

RESOLUTION NO. 07-451

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BLACK DIAMOND, KING COUNTY, WASHINGTON  
AUTHORIZING THE MAYOR TO EXECUTE THE CITY OF  
BLACK DIAMOND STAFF AND FACILITIES FUNDING  
AGREEMENT BETWEEN BLACK DIAMOND LAWSON  
PARTNERS LP, BLACK DIAMOND VILLAGE PARTNERS LP,  
AND THE CITY OF BLACK DIAMOND

WHEREAS, the City has diligently pursued implementing the vision for Black Diamond, as embodied in the Black Diamond Urban Growth Area Agreement ("BDUGAA"), by adopting numerous ordinances and resolutions and executing various ; and

WHEREAS, the City currently doesn't have the financial resources to increase its staffing and provide necessary facilities and equipment to effectively and efficiently handle core city administrative services; and

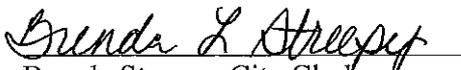
WHEREAS, Black Diamond Lawson Partners, LP and Black Diamond Village Partners, LP are desirous of financially assisting the City so that the City will have the ability to provide core City services; now, therefore

BE IT RESOLVED that the Mayor is hereby authorized to execute duplicate originals of the document entitled City of Black Diamond Staff and Facilities Funding Agreement that is attached hereto as Exhibit A ("Agreement") if, and only if, prior to 5 P.M. on June 29, 2007 he receives duplicate originals of the Agreement that have been executed by the other parties to the Agreement.

ADOPTED by the City Council at an open public meeting held on the 21st day of June, 2007.

  
Howard Botts, Mayor

Attest:

  
Brenda Streepy, City Clerk

CITY OF BLACK DIAMOND STAFF AND FACILITIES FUNDING AGREEMENT

**1. Date and Parties.**

27<sup>th</sup> This City of Black Diamond Staff and Facilities Funding Agreement is dated the day of June, 2007 and is entered into by and between BD Lawson Partners, LP and BD Village Partners, LP and the City of Black Diamond, a Washington municipal corporation.

**2. Definitions.**

“Agreement” shall mean this City of Black Diamond Staff and Facilities Funding Agreement.

“Agreement Date” shall mean June 29, 2007.

“Agreement Term” shall mean the period of time between the Agreement Date and either 1) the execution of one or more MPD Development Agreements between the Parties or the City and a third party that provide for funding of the then-unfunded Supplemental Costs and adequate security for their payment; 2) the determination, after peer review of the economic analyses outlined in paragraph 4 (K), that the Supplemental Costs subsidy is no longer needed; or 3) Yarrow Bay’s termination of its funding under this Agreement pursuant to paragraph 4 (J) after the City’s default of its Processing obligations.

“BDUGAA” shall mean the Black Diamond Urban Growth Area Agreement dated December 31, 1996.

“Benefited Non-Contributing Parties” shall mean legal entities that benefit from the staffing and facilities provided by this Agreement, but that have not contributed to the expenditures required to provide such staffing and facilities.

“City” shall mean the City of Black Diamond, a Washington municipal corporation.

“City Code Consultants” shall mean consultants to finish various City regulations needed for the City to lift the current development moratorium.

“Core City Staff” shall mean City staff positions necessary to rectify the staffing deficiencies referenced in paragraph 3 (E) and as further detailed in paragraph 4 (A) below.

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“Default Amount” shall mean the amount required to cure any Yarrow Bay default under this Agreement.

“Default Notice” shall mean a written notice sent from the City to Yarrow Bay in the event that Yarrow Bay does not make any payment or deposit required under this Agreement. The Default Notice shall contain a concise explanation of the alleged default and, if applicable, the Default Amount.

“EIS” shall mean Environmental Impact Statement.

“Legal Costs” shall mean the costs of legal work that will be done to prepare and implement this Agreement, including, but without limitation, assisting the City Administrator in reviewing City Code Consultants’ work product, preparing and reviewing documents related to the implementation of the various parts of this Agreement, updating and finalizing City Code additions and revisions needed for the City to lift the current moratorium on development, preparing form documents to assist in the processing of land development applications, updating the City Municipal Code, and dealing with the legal issues related to the expansion of the Core City Staff and the facilities needed for such staff.

“Facilities Costs” shall mean the costs detailed in paragraph 4 (D) below.

“Letter of Credit” shall mean an irrevocable letter of credit in a form and from a financial institution acceptable to the City.

“MPD” shall mean Master Plan Development.

“Net Core City Cost Amount” shall mean the City’s estimate of Supplemental Costs for the following calendar quarter, less any credit for unexpended funds, or debit for over-expenditures, for the previous calendar quarter.

“Parties” shall mean Yarrow Bay and the City, collectively.

“Process” or “Processing” shall mean completion of all the City’s obligations under the City MPD Ordinance, codified at chapter 18.98 of the City’s Municipal Code, that are conditions precedent to the City Council decisions on Yarrow Bay’s MPD applications, and the City Council making its oral decision on the application . Processing does not include any appeals brought against the City Council’s decisions on Yarrow Bay’s MPD applications.

“Supplemental Costs” shall mean all expenditures addressed in this Agreement that are beyond the financial obligations that the City could impose upon Yarrow Bay under City regulations existing as of the Agreement Date. Supplemental Costs include

the costs of funding the Core City Staff, the City Code Consultants, the Facilities Costs, the Legal Costs, the amounts that Yarrow Bay has paid the City prior to the Agreement Date for the City Code Consultants and for the salary and benefits of the City's former Community Development Director.

"Vision" shall mean the City's vision of economically viable smart urban growth, creating a sense of community through wise land use planning and implementation, while, at the same time preserving and enhancing integrated open space and riparian corridors that protect the Lake Sawyer watershed and provide wildlife and pedestrian corridors throughout the City.

"Yarrow Bay" shall mean BD Lawson Partners, LP and BD Village Partners, LP, collectively.

**3. General Recitals.**

A. The City, King County and others were parties to the Black Diamond Urban Growth Area Agreement dated December 31, 1996. Yarrow Bay owns or controls all properties that were subject to the BDUGAA.

B. Consistent with the BDUGAA, the City has amended, or is in the processing of amending its Comprehensive Plan and other regulations, including its Master Plan Development Ordinance and Transfer of Development Rights Ordinance, to facilitate accomplishing the Vision.

C. The Parties share the Vision and want to bring it into reality as soon as possible. The Parties realize that the limited number of large land owners, the amount of undeveloped properties within the City, the scenic beauty and related natural amenities in and around the City, and the BDUGAA and related implementation efforts made to date have created a unique opportunity not available to other cities and citizens in the State of Washington.

D. Yarrow Bay has acquired interests in large amounts of property in the City in the belief that if the Vision can be successfully implemented it not only will be a model of successful environmentally friendly development in an urban setting, but will be economically successful as well.

E. The Parties recognize that the City is currently significantly understaffed in its core functions, making it impossible for the City to effectively and efficiently handle its current workload, let alone the increased workload for all City staff, including the staff charged with the responsibility for processing MPD applications, that will result from applications that Yarrow Bay will be submitting. This preexisting understaffing has been exacerbated by the recent loss of key City staff. The Parties also acknowledge the recommendations of experts, including the 2005 studies by Nesbitt Planning and

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Management, that the City must significantly expand its staff and staff facilities in order for the City to effectively function, regardless of the anticipated increase in development permit application activity.

F. The Parties acknowledge that the City does not have the legal authority to require Yarrow Bay to fund the Supplemental Costs set forth in this Agreement. However, Yarrow Bay acknowledges that there is adequate consideration for this Agreement because a properly staffed City government will allow for the expeditious completion of the remaining City regulations necessary to assure the Vision is properly implemented, and will allow for the City to operate efficiently and effectively so that Yarrow Bay's development applications can be processed without the delay that would be caused by understaffing and inadequate staff resources and facilities.

G. Increasing City staff will also be of great benefit to the City's existing and future citizens because the City will be able to provide quality municipal services for all citizens, including small and large property owners who cannot currently proceed with development consistent with the Vision due to lack of sufficient City staff, equipment and capital facilities.

H. The purposes of this Agreement are to provide funding for Core City Staff, City Code Consultants, related support facilities, equipment expenses, and Legal Costs through contributions by Yarrow Bay until such time as the City can independently provide funding for the Supplemental Costs, and to provide a mechanism, to the extent authorized by law, for Yarrow Bay to receive reimbursement for the funding of Supplemental Costs from Benefited Non-Contributing Parties. Because the City's MPD Ordinance requires that Yarrow Bay's proposed MPDs will produce revenue for the City, the Parties expect that the need for funding under this Agreement will be reduced over time, and ultimately eliminated.

**4. Yarrow Bay's Commitment to Fund City Staff and Support Facilities.**

**A. Core City Staff**

Subject to the provisions of this Agreement, Yarrow Bay commits to fund the Core City Staff, including the salary and benefit costs of each Core City Staff person, up to a maximum \$2,000,000 per year. The City shall determine the positions that will be included within the Core City Staff, but it shall include at least the following: 1) not less than six (6) executive level staff members; and 2) the staff necessary to allow the executive level staff members to expeditiously handle the tasks assigned to them by the Mayor, through the City Administrator. The Core City Staff may participate in Processing development applications submitted by Yarrow Bay and others, and will direct and assist other staff who will process development applications submitted by Yarrow Bay and others. In reliance upon the funding contemplated by this Agreement

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the City may choose to offer multiyear employment contracts to some or all of the Core City Staff.

The Parties acknowledge that the City will determine the method and manner of hiring the Core City Staff, and will be solely responsible for hiring and firing decisions and compensation amounts. The City shall regularly (at least monthly) advise Yarrow Bay on hiring efforts, including compensation and benefits to be paid to Core City Staff, so that Yarrow Bay can honor its commitment to provide funding.

B. City Code Consultants

The Parties acknowledge that the completion of City development regulations and other City Code amendments will require the use of City Code Consultants. Yarrow Bay commits to pay the costs of the City Code Consultants pursuant to the following procedure. Prior to entering into any contract with a City Code Consultant, the City shall notify Yarrow Bay of the contract amount. Upon such notification, Yarrow Bay shall promptly negotiate with the City in good faith to pay the contract amount, and the Parties shall memorialize each payment through an amendment to this Agreement.

C. Legal Costs

Yarrow Bay shall pay the Legal Costs, as said term is defined above, incurred by the City to date, and up to an additional \$450,000 over the Agreement Term, upon invoice for the same from the City. The City shall be responsible for all Legal Costs beyond that amount.

D. Furniture, Equipment, and Office Space

The Parties acknowledge that there is a need for furniture, equipment and temporary office space related to the Core City Staff. Yarrow Bay commits to pay the City's Cost, up to \$15,000 per month, to lease or purchase, install, and maintain temporary or permanent buildings, such as modular structures or metal structures (that could later be converted to City shops and garages), to provide good temporary working space for Core City Staff. Yarrow Bay also commits to pay an agreed upon sum for furniture, fixtures and equipment related thereto. The City will be responsible for all expenditures beyond \$15,000 per month.

It is anticipated that at some time during the Agreement Term the City may construct permanent facilities to house the Core City Staff. Yarrow Bay shall: 1) pay to the City, within 21 days after the time the lowest responsible bidder for constructing the facility is determined, the anticipated construction costs for the facilities related to City staff reviewing and/or processing Yarrow Bay's development applications; or 2) once the permanent facilities are constructed, pay the City the fair market rental rate each month for the facilities used by the City staff reviewing and/or processing Yarrow Bay's

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development applications, for the length of time that Yarrow Bay has an MPD application pending and/or an MPD permit being implemented. The choice to pay construction cost or market rate rent shall be in Yarrow Bay's sole discretion. However, the choice shall be made, in writing, at least 10 days before the construction contract is awarded. If the City has constructed other permanent facilities, such as the metal structures detailed above, to provide temporary offices, Yarrow Bay will receive a credit for those structures if they can be converted to serve other City uses, e.g., shops and garages.

E. Payment Procedure

Yarrow Bay shall advance funds to the City on a calendar quarter basis to pay Supplemental Costs pursuant to the following mechanism. Within 10 days of the Agreement Date, the City will provide Yarrow Bay with the unreimbursed expenditures for Supplemental Costs through June 30, 2007. Yarrow Bay shall pay said sum to the City within 40 days of the Agreement Date. Within 30 days of the Agreement Date the City will provide its estimate of Supplemental Costs for the calendar quarter commencing on July 1, 2007. Yarrow Bay will deposit with the City funds for that calendar quarter within 30 days of receiving the City's estimate. By July 30, 2007, and within 15 days after the start of each calendar quarter thereafter, for the remainder of the Agreement Term, the City will provide Yarrow Bay with the Net Core City Cost Amount. Thirty days before the beginning of each following calendar quarter, for the remainder of the Agreement Term, Yarrow Bay will deposit with the City the Net Core City Cost Amount.

F. Accounting

Within 30 days of the end of each calendar quarter for which Yarrow Bay has made a deposit with the City pursuant to the terms of the previous paragraph, the City shall provide Yarrow Bay with an accounting showing actual Supplemental Costs paid by the City in the prior fiscal quarter, broken down by Supplemental costs for each staff position, facilities costs, equipment costs, City Code Consultant costs, Legal Costs, and any other expenditures for which Yarrow Bay is obligated to make pursuant to the Agreement, all according to generally accepted accounting principles for municipal corporations in the State of Washington. The difference between the City-estimated Supplemental Costs and actual Supplemental Costs shall either be a debit or credit toward the following quarter's deposit required by the previous paragraph.

G. Security

Since the City will be making irrevocable commitments in hiring personnel and consultants, and will be committed to provide furniture, fixtures, equipment, and office space for said employees and consultants, Yarrow Bay will provide as security a combination of a Letter of Credit of two million dollars (\$2,000,000.00) by July 10, 2007 and a first position deed of trust to the City on property within the City that is owned by

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Yarrow Bay and has a current fair market value of at least eight million dollars (\$8,000,000.00) no later than July 29, 2007, to assure that the obligations created by this Agreement are timely met. This security does not relieve Yarrow Bay from liability for the full amount of the obligations hereunder if they exceed the security value. The City may record the deed of trust on or after the Agreement Date. Yarrow Bay may substitute other property for some or all of the property that is the subject of the security deed of trust. Any such substitution will be subject to the City's approval, which shall not be unreasonably withheld as long as the substitute property has substantially equivalent developable acreage to the original property. The required amount of the Letter of Credit and/or deed of trust security provided by Yarrow Bay will be reduced by the amount of the Supplemental Costs funded and secured with like security under one or more MPD Development Agreements entered into by the Parties, or the City and a subsequent purchaser of property that is subject to one or more of such agreements.

### H. Default

If Yarrow Bay does not timely make any payment or deposit required hereunder, then the City shall send Yarrow Bay a Default Notice. Yarrow Bay shall have seven (7) days after receiving the Default Notice to cure its default by making the required payment or a deposit of the Default Amount. If the default is not cured within the seven day period, then the City shall have the right, without further notice, to make demand upon the Letter of Credit for the Default Amount. Yarrow Bay shall then replenish the Letter of Credit back to its full \$2,000,000 amount within 60 days from the City's demand. If the City does not receive notice that the full amount of the Letter of Credit has been reinstated within 60 days from the City's demand, then the City may make demand for the full amount of the Letter of Credit, and said amount shall be held by the City as a deposit for Supplemental Costs, and other Yarrow Bay financial obligations set forth in the Agreement for the remainder of the Agreement Term. If the balance in the deposit account drops below \$1,000,000, then the City may begin foreclosure proceedings against the property that is the subject of the Deed of Trust, with the City impounding, at sale, the full sale amount, up to \$8,000,000, to be held as a deposit for Supplemental Costs, and other Yarrow Bay financial obligations set forth in the Agreement for the remainder of the Agreement Term. The City will provide a quarterly accounting for all payments made toward Yarrow Bay obligations set forth in the Agreement in the same manner as required for payments made by Yarrow Bay pursuant to Paragraph 4(F) above. The provisions of this paragraph notwithstanding, the City may also cease processing any pending Yarrow Bay applications until such time as the default is cured, or all monies are collected from the security, so that the City has monies on deposit to pay for the application processing costs.

### I. Funding Commitments Non-Duplicative

The commitment to funding set forth in the Agreement is in addition to, but shall not be duplicative of, any financial obligations created by City codes such as the MPD

Code that are related to the filing and processing of a land use application by Yarrow Bay, or any other applicant. While the Parties recognize that the Core City Staff will participate in the processing of Yarrow Bay development applications, Yarrow Bay will not be charged for this time; provided, however, that pursuant to the City MPD Ordinance Yarrow Bay will pay the full cost of staff hired specifically to review and process MPD applications. For example, when Yarrow Bay is required under the City Code to pay a fee to the City related to the filing and processing of a land use application, Yarrow Bay shall only pay the City a base administrative charge and such other amounts as are required by the City Code that are not otherwise provided for in the Agreement.

J. Yarrow Bay Development

Given the current inadequate City staffing, the parties to this Agreement recognize that Yarrow Bay will benefit directly from expanded staff and support facilities, because expanded City staff will be able to expedite completing the Vision implementation regulations, and provide a support structure for timely review and processing of Yarrow Bay's Master Plans. As partial consideration for Yarrow Bay funding Core City Staff and facilities, to expedite economic and fiscal benefits to the City, and to facilitate the transfer of funding obligations from the Agreement to Yarrow Bay's MPD Development Agreement(s), the City intends to Process, as defined above, each Yarrow Bay's MPD application within 24 months from the latter of: 1) the date a notice of complete MPD application is submitted and 2) 6 months after the Agreement is executed by all Parties and Yarrow Bay has provided the security referenced in Paragraph 3 (G) and the Deed of Trust referenced therein has been recorded.. The 24 month time line does not include the following: 1) any time which the processing of the MPD application is delayed because of the City having to wait for further information relevant to the MPD Processing reasonably requested from the Yarrow Bay team; 2) any time during which an appeal is pending; and 3) the environmental review period. Provided, however, the City commits to continuing its Processing efforts during the "excluded" time periods on those portions of the application(s), if any, that are unaffected by the reasons for the delay. If the City does not Process Yarrow Bay's MPD applications within the above referenced 24 months, less excluded periods, and if Yarrow Bay has timely paid all of its financial commitments, then Yarrow Bay shall have the option, on 60 days written notice to the City, to terminate funding of the Supplemental Costs. Provided, the termination of funding shall not apply to those Supplemental Costs for which the City entered contractual obligations to pay the same prior to the date the notice to terminate was given and to the extent the payments for said Supplemental Costs are due within 5 years of the date the notice to terminate was given.

Pursuant to Section 18.98.070 of the Black Diamond Municipal Code, the Parties agree to prepare EISs for Yarrow Bay's proposed MPDs prior to or concurrent with Yarrow Bay's submittal of MPD applications.

K. Reduction of Necessary Funding under Agreement; Termination of Agreement

The City shall work in good faith and use reasonable best efforts to periodically review its fiscal condition and policies so that Yarrow Bay funding for Supplemental Costs can be reduced by other funding sources. The City agrees, to the extent staff is available, to apply for grants that could be used to contribute to Supplemental Costs, and shall use any funds awarded under such grants to pay Supplemental Costs. The City, if funding is provided by Yarrow Bay or one of its successors in interest, shall cause an economic analysis to be prepared by qualified independent consultants, and subjected to peer review, to determine if the City's normal general fund receipts from sales tax, property tax and any other regularly occurring tax sources, now have a sufficient base line so as to reduce or eliminate the need for continued subsidy of Supplemental Costs by Yarrow Bay and/or its successors in interest. These economic analyses shall occur biannually, with the first analysis to be done in calendar year 2012.

Yarrow Bay's commitment to fund Supplemental Costs under this Agreement shall end when: 1) the Parties, or the City and a successor in interest to Yarrow Bay, or the City and a third party, execute MPD Development Agreements that provide funding for the then-unfunded Supplemental Costs and any other obligations remaining hereunder, and provide adequate security for the payment of said costs and obligations; or 2) when it is determined, after peer review of the economic analyses outlined in this paragraph, that the Supplemental Cost subsidy is no longer needed; or 3) Yarrow Bay terminates the Supplemental Costs funding pursuant to paragraph 4 (J) in the event that the City defaults on its Processing obligations.

L. No Special Treatment

As a matter of law, Yarrow Bay acknowledges that the City has legal and ethical obligations to implement its plans and to enforce its regulations objectively, without regard to the fact that Yarrow Bay is providing funding for Core City Staff, City Code Consultants, Legal Costs, and facilities costs. Yarrow Bay understands that this Agreement does not entitle Yarrow Bay to any special treatment, other than the City commitments set forth herein.

M. Reimbursement

The City will take actions so that Yarrow Bay can recover the Supplemental Costs by adding a surcharge, to the extent allowed by law, to all impact fees, latecomer's agreements, and all other financial obligations that are created by City codes, and to all fees charged for the following land use applications and permits submitted by Benefited Non-Contributing Parties: MPD Applications, multifamily dwelling unit building permits, subdivisions, multiple short plats, commercial/industrial site plans, and single family home construction permits if more than one is submitted in a 12 month period,

This surcharge, designed to amortize Supplemental Costs, shall be equivalent to the Benefited Non-Contributing Party's pro-rata fair share of the Supplemental Costs. The surcharge shall include administrative fees for the City's costs in establishing and processing the surcharge, and for Yarrow Bay's costs associated with this Agreement. The amount of this surcharge actually collected from the Benefited Non-Contributing Parties, minus the City's administrative fee, shall be issued as a credit against Yarrow Bay's quarterly payments during the term of this Agreement, or shall be issued as a credit against development-related fees and costs owed from Yarrow Bay to the City after the term of this Agreement. In the event that a third party who is benefited by this Agreement contributes to the Supplemental Costs, that party shall not be reimbursed for any of its contributions until Yarrow Bay has been reimbursed for all of its contributions prior to the third party's contribution date. After that point, Yarrow Bay and any third party contributing to Supplemental Costs shall be reimbursed pro-rata according to their monetary contributions. The City will not collect the surcharge under the terms of this Agreement after the earlier of: 1) the date when Yarrow Bay has been fully repaid for all Supplemental Costs it has paid under this Agreement, or 2) the end of the vesting term specified in the final MPD Development Agreement between the Parties.

**5. Miscellaneous.**

A. Amendments

Any Party may request changes to this Agreement. Proposed changes that are agreed upon by all Parties will be incorporated by written amendments to this Agreement.

B. Integration

The Parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Waiver of any default will not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement will not be deemed to be a waiver of any other or subsequent breach and will not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by the Party charged with so waiving or modifying the terms of the Agreement, which written approval will be attached to the original Agreement.

C. Negotiation and Drafting

The Parties hereby acknowledge that this Agreement has been reached as a result of arms length negotiations with each Party represented by counsel. No presumption shall arise as a result of one Party or the other having drafted all or any portion of this Agreement.

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D. Counterparts

This Agreement may be executed by the Parties in counterparts, each of which, when executed shall be deemed an original instrument and binding against the Party signing thereon.

E. Severability

If any section, sentence, clause, or portion of this Agreement is declared unlawful or unconstitutional for any reason, the remainder of this Agreement shall continue in full force and effect.

F. Authority to Sign

Each Party represents and warrants to the others that the individuals signing below have full power, authority and legal right to execute and deliver this Agreement and thereby to legally bind the Party on whose behalf such person signed.

G. Binding Effect on Subsequent Parties

This Agreement shall bind and inure to the benefit of the Parties and their respective receivers, trustees, insurers, successors, subrogees, transferees and assigns.

H. Notice

Any demand, request or notice which either party hereto desires or may be required to make or deliver to the other shall be in writing and shall be deemed given when personally delivered, or successfully transmitted by facsimile transmission, or when actually received after being deposited in the United States Mail in registered or certified form, return receipt requested, addressed as follows

To the City: Rick Luther, City Administrator  
City of Black Diamond  
25510 Lawson St.  
PO Box 599  
Black Diamond, WA 98010  
Facsimile: (360) 886-2592

Loren Combs  
McGavick Graves  
1102 Broadway, Suite 500  
Tacoma, WA 98401  
Facsimile: (253) 627-2247

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To Yarrow Bay: Brian Ross  
Yarrow Bay Group  
825 5<sup>th</sup> Ave., Suite 202  
Kirkland, WA 98033  
Facsimile: (425) 202-3694

John Hempelmann  
Cairncross & Hempelmann, P.S.  
524 Second Avenue, Suite 500  
Seattle, Washington 98104-2323  
Facsimile: (206) 587-2308

I. Choice of Law, Jurisdiction, and Venue.

This Agreement shall be interpreted, construed, and enforced according to the laws of the State of Washington. If any action is brought by any of the Parties to enforce provisions of this Agreement, the Parties agree that the exclusive jurisdiction and venue of any lawsuit arising from such action will be the Superior Court of Washington for King County.

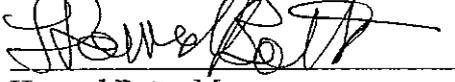
J. Mediation, Attorneys' Fees and Costs

In the event of any dispute concerning this Agreement, the parties agree to submit their dispute to a mutually-agreed mediator before seeking recourse from any court. In the event that mediation fails to resolve the dispute, the substantially prevailing Party shall be entitled to receive its attorneys' fees and costs at trial, at any alternative dispute resolution proceeding, and on appeal.

YARROW BAY COMMUNITIES  
For BD Lawson Partners, LP and BD Village Partners, LP

  
By: Brian Ross  
Title: Managing Partner

CITY OF BLACK DIAMOND

  
Howard Botts, Mayor

Attest:

  
Brenda Streepy, City Clerk/Treasurer  
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