

RESOLUTION NO. 09-626

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE A PRE-ANNEXATION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BLACK DIAMOND AND BD VILLAGE PARTNERS, LP RELATING TO THE DEVELOPMENT OF THE SOUTH ANNEXATION AREA

BD Village Partners, LP, pursuant to RCW 35A.14.120 has notified the City of its intent to commence annexation proceedings for the area known as the South Annexation Area, the legal description of which is set forth in Exhibit A to the attached Pre-Annexation and Development Agreement; and

WHEREAS, RCW 36.70B.170 authorizes a city to enter into an agreement regarding the development of real property outside its boundaries as part of a proposed annexation with any person having an ownership interest or control of such real property; and

WHEREAS, the City and BD Village Partners, LP, have negotiated a Pre-Annexation and Development Agreement, substantially in the form attached hereto as Exhibit A; and

WHEREAS, the City and others were parties to the Black Diamond Urban Growth Area Agreement dated December 31, 1996 (“BDUGAA”); and

WHEREAS, BD Village Partners, LP is a successor in interest to some of the real property that is subject to the BDUGAA, and the attached Pre-Annexation and Development Agreement is consistent with the terms of the BDUGAA; and

WHEREAS, the City Council held a public hearing on the proposed Pre-Annexation and Development Agreement on August 20, 2009; and

WHEREAS, the Council has reviewed the attached Pre-Annexation and Development 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 a Pre-Annexation and Development Agreement between the City of Black Diamond and BD Village Partners, LP relating to the development of the South Annexation Area, in substantially the form attached hereto (the “Agreement”), upon receipt of an original of the Agreement signed by BD Village Partners, LP.

ADOPTED by the City Council at an open meeting on the 20th day of August, 2009.


Howard Botts, Mayor

Attest:


Brenda Martinez, City Clerk

After Recording Return To:

Jami Kuzaro-Balint
10220 NE Points Drive, Suite 120
Kirkland, WA 98033

PRE-ANNEXATION AND DEVELOPMENT AGREEMENT

BY

AND

BETWEEN

THE CITY OF BLACK DIAMOND

AND

BD VILLAGE PARTNERS, L.P.

RELATING TO THE DEVELOPMENT OF THE

SOUTH ANNEXATION AREA

**PRE-ANNEXATION AND DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF BLACK DIAMOND, WASHINGTON,
AND
BD VILLAGES PARTNERS, L.P.
RELATING TO THE DEVELOPMENT OF THE VILLAGES
SOUTH ANNEXATION AREA**

1. DATE, PARTIES AND TERMS.

This Pre-Annexation and Development Agreement (“**Agreement**”) is entered into this 20th day of August, 2009, (“**Effective Date**”), by and between the CITY OF BLACK DIAMOND, a non charter code city in the State of Washington, operating under the provisions of chapter 35A RCW (“**Black Diamond**” or “**City**”) and BD VILLAGE PARTNERS, L.P., a Washington Limited Partnership (“**Village Partners**”). Village Partners and Black Diamond are collectively referred to herein as the “**Parties**.” All capitalized terms in this Agreement shall have the meanings set forth herein, and if not defined herein such terms shall have the meaning given to them in that certain Black Diamond Urban Growth Area Agreement, dated December 31, 1996 (the “**BDUGAA**”).

2. GENERAL RECITALS.

2.1 Authority. RCW 36.70B.170 authorizes a city to enter into an agreement regarding the development of real property outside its boundaries as part of a proposed annexation with any person having an ownership interest or control of such real property. RCW 35A.14.330, after two public hearings at least 30 days apart, as required by RCW 35A.14.340, authorizes a city to establish the zoning that will become effective upon annexation of real property.

2.2 BDUGAA. The City is a party to the BDUGAA. Village Partners is a successor in interest to some of the real property that is subject to the BDUGAA. Land uses, zoning and development standards for the South Annexation Area shall be consistent with the terms of the BDUGAA.

2.3 South Annexation Area. Village Partners, pursuant to RCW 35A.14.120 has notified the City of its intent to commence annexation proceedings for the South Annexation

Area, the legal description to said property having been approved by the Parties and is attached hereto as Exhibit A and illustrated in Exhibit B, each incorporated herein by this reference (the “**South Annexation Area**”). The portions of the South Annexation Area that are owned by Village Partners are included in the Villages Master Planned Development application submitted to the City by Village Partners on May 11, 2009 (the “**Villages MPD Application**”), the legal descriptions for which are attached hereto as Exhibits C and illustrated in Exhibit D, each incorporated herein by reference (the “**Villages Property**”). The property that is within the South Annexation Area that is not subject to this Agreement and is not owned by any of the parties is legally described in Exhibit E and illustrated in Exhibit F, each incorporated herein by reference. (the “**Non-Villages Property**”).

2.4 Material Consideration. The Parties acknowledge that they enter into this Agreement in consideration of the mutual promises contained in the BDUGAA and that this Agreement implements the terms and conditions of the BDUGAA.

3. EFFECTIVE DATE AND TERM.

The Agreement shall be in full force and effect from the Effective Date unless earlier terminated pursuant to the provisions of paragraph 16 below.

4. PERMITTED LAND USES AND ZONING.

4.1 The land uses allowed on the Villages Property shall be those allowed in the MPD zone in effect on the Effective Date, and shall remain in effect for 5 years, except as modified by the Villages MPD, if approved by the City. The Villages Property is and shall remain included in the Villages MPD Application. If the Villages MPD Application is approved then the zoning and applicable uses for the Villages Property shall be subject to the conditions of approval and the vesting period set forth in the Villages Master Planned Development conditions of approval and associated development agreement.

4.2 Any development on the Villages Property shall take into consideration the need to maintain the City’s fair share of affordable housing, taking into account the City’s existing housing stock. If affordable housing is required in order to maintain the appropriate level of affordable housing stock, and the Villages Property is part of the approved Villages Master Planned Development, then the obligation may be met by providing the necessary affordable

housing on any of the lands included within the approved Villages Master Planned Development, and not necessarily on the Villages Property itself.

5. DEVELOPMENT STANDARDS AND VESTING.

The Villages Property shall be developed in accordance with the development standards in effect on the Effective Date, and shall remain vested to those standards for 5 years. The Villages Property is and shall remain included in the Villages MPD Application. If the Villages MPD Application is approved, then the Villages Property shall be developed in accordance with the development standards that are applicable to the Villages MPD Application, and shall be vested to those development standards as set forth in the Villages Master Planned Development conditions of approval and the associated development agreement. The requirement regarding affordable housing set forth in paragraph 4 above shall be applicable.

6. DENSITY.

The portion of the Villages Property to be developed for residential uses shall have a minimum average residential density of four units per acre. The base residential density shall be two (2) dwelling units per acre and any and all additional residential density shall be achieved by acquiring Development Rights through the City's Transferable Development Right ("TDR") Program. The maximum allowed density shall be as determined by the applicable codes and conditions of development approval as set forth in paragraphs 4 and 5 above.

7. OPEN SPACE.

7.1 The BDUGAA Open Space requirements applicable to the South Annexation Area, as set forth in BDUGAA paragraph 5.4, and as further defined in section III (H) of the Black Diamond Area Open Space Protection Agreement dated the 6th day of June, 2005 (the ("BDAOSPA")) shall be met before the effective date of the City ordinance annexing the South Annexation Area. All documents necessary to effectuate the protection of the open space both in unincorporated King County and in the City, as required by the BDAOSPA and the BDUGAA, shall either have been duly executed and recorded, or shall be executed and placed into escrow, prior to the City adopting the ordinance to annex the South Annexation Area. The escrow instructions shall be approved by the City, shall be subject to the terms of this Agreement, and shall require that the escrow agent record the documents upon the expiration of the appeal period of the City ordinance annexing the South Annexation Area, or upon the successful conclusion of

any appeal whichever shall later occur. The escrow instructions shall be irrevocable, unless the revocation is approved in writing by the City and Village Partners.

7.2 The provisions of paragraph 7.1 notwithstanding, the City may require additional parks, playfields, and other recreational amenities as part of the MPD and/or subdivision process to the extent those requirements are consistent with the applicable City policies and regulations, as determined under the provisions of paragraphs 4 and 5 above.

8. WATER.

All potable water shall be provided by the City through the City's public water system. The Parties, and others, entered into an agreement dated the 11th day of August, 2003 entitled the Water Supply and Facilities Funding Agreement ("WSFFA"). Water service for the Villages Property shall be provided in accordance with the terms of the WSFFA. Village Partners, upon the Effective Date, shall be deemed to have irrevocably waived its right to terminate the WSFFA as authorized by WSFFA paragraph 28.4. Any water system improvements, other than those specified in the WSFFA that are necessary to provide water service to serve any portion of the Villages Property, shall be constructed by Village Partners, under the standards in effect at the time a complete preliminary plat application is submitted for the affected portion of the Villages Property, unless a separate vesting date is specified in an applicable MPD Permit.

9. ROADS.

9.1 Major Road Access. Village Partners commits to construct and provide major road access to the Villages Property so major road access service for the South Annexation Area can be provided at the time of project completions. The details, timing, and phasing for the construction of said major road access improvements shall be determined during the MPD Permit approval process and shall be incorporated into the MPD Permit and/or approval conditions.

9.2 BDUGAA paragraph 5.2(a)(6), and City Ordinance 05-803 required that the Pipeline Road, as that term is defined in the BDUGAA, would be constructed as part of the development of the West Annexation Area in order to provide a new east-west road connection for the City. The West Annexation Area and the Villages Property are both included in the Villages MPD Application, and it is anticipated that the construction of the Pipeline Road will be a condition of approval for the Villages MPD Application, with the timing of construction being

defined within the conditions of approval. The Villages MPD approval will thus provide the needed new east-west connection through the City so that the level of service on Roberts Drive will not be significantly adversely affected as a result of the development of the properties included within the Villages MPD Application, and the number of travel lanes on Roberts Drive will not be increased in order to handle the traffic resulting from the Villages MPD project. If the Villages MPD Application is not approved, or the Villages Property is developed independently of the West Annexation Area, then further analysis may be required to assure that the applicant provides concurrency of off site transportation improvements in order to mitigate the traffic generated in the South Annexation Area, without requiring the increase in the number of travel lanes on Roberts Drive, or degrading the level of service on Roberts Drive in order to mitigate those impacts.

9.3 Other Roads. Village Partners shall construct such other roads as are required to adequately serve the development on the Villages Property, as authorized in any MPD Permit approvals.

9.4 Road Design and Construction Standards. The road design and construction standards that will be applied shall be those determined during the MPD Permit approval process. Since road construction may be phased, as determined by the MPD Permit, different road design and construction standards may apply to subsequent road phases.

10. SANITARY SEWER SERVICE.

10.1 Public Sanitary Sewer Service. All sanitary sewer service shall be by the City's public sewer system. Village Partners shall be responsible for constructing such sanitary sewer improvements as are necessary to serve the Villages Property. If Village Partners constructs sanitary sewer service improvements that will benefit other properties, Village Partners shall be entitled to recapture a pro-rata portion of the costs as authorized by State law.

10.2 System Capacity. The City currently does not have sufficient capacity to serve all of the Villages Property and that the City is relying upon the Soos Creek Utility District and King County to provide needed sanitary sewer treatment capacity, and the main collection lines to wheel the sanitary sewage to the treatment facility. Village Partners acknowledges that if service capacity is not available the City may have to restrict development on some or all of the Villages Property until the capacity becomes available. The City reserves the right to ration the

current City capacity to assure that equal opportunity for access to available capacity is provided. may have to construct facilities necessary to create additional capacity.

10.3 Design Standards. The sanitary sewer design and construction standards that will be applied shall be those determined during the MPD Permit approval process.

11. FUNDING FOR REQUIRED WATER, SEWER AND ROAD IMPROVEMENTS.

Village Partners is responsible for funding improvements necessary to develop the Villages Property. Consistent with BDUGAA section 6.5 the Parties will seek federal, state, local government and public/private funding for the infrastructure planning, engineering and construction necessary to implement the BDUGAA. Village Partners consents to, and agrees not to protest, the formation of local improvement districts (“LIDs”) to finance said improvements to the extent the Villages Property is benefited. The City shall have the right, but not the obligation, to use LID’s as a funding mechanism.

12. PHASING.

Phasing of all development activities on the Villages Property, including constructing infrastructure, is anticipated. Phasing shall be allowed. Timing of said phasing, and the improvements to be constructed in each phase, shall be determined in the MPD Permit approval process.

13. PROCESSING FEES.

Unless specified otherwise in the Agreement, or in other written agreement between the Parties, the processing fees charged by the City for an application shall be those included in the City’s fee resolution that applies to all applicants within the City and that is in effect on the date a complete application is submitted.

14. NOTICE. Any demand, request or notice which any party hereto desires or may be required to be 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:

If to the City, to:

Mayor or City Administrator
City of Black Diamond
P.O. Box 599

Black Diamond, WA 98010
Telephone: (360) 886-2560
Facsimile: (360) 886-2562

With copies to:

Loren Combs
City Attorney
3600 Port of Tacoma Road, Suite 311
Tacoma, Washington 98424
Telephone: (253) 922-5464
Facsimile: (253) 922-5848

If to Village Partners, to:

Brian Ross
Yarrow Bay Development LLC
10220 NE Points Drive, Suite 102
Kirkland, WA 98033
Telephone: (425) 898-2100
Facsimile: (425) 898-2139

And to:

Ryan Kohlmann
Yarrow Bay Development LLC
P.O. Box 690
Black Diamond, WA 98010
Telephone: (206) 280-7937
Facsimile: (425) 202-3694

With copies to:

Cairncross & Hempelmann, P.S.
524 Second Avenue
Seattle, WA 98104-2323
Attn: Nancy Rogers
Telephone: (206) 587-0700
Facsimile: (206) 587-2308

15. MISCELLANEOUS.

15.1 Threats to Public Health and Safety. Consistent with RCW 36.70B.170(4), the City may impose new or different regulations to the extent required by a serious threat to public health and safety.

15.2 Additional Development Agreements. The Parties anticipate that additional, more detailed, development agreements will be necessary during the development process and/or MPD

application process to address, among other things, vesting to the City's development regulations and standards.

15.3 Amendment. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the Parties or their successors in interest.

15.4 Assignment. Village Partners shall have the right to assign or transfer all or any portion of its interests, rights or obligations under this Agreement.

15.5 Severability. If any term or provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

15.6 Other Necessary Acts. The Parties shall execute and deliver to each other all other further instruments and documents that are reasonably necessary to carry out and implement the Agreement.

15.7 Covenants Running with the Land. All of the provisions contained in this Agreement shall constitute covenants running with the land.

15.8 Remedies. The Parties may, in addition to any other rights or remedies, institute an equitable action to cure, correct, or remedy any default; enforce any covenant or agreement herein; enjoin any threatened or attempted violation thereof; enforce by specific performance the obligations and rights of the parties hereto; or obtain any remedies consistent with the foregoing and the purposes of this Agreement.

15.9 Washington Law. This Agreement shall be construed and enforced in accordance with the laws of the state of Washington.

15.10 Attorneys' Fees. In the event of any litigation or arbitration between the Parties regarding an alleged breach of this Agreement, the substantially prevailing party shall be entitled to any award of attorneys' fees.

15.11 Counterparts. This Agreement is executed in three (3) duplicate counterparts, each of which is deemed to be an original.

16. Agreement Termination. This Agreement may only be terminated if, through no fault of Village Partners, the South Annexation Area is not annexed into the City by June 30, 2010. Provided, if an appeal of the annexation is pending, then the Agreement shall remain in full force

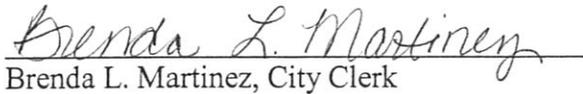
and effect until the appeal has been concluded. If the results of the appeal is that the South Annexation Area can be annexed consistent with the terms of this Agreement, then the Agreement shall remain in full force and effect. If the results of the appeal is otherwise, then the Agreement may be terminated. If any condition precedent to the termination of the Agreement occurs, than Village Partners may terminate the Agreement upon providing the Parties with 10 days notice. The termination shall be effective at the end of the 10 day period.

CITY OF BLACK DIAMOND

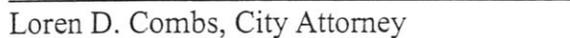


By: Howard Botts
Its: Mayor

Attest:


Brenda L. Martinez, City Clerk

Approved As To Form:


Loren D. Combs, City Attorney

VILLAGE PARTNER, L.P., a Washington limited partnership
By: Yarrow Bay Development LLC, General Partner



By: Brian Ross
Its: CEO

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 1st day of October, 2009, Brian Ross did personally appear before me, the undersigned Notary Public in and for the State of Washington, and acknowledged to me that he is the CEO of Yarrow Bay Development LLC, a Washington Limited Liability Company (the "Company") and that on behalf of said Company, further acknowledged that he has authority to act on behalf of said Company to execute the foregoing instrument and acknowledged it as the voluntary act and deed of said Company.

GIVEN under my hand and official seal this 1st day of October, 2009.



Rachel J. Pitzel
Rachel J. Pitzel
NOTARY PUBLIC in and for the State of
Washington, residing at Black Diamond
My commission expires 8/13/12

EXHIBIT A

EXHIBIT A
URBAN GROWTH AREA ANNEXATION LEGAL DESCRIPTION

TRIAD JOB # 05-336
OCTOBER 24, 2008

THAT PORTION OF SECTION 23, TOWNSHIP 21 NORTH, RANGE 6 EAST, W.M. IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 23;

THENCE EASTERLY ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 23, TO THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER;

THENCE SOUTHERLY, ALONG THE EAST LINE OF SAID NORTHWEST QUARTER TO THE NORTHWEST CORNER OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 23;

THENCE EASTERLY, ALONG THE NORTH LINE OF SAID SOUTH HALF, TO THE EASTERLY MARGIN OF STATE ROUTE 169;

THENCE SOUTHEASTERLY, ALONG SAID EASTERLY MARGIN, TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 23;

THENCE WESTERLY, ALONG SAID SOUTH LINE, TO THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 23;

THENCE WESTERLY, ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER, TO THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 23;

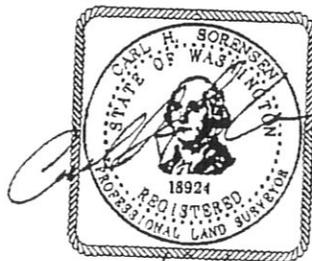
THENCE SOUTHERLY, ALONG THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SOUTHWEST QUARTER, TO THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER;

THENCE WESTERLY, ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 23, TO THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER;

THENCE NORTHERLY, ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 23, TO THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 23;

THENCE NORTHERLY, ALONG THE WEST LINE OF SAID NORTHWEST QUARTER, TO THE NORTHWEST CORNER OF SAID SECTION 23, THE POINT OF BEGINNING.

WRITTEN: ARJ
CHECKED: CHS



10/24/08

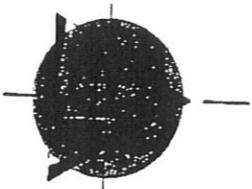


S:\PROJECTS\05336\CORRESP\NC\TRIAD LEGALS\053362008-10-24 UGA Annex.doc
12112 115th Avenue NE Kirkland, Washington 98034-9623
425.821.3448 · 802.488.0756 · Fax 425.321.3481
www.triadassoc.com

Land Development Consultants

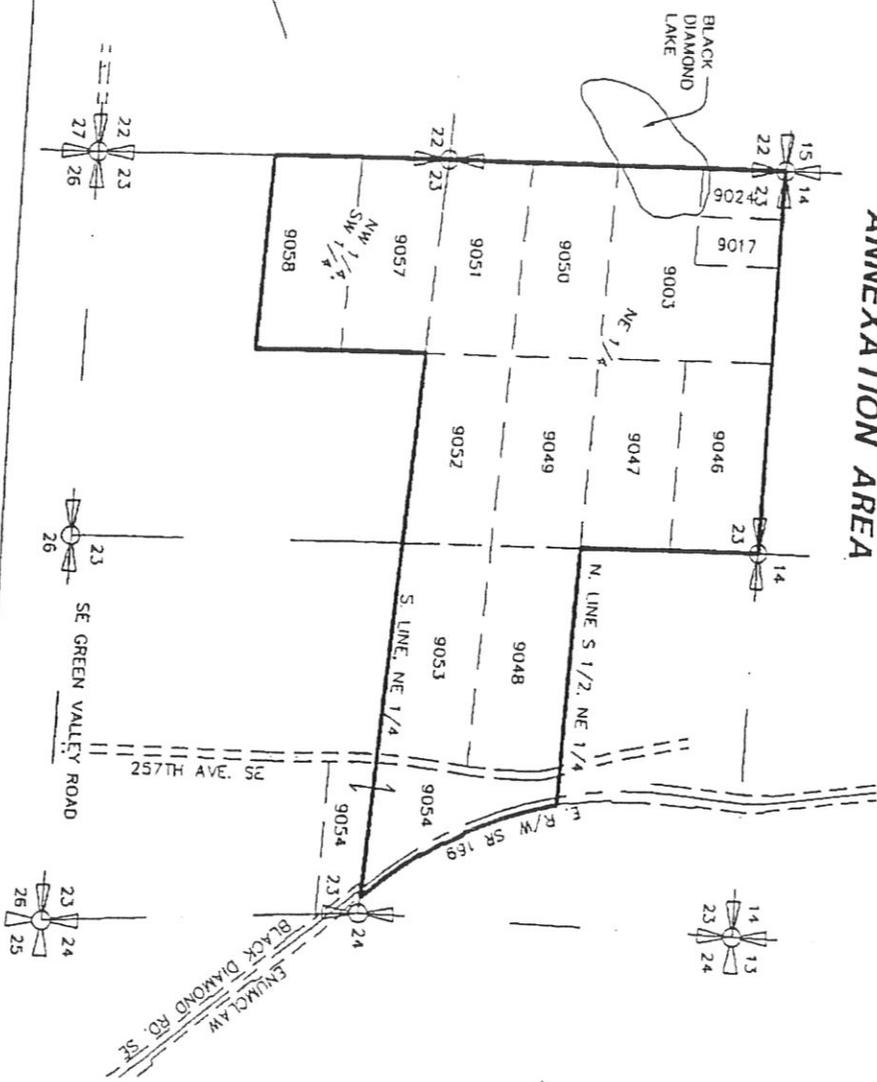
EXHIBIT B

POR. OF NW 1/4 AND NE 1/4, AND SW 1/4 OF SEC. 23, T21N, R6E, W.M.
ANNEXATION AREA



SCALE: 1" = 1000'
 0 500 1000 2000

NOTE: COMPLETE ASSESSOR
 PARCEL NUMBERS INCLUDE
 THE PREFIX "232106"
 (EG: 2321069057)



BLACK DIAMOND
URBAN GROWTH
AREA ANNEXATION
EXHIBIT B

CITY OF BLACK DIAMOND, WASHINGTON

TRIAD
 ASSOCIATES
 12112 115th Ave. NE
 Kirkland, WA 98034-6929
 425.821.8448
 www.triadassoc.com

MANAGER:	AL FURE, PE
DISTRICT:	
CDMP:	ARI
PREPARED:	CHS
DATE:	10-24-08
SCALE:	HORZ: 1"=1000'
VERT:	
JOB NUMBER:	05-336
SHEET NUMBER:	1 OF 7