The Expansion , (ii) the density and intensity of the use of the Tamarack
10 Property, (iii) the maximum height, hulk and size of proposed buildings, (iv) the provisions
11 for reservation or dedication of land for open space and other common purposes, (v) the
12 location of public utilities, (vi) and other terms and conditions of development applicable
13 to The Expansion shall be as set forth in this Agreement, the MPR Permit, The Expansion
14 MPR Permit Conditions, and the Development Standards set forth in Section 4.1(d) of this
15 Agreement.
16

17 **(c) Applicable Law.** The rules, regulations, ordinances, codes, official
18 policies, laws, standards and specifications in effect and as written as of the Vesting Date
19 that are applicable to and vested in The Expansion are those set forth in the MPR Permit,
20 The Expansion MPR Permit Conditions, and this Agreement, including, but not limited to,
21 those provisions of RCW 36.70A (Growth Management) and 58.17 RCW (Plats,
22 Subdivisions, and Dedications) and the following:
23
24

25 Resolution No. 2007-98 (Exhibit E)
26

- 1 CCC Title 8 Roads and Bridges; Chapters 8.24, 8.25, 8.26 (Exhibit F)
- 2 CCC Chapter 8.24 (Exhibit G)
- 3
- 4 CCC Title 11 Zoning; Chapters 11.02, 11.04, 11.06., 11.08, 11.78, 11.80,
- 5 11.82, 11.86, 11.88, 11.89, 11.90, 11.91, 11.92, 11.93, 11.95 (Exhibit H)
- 6 CCC Title 12 Land Divisions; Chapters 12.02, 12.04, 12.08, 12.10, 12.12,
- 7 12.14, 12.18, 12.20, 12.22, 12.24 (Exhibit I)
- 8 CCC Title 13 Environment; Chapters 13.04, 13.12, 13.14, 13.16, 13.18
- 9 (Exhibit J)
- 10 CCC Title 14 Development Permit Procedures and Administration;
- 11 Chapters 14.02, 14.04, 14.06, 14.08, 14.10, 14.12, 14.16, 14.18, 14.98
- 12 (Exhibit K)
- 13 CCC Title 15 Development Standards; 15.30, 15.40, 15.50, 15.60, 15.70
- 14 (Exhibit L)

14 (collectively, the “Applicable Law”)

15 (c) **Development Standards.** The Development Standards set forth
 16 below shall apply to the development of The Expansion. Tamarack may choose, at its sole
 17 discretion, to impose additional more restrictive development standards through CC&Rs
 18 or other methods. The following Development Standards shall apply to the development
 19 of The Expansion:
 20

21 (1) **Consistency with Applicable Law and Development**
 22 **Agreement.** Development of The Expansion shall comply with (i) all Applicable Law and
 23 (ii) the terms and conditions of this Agreement.

24 (2) **Permitted Uses.** The following uses are permitted uses
 25 within The Expansion:
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Commercial	Residential	Recreational (Also See Commercial Uses)	Government Services and Other Similar Facilities Including Without Limitation	Other
Lodges	single-family dwellings	alpine and/or cross-country skiing	transportation-related facilities	clustered subdivision
Hotels	duplexes	trails	emergency/medical facilities	agricultural uses
Bed and Breakfasts	townhouses	sporting events	Schools (public or private)	forestry uses
Guest Inns	other multifamily or residential dwellings	ball fields	fire protection	machine shop
Time-Share Units	accessory use/structure	tennis or racquetball courts	law enforcement/security	rock crusher, temp use
Rental Cabins	fences		waste disposal and utilities (including substations)	parking garage
Other Similar Transient Lodging Facilities	detached garages			parking lots
Lodging Facilities				swimming pools
Convention and Conference Facilities	residential dwelling units, above ground floor			church
Commercial Amusement/Recreational Facilities				
Accessory Support Facilities				
Restaurants				
Drinking Establishments				
Barber/Beauty Shops				
Specialty shops				
Grocery Stores				
Real Estate Services				
Other Professional Services/Offices				
Gas Station				
Pet Services				

1	Other Such Retail Uses and Services that Provide for the Needs of the Residents and Visitors				
2	Theaters				
3	Amphitheaters				
4	Galleries				
5	Arts and Crafts Centers				
6	Interpretive Centers				
7	Recreation/Tourist Uses				
8	Signs				
9	Home-Based Business				
10	Home Occupation				
11	Private Greenhouse				
12	Winery, Equal to or Less Than 1,500 sq. ft. of Retail Space				
13	Winery, greater than 1,500 sq. ft. of retail space				
14	Daycare Center/Preschool				
15	Places of Public and Private Assembly				

14 (3) **Phasing.** The development of The Expansion and all
15 associated infrastructure, including roads and bridges, and capital facilities, utilities and
16 services (including water supply and wastewater treatment facilities and services), may be
17 approved and constructed and/or bonded in Phases or Subphases. Development may be
18 reviewed, approved and permitted individually through the Proposed Site Plan, Approved
19 Site Plan, Minor Amendment, Major Amendment, and Implementing Entitlement
20 processes set forth in Section 5 of this Agreement.
21

22 (4) **Open Space Required.** Open Space shall be provided for
23 The Expansion consistent with the requirements contained in the MPR Permit and this
24 Agreement. The Open Space requirements do not need to be satisfied within the boundaries
25 of any particular Phase. Instead, the land provided to meet such Open Space requirements
26

1 may be located within, contiguous to, or adjacent to land proposed for development within
2 one or more Phases.

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4 (5) **Recreational Facilities.** Recreational Facilities shall be
5 provided for by The Expansion consistent with the requirements contained in the MPR
6 Permit and this Agreement. The Recreational Facilities do not need to be satisfied within
7 the boundaries of any particular Phase.

8 (6) **Short-Term Visitor Accommodations.** Short Term Visitor
9 Accommodations shall be provided for by The Expansion consistent with the requirements
10 contained in the MPR Permit and this Agreement. Tamarack shall have the sole authority
11 and discretion when determining how many Short Term Visitor Accommodations to build
12 within each Phase, if any, as long as each Phase does not exceed the following number of
13 units:
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	Condominiums, Townhomes and Duplexes (Total Units)	Single Family Detached Units	Hotel/ Lodge
Phase 1	172	102	
Phase 2	162	50	57
Phase 3	156	41	
Phase 4	131	41	
Phase 5	-	41	
Total	621	275	57

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22 (7) **Commercial and Cultural Community and**
23 **Entertainment Uses.** Commercial and Cultural Community and Entertainment Uses
24 shall be provided for by The Expansion consistent with the requirements contained in the
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1 MPR Permit and this Agreement. Tamarack shall have the sole authority and discretion
2 in determining the total amount of Commercial and Cultural Community and
3 Entertainment uses to provide within each Phase, if any, as long as each Phase does not
4 exceed the following:
5

	Commercial Space/Skier Services	Employee housing
Phase 1	60,000	
Phase 2	20,000	40*
Phase 3	18,500	
Phase 4	11,500	40*
Phase 5		
Total	110,000	80*

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13 (8) **Governmental Services.** Governmental Services shall be
14 provided for by The Expansion consistent with the requirements contained in the MPR
15 Permit and this Agreement. The Governmental Services do not need to be satisfied within
16 the boundaries of any particular Phase.
17

18 (9) **Compatibility with Site and Adjacent Land Uses.** The
19 County shall ensure that The Expansion is compatible with the site and adjacent land uses
20 through implementation of the following measures and guidelines:
21

22 (a) Development of The Expansion must comply with all
23 County development regulations for critical areas set forth in Chapter 13 of the Chelan
24 County Code (the “Critical Areas Regulations”).

25 (b) To the maximum extent feasible, vegetation within
26 riparian corridors, and wetlands regulated under the Critical Areas Regulations, shall be

1 retained in their natural form provided, however, that roads and bridges, utilities and trails
2 may pass through riparian corridors and regulated wetlands provided that any such
3 crossings of regulated wetlands are subject to appropriate requirements for restoration or
4 replacement of impacted wetlands.
5

6 (c) Improvements and activities within The Expansion shall
7 be located and designed to minimize any significant adverse effects on other uses in the
8 surrounding area through establishing and maintaining on-site buffers between The
9 Expansion and adjacent areas consistent with the Applicable Laws and the terms and
10 conditions of this Agreement. Trails, utilities, passive recreational uses and private open
11 space may be included within buffers.
12

13 (10) **Density.** Subject to the provisions of Section 5.1(d) below,
14 the overall maximum density for the Tamarack Property shall not exceed the following:
15

	Condominiums, Townhomes and Duplexes (Total Units)	Single Family Detached Units	Hotel/ Lodge	Commercial Space/Skier Services	Employee housing
Phase 1	172	102		60,000	
Phase 2	162	50	57	20,000	40*
Phase 3	156	41		18,500	
Phase 4	131	41		11,500	40*
Phase 5	-	41			
Total	621	275	57	110,000	80*

21
22 Notwithstanding these maximum densities, however, Tamarack shall have sole and
23 exclusive authority to build The Expansion to lesser densities than those contained above.
24

25 (a) **Subsequent Actions.** Tamarack may apply for other
26 land use actions, approvals, agreements, permits or entitlements (collectively, the

1 “Subsequent Actions”) necessary or desirable to the development of The Expansion.
2 Except to the extent additional environmental review has resulted in the imposition of new
3 conditions pursuant to Sections 4.1(i) or Section 5 generally, applications for Subsequent
4 Actions shall be vested pursuant to Section 4.1(a) to Applicable Law as set forth in Section
5 4.1(c) of this Agreement. Subsequent Actions include County approval of Proposed Site
6 Plans, Approved Site Plans, Minor Amendments, Major Amendments, and all
7 Implementing Entitlements. Implementing Entitlements include, but are not limited to,
8 construction permits, certificates of occupancy; lot line or boundary adjustments;
9 subdivisions (including preliminary and final plat approval); re-subdivisions; binding site
10 plans, and forest practice permits for individual Phases or Subphases of The Expansion.
11 The County reserves the right to deny or condition applications for Subsequent Actions
12 that are inconsistent with Applicable Law or this Agreement.
13
14

15
16 **(b) No Conflicting Enactments.** Except as otherwise
17 specifically set forth in this Agreement, the County, including but not limited to the
18 exercise by the BOCC of the County's police power or its taxing power, shall not apply to
19 The Expansion any ordinance, resolution, rule, regulation, standard, directive, condition or
20 other measure (each, individually, a “Contrary Law”) that is in conflict with the Applicable
21 Law (including this Agreement) or that reduces the rights provided by this Agreement
22 unless agreed to in writing by Tamarack or imposed by the County through the exercise of
23 its substantive SEPA authority. Without limiting the generality of the foregoing, any
24 Contrary Law shall be deemed to conflict with Applicable Law, including this Agreement,
25
26

1 if it would accomplish any of the following results, either through any Subsequent Action
2 or through the imposition of any condition of approval by specific reference to The
3 Expansion in any other enactment, or as part of a general enactment that applies to or
4 affects The Expansion:

5
6 i. otherwise limit or reduce the density of The Expansion,
7 or any part thereof;

8 ii. otherwise change any land use designation or Permitted
9 Use for The Expansion;

10 iii. limit or control the location of buildings, structures,
11 clearing, grading, or other improvements of The Expansion in a manner that is inconsistent
12 with or more restrictive than the limitations in the Applicable Law or the terms and
13 conditions of this Agreement;

14 iv. limit or control the availability of public utilities,
15 services, facilities, or any privileges or rights to public utilities, services, or facilities for
16 The Expansion; provided that nothing in this subsection shall be interpreted to limit the
17 authority of any public utility, service or facility provider that is not a party to this
18 Agreement to require anything legally necessary or appropriate prior to any commitment
19 to provide such utilities, facilities and/or services;

20 v. require the issuance of additional permits or approvals
21 by the County other than those required by the Applicable Law;

22 vi. establish, enact, or increase in any manner applicable to
23
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1 environmental review and issued a Mitigated Determination of Non-Significance
2 (“MDNS”) for The Expansion. The County retains substantive SEPA authority to address
3 environmental impacts not considered under the MDNS. In addition, further SEPA review
4 may be required in connection with Proposed Site Plans submitted by Tamarack which
5 qualify as Major Amendments in accordance with Section 5.1(e) below. Conditions
6 resulting from such further SEPA review may be based on then-current adopted County
7 SEPA policies. Costs associated with any additional SEPA review required by the County
8 pursuant to this Agreement shall be borne by Tamarack.
9
10

