

AGREEMENT

THIS AGREEMENT (the "Agreement") is entered into and made effective March 15, 2021, by and among SEMIAHMOO, LLC, a Colorado limited liability company ("Semiahmoo"); THE NEXT ADVENTURE, LLC, a Washington limited liability company ("Next Adventure"), and SEMIAHMOO RESORT ASSOCIATION, a Washington nonprofit corporation ("SRA"). Semiahmoo, Next Adventure, and SRA shall be referred to collectively as the "Parties."

RECITALS

A. Semiahmoo is the record owner of certain real property located in the County of Whatcom, State of Washington, Whatcom County Assessor's Parcel Nos. 4051143805470000, 4051143765390000, 4051143955220000, 4051143535320000, and 4051143615180000, legally described as Tracts B, C, D, E & F, Plat of Carnoustie-Semiahmoo, according to the official map thereof, filed under Auditor's File No. 2080903235, records of Whatcom County, Washington (the "Property"). Semiahmoo and Next Adventure have entered into a purchase and sale agreement with respect to the Property ("PSA") pursuant to which they intend for Next Adventure, and/or its assigns, to become owner of the Property on or before March 31, 2021.

B. The Property is subject to that certain Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Semiahmoo Resort Community, recorded October 31, 2017 under Auditor's File Number 2017-1003807, as amended by a First Amendment to Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Semiahmoo Resort Community, recorded December 13, 2018 under Auditor's File Number 2018-1201175, and a Second Amendment to Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Semiahmoo Resort Community, recorded November 6, 2019 under Auditor's File Number 2019-1100749 (the "Semiahmoo Declaration"), and that certain Declaration of Covenants, Conditions and Restrictions (Carnoustie), recorded September 29, 2008 under Auditor's File No. 2080093237 (the "Carnoustie Declaration").

C. SRA is the owner's association under the Semiahmoo Declaration.

D. A storm water system located on the Property includes a bioswale, which requires certain repairs ("Bioswale Repairs"). SRA has demanded that Semiahmoo perform such repairs as required by the Carnoustie Declaration.

E. The Parties have reached agreement to allow SRA to perform the Bioswale Repairs, and to recoup the costs thereof from Semiahmoo as a settlement of the present dispute.

F. In order to effectuate this agreement, the Parties will enter into this Agreement, as set forth below.

AGREEMENT

NOW, THEREFORE, the Parties, for and in consideration of the releases, agreements and undertakings contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree to a full and final compromise and settlement of all matters pertaining to the Bioswale Repairs in accordance with the following terms and conditions whereby the Parties, intending to be legally bound, agree:

1. **Bioswale Repairs.** SRA shall use reasonable efforts to perform the Bioswale Repairs on or before June 1, 2021, and shall perform the Bioswale Repairs in a commercially reasonable manner, using licensed, bonded, and reputable contractors, and shall obtain warranties extending for at least one year from the date of the work. SRA and its agents, representatives, consultants, architects and engineers shall have the right to enter on the Property to perform the Bioswale Repairs, and shall conduct any and all activities thereon using reasonable care and in full compliance with all applicable federal, state, and local laws, ordinances, rules, and regulations. All parties performing the Bioswale Repairs shall carry commercial general liability insurance and professional liability insurance (if available) in reasonable and customary amounts, and shall name the current owner of the Property (Semiahmoo or Next Adventure and/or its assigns, as the case may be) as additional insureds. Contingent upon Semiahmoo's timely satisfaction of its payment obligations in Section 2, SRA shall promptly remove or bond over any lien that may attach to any portion of the Property as a result of the Bioswale Repairs and will defend and indemnify Semiahmoo therefrom. SRA shall ensure that any contractor performing the Bioswale Repairs shall defend, indemnify and hold Semiahmoo and Next Adventure and/or its assigns harmless for, from and against any claims, demands, actions, liabilities and obligations arising from the Bioswale Repairs. This Section shall survive any termination of this Agreement.

2. **Payment Amount and Terms.** Semiahmoo agrees to reimburse SRA for the Project Costs (defined below) in completing the Bioswale Repairs, in an amount not to exceed Thirty-Two Thousand Five Hundred and 00/100 Dollars (\$32,500.00). Project Costs are actual costs incurred by SRA in performing the Bioswale Repairs, including without limitation:

- Third party contractor and engineering costs for engineering and construction;
- SRA project management costs;
- SRA attorneys' fees incurred prior to March 12, 2021; and
- Other SRA costs and expenses related to the Bioswale Repairs.

2.1 Concurrently with Semiahmoo's execution of this Agreement, Semiahmoo shall tender the sum of \$32,500 (the "Deposit") to the trust account of SRA's legal counsel, Chmelik, Sitkin & Davis, P.S. If such Deposit has not been received by March 22, 2021, this Agreement shall be null and void.

2.2 Upon (i) completing the Bioswale Repairs, (ii) tendering to Semiahmoo an accounting of all Project Costs and (iii) tendering to Semiahmoo lien releases from all engineers and contractors performing work on the Bioswale Repairs, SRA shall be entitled to disbursement of such funds necessary to reimburse SRA for the Project Costs without further action from Semiahmoo.

2.3 If the Project Costs exceed the Deposit, SRA shall be responsible for such excess costs. If the Project Costs are less than the Deposit, the balance shall be refunded to Semiahmoo. Upon disbursement to SRA, such payment shall be full and complete satisfaction of any and all obligations Semiahmoo or Next Adventure may have with respect to the Bioswale Repairs, and any known claims SRA may have arising out of any repair or maintenance needed for the storm water system and the Bioswale Repairs.

3. **Mutual Release and Agreement Not to Pursue Claims.** Notwithstanding anything contained herein which may be interpreted to the contrary, and in consideration of the parties satisfying their obligations herein, the Parties do forever mutually release and discharge each

other for any and all liability associated with the Bioswale Repairs, including any claims for attorneys' fees and costs. The Parties further agree not to pursue any claims, known or unknown, at law or in equity, against any other Party to this Agreement, the other Party's subsidiaries, parent companies, affiliates, divisions, successors, assigns, representatives, attorneys, contractors, subcontractors, insurers, employees, officers, directors, partners, shareholders, agents and heirs relating in any way to the Bioswale Repairs.

4. **Representations and Warranties.** Each of the Parties hereunder represent and warrant to each of the other Parties that this Agreement constitutes their legal, valid and binding obligation, enforceable against them in accordance with its terms. Each Party acknowledges that they are freely and voluntarily entering into this Agreement uncoerced by any person and acknowledge their understanding of the same. By entering into this Agreement, none of the Parties are relying upon any representation of the other Parties. All Parties acknowledge that they have had a full opportunity to conduct due diligence of the claims and rights and enter into this Agreement based upon their own due diligence.

5. **No Admission of Liability.** It is expressly understood and agreed that this Agreement and the consideration called for hereunder is entered into by the Parties solely for the purpose of avoiding the expense and inconvenience of litigation of disputed claims. Neither this Agreement, any document referred to herein, nor any action taken to carry out this Agreement shall be construed as giving rise to any presumption or inference of an admission or concession by the Parties of any fault, wrongdoing, or liability whatsoever with respect to the Bioswale Repairs. Neither this Agreement, any of its terms or provisions, nor any negotiations or the proceedings connected with it shall be referred to, offered as evidence or received as evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to enforce this Agreement or to address the breach of any terms herein, to defend against the assertion of the related claims, or as otherwise provided by law.

6. **Confidentiality.** Subject to the requirements of RCW 64.38, each Party to this Agreement agrees that the terms and conditions of this Agreement shall be and remain confidential and shall not be disclosed to third parties, except to the extent that disclosure is required under court order or is necessary to comply with any applicable law or regulation. Each Party further acknowledges that the unauthorized use of such information or the disclosure of such information, or any part thereof, to unauthorized third parties will be injurious to the other Parties and that, in the event of the unauthorized use or disclosure of such information, the injured Parties may seek emergency relief from the courts, including injunctive relief, to enforce the terms of this Agreement.

7. **Entire Agreement.** This Agreement, together with any attachments or exhibits, contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior contemporaneous representations, understandings and agreements between the Parties with respect to the matters hereof. It is expressly understood and agreed that no promise, statement, representation, inducement or agreement not expressed herein has been made or offered and that this Agreement sets forth the entire agreement between the Parties.

8. **Choice of Law and Venue.** This Agreement shall be interpreted in accordance with the laws of the State of Washington. The Parties agree that the exclusive jurisdiction over all disputes and other matters relating to the interpretation and enforcement of this Agreement shall be in the Superior Court of Whatcom County, Washington. Each party expressly waives the right to a jury trial.

9. **Severability.** Should any provision of this Agreement be found to violate the statutes or court decisions of the State of Washington or of the United States, the remaining provisions shall not be affected or impaired thereby, and any such invalid, illegal or unenforceable provision shall be deemed to be amended to comply with and conform to such statutes or court decisions to affect the intent of the Parties hereunder.

10. **Prevailing Party in Event of Breach.** In the event of any litigation between the Parties based upon an alleged breach or default in their respective obligations to be fulfilled pursuant to this Agreement, the substantially prevailing Party therein shall be entitled to recover attorneys' fees and costs, including expert witness fees, against the non-prevailing Party.

11. **Binding Effect.** This Agreement shall be binding upon the parties hereto and their respective successor, assignees, transferees and grantees.

12. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be made effective on the day and year first above written.

**THE NEXT ADVENTURE, LLC a Washington
limited liability company**


By: Jason Ragsdale, Member

Dated: 3/12/21

**SEMIAMMOO, LLC a Colorado limited liability
company**

By: Evan Makovsky, Manager

Dated: _____

**SEMIAMMOO RESORT ASSOCIATION, LLC,
a Washington nonprofit corporation**

By: _____
Its: _____

Dated: _____

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By: Jason Ragsdale, Member

Dated: _____

SEMIAHMOO, LLC a Colorado limited liability company

By: Evan Makovsky, Manager

Dated: _____

SEMIAHMOO RESORT ASSOCIATION, INC. a Washington nonprofit corporation

By:

Alec Berkman

Its: President

Dated: March 15, 2021