

RESOLUTION NO. 09-590

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN THE VILLAGES MPD PRE-APPLICATION AGREEMENT BETWEEN THE CITY OF BLACK DIAMOND AND BD VILLAGE PARTNERS, LP

WHEREAS, the City of Black Diamond ("City"), Palmer Coking Coal Company ("Palmer"), King County and others were parties to the Black Diamond Urban Growth Area Agreement dated December 31, 1996 ("BDUGAA"); and

WHEREAS, in order to implement the BDUGAA provisions the City is developing a new set of development regulations and planning documents; and

WHEREAS, the City imposed a moratorium on certain types of development while the City was updating its regulations in order to assure that development would not vest to old standards, and thus thwart the intent and purpose of the BDUGAA; and

WHEREAS, the City is nearing completion of the process to adopt new policies and regulations and amend old ones in order to fully implement the BDUGAA provisions; and

WHEREAS, certain large scale developments identified in City regulations as Master Planned Developments ("MPD"), involve large tracts of land and, because of their size and the complexity of the projects, will require a significant amount of time to process; and

WHEREAS, the City, in order to allow the expeditious, yet thorough processing of MPD applications, determined that it would be beneficial to allow MPD applications to be submitted prior to the completion of the City code and policy updates, so that the City staff could familiarize themselves with the applications' general development concepts, so long as the application did not vest to the old development standards. The City provided for this early processing by adopting Ordinance 08-885; and

WHEREAS, Village Partners has advised the City that it intends to utilize the early application process allowed by Ordinance 08-885 to submit an MPD application for a development to be known as the Villages MPD; and

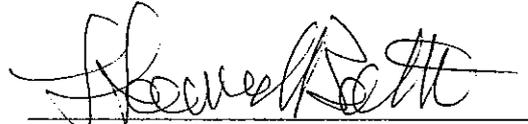
WHEREAS, the City entered into an agreement entitled the City of Black Diamond Staff and Facilities Funding Agreement ("Core Funding Agreement"), which provided for the funding for needed City staff and other related items; and

WHEREAS, the agreement that will be approved by the adoption of this resolution will:  
1) provide clarity on the interrelationship between the City's fee resolution, the MPD Code, and the Core Funding Agreement; and 2) allow the early processing of the Villages MPD application, as authorized by City Ordinance 08-885;

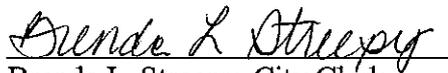
WHEREAS, the Council has reviewed the Villages MPD Pre-Application Agreement and finds it is in the best interests of the City and its citizens to authorize the Mayor to execute the Agreement; now, therefore

BE IT RESOLVED that the City Council hereby authorizes the Mayor to execute the Villages MPD Pre-Application Agreement, in substantially the form attached hereto.

ADOPTED by the City Council at an open meeting on the 16th day of April, 2009.

  
Howard Botts, Mayor

Attest:

  
Brenda L. Streepy, City Clerk

VILLAGES MPD PRE-APPLICATION AGREEMENT

1. **Date and Parties.** This document, entitled BD Village Partners, LP MPD Pre-Application Agreement (“Agreement”) is dated the 16 day of April 2009, and is entered into by and between BD Village Partners, LP (“Village Partners”) and the City of Black Diamond (“City”), a Washington municipal corporation.

2. **General Recitals and Agreement Purpose.**

2.1 The City, Palmer, King County and others were parties to the Black Diamond Urban Growth Area Agreement dated December 31, 1996 (“BDUGAA”).

2.2 In order to implement the BDUGAA provisions the City is developing a new set of development regulations, policies, and planning documents.

2.3 The City imposed a moratorium on certain types of land use activity while the City was updating its regulations in order to assure that development would not vest to old standards, and thus thwart the intent and purpose of the BDUGAA.

2.4 The City is nearing completion of the process to adopt new policies and regulations and amend old ones in order to fully implement the BDUGAA provisions.

