

RESOLUTION NO. 09-662

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN TWO CONSERVATION EASEMENT DEEDS WITH B.D. VILLAGE PARTNERS, L.P. TO ENSURE THE PROTECTION OF OPEN SPACE WITHIN THE CITY LIMITS AS REQUIRED BY THE BLACK DIAMOND URBAN GROWTH AREA AGREEMENT

WHEREAS, in 1996, the City of Black Diamond, King County, Palmer Coking Coal Company and Plum Creek Timber Company entered in the Black Diamond Urban Growth Area Agreement ("BDUGAA"); and

WHEREAS, Section 5.4 of the BDUGAA requires the preservation of open space within the unincorporated King County, within urban growth area and within the city limits as a pre-condition of the South Annexation area being annexed into the city limits; and

WHEREAS, on December 14, 2009, the King County Council accepted the provision of required open space lands within unincorporated King County; and

WHEREAS, on the two conservation easements will provide for the preservation of 81.7 acres of open space within the proposed annexation area and 195 acres within the current city limits, consistent with Section 5.4 of the BDUGAA; and

WHEREAS, the exact location of the open space will be defined in the future as development of the properties occur and survey work allows for precise delineations; and

WHEREAS, the South Annexation has passed through the King County Boundary Review Board process and is now ready for adoption by the City;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The Mayor is hereby authorized to execute conservation easement deeds with BD Village Partners, LP to protect open space within the existing city limits and within the proposed South Annexation area.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 17th DAY OF
DECEMBER, 2009.

CITY OF BLACK DIAMOND:



Howard Botts, Mayor

Attest:



Brenda L. Martinez, City Clerk

WHEN RECORDED RETURN TO:

**Brenda Martinez
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010**

Document Title: CONSERVATION EASEMENT

Grantor: BD Village Partners, LP

Grantee: City of Black Diamond

Legal Description:

Abbreviated Legal Description: PTN, SECTION 15, 22 and 23

Full Legal Description: See Exhibit A attached

Assessor's Tax Parcel Nos.:

152106-9096

222106-9004, 222106-9035, 222106-9036, 222106-9037, 222106-9038, 222106-9039, 222106-9040, 222106-9041, 222106-9042, 222106-9043, 222106-9044, 222106-9045, 222106-9046, 222106-9047, 222106-9048, 222106-9049, 222106-9050, 222106-9051, 222106-9052, 222106-9053

232106-9001

Reference Nos. of Documents Released or Assigned: N/A

CONSERVATION EASEMENT DEED

1. Date and Parties.

This Conservation Easement Deed ("Easement") is dated, for reference purposes, the ___ day of December, 2009, by BD VILLAGE PARTNERS, L.P., a Washington limited partnership, as "Grantor," and the CITY OF BLACK DIAMOND, a Washington municipal corporation, as "Grantee."

2. General Recitals.

- 2.1 Grantor is the fee owner of certain real property located in King County, Washington, that is depicted in the map attached as Exhibit A-1 (hereafter "In-City Open Space") and by reference incorporated herein. The In-City Open Space is not comprised of existing tax parcels, therefore, this Easement is recorded against a larger existing tax parcel legally described in attached Exhibit A-2 (the "Encumbered Property"). The restrictions on use shall only apply to the In-City Open Space. Village Partners may amend this Easement to conform to subsequently established separate tax parcels for the In-City Open Space in accordance with paragraph 4 of Exhibit B attached herein.
- 2.2 Grantee is authorized, pursuant to RCW 64.04.130 and RCW 84.34.210 to acquire an interest in real property for the purpose of preserving, maintaining, improving, restoring, limiting the future use of, and otherwise conserving, open space land.
- 2.3 This Easement is granted pursuant to and fulfills Grantor's obligations pursuant to section 5.4(c)(3) of the Black Diamond Urban Growth Area Agreement.
- 2.4 Open space land includes any land, the preservation of which in its present use would (i) conserve and enhance natural or scenic resources, or (ii) protect streams or water supply, or (iii) promote conservation of soils and wetlands, or (iv) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space, or (v) enhance recreation opportunities, or (vi) preserve historic sites, or (vii) preserve visual quality along highway, road, and street corridors or scenic vistas, (viii) retain in its natural state lands within or adjacent to the City of Black Diamond that are at least one acre in size and may be open to public use for purposes defined by the City of Black Diamond.

