SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

I. INTRODUCTION AND PARTIES

THIS SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS, ("Settlement" or "Agreement") is entered into by and between the following "Parties": The City of Sequim, a Washington municipal corporation, including without limitation all of its departments, agencies, elected and other officers or officials, its hearing examiner, employees, agents, consultants, contractors, attorneys, insurers, and every other person or entity working for or on behalf of the City, past, current or future (collectively referred to as "City"); and Brody Broker, individually, and acting on behalf of Maliandra Apartments, LLC, and the Estate of Matthew Niemeyer, individually, and acting on behalf of Paragon Residential Real Estate LLC (collectively referred to as "Claimants").

II. RECITALS

A. Claimants own real property, partially developed, at the corner of Seventh Street and Silberhorn in Sequim, WA 98382, more specifically described as Lots 4-15, inclusive, of the final plat recorded under Auditor's File Number 2005-1164049 ("Property").

B. On or about March 1, 2021, Claimants filed a "Claim for Damages" with the City of Sequim making allegations and claims against the City of Sequim regarding development of the Property. A copy of this Claim (actually received by the City on March 19, 2021) is attached hereto as **Exhibit A** and incorporated herein by reference as if fully set forth.

C. Exhibit A and other allegations and communications by Claimants regarding development of the Property and potentials claims against the City are collectively referred to as "Claim."

D. Consistent with the foregoing recitals, the Parties now wish to enter into this Agreement to resolve all issues, claims and potential claims related to or arising out of the Claim, and to avoid all other disputes and claims by, between or among the Parties. The Parties desire to set forth their settlement in this writing.

E. Claimants wanted a preliminary layout incorporated into this Agreement to generally demonstrate the location of required infrastructure. That layout is attached hereto as **Exhibit B.**

F. The City's Public Works Department has reviewed the proposed layout and has provided a written response, attached and incorporated hereto as **Exhibit C.**

NOW, THEREFORE, based on the foregoing recitals, which are hereby incorporated into the terms and conditions of this Agreement, and in consideration of and subject to the terms and conditions set forth below, this Agreement is entered into for the purpose of fully and finally settling the Claims between the City and Claimants, which claims were asserted or could have been asserted in lawsuits as defined below.

III. AGREEMENT AND RELEASE AND INDEMNIFICATION

1. Release of Claims

   a. Claimants expressly release and shall be deemed to have forever discharged the City from any and all claims ("Claims") relating to the claim filed by Claimants with the City on March 1, 2021 (Exhibit A). Claims covered by this Agreement, include any and all asserted claims, future claims, potential causes of action, or demands, known or unknown that were asserted or could have been brought by Claimants and against the City in a lawsuit or that arise out of the City's conduct up until the effective date of this Agreement.

   b. It is hereby agreed between the Parties that this Agreement is a compromise and a full and final settlement, accord and satisfaction of all Claims and the claim by Claimants individually and collectively, and includes all damages, penalties, taxes, attorneys' fees and costs. Claimants stipulate and warrant that no actions or lawsuits regarding the Claims, as defined above, have been filed with any court or agency and that no such actions will be filed against or involving the City.

   c. This release is intended to and shall bind the Parties.

   d. The Claimants represent, warrant, and agree that: (i) they understand they are releasing potentially unknown claims; (ii) these releases are fairly and knowingly made; and (iii) they are aware that they have or may have limited knowledge with respect to certain of the Released Claims. The Parties specifically allocate the risk of any mistake by any party in entering into this Agreement to the party or parties who later claim that party was mistaken.

2. Terms. The Parties agree to the following terms in consideration for this Agreement:

   a. The Claimants will comply with the City's current stormwater regulations. The stormwater control plan prepared for the Claimants in July 2020 has not yet been accepted by City Staff. As part of this Settlement, this stormwater control plan will be fully reviewed by the City's Public Works Department to ensure that it meets the City's current stormwater regulations. If the City finds that adjustments to the July 2020 stormwater plan are necessary, these will need to be made to comply with all current regulations and Claimants agree to make all such adjustments as a condition of proceeding with development of the Property.

   b. The City will forego collecting City permit fees from Claimants for development of the Property up to a maximum of $70,000. All fees will be assessed and credited at the time of permit approval and before issuance; such credits will be assessed and processed in order of application and not at Claimants' discretion.

   c. Improvements required as noted in Special Conditions Nos. 7, 11-15, 17-21, and 23-25 as identified in the "Final Major Subdivision - (SUB05/001)" must be completed in accordance with the current City development standards to the extent practicable, as determined by the City after consultation with the Claimants. Claimants agree to make all

such adjustments to improvements as a condition of proceeding with development of the Property. The only exception to this requirement is in relation to number 25: The City agrees to remove the requirement for a landscaped area between the curb gutter and the sidewalk. Further, Claimants must provide proof of utility easements in a form acceptable to the City and provide as-builts for all infrastructure before a site construction permit will be finalized and approved. No building permits will issue until the site construction permit is finalized.