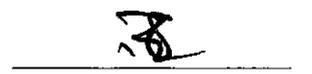
2.5 Certain large scale developments identified in City regulations as Master Planned Developments (“MPD”), involve large tracts of land and, because of their size and the complexity of the projects, will require a significant amount of time to process.

2.6 The City, in order to allow the expeditious, yet thorough processing of MPD applications, determined that it would be beneficial to allow MPD applications to be submitted prior to the completion of the City code and policy updates, so that the City staff could familiarize themselves with the applications general development concepts, so long as the application did not vest to the old development standards. The City provided for this early processing by adopting Ordinance 08-885.

2.7 Village Partners has advised the City that it intends to utilize the early application process allowed by Ordinance 08-885 to submit an MPD application for a development to be known as the Villages MPD.

2.8 The BDUGAA provisions set forth the general framework for the annexation of certain properties identified in the BDUGAA, and referenced herein, as the South Annexation Area, the West Annexation Area, and the East Annexation Area. The West and South Annexation Areas are intended to be included within the Villages MPD. The West Annexation has already occurred.

  
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2.9 The City entered into an agreement entitled the City of Black Diamond Staff and Facilities Funding Agreement (“Core Funding Agreement”), which provided for the funding for needed City staff and other related items.

2.10 This agreement will: 1) provide clarity on the interrelationship between the City’s fee resolution, the MPD Code, and the Core Funding Agreement; 2) allow the early processing of the Villages MPD application, as authorized by City Ordinance 08-885; and 3) define the relationship between the finalization of the South Annexation process and the hearings on the Villages MPD application.

3. **South Annexation.**

3.1 The City agrees to commence processing the Villages MPD application, which will include the South Annexation Area, prior to completion of the annexation process for the South Annexation Area. The public hearings on the Villages MPD Application shall not be scheduled until the South Annexation Area has been annexed into the City, and any appeals finalized, or the South Annexation Area has been removed from the Villages MPD Application.

3.2 A request to commence the annexation process for the South Annexation Area has been received by the City. The parties agree that before the City authorizes the circulation of the petition to annex the South Annexation Area, the parties shall negotiate a pre-annexation agreement that will provide for the implementation of the remaining BDUGAA conditions relative to annexation of the South Annexation Area so that the pre-annexation agreement can be integrated into the annexation process at the time the circulation of the petition to annex is authorized. The parties agree to immediately commence negotiating the pre-annexation agreement. Village Partners waives the requirement in RCW 35A.14.120 that a meeting with the initiating parties must be held within 60 days of submitting the notice of intent to annex. The City agrees that since the petition to annex will include signatures of the owners of all of the property to be annexed, that it will hold the meeting with the initiating parties and authorize the circulation of the petition in the same meeting.

3.3 The cost of processing the South Annexation shall be paid in accordance with the City’s fee resolution.

4. **Relationship of Core Funding Agreement to City’s Fee Resolution for MPD Processing.**

4.1 The Core Funding Agreement provides a funding mechanism, funded by BD Lawson Partners, L.P. and BD Village Partners, LP, for needed City staff and City facilities and equipment until such time as the City can independently provide funding for those costs. It also provides that the City shall not charge for City staff time used in reviewing and processing a land use application that is otherwise being paid for pursuant to the Core Funding Agreement provisions. It is the City’s intent that all applicants for land use entitlements shall be treated the same, and pay the same fees.

4.2 The City shall designate for City staff whose salaries and overhead are funded by the Core Funding Agreement, what percentage of their time will be allocated to

  
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processing MPD applications. That percentage of the total amount paid for their salary and overhead, shall then be deducted from the amount that is funded by the Core Funding Agreement. Any time that those employees then spend on processing an MPD application shall be charged to the particular MPD application in accordance with the City's fee resolution and the City's MPD ordinance.

4.3 Although the Core Funding Agreement provisions relating to non-duplicative payments only applies to land use applications, and an annexation is not a land use application, since the annexation is also inextricably linked to the MPD land use application the staff time associated with the South Annexation shall also be subject to the provisions of paragraph 4.2.