11 **4.2 Timing of Construction and Completion.** Except as required by
12 Applicable Law, there is no requirement that Tamarack initiate or complete development
13 of The Expansion within any particular period of time, and the County shall not impose
14 such a requirement on any Subsequent Action. Subject to the foregoing, the Parties agree
15 that Tamarack shall be able to develop The Expansion in accordance with Tamarack's own
16 time schedule in light of market conditions, and that Tamarack shall determine the order in
17 which Phases of The Expansion shall be developed. Tamarack shall further have the right
18 to determine, at its sole discretion, to develop an element of a particular Phase before
19 completion of a preceding Phase. For example, Tamarack may elect to seek an
20 Implementing Entitlement to construct Hotel or Lodge residential accommodations prior
21 to completion of Phase 1, or not until Phase 5 of The Expansion if it so chooses.
22
23

24 **SECTION 5. COOPERATION-IMPLEMENTATION**

25 **5.1 Proposed Site Plan and Site Development Plan Process.**

26

1 (a) **Purpose.** The planning and approval process for the development of
2 The Expansion is intended to proceed from the general to the specific, generally in the
3 following sequence: (i) issuance of the MPR Permit and The Expansion MPR Permit
4 Conditions; (ii) Proposed Site Plan; (iii) Minor Amendment or Major Amendment (if
5 applicable); (iv) Approved Site Plan; (v) platting (if required); and (vi) Implementing
6 Entitlements (as applicable).
7

8 The MPR Permit and The Expansion MPR Permit Conditions, together with
9 the Development Agreement, are intended to provide the general, conceptual development
10 plan for The Expansion. It is anticipated that field conditions, market factors,
11 environmental constraints and opportunities, design considerations and other similar
12 factors will cause the development of The Expansion to change and be refined from time
13 to time. Such changes and refinements may include a Proposed Site Plan that proposes no
14 changes to the development provided for by the MPR Permit, The Expansion MPR Permit
15 Conditions, or the Development Agreement. Alternatively, the Proposed Site Plan may
16 propose a Minor or Major Amendment, as provided for in Sections 5.1(d) and 5.1(e) below.
17
18

19 Proposed Site Plans may be submitted to the County in the discretion of Tamarack,
20 but shall not be a prerequisite to the submittal by Tamarack for a plat or other Implementing
21 Entitlement. The purpose of a Proposed Site Plan is to provide for an informal process
22 between Tamarack and the County to identify potential issues early in the development
23 process and ensure that there is agreement between Tamarack and the County regarding
24 development of The Expansion consistent with the MPR Permit, The Expansion MPR
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1 Permit Conditions, and this Agreement. (“Proposed Site Plan”)

2 The boundaries and scope of a Proposed Site Plan shall be determined by
3 Tamarack, and may encompass The Expansion area which includes one or more proposed
4 Phases, a group of Subphases, a Subphase, or a discrete element of The Expansion. A
5 Proposed Site Plan may be geographically broader than a subsequent related Proposed Site
6 Plan (e.g. a Proposed Site Plan may encompass an entire Phase while a subsequent related
7 Proposed Site Plan may encompass only a single Subphase within such Phase). A Proposed
8 Site Plan is an informal planning tool that provides a frame of reference for Tamarack and
9 the County to identify issues before a more detailed application for a plat or other
10 Implementing Entitlement is sought by Tamarack. Proposed Site Plans shall be submitted
11 to, reviewed, and approved by the County in accordance with this Section 5.1.

12 **(b) Submittal Requirements for Proposed Site Plan.** At Tamarack’s
13 discretion it can include as much information as it feels appropriate for a Proposed Site
14 Plan submittal, but at a minimum must include the following:

15 **(1)** A vicinity map showing the planning area and its
16 relationship to surrounding areas;

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

19 **(a)** Arrangement of land uses by type, such as Master
20 Planned Resort Units including, as applicable, Recreational Facilities, Short-Term Visitor
21 Accommodations, Residential Units, Commercial and Cultural Community and
22

- 1 Entertainment Uses, Governmental Services, Open Space, and other Permitted Uses;
- 2 (b) Elevation contours at intervals appropriate for site
- 3 terrain;
- 4
- 5 (c) The location and type of each Master Planned Resort
- 6 Unit and other Permitted Uses;
- 7 (d) The location of Open Space areas;
- 8 (e) The general location of road right-of-ways; and
- 9 (f) The general location of lot or boundary lines.
- 10
- 11 (3) A statement identifying any deviation(s) between such plan
- 12 and the MPR Permit, The Expansion MPR Permit Conditions, or this Agreement;
- 13 (4) Appropriate environmental documentation, if any; and
- 14 (5) At the option of Tamarack, preliminary boundaries and lot
- 15 lines for parcels and lots.
- 16

17 (c) **Proposed Site Plan Which Is Consistent With the MPR Permit,**

18 **The Expansion MPR Conditions, and the Development Agreement.** A Proposed Site

19 Plan that is consistent with the MPR Permit, The Expansion MPR Permit Conditions, and

20 this Agreement shall be submitted to the Planning Director and reviewed by the Planning

21 Director in accordance with this Section 5. Before approving a Proposed Site Plan, the

22 Planning Director may, but is not required to, provide public notice and submit such

23 Proposed Site Plan to County offices or officials deemed appropriate for their review and

24 comment. A Proposed Site Plan shall be approved by the Planning Director once the

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1 Planning Director finds that such Proposed Site Plan is consistent with the MPR Permit,
2 The Expansion MPR Permit Conditions, this Agreement, and Applicable Law.