d. Claimants acknowledge and agree that this Settlement Agreement must be approved by the Sequim City Council at or following an open public meeting, and that this Agreement is not valid and cannot be acted upon until approved by the City Council.

e. The Parties will craft a mutually agreeable joint press release explaining this Settlement and agreed-upon development, presuming the City Council approves this Agreement, for the City to use at its sole discretion.

f. Claimants acknowledge that City staff cannot bind the City Council and that City staff cannot promise or guarantee that the City Council will agree to this Agreement to resolve Claimants' Claims. These are discretionary decisions to be made by the City Council acting in its legislative authority; however, as part of this Agreement, City staff will support the terms in this Settlement Agreement.

g. Because Washington State law protects land uses for only five years, this Settlement is valid for only 5 years after execution. Extensions to specific permitting approvals must be requested and processed by the City in accordance with City procedures.

h. Claimants acknowledge and agree that individual lots will not be sold before all improvements are completed and accepted by the City unless Claimants submit a performance bond to the City in accordance with the Sequim Municipal Code and City practices.

i. Claimants understand and agree as follows:
    a. That the layout plans attached and incorporated as "Exhibit B" are representative of the agreed upon development conditions;
    b. That inclusion of these documents does not circumvent the required permit application processes;
    c. That the City may require additional review, details, information, and resubmittals normally required as part of a permit review process;
    d. That the purpose of Exhibit B is to provide general layout configuration only; and
    e. That specific distances, measurements, design and infiltration specifications, etc. on the layout should not be construed as "approved" through the mere inclusion as an exhibit, and as provided in Exhibit C.

3. Hold Harmless/Indemnification. Claimants will defend and hold harmless the City from any and all claims, actions, liabilities, suits, demands, obligations, losses, settlements, judgments,

damages, taxes, fines, penalties, costs and expenses, including attorney's fees and other expenses arising from or relating to the Claimants' Claim.

4. Authority. The undersigned agree and warrant that they have full authority to enter into this Agreement.

5. Voluntary Act. This Agreement is made and entered into as a free and voluntary act and has been negotiated between the Parties.

6. Effective Date. This Agreement shall become fully effective on the date the Agreement signed by the Claimants and the City.

7. Choice of Law. This Agreement, and all matters arising out of or relating to this Agreement, shall be governed by the laws of the State of Washington. The Parties agree that any legal action related in any way to this Agreement or to the underlying issues shall be brought exclusively in the Superior Court for Clallam County, Port Angeles, Washington.

8. Parties Bound. The City and Claimants, individually and collectively, agree that this Settlement Agreement will be binding upon each of them, their marital communities (whether or not their spouses are specifically named), their employees, officers, directors, shareholders, attorneys, agents, parents, subsidiaries, related entities, affiliates, respective heirs, insurers, executors, administrators, legal representatives, successors and assigns.

9. No Admission of Liability. The City expressly denies liability to the Claimants, and this Agreement does not constitute, and shall not be construed as, an admission of liability or wrongdoing on the part of the City or any of its agents or representatives or an admission of violation of any law. The Parties have entered into this Agreement solely to avoid costs, delay and uncertainty of continued claims and future litigation.

10. Voluntary Signature/Independent Legal Counsel. The Parties acknowledge, represent, and agree that they have read this Agreement, they fully understand its terms, and they have consulted with and been fully advised by legal counsel. The Parties understand and agree that this Agreement has been executed knowingly and voluntarily. Both Parties have participated in drafting this Agreement and waive the rule of construction that an agreement is construed against its drafter.

11. Severability. In the event any one or more of the provisions shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

12. Final and Complete Expression. This Agreement is the final, entire and complete expression of the agreement of the Parties and may be modified only by a written addendum signed by each Party. The terms of this Agreement are contractual and not mere recitals. This Agreement supersedes and replaces all prior agreements, discussions and representations, all of which are merged into, and superseded by, this Agreement. No party is entering into this Agreement in

reliance on any oral or written promises, inducements, representations, understandings, interpretations, or agreements other than those contained in this Agreement.

The undersigned, by their signature, hereby agree to be bound by the terms of this Agreement and acknowledge that they have read and understood its terms.

MALIANDRA APARTMENTS LLC

Brody Broker, Manager
Signed this 10th day of October, 2023.

PARAGON RESIDENTIAL REAL ESTATE LLC

See Next Page

Agnieszka Niemeyer, Manager
Signed this — day of —, 2023.