For purposes of this Easement, the definition of Open Space Lands shall include Public Benefit Lands as defined in City of Black Diamond

Ordinance 752, the terms of which are incorporated herein by reference. Open Space Land also includes In-City Open Space as defined in Section 7 of the Black Diamond Urban Growth Area Agreement, dated December 1996 ("BDUGAA").

- 2.5 The In-City Open Space possesses one or more features of open space land, the permanent preservation and protection of which has value to Grantor, Grantee, the people of the City of Black Diamond, the City of Black Diamond, and King County. These values are referred to herein as the "Conservation Values" of the In-City Open Space.
- 2.6 The purpose of this conveyance is to permanently protect one or more of the Conservation Values, listed in paragraph 2.4 herein, of the In-City Open Space as more specifically described in Exhibit B attached hereto and by reference incorporated herein.

3. **Consideration.**

The parties hereto acknowledge there is good and valuable consideration for the assumption of the rights and responsibilities inherent in agreeing to preserve and protect the Conservation Values of the In-City Open Space.

4. **Easement Conveyance.**

- 4.1 Grantor grants, conveys and warrants to Grantee, a conservation easement (the "Easement") in perpetuity over the In-City Open Space on the terms and conditions set forth herein, exclusively for the purpose of conserving, preserving and protecting the Conservation Values of the In-City Open Space, as defined in Exhibit B attached hereto and by reference incorporated herein.
- 4.2 a. The specific Conservation Values of the In-City Open Space are documented in an inventory of relevant features to be maintained on file at the offices of Grantee and are incorporated into this Easement by this reference ("Present Conditions Report"). The Present Conditions Report shall be completed, reviewed, and accepted by Grantee by January 31, 2010, and shall consist of reports, maps, photographs, and/or other documentation that provide, collectively, an accurate representation of the In-City Open Space at the date of grant of this Easement and that is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement.

b. If Grantor disagrees with the Present Conditions Report: (1) it shall notify Grantee within 30 days of its receipt; and (2) the Agreed Present Conditions Report shall be recorded as an addendum to this Easement.

c. If agreement is not reached, the Grantor may seek binding arbitration. The demand for arbitration must be made within 30 days after the expiration of the period in 4.2 b (2).

5. Grantee's Rights.

5.1 The following rights are conveyed to Grantee:

5.1.1 To preserve and protect the Conservation Values of the In-City Open Space, as detailed in Exhibit B;

5.1.2 To prevent any use of the In-City Open Space that is restricted pursuant to Exhibit B and to require the restoration of such areas or features of the In-City Open Space that may be damaged by any improper use, pursuant to the remedies set forth in Section 8;

5.1.3 To enter upon the In-City Open Space at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement in accordance with Section 8; provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not in any case unreasonably interfere with Grantor's quiet use and enjoyment of the In-City Open Space;

5.1.4 To assign, convey, or otherwise transfer all or a portion of Grantee's rights and obligations under this Easement only to a government unit or other organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold Easements under RCW 64.04.130 or RCW 84.34.250 (or any successor provision(s) then applicable; and

5.1.5 Such other rights as are set forth in Exhibit B.

6. Use Restrictions.

Uses restricted on the In-City Open Space are set forth in Exhibit B.

7. Reserved and Retained Rights and Responsibilities.

7.1 Grantor reserves all rights accruing from ownership of the In-City Open Space, except for such rights that are specifically granted herein and such activities that are specifically restricted or prohibited herein.

7.2 Grantor retains responsibility for the following obligations:

7.2.1 Taxes. The Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the In-City Open Space. Upon five days written notice to the Grantor, the Grantee shall have the right, but not the obligation, to pay any taxes or assessments levied against the Property in accordance with any bill, statement or estimate procured from the appropriate authority. If the Grantee ever pays any taxes or assessments levied against the Property, the Grantor shall reimburse the Grantee for the same, with interest until reimbursed at the maximum rate allowed by law. The Grantor shall reimburse the Grantee for these sums plus any reasonable attorneys' fees and court costs incurred to collect such sums.