3
4 (d) **Proposed Site Plans That Propose Minor Amendments to the**
5 **MPR Permit, The Expansion MPR Permit Conditions, or this Agreement.** The Parties
6 acknowledge and agree that site-specific implementation of the MPR Permit, The
7 Expansion MPR Permit Conditions, and this Agreement will be affected by market,
8 environmental, field conditions, or other factors, throughout the Term of this Agreement.
9 The Parties further acknowledge and agree that County Code provides for the
10 administrative review and approval of proposed modifications for approved Master Plan
11 Resorts at CCC 11.89.130. Pursuant to CCC 11.89.130 an approved Master Plan Resort
12 "...may be amended or modified at the request of the applicant or the applicant's successor
13 in interest. The administrator may administratively approve minor modifications to a final
14 Master Plan Resort plan. Minor Modifications may include changes in density, provided
15 the total number of dwelling units approved shall not exceed ten percent of the maximum
16 number approved in the final Master Plan Resort pan for the project or phase; and provided,
17 that the net residential density is not altered; and also provided that, such changes do not
18 significantly increase impacts on transportation, reduce buffers or open space, or increase
19 impacts on environment." For the purpose of clarity and convenience to the Parties, the
20 Parties agree that the following is a non-exclusive list of amendments that qualify as Minor
21 Amendments: (i) the location of roads, trails and utilities, (ii) the location, quantity and
22 type of Master Planned Resort Accommodation Units and Permitted Uses, provided overall
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1 residential and commercial density at full build-out shall not exceed a 10% increase in the
2 total density provided for by the MPR Permit, (iii) the location of governmental services;
3 and (iv) the location of Recreational Facilities. The foregoing list is not exhaustive and is
4 not meant to limit the Director's discretion to approve a Proposed Site Plan that includes
5 one or more Minor Amendments.

7 (e) **Proposed Site Plans That Propose Major Amendments to the**
8 **MPR Permit, The Expansion MPR Permit Conditions, or this Agreement.** If,
9 notwithstanding the foregoing, the Director reasonably determines that a Proposed Site
10 Plan deviates materially from the MPR Permit, The Expansion MPR Permit Conditions, or
11 this Agreement, then the Proposed Site Plan shall be determined to contain a Major
12 Amendment and shall be reviewed and acted upon by the Director consistent with CCC
13 11.89 and Applicable Law.

16 Proposed Site Plans seeking approval of Major Amendments may be
17 submitted by Tamarack and processed by the County concurrently with applications for
18 Subsequent Approvals, including, but not limited to plats or other Implementing
19 Entitlements.

21 (f) **Effect of Approval.** Approval by the County of a Proposed Site
22 Plan shall convert the Proposed Site Plan to an "Approved Site Plan" automatically.
23 Approved Site Plans shall authorize Tamarack to submit to the County for Subsequent
24 Approvals based upon an Approved Site Plan, including plats and Implementing
25 Entitlements. Approved Site Plans shall be binding upon the County for purposes of
26

1 processing Subsequent Approvals, including plats or other Implementing Entitlements.
2 Approved Proposed Site Plans shall be deemed to have conformed with the MPR Permit,
3 The Expansion MPR Permit Conditions, and this Agreement to the extent of such
4 deviations. All submittals for Subsequent Approvals, including plats and Implementing
5 Entitlements, shall conform to an Approved Site Plan, the terms of this Agreement, County
6 Code, and Applicable Law and the County will review and approve those submittals
7 consistent with this Agreement and Applicable Law
8

9
10 (g) **Application for Building Permits Accompanying an Approved**
11 **Site Plan.** Once an Approved Site Plan is obtained, Tamarack shall be allowed to make
12 application for and receive building permits for up to ten percent (10%) of any Master
13 Planned Resort Accommodation Units identified for any specific Phase as identified in
14 Section 4.1(d)(10) above. For example, upon issuance of an Approved Site Plan for all or
15 a portion of Phase 1, Tamarack could apply for building permits for a combined total of 27
16 condominium, townhouse, duplex or single family detached residential units and 6,000
17 square feet of commercial space or skier services². The purpose of these early-start
18 building permits would be to allow Tamarack to market The Expansion and Master Planned
19 Resort Accommodation Units for sale or lease prior to finalization or satisfaction of plats
20 or other Implementing Entitlements. For any such building permit Tamarack must supply
21 evidence to the County of an adequate water supply for the intended use of each such
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26 ² 207 total Phase 1 condominium, townhouse, duplex, or detached single family home x 10% = 's 27. Phase 1 Commercial Space/Skier Accommodations total 60,000 square feet x 10% = 's 6, 000 square feet.

1 building, which evidence may be in the form of a water right permit from the Department
2 of Ecology, a letter from an approved water purveyor stating the ability to provide water,
3 or another form sufficient to verify the availability of an adequate water supply: provided,
4 however, that building permits may be issued without proof of permanent potable water
5 for structures other than Master Planned Resort Accommodation Units that will not be
6 occupied by full-time use (e.g. Recreational Facilities and sale(s) office), which may, if
7 necessary, be served by temporary sources of water.
8

9
10 **5.2 Plat or Subdivision Applications.**

11 (a) Applications to plat or subdivide property within The Expansion
12 shall be submitted consistent with this Agreement and the requirements of CCC Chapter
13 12.12 *et. seq.* and RCW 58.17 *et. seq.* Plat applications may be submitted and processed
14 concurrently with review of a Proposed Site Plan. Plat applications may be submitted for
15 all or a portion of the Tamarack Property.
16

17 (b) Notwithstanding any provision of CCC Chapter 12.12 *et. seq.*,
18 seemingly to the contrary, a plat application submitted to implement development of all or
19 a portion of the Tamarack Property seeking preliminary and/or final plat approval shall be
20 approved by the County upon a finding that any such application is consistent with: (i) the
21 MPR Permit and The Expansion MPR Permit Conditions; (ii) an Approved Site Plan; (iii)
22 the requirements of Chapter 58.17 RCW regarding plats, subdivisions and dedications; (iv)
23 the terms and conditions of this Agreement; (v) and Applicable Law. In the event the
24 County determines that any plat application submitted to implement development of all or
25
26

1 a portion of the Tamarack Property is not consistent with: (i) the MPR Permit and The
2 Expansion MPR Permit Conditions; (ii) an Approved Site Plan; (iii) the requirements of
3 Chapter 58.17 RCW regarding plats, subdivisions and dedications; (iv) the terms and
4 conditions of this Agreement; (v) and Applicable Law, then the County shall require
5 Tamarack to revise such plat application. Approval of any subdivision application related
6 to The Expansion shall include written findings as required by Applicable Law.
7

8 (c) A preliminary plat application may be approved by the County
9 without evidence of an adequate water supply to meet the needs of such proposed
10 subdivision, provided that such evidence must be provided to the County prior to final plat
11 approval. Appropriate provisions shall have been made for the public health, safety and
12 general welfare, including with respect to proposed sewage disposal and water supply
13 systems, including potable water supplies, in accordance with RCW 58.17.110 with respect
14 to any final plat that is consistent with Applicable Law, this Agreement, the MPR Permit,
15 and The Expansion MPR Permit Conditions.
16
17

18 **5.3 Infrastructure, Surety Bonding or Other Assurances.** Infrastructure
19 identified by Tamarack in an Approved Site Plan must be provided and available for use
20 before the issuance of the first certificate of occupancy for Master Planned Resort
21 Accommodation Units included within such plan. For purposes of final plat approval or
22 issuance of building permits, infrastructure may be guaranteed through surety bonding or
23 other financial assurance device (e.g. letter of credit) acceptable to the County. The
24 estimated costs of providing all such guaranteed Infrastructure shall be reviewed and
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26

1 approved by the County Public Works Director or designee. Surety bonding or other
2 acceptable financial device (e.g. letter of credit) provided to the County shall be in an
3 amount equal to at least one hundred ten percent (110%) percent of such estimated costs
4 as determined by Tamarack's architects and engineers. The County shall have the right, at
5 its expense, to retain its own architects and engineers to verify Tamarack's estimated costs
6 hereunder.
7

8 **5.4 Processing of Subsequent Actions.**

9 (a) Upon submission by Tamarack of all appropriate applications and
10 processing fees for any Subsequent Action necessary for The Expansion, the County shall
11 promptly and diligently commence and complete all steps necessary to act on the
12 application for a Subsequent Action consistent with the terms and conditions of this
13 Agreement, County Code, and Applicable Law.
14

15 (b) The County's obligations relative to Subsequent Actions are
16 conditioned on Tamarack's timely provision to the County of all documents, applications,
17 plans, and other information necessary for the County to meet such obligations. Tamarack
18 may enter into a staffing and cost reimbursement funding agreement pursuant to Section
19 4.1(g)(3) above. It is the express and material intent of Tamarack and the County to
20 cooperate and work diligently and in good faith to obtain any and all Subsequent Actions.
21

22 The County may deny an application for a Subsequent Action only if such
23 application does not comply with (i) the MPR Permit; (ii) The Expansion MPR Permit
24 Conditions; (iii) this Agreement; (iv) and Approved Site Plan (if applicable); (v)
25
26

1 Applicable Law, or (vi) the County is unable to make all findings related to the Subsequent
2 Action required by Applicable Law.

3
4 The County may approve an application for such a Subsequent Action
5 subject to any conditions necessary to bring the Subsequent Action into compliance with
6 Applicable Law, or to make the Subsequent Action consistent with the MPR Permit, The
7 Expansion MPR Permit Conditions, and this Agreement, so long as such conditions comply
8 with Section 4.1(c) of this Agreement. If the County denies any application for a
9 Subsequent Action, the County must specify in making such denial the modifications
10 required to obtain approval of the application. Any such specified modifications must be
11 consistent with the MPR Permit, The Expansion MPR Permit Conditions, this Agreement,
12 and Applicable Law (including Section 4.1(c) of this Agreement), and the County shall
13 approve the application if subsequently resubmitted for the County's review if it complies
14 with the specified modifications.
15

16
17 **5.6 Other Governmental Permits.** Tamarack shall apply for such other
18 permits and approvals as may be required by other governmental or quasi-governmental
19 agencies in connection with the development of, or the provision of services to, The
20 Expansion. The County shall cooperate with Tamarack in its efforts to obtain such permits
21 and approvals.
22

23 **SECTION 6. AMENDMENT**

24 This Agreement may be amended from time to time, in whole or in part, by mutual,
25 written consent of the Parties or their successors in interest, in accordance with this
26

1 Agreement as follows:

2 **6.1 Insubstantial Amendments.** Any amendment to this Agreement that does
3 not relate to (i) the Term of this Agreement, (ii) Permitted Uses for The Expansion and the
4 Tamarack Property, (iii) provisions for reservation or dedication of land, (iv) conditions,
5 terms, restrictions, or requirements for discretionary decisions in connection with
6 Subsequent Actions, (v) the density or intensity of use of The Expansion, (iv) the
7 development standards for The Expansion, or (vii) monetary contributions by Tamarack,
8 shall not, except to the extent otherwise required by law, require notice or public hearing
9 before the Parties may execute an amendment to this Agreement.
10

11 **6.2 Amendments of the MPR Permit or Subsequent Actions.** No amendment
12 of the MPR Permit or any Subsequent Action shall require amendment to this Agreement.
13 Instead, any such amendment automatically shall be deemed to apply to The Expansion
14 and made subject to this Agreement. Nothing in this subsection shall modify the limitations
15 applicable to such amendments established by this Agreement.
16

17 **6.3 Parties Required to Amend.** Where a portion of Tamarack's rights or
18 obligations have been transferred pursuant to a "Transfer Agreement" as defined in Section
19 9.1 below, the signature of the person to whom such rights or obligations have been
20 transferred shall not be required to amend this Agreement unless such amendment would
21 materially alter the rights or obligations of such transferee; provided, however, that any
22 such transferee shall be provided with thirty (30) days prior written notice of any
23 amendment to this Agreement.
24
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1 **SECTION 7. COOPERATION IN THE EVENT OF LEGAL CHALLENGE**

2 **7.1 Cooperation.** In the event of any administrative, legal or equitable action
3 or other proceeding instituted by any person not a party to this Agreement challenging the
4 validity of any provision of the MPR Permit the MPR Permit, The Expansion MPR Permit
5 Conditions, this Agreement, or any Subsequent Action, the Parties shall cooperate in
6 defending such action or proceeding to settlement or final judgment, including all appeals.
7 Each Party shall select its own legal counsel and retain such counsel at its own expense.
8