CITY OF SEQUIM

Tom Ferrell, Mayor, on behalf of the City of Sequim
Signed this 18th day of October, 2023.

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The undersigned, by their signature, hereby agree to be bound by the terms of this Agreement and acknowledge that they have read and understood its terms.

MALIANDRA APARTMENTS LLC

See Preceding Page

Brody Broker, Manager
Signed this – day of –, 2023.

PARAGON RESIDENTIAL REAL ESTATE LLC

Agnieszka Niemeyer, Manager
Signed this 12 day of October, 2023.

CITY OF SEQUIM

See Preceding Page

Tom Ferrell, Mayor, on behalf of the City of Sequim
Signed this – day of –, 2023.

Exhibit A

CITY OF SEQUIM

152 W. Cedar Street, Sequim, WA 98382
PH (360) 683-4139 FAX (360) 681-3448

STANDARD TORT CLAIM FORM

General Liability Claim Form

Pursuant to Chapter 4.96 RCW, this form is for filing a tort claim against the City of Sequim. Information requested on this form is required by RCW 4.96.100 and may be subject to public disclosure. Claim forms cannot be submitted electronically (via e-mail or fax). Please direct claims to the City Clerk.

PLEASE TYPE OR PRINT IN INK

Mail or deliver original claim to:

City Clerk
City of Sequim
152 West Cedar Street
Sequim WA 98382

CLAIMANT INFORMATION

1. Claimant's name:

Maliandra Apartments LLC (owned by Brody Broker) & Paragon Residential Real Estate LLC (owned by Matthew Niemeyer)

Last Name *First* *Middle* *Date of Birth*

2. Current residential address:

36 Gold Dust Lane Sequim WA 98382, 138 Polly Place Sequim WA 98382

3. Mailing address (if different):

Same

4. Residential address for six months prior to the date of the incident (if different from current address):

Same

5. Claimant's daytime telephone number:

360-461-7052 for Brody Broker 360-808-7002 for Matthew Niemeyer

Home *Business*

6. Claimant's e-mail address:

brody@brodybroker.com msniemeyer@gmail.com

INCIDENT INFORMATION

7. Date of the incident: October 2, 2019 Time: 3:00 __am X pm *(check one)*

8. If the incident occurred over a period of time, date and time of first and last occurrences:
from 2004 Date/Time *to* summer 2020 Date/Time

9. Location of incident:
That Property at the Corner of seventh and Silberhorn in Sequim WA 98382
State and County *City* *Place where occurred*

10. If the incident occurred on a street or highway:

Name of street/address at the intersection with or nearest intersecting street

11. Agency or department alleged responsible for damage/injury:
Planning

12. Names, addresses and telephone numbers of all persons involved in or witness to this incident:
City Staff, Brody Broker 360-461-7052; Matthew Niemeyer 360-808-7002;
Vision Builders, Inc. 370 Critchfield Rd. Port Angeles Washington, 98363, 360-452-1186; Craig Heckman

13. Names, addresses and telephone numbers of all City of Sequim employees having knowledge about this incident:
Barry Berezowsky 360-681-3435; Tim Woolett 360-582-2476;
James Bay (deceased); Dennis Lefevre (unknown); Craig Ritchie (unknown)

14. Names, addresses and telephone numbers of all individuals not already identified in #12 and #13 above that have knowledge regarding the liability issues involved in this incident, or knowledge of the Claimant's resulting damages. Please include a brief description as to the nature and extent of each person's knowledge. Attach additional sheets if necessary.

15. Describe the cause of the injury or damages. Explain the extent of property loss or medical, physical or mental injuries. Attach additional sheets if necessary.
See attached

16. Has this incident been reported to law enforcement, safety or security personnel? If so, when and to whom?

NA

17. Names, addresses and telephone numbers of treating medical providers. Attach copies of all medical reports and billings.

N/A

18. Please attach documents which support the claim's allegations.

19. I claim damages from the City of Sequim in the sum of $ 360,000.

This claim form must be signed by the Claimant, a person holding a written power of attorney from Claimant, an attorney for the Claimant, by an attorney admitted to practice in Washington State of behalf of the Claimant, or by a court-approved guardian or guardian ad litem on behalf of the Claimant.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed this 1 day of March, 2021, at Sequim (city), WA (state).

Signature of Claimant

Attachment to Tort Claim Form

On or about October 2, 2019, the Claimants purchased a number of lots within the City of Sequim in that subdivision described as:

> Final Major Subdivision Sub 05/001 for Amy and Craig Heckman according to Plat thereof recorded in Volume 14 of Plats, page 77 of Clallam County Washington

Under prior ownership developing the property, the City of Sequim approved division of the Claimants' property as a single approved plat, on condition that roads be built immediately, but other infrastructure be completed by the developer in phases. Despite the phased approach, the development was not approved in phases, but all at once. The infrastructure buildout, and the plat approval, were specifically for three-plex or four-plex multifamily condominium development per lot. The City of Sequim accepted a performance bond on behalf of the developer to secure against future construction of the phased infrastructure.

The prior owner, as developer, constructed parts of the conditioned infrastructure components as parts of the general development were constructed and sold. At some point, without the full infrastructure completed, the City reached agreement with the developer and the bond was fully released. At all times, the City and the developer proceeded with deployment with the end goal of each lot supporting three-plex or four-plex multifamily units. This occurred even in the face of changes to the City's zoning code limiting multifamily unit development.

As a part of their due diligence, prior to purchase, the Claimants requested assurances from City Staff in the planning department the right to develop three-plex or four-plex units. The planning department was unequivocal that the properties could and would be developed into multifamily units. This statement was made to the Claimants and to the listing agent for the property, Michael McAleer. At all times since the initial development of the property, and after the change in zoning, the City of Sequim planning staff interacted with the developer, interim owners, and the Claimants in a manner taking as a given that multifamily units was and would continue to be an approved use of the Claimants' properties.

After closing, the planning department requested the Claimants submit updated engineering for the stormwater runoff. The request was premised on approved multi-family use and the engineering was produced under that assumption. After undergoing the time and expense of the engineering report, City planning sent back to the Claimants a formal letter saying the Claimants could not develop the lots as multiplexes. Despite the longstanding actions, statements, and agreements of the City with prior owners and developers of the property, City planning refused to accept the plat as final and the multifamily lot development as vested.

As single-family lots, each lot is worth less than 1/4 of what they are worth as multi-family. The City's change of course has not only devalued each of the lots owned by the Claimant, the City's

actions caused the Claimants to undertake costs and expenses functioning under the general assumption that the lots would be developed as three-plex or four-plex properties.

The Claimants are aware of the density concerns of the City inherent in the change in zoning. The Claimants are also aware of the painful lack of affordable housing in the City of Sequim. The Claimants earnestly believed that this mix in policy objectives was why the City had chosen to allow the development to proceed as a condominium based multi-plex quality mid-price development.

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Exhibit B

SITE PLAN

PRELIMINARY LAYOUT

BRODY BROKER
244 W. WASHINGTON STREET
SEQUIM, WASHINGTON 98382

ZENOVIC & ASSOCIATES
INCORPORATED

P1

Exhibit C

CITY OF SEQUIM

NICK DOSTIE
City Engineer/Deputy Director of Public Works
152 W. Cedar Street, Sequim, WA 98382

PUBLIC WORKS REVIEW RESPONSE

DATE: Monday, September 18, 2023

TO: Kristina Nelson-Gross, City Attorney

THRU: Sarah VanAusdle, Public Works Director

FROM: Nick Dostie, P.E., City Engineer/Deputy Director of Public Works

SUBJECT: **Subdivision 05-001, Southwest corner of Silberhorn and S Seventh Ave**

Response to *Preliminary Project Plans* dated September 13, 2023

Attn:

Scope:

On September 14, 2023 I was forwarded an email originally sent to Kristina Nelson-Gross (City Attorney) from Patrick Irwin with two attachments (.pdf documents) titled "20013 – S.W. CONTROL PLAN 09-13-2023" and "20013 – Preliminary Project Plans 09-13-2023". I was tasked with reviewing the documents attached in the email for compliance to the "**PUBLIC WORKS REVIEW RESPONSE**" issued March 3, 2023. The review was not a full engineering review to the detail and scope of a typical *Site Construction Permit Application* or other permitting requirements. Further application review of additional submittals will be necessary prior to construction.

In general, the provided preliminary submittals are acceptable for planning purposes and establishing design and development standards, guidelines, and principals. The stormwater report and model adhere to the 2019 SWMMWW. The proposed utilities appear to adhere to the City Engineering Standards, and the interior right of way development appears to follow recommendations detailed in the "**PUBLIC WORKS REVIEW RESPONSE**". Additional development of the 7th Ave. right of way will need to be discussed later during the permitting process.

In my opinion the submittal adheres to the purpose and spirit of the **SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS** which is to agree upon a general layout for the project.

Adherence to the agreement document does not waive the requirements for established application/permit review for development approval through City of Sequim Public Works or Department of Community Development. The submittal lays an adequate foundation for further discussion and development for the "the normal" or "typical" development review process. Additional information will be required for project approval including *Site Construction Permit Application* approval.

If you have any questions, comments, or concerns or would like specific details on the review or information needed to move forward in the process, please feel free to contact me through the information in the footer of this letter.

Regards,

Nick Dostie

Nicholas Dostie, P.E.
City Engineer/Deputy Director of Public Works