4.4 The MPD application shall be processed in accordance with the City's fee resolution and MPD ordinance. Provided, in lieu of the amount of the required deposit being the estimated cost to process the application, the parties agree that the deposit amount shall be \$25,000, and the security provided in the Core Funding Agreement for payment of amounts owed to the City shall also serve as security for the payment of any amounts to become due and owing to the City as a result of the MPD application process.

## 5. MPD Vesting.

5.1 This section 5 shall apply to any MPD application that is submitted by any party hereto and/or for lands owned by a party hereto, while the moratorium imposed by City Ordinance 08-885, or any extension thereof, remains in effect.

5.2 The MPD application shall vest to the City policies, standards, application requirements, and land use regulations in effect on the date the moratorium referenced in paragraph 5.1 is lifted or otherwise expires ("Vested Standards").

5.3 The applicant and landowner of land included in the MPD application, assume the risk that the City policies and development regulations to which they will vest will be significantly different than the policies and development regulations in effect on the date they submit their application, including the loss of some land use activity or densities that might have otherwise been permitted under the existing regulations.

5.4 The applicant, at its expense, will modify its MPD application, as necessary, in order to meet the Vested Standards. If the applicant concludes, after reviewing its application in accordance with the provisions of the Vested Standards, that it believes no modifications to its application is necessary, then it shall notify the City, in writing that it does not intend to modify its application. Otherwise, it will notify the City that it intends to modify its application in order to comply with the Vested Standards.

5.5 The MPD application date shall be either the date that the applicant provides the City with the notice referenced in paragraph 5.4 that it does not intend to amend its application, or when the applicant submits its modified application referenced in paragraph 5.4 ("MPD Application Date").

5.6 The City shall commence its review of the MPD application upon receipt, even though some of that review may be of application materials that will have to be modified after the MPD Application Date, resulting in additional charges to the applicant. The applicant will be responsible for these additional costs as application costs under the City's fee resolution and MPD ordinance.

5.7 The City shall not commence its review of the application as to whether or not it is a complete application until the MPD Application Date. The application shall vest to the applicable City policies, standards and development regulations in effect on the date a complete application, as defined in the MPD ordinance in effect on the MPD Application Date, is submitted.

6. **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.

7. **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.

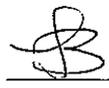
8. **Negotiation and Drafting.** The parties hereby acknowledge that this Agreement has been reached as a result of arms length negotiations with each party represented by counsel. No presumption shall arise as a result of one party or the other having drafted all or any portion of this Agreement.

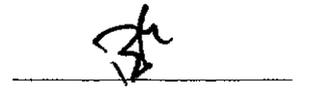
9. **Counterparts.** This Agreement may be executed by the parties in counterparts, each of which, when executed shall be deemed an original instrument and binding against the party signing thereon.

10. **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.

11. **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.

12. **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.

  
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13. **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: Gwendolyn Voelpel, City Administrator  
City of Black Diamond  
25510 Lawson St.  
PO Box 599  
Black Diamond, WA 98010  
Facsimile: (360) 886-2592

Loren Combs  
VSI Law Group, PLLC  
3600 Port of Tacoma Road, Suite 311  
Tacoma, WA 98424  
Facsimile: (253) 922-5848

To Village Partners: Brian Ross  
BD Village Partners, LP  
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

14. **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.

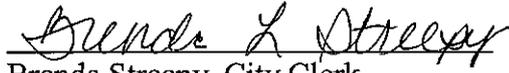
15. **Mediation, Attorneys' Fees and Costs.** In the event of any dispute concerning this Agreement, the parties agree to submit their dispute to a mutually-agreed mediator before seeking recourse from any court. In the event that mediation fails to resolve the dispute, the substantially prevailing party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

CITY OF BLACK DIAMOND



Howard Botts, Mayor

Attest:



Brenda Streepy, City Clerk

Approved as to form:

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Loren D. Combs, City Attorney

BD VILLAGE COMMUNITIES

BD Village Partners, LP



By: Brian Ross

Title: Managing Partner