9 **SECTION 8. DEFAULT**

10 **8.1 Defaults.** Any failure by either Party to perform any term or provision of
11 this Agreement, which failure continues uncured for a period of sixty (60) days following
12 written notice from the other Party, (unless the Parties have mutually agreed in writing to
13 extend this period) shall constitute a default under this Agreement. Any notice of default
14 shall specify the nature of the alleged default and, where appropriate, the manner in which
15 the alleged default may be satisfactorily cured. If the nature of the alleged default is such
16 that it cannot reasonably be cured within the 60-day period, then the commencement of
17 actions to cure the alleged default within the 60-day period, and diligent prosecution of
18 actions necessary to complete the cure of the alleged default after the 60-day period, shall
19 be deemed to be a cure within the 60-day period. Upon a default of this Agreement that is
20 not cured as provided above, the non-defaulting Party may institute legal proceedings to
21 enforce the terms of this Agreement. If the default is cured, then no default exists and the
22 noticing Party shall take no further action.
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1 **8.2 Enforced Delay; Extension of Time of Performance.** Notwithstanding
2 anything to the contrary contained herein, neither Party shall be deemed to be in default
3 where delays in performance or failures to perform are due to war, insurrection, strikes or
4 other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God,
5 restrictions imposed or mandated by other governmental entities, enactment of conflicting
6 state or federal laws or regulations, extended appeals, or similar basis for excused
7 performance which is not within the reasonable control of the Party to be excused. Upon
8 the request of either Party, an extension of time for such cause shall be granted in writing
9 for the period of the enforced delay, or longer as may be mutually agreed upon by the
10 Parties. In the event such delays preclude development of The Expansion in an
11 economically feasible manner consistent with the MPR Permit, The Expansion MPR
12 Permit Conditions, and this Agreement the parties agree to negotiate in good faith to revise
13 or terminate this Agreement.

14
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16
17 **SECTION 9. ASSIGNMENT; TRANSFER NOTICES**

18 **9.1 Assignment of Interests, Rights and Obligations.** Tamarack shall have
19 the right to assign or transfer all or any portion of its interests, rights, obligations or
20 responsibilities under this Agreement, including the MPR Permit and the Subsequent
21 Actions, to third parties acquiring an interest in Tamarack, The Expansion, or the Tamarack
22 Property, or any portion thereof, including, without limitation, purchasers or long-term
23 ground lessees of individual lots, parcels, or any lots, condominiums, timeshares, homes
24 or facilities comprising a portion of The Expansion. Such assignments or transfers shall be
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1 made pursuant to a written agreement (“Transfer Agreement”) with consent as described
2 in Section 9.2 below, or, if applicable, without consent as described in Section 9.3 below.

3
4 **9.2 Transfer Agreements Requiring Consent.**

5 (a) Tamarack may enter into a written agreement (“Transfer
6 Agreement”) to transfer or assign all or any portion of Tamarack's interests, rights,
7 obligations and responsibilities under this Agreement, including the MPR Permit and the
8 Subsequent Actions, and to release Tamarack from its obligations and responsibilities
9 pursuant to this Agreement, and the MPR Permit and Subsequent Actions, but only after
10 obtaining written consent from the County as described in his section, unless such transfer
11 falls within those types of transfers not requiring consent pursuant to Section 9.3 below.
12 Such Transfer Agreement may: release Tamarack from obligations under this Agreement,
13 including the MPR Permit and Subsequent Actions that pertain to that portion of The
14 Expansion being transferred, provided the transferee expressly assumes such obligations
15 and responsibilities; (ii) transfer to the transferee vested rights to improve that portion of
16 The Expansion being transferred, and (iii) address any other matter deemed by Tamarack
17 or the County to be necessary or appropriate in connection with the transfer or assignment.

18
19
20 (b) Such Transfer Agreement shall not take effect unless and until the
21 County has consented in writing to such transfer. The County's consent shall not be
22 unreasonably withheld, conditioned, or delayed. To the extent any Transfer Agreement
23 relates to mitigation measures designed to specifically benefit an Affected Jurisdiction or
24 Public Body, the County shall not give its consent to such transfer until it has first consulted
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1 with such Affected Jurisdiction or Public Body regarding such transfer. Written notice of
2 the proposed Transfer Agreement shall be mailed, first-class, to the County and any
3 Affected Jurisdiction or Public Body in the matter set forth in Section 9.4 below at least
4 forty-five (45) days in advance of the proposed date of transfer. Failure by the County to
5 respond within forth-five (45) days after receipt of a request made by Tamarack for such
6 consent shall be deemed to be the County's approval of the Transfer Agreement in question.
7

8 The County may refuse to give its consent to a Transfer Agreement only if there is a
9 material reason for such refusal, including without limitation, (i) the transferee's failure to
10 perform under a similar development agreement or (ii) a failure to demonstrate adequate
11 financial capability to perform the obligations proposed to be assumed by such transferee.
12

13 County determinations shall be made by the BOCC and are immediately appealable to the
14 Chelan County Superior Court by Tamarack or an Affected Jurisdiction or Public Body.
15

16 The effective date of a Transfer Agreement that is the subject of an appeal to the Chelan
17 County Superior Court by an Affected Jurisdiction or Public Body shall not be stayed
18 unless the Affected Jurisdiction or Public Body has timely secured appropriate judicial
19 relief enjoining such Transfer Agreement from becoming effective.
20

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

24 (d) Tamarack shall be free from any and all liabilities accruing on or
25 after the date of any assignment or transfer with respect to those obligations assumed by a
26

1 transferee pursuant to an approved Transfer Agreement. No breach or default hereunder by
2 any person that assumes any portion of Tamarack's obligations under this Agreement
3 pursuant to an approved Transfer Agreement shall be attributed to Tamarack, nor may
4 Tamarack's rights hereunder or under the MPR Permit be canceled or diminished in any
5 way by any such breach or default.

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

12 **9.3 Transfer Agreements Not Requiring Consent.**

13 (a) The provisions of Section 9.2 above notwithstanding, a Transfer
14 Agreement shall not require County consent or County consultation with an Affected
15 Jurisdiction or Public Body if such agreement relates to the transfer of: (i) any single
16 residential parcel conveyed to a purchaser, (ii) any condominium, time-share or
17 fractionally-owned unit conveyed to a purchaser, (iii) any property transferred as fewer
18 than forty (40) lots in a single transaction to a single builder, or (iv) any property that has
19 been established as a separate legal parcel for an alpine or cross-country skiing use,
20 commercial, open space, park, hotel, or other use agreed to by Tamarack and the County
21 as long as Tamarack or its assigns retain all obligations and responsibilities pursuant to this
22 Agreement, and the MPR Permit and Subsequent Actions, except for those obligations and
23 responsibilities that can be fulfilled exclusively within the boundaries of, and by the
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1 development upon, the parcel or parcels transferred (“Parcel Obligation”). Parcel
2 Obligations include, by way of illustration and without limitation, such items as individual
3 lot landscaping or buffering requirements, building setback, height or design requirements,
4 wood-burning stove prohibitions, and access and infrastructure to be constructed solely
5 within the boundaries of the parcel and intended to serve only the building(s) or uses
6 located within that parcel. To be eligible for a transfer without consent pursuant to this
7 subsection, Tamarack or its assigns shall retain all obligations and responsibilities pursuant
8 to the MPR Permit and Subsequent Actions (other than those that can be fulfilled
9 exclusively within the boundaries of, and by the development on, the individual parcel),
10 including, by way of illustration and without limitation, such items as overall project
11 impact monitoring, public facility and fiscal impact mitigation (except for parcels
12 transferred to a single builder hereunder), overall infrastructure necessary to serve more
13 than one parcel of The Expansion development, and offsite traffic mitigation.
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17 **(b)** The transferee in such a transaction and its successors shall be
18 deemed to have no obligations under this Agreement other than the Parcel Obligations,
19 provided that the transferee shall be bound by all conditions in the MPR Project
20 Development Permit and The Expansion MPR Conditions deemed applicable by Tamarack
21 and the County and embodied in CC&Rs, and shall continue to benefit from the vested
22 rights provided by this Agreement for the duration of the Term. Nothing in this section
23 shall exempt any property transferred from payment of applicable fees and assessments or
24 compliance with applicable conditions of approval.
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1 **9.4 Notices.** Any notice or communication required by this Agreement between
2 the County and Tamarack must be in writing and may be given either personally,
3 electronically with evidence or receipt or by express delivery service, return receipt
4 requested. If given by registered or certified mail, such notice or communication shall be
5 deemed to have been given and received on the first to occur of (i) actual receipt by any of
6 the addressees designated below as the party to whom notices are to be sent, or (ii) five (5)
7 days after a registered or certified letter containing such notice, properly addressed, with
8 postage prepaid, is deposited in the United States mail. If personally delivered or if delivery
9 is made electronically or by express delivery service, a notice shall be deemed to have been
10 given when delivered to the party to whom it is addressed. Any Party may at any time, by
11 giving ten (10) days written notice to the other Party, designate any other address in
12 substitution of the address to which such notice or communication shall be given. Such
13 notices or communications shall be given to the Parties at their addresses set forth below:
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17
18 If to the County, to: Chelan County Board of Commissioners
19 400 Douglas St, Suite 201
20 Wenatchee, WA 98801
21 Telephone: (509) 667-6215
22 Facsimile:
23 Email:

24 With copies to: Chelan County Community Development
25 316 Washington St, Suite 301
26 Wenatchee, WA 98801
 Telephone: (509) 667-6225
 Email:

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Prosecuting Attorney Chelan County
401 Washington Street
Wenatchee, WA 98801
Telephone: (509)667-6202
Facsimile:
Email: Prosecuting.Attorney@co.chelan.wa.us

If to Tamarack, to Larry Scrivanich, Managing Member
ADDRESS

With copies to: Clay M. Gatens c/o
Jeffers, Danielson, Sonn & Aylward, P.S
PO Box 1688
2600 Chester Kimm Rd
Wenatchee, WA 98807-1688
Telephone: 509-662-3685
Facsimile: 509-662-2452
Email: ClayG@jdsalaw.com

SECTION 10. MISCELLANEOUS

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

10.2 Severability. If any term or provision in this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the

1 application of such provision to a particular situation is held to be invalid, void or
2 unenforceable, Tamarack may, in Tamarack's sole discretion, terminate this Agreement by
3 providing written notice of termination to the County.
4

5 **10.3 Other Necessary Acts.** Each Party shall execute and deliver to the other all
6 other further instruments and documents that are reasonably necessary to carry out and
7 implement the MPR Permit and the Subsequent Actions and that are necessary to provide
8 to the other Party the full and complete enjoyment of its rights and privileges under this
9 Agreement.
10

11 **10.4 Other Miscellaneous Terms.** The singular shall include the plural, the
12 masculine gender shall include the feminine; “shall” is mandatory; “may” is permissive.
13

14 **10.5 Covenants Running with the Land.** Subject to Section 9 of this
15 Agreement, all of the provisions contained in this Agreement shall be enforceable as
16 equitable servitudes and shall constitute covenants running with the land pursuant to
17 Washington law. Each covenant herein to act or refrain from acting is for the benefit of or
18 a burden upon The Expansion, as appropriate, runs with the Tamarack Property and,
19 subject to Section 9 of this Agreement, is binding upon each successive owner of all or a
20 portion of the Tamarack Property during its ownership of such property.
21

22 **10.6 Remedies.** In addition to the remedies set forth in The Expansion MPR
23 Conditions, either Party may, in addition to any other rights or remedies, institute an
24 equitable action to cure, correct, or remedy any default; enforce any covenant or agreement
25 herein; enjoin any threatened or attempted violation thereof; enforce by specific
26

1 performance: the obligations and rights of the parties hereto; or obtain any remedies
2 consistent with the foregoing and the purpose of this Agreement. In no event shall either
3 Party be entitled to recover from the other Party, either directly or indirectly, damages,
4 costs or attorneys' fees in any legal or equitable action.

6 **10.7 Washington Law.** This Agreement shall be construed and enforced in
7 accordance with the laws of the state of Washington.

8 **10.8 Covenant of Good Faith and Fair Dealing.** Each Party shall use its best
9 efforts and take and employ all necessary actions to ensure that the rights secured by the
10 other Party through this Agreement can be enjoyed and neither Party shall take any action
11 that will deprive the other Party of the enjoyment of the rights secured through this
12 Agreement.

14 **10.9 No Third-Party Beneficiaries.** this Agreement is for the benefit of the
15 Parties hereto only and is not intended to benefit any other person or entity, and no person
16 or entity not a party to this Agreement shall have any third-party beneficiary or other rights
17 whatsoever hereunder.

19 **10.10 Conflicts.** In the event of a conflict, the terms and conditions set forth in the
20 MPR Permit and The Expansion MPR Permit Conditions shall prevail over the terms and
21 conditions of this Agreement, and the terms and conditions of this Agreement shall prevail
22 over the terms and conditions of Subsequent Actions and Applicable Law.

24 **10.11 Time is of the Essence.** Time is of the essence for all terms and conditions
25 contained in this Agreement and shall be strictly construed.

1 **SECTION 11. ENTIRE AGREEMENT, COUNTERPARTS AND EXHIBITS**

2 **11.1 Counterparts.** Two copies of this Agreement shall be signed by each party,
3 each of which copy is deemed to be an original.
4

5 **11.2 Entire Agreement.** This Agreement consists of _____ pages, including
6 two (2) notary acknowledgement pages, _____ Exhibits attached hereto, which,
7 collectively, constitute in full, the final and exclusive understanding and agreement of the
8 Parties and supersedes all negotiations or previous agreements between the Parties with
9 respect to all or any part of the subject matter hereof. All waivers of the provisions of this
10 Agreement shall be in writing and signed by the appropriate authorities of the County and
11 Tamarack.
12

13 **11.3 Drafting.** The Parties acknowledge and agree that this Agreement was
14 drafted mutually between the Parties and ambiguities, if any, shall not be construed against
15 one Party or the other.
16

17 **11.4 Exhibits.**

- 18 Exhibit A Legal Description for Tamarack Property
- 19 Exhibit B Master Planned Resort Overlay and Development Agreement
20 Application January 17, 2020
- 21 Exhibit C Ordinance No. _____ (MPR Permit)
- 22 Exhibit D The Expansion MPR Permit Conditions
- 23 Exhibit E Resolution No. 2007-98
- 24 Exhibit F CCC Title 8 Roads and Bridges; Chapters 8.24, 8.25, 8.26
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1	<u>Exhibit G</u>	CCC Chapter 8.24
2	<u>Exhibit H</u>	CCC Title 11 Zoning; Chapters 11.02, 11.04, 11.06., 11.08, 11.78,
3		11.80, 11.82, 11.86, 11.88, 11.89, 11.90, 11.91, 11.92, 11.93, 11.95
4	<u>Exhibit I</u>	CCC Title 12 Land Divisions; Chapters 12.02, 12.04, 12.08, 12.10,
5		12.12, 12.14, 12.18, 12.20, 12.22, 12.24
6	<u>Exhibit J</u>	CCC Title 13 Environment; Chapters 13.04, 13.12, 13.14, 13.16,
7		13.18
8	<u>Exhibit K</u>	CCC Title 14 Development Permit Procedures and Administration;
9		Chapters 14.02, 14.04, 14.06, 14.08, 14.10, 14.12, 14.16, 14.18,
10		14.98
11	<u>Exhibit L</u>	CCC Title 15 Development Standards; 15.30, 15.40, 15.50, 15.60,
12		15.70
13	<u>Exhibit M</u>	MPR Permit Area Legal Description

SECTION 12. RECORDATION OF DEVELOPMENT AGREEMENT

Tamarack shall record an executed copy of this Agreement with the Chelan County Auditor, pursuant to RCW 36. 70B.190, no later than ten (10) days after the County executes this Agreement. Lengthy exhibits to this Agreement, shall not be required to be recorded together with this Agreement; provided, however, that exhibits not recorded with this Agreement shall be maintained by the Chelan County Planning Department and remain available for public inspection and copying during regular business hours throughout the Term of this Agreement.

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

TAMARACK

By: Larry Scrivanich, Managing Member

COUNTY

By: _____

1 STATE OF WASHINGTON)
2) ss.
3 COUNTY OF _____)

4 I certify that I know or have satisfactory evidence that _____ is the
5 person who appeared before me and said person acknowledged that he/she signed this
6 instrument and acknowledged it to be his/her free and voluntary act for the uses and
7 purposes mentioned in the instrument.

8 Dated this _____ day of _____, 2020.

9 _____
10 Typed/Printed Name _____
11 NOTARY PUBLIC
12 In and for the State of Washington
13 My appointment expires _____

14 STATE OF WASHINGTON)
15) ss.
16 COUNTY OF _____)

17 I certify that I know or have satisfactory evidence that _____ is the
18 person who appeared before me and said person acknowledged that he/she signed this
19 instrument, on oath stated that he/she was authorized to execute the instrument and
20 acknowledged it as the _____ of _____ to be the free and voluntary act of such
21 party for the uses and purposes mentioned in the instrument.

22 Dated this _____ day of _____, 2020.

23 _____
24 Typed/Printed Name _____
25 NOTARY PUBLIC
26 In and for the State of Washington
My appointment expires _____

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EXHIBIT A

Legal Description for Tamarack Property

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EXHIBIT B

**Master Planned Resort Overlay and Development Agreement
Application dated January 17, 2020**

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EXHIBIT C

Ordinance No. _____ (MPR Permit)

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EXHIBIT D

The Expansion MPR Permit Conditions

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EXHIBIT E

Resolution No. 2007-98

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EXHIBIT F

**CCC Title 8 Roads and Bridges;
Chapters 8.24, 8.25, 8.26**

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EXHIBIT G
CCC Chapter 8.24

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EXHIBIT H

**CCC Title 11 Zoning;
Chapters 11.02, 11.04, 11.06., 11.08, 11.78, 11.80, 11.82, 11.86,
11.88, 11.89, 11.90, 11.91, 11.92, 11.93, 11.95**

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EXHIBIT I

**CCC Title 12 Land Divisions;
Chapters 12.02, 12.04, 12.08, 12.10, 12.12, 12.14, 12.18, 12.20,
12.22, 12.24**

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EXHIBIT J

CCC Title 13 Environment; Chapters 13.04, 13.12, 13.14, 13.16, 13.18

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EXHIBIT K

**CCC Title 14 Development Permit Procedures and Administration;
Chapters 14.02, 14.04, 14.06, 14.08, 14.10, 14.12, 14.16, 14.18,
14.98**

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EXHIBIT L

**CCC Title 15 Development Standards; 15.30, 15.40, 15.50, 15.60,
15.70**

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EXHIBIT M

MPR Permit Area Legal Description