7.2.2 Upkeep, Maintenance, Costs, Legal Requirements, and Liabilities. Except to the extent limited in Exhibit B, Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the In-City Open Space, including the maintenance of adequate liability insurance coverage. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall prevent the perfection of any liens against the Conservation Zone that are not subordinate to this Easement arising out of any work performed for, materials

furnished to, or obligations incurred by Grantor.

- 7.2.3 Control. Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the In-City Open Space, or any of Grantor's activities on the In-City Open Space, or otherwise to become an owner or operator with respect to the In-City Open Space within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), or the Model Toxics Control Act, as amended ("MTCA").
- 7.2.4 Liability and Liability and Indemnification. Grantor hereby agrees to release, hold harmless, indemnify, and defend Grantee, its officers, employees and agents from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, judgments or administrative actions, including, without limitation, reasonable attorney's and consultant's fees, regardless of cause, except to the extent caused by the negligent acts or omissions of Grantee, its officers, employees or agents, arising from or in any way connected with (1) injury to or death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the In-City Open Space; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation or requirement, including without limitation, CERCLA and MTCA, by any person other than Grantee, its officers, employees and agents; or (3) the presence or release in, on, from; or about the In-City Open Space, at any time, of any hazardous substances, unless caused solely by the Grantee.

8. Grantee's Remedies.

- 8.1 Notice of Failure. If the Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, the Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the In-City Open Space resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the In-City Open Space so injured.

- 8.2 Grantor's Failure to Respond. The Grantee may bring an action as provided in subsection 8.3 if Grantor:
- 8.2.1 Fails to cure the violation within thirty (30) days after receipt of a notice of violation from the Grantee; or
 - 8.2.2 Under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty (30) day period and fails to continue diligently to cure such violation until finally cured.
- 8.3 Grantee Action. The Grantee may bring an action at law or in equity in a court having jurisdiction to enforce the terms of this Easement. This right shall include, but not be limited to:
- 8.3.1 Enjoining the violation, ex-parte as necessary and as allowed under applicable civil rules, by temporary or permanent injunction;
 - 8.3.2 Recovering any damages to which it may be entitled for violation of the terms of this Easement or for injury to any Conservation Values protected by this Easement, including damages for the loss of Conservation Values; and
 - 8.3.3 Requiring the restoration of the Conservation Zone to the condition that existed prior to any such injury. The Grantee shall be entitled to a mandatory injunction, requiring restoration, even if the monetary value of the loss is less than the restoration cost, as the parties acknowledge that the diminution in monetary value is not an adequate remedy at law, unless both parties agree thereto.
- 8.4 Immediate Action Required. The notice provisions of sections 8.1 and 8.2 notwithstanding, if the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the In-City Open Space, the Grantee may pursue its remedies authorized by the provisions of this Easement, without prior notice to Grantor or without waiting for the period provided for cure to expire.
- 8.5 Nature of Remedy. The Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement. The Grantee shall be entitled to the injunctive relief described in

this section in addition to such other relief to which the Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Grantee's remedies described, in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

- 8.6 Cost of Restoration. In the event the Grantee must enforce the terms of this Easement, the costs of restoration necessitated by acts or omissions of Grantor, its agents, employees, contractors, invitees or licensees in violation of the terms of this Easement shall be borne by Grantor or those of its successors, or assigns, against whom a judgment is entered. In the event that the Grantee secures redress for an Easement violation without initiating or completing a judicial proceeding, the costs of such restoration shall be borne by Grantor or those of its successors and assigns who are otherwise determined to be responsible for the unauthorized use or activity.
- 8.7 The Grantee's Forbearance. The Grantee acknowledges its commitment to protect the Conservation Values associated with the In-City Open Space, including enforcement of the terms of this Easement. Any forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any right under this Easement. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver. The exercise of any remedy by the County or a private party, as authorized by paragraph 10, shall not be deemed as a waiver of the Grantee's right to enforce the same, or a different right or remedy at a subsequent time.
- 8.8 Waiver of Certain Defenses. Grantor acknowledges that the Grantee and its successors and assigns have limited resources for monitoring compliance with the terms of this Easement. In recognition of this fact, Grantor hereby waives any technical defense it may have against an enforcement action undertaken by the Grantee or its successors or assigns based upon laches (e.g., delay by the Grantee in enforcing the terms of this Easement), estoppels (e.g., a claim by Grantor that, in reliance on a prior oral rather than written statement of the Grantee, it undertook a use or activity on the In-City Open Space deemed by the Grantee to be inconsistent with the Purpose of this Easement) or prescription.
- 8.9 Acts Beyond Grantor's Control. Unless modified by the terms of Exhibit B, Grantor shall not be in default or violation as to any obligation created hereby and no condition precedent or subsequent shall be deemed to fail to occur if Grantor is prevented from fulfilling such obligation by, or such

condition fails to occur due to, (a) actions upon the In-City Open Space by trespassers or other third parties not under Grantor's reasonable control, including, without limitation, natural changes, fire, flood, storm, or earth movement, or (b) any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the In-City Open Space resulting from such causes.

- 8.10 Violations of Easements by Third Parties. Unless modified by the terms of Exhibit B, Grantor will not be deemed to be in violation of this Easement when there are violations of the terms of this Easement by parties other than Grantor, its officers, employees, agents or contractors and Grantor takes reasonable steps to prevent such violations. Provided, however, Grantor has an affirmative duty to cooperate in the prosecution of any third parties violating the terms of this Easement.
- 8.11 Costs and Attorneys Fees. In any legal action commenced to enforce the provisions of this Easement, the substantially prevailing party shall be entitled to their costs, and reasonable attorneys fees incurred in said action.

9. **Enforcement by King County.**

- 9.1 King County shall have the right, but not the obligation, to exercise Grantee's remedies set forth in paragraph 8 if the Grantee fails or refuses to enforce the use restrictions.
- 9.2 King County shall not have the authority to exercise this right without first giving the Grantee written notice that there is a violation of the use restriction, and requesting the City to exercise its enforcement authority within a reasonable period of time.
- 9.3 This grant of authority does not create a cause of action against the City for failure to enforce the use restrictions, or, a right to compel the City to enforce the use restrictions. King County is deemed to have irrevocably waived any and all claims against the City for failing or refusing to enforce the use restrictions. This subsection shall not apply if the City acquires fee title to the Protected Property, as contemplated in section 10.2.
- 9.4 This grant of authority does not create a cause of action against King County for failure to enforce the use restrictions, or a right to compel King County to enforce the use restrictions. The City is deemed to have irrevocably waived any and all claims against King County for failing or refusing to enforce the use restrictions.

10. Grant in Perpetuity.

- 10.1 This Easement shall be recorded in the records of King County, Washington and shall be a burden upon and shall run with the In-City Open Space in perpetuity and shall bind the Grantor, its successors and assigns forever.
- 10.2 In the event that the Grantee acquires the fee title to all or a portion of the real estate covered by this Easement, it is the intent of the Parties, both the Grantor and the Grantee, that no merger of title shall take place that would merge the restrictions of this Easement with fee title to the In-City Open Space, notwithstanding any otherwise applicable legal doctrine under which such property interests would or might be merged. As the Parties intend that no such merger take place, and in view of the public interest in the enforcement of this Easement, the restrictions on the use of the In-City Open Space, as embodied in this Easement shall, in the event fee title becomes vested in the Grantee, become and remain permanent and perpetual restrictions on the use of the In-City Open Space. The Grantee, as successor in title to the Grantor under the circumstances described in the foregoing sentence, shall observe and be bound by the obligations of the Grantor and the restrictions imposed on the In-City Open Space by this Easement.

11. Exhibits.

The following exhibits are attached hereto:

- Exhibit A-1 – Map Depicting In-City Open Space
- Exhibit A-2 - Legal Description for Encumbered Property
- Exhibit B – Property Specific Terms

12. Written Notices.

- 12.1 All Notices required by this Agreement shall be in writing, signed by the sending party, and shall be considered properly delivered when personally delivered, when received by facsimile, or on the third day following mailing, postage prepaid, certified mail, return receipt requested to:

Grantee: City Administrator
CITY OF BLACK DIAMOND
P.O. Box 599
Black Diamond, WA 98010
Fax: (360) 886-2492

With a copy to:

Grantor: Jami Balint or successor

YARROW BAY DEVELOPMENT
LLC
10220 NE Points Drive, Suite120
Kirkland, WA 98033

And to: Brian Ross

YARROW BAY DEVELOPMENT
LLC
10220 NE Points Drive, Suite120
Kirkland, WA 98033

With a copy to: John Hempelmann or other known
counsel of record
CAIRNCROSS & HEMPELMANN
524 Second Avenue, Suite 500
Seattle, WA 98104

12.2 Either party may modify the above notice delivery information by providing written notice to the other party at the address set forth above, or such subsequent address that has been properly provided in accordance with the paragraph's terms.

13. Public Access.

No general public access to any portion of the In-City Open Space is conveyed by this Easement unless specifically referenced in the Exhibits attached hereto.

14. Interpretation.

This Deed shall be interpreted under the laws of Washington, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

15. Severability.

If any provision of this Deed is found to be invalid, illegal or unenforceable, that finding shall not affect the validity, legality or enforceability of the remaining provisions, unless the remaining provisions cannot be construed in such a way as to protect any of the Conservation Values intended to be protected by this Grant of Easement.

16. Acceptance.

The Grantee hereby accepts the granting of this Conservation Easement Deed.

GRANTOR: BD VILLAGE PARTNERS, L.P.
By: [Signature]
Name: Brian Ross
Title: CEO YARROW BAY DEVELOPMENT
GENERAL PARTNER

GRANTEE: CITY OF BLACK DIAMOND
By: [Signature]
Howard Botts, Mayor
Attest: [Signature]
Brenda Martinez, City Clerk

Approved as to form:
By: [Signature]
Interim Yvonne Ward, City Attorney

STATE OF WASHINGTON)
)ss:
COUNTY OF KING)

On this 17th day of DECEMBER, 2009 before me personally appeared BRIAN ROSS, to me known to be the CHIEF EXECUTIVE OFFICER, of YARROW BAY DEVELOPMENT, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument on behalf of the corporation and that the seal affixed is the seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.



[Signature]
Notary Public in and for the
State of Washington
Residing at: Edmonds, WA
My Commission Expires: 3/28/13
Printed Name: Daina Lynn Mereness

STATE OF WASHINGTON)
)ss:
COUNTY OF KING)

On this 17th day of DECEMBER, 2009 before me personally appeared HOWARD BUTTS, to me known to be the MAYOR of THE CITY OF BLACK DIAMOND, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument on behalf of the municipal corporation and that the seal affixed is the seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Yvonne Kinoshita Ward
Notary Public in and for the
State of Washington
Residing at: AUBURN, WA
My Commission Expires: 3-2-13
Printed Name: YVONNE KINOSHITA
WARD

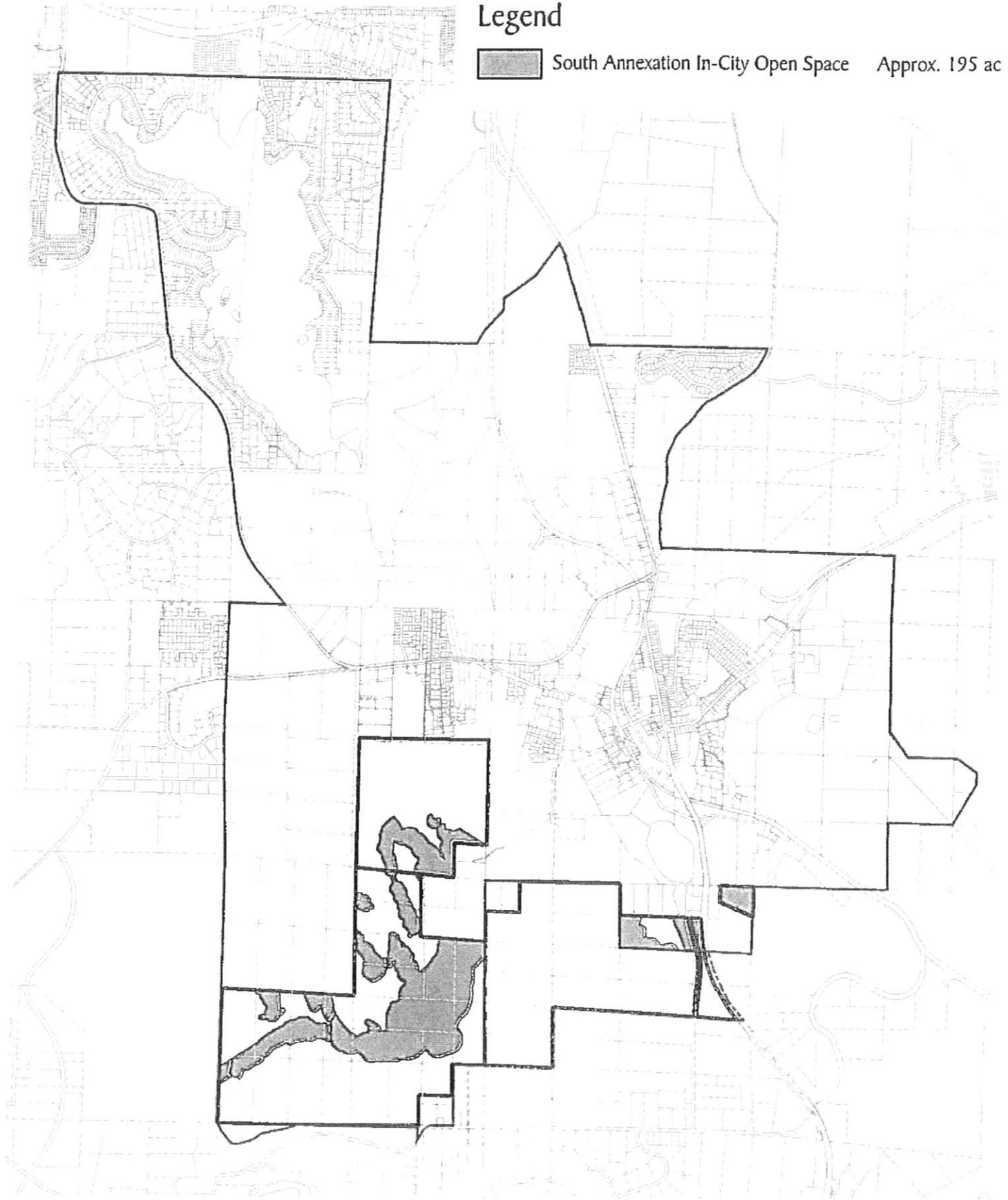
(Attached)

EXHIBIT "A-1"

Map of In-City Open Space

Legend

 South Annexation In-City Open Space Approx. 195 ac



In City Open Space Exhibit - South Annexation Area

EXHIBIT A-2
LEGAL DESCRIPTION

(ATTACHED)

EXHIBIT A-2

Encumbered Property

Legal Descriptions

The southeast quarter of Section 15, except the southeast quarter of the southeast quarter of the southeast quarter thereof;

And together with:

ALL of section 22, except the northwest quarter thereof, also except the northeast quarter of the northeast quarter thereof;

And together with:

The south half of the northwest quarter of the northeast quarter of Section 23 and that portion of the south half of the northeast quarter of the northeast quarter, lying westerly of the westerly margin of the Enumclaw-Black Diamond Road (SR 169) Right of Way;

And together with:

That portion of the northeast quarter of the northeast quarter of the northeast quarter of Section 23, lying northerly of the following described line:

Beginning at a point of the East line of said northeast quarter of the northeast quarter of the northeast quarter and 600 feet south of the northeast section corner of said section:

Thence extending in a northwesterly direction to a point on the west line of said northeast quarter of the northeast quarter of the northeast quarter and 330 feet south of the northwest quarter of said northeast quarter of the northeast quarter of the northeast quarter.

EXHIBIT "B"

Property Specific Terms

1. Purpose and Conservation Values. The Purpose of this Easement and Conservation Values protected by this Easement, as referenced in paragraphs 2.3-2.6 thereof, are as follows: To provide open space as set forth in paragraph 2.4 of the Easement. The specific Conservation Values, of those listed in paragraph 2.4, that are ultimately to be protected will be determined as set forth in paragraph 4 herein.
2. Grantee's Rights. All of Grantee's rights are described on the face of the Easement. Those rights may be expanded, with the written consent of the Grantor and Grantee, in an amendment to this Easement.
3. Use Restrictions.
 - A. The In-City Open Space may not be developed in any manner inconsistent with the Conservation Values set forth above.
 - B. The Conservation Values of approximately one hundred ninety-five acres (195) acres of the In-City Open Space shall be permanently protected in accordance with the process set forth in paragraph 4 herein.
4. Establishing In-City Open Space and Conservation Values.
 - A. In-City Open Space At the time of execution of this Easement, the In-City Open Space is not comprised of existing tax parcels. Therefore, this Easement is recorded against a larger existing tax parcel and will need to be amended to include the legal description of the In-City Open Space.
 - B. The parties shall subsequently add an addendum to this Easement that includes the legal description of the In-City Open Space, which shall include one hundred ninety-five (195) acres, as referenced in paragraph 3(B) above.
 - C. Unless established earlier by Grantor and Grantee, the permanent boundaries of the one hundred ninety-five (195) acres of In-City Open Space shall be established as part of the MPD approval process, other development approval, through a development agreement, or other mechanism approved by the City. Any development application including the Encumbered Property shall include a site plan showing the proposed boundaries of the In-City Open Space and its relationship to all proposed improvements to, and development upon, the Encumbered Property. It shall also specify the specific Conservation Values that are intended to be preserved and protected. The configuration of the In-City Open Space shall take into account: (1) the need for transportation and utility corridors if their impact on the Conservation

Values of the In-City Open Space can be adequately mitigated; and (2) the need to adjust the location of the In-City Open Space so that the Conservation Values to be permanently protected are not detrimentally impacted by pre-existing matters of record.

- D. The permanent one hundred ninety-five (195) acres of In-City Open Space shall be surveyed by the applicant prior to the MPD development agreement approval or other mechanism used to define the boundaries of the In-City Open Space set forth in paragraph 4(C) herein. The parties shall record an addendum to the Easement that sets forth the one hundred ninety-five acres In-City Open Space legal description, the specific Conservation Values, of those identified in paragraph 2.4 of the Easement, that are to be protected and conserved, and any further use restrictions on the In-City Open Space necessary to protect and preserve those Conservation Values.
- E. If the In-City Open Space is established as a separate tract during the land division processes that follow MPD approval, or another mechanism to identify the In-City Open Space approved by the City, then the addendum to the Easement described in paragraph 4(D) herein shall include a provision requiring future owners of the In-City Open Space to be responsible for the preservation and protection of the Conservation Values of the In-City Open Space and shall establish a mechanism approved by the City to implement this requirement. Such mechanism shall provide the City with legal rights to enforce this requirement. This requirement shall run with the land in the In-City Open Space.

F. In-City Open Space

- 5. Record Agreement. Grantee acknowledges that this Easement is subject to existing matters of record, including but not limited to, the prior transfer of any mineral or oil rights on the In-City Open Space or the Encumbered Property. Provided, however, the Easement is not subject to the Partial Waiver of Surface Use Rights document recorded under King County recording number 9206230401. The Grantor guarantees and warrants that there shall be no interference with meeting the Conservation Values at all times on the In-City Open Space, as a result of the exercise of surface rights pursuant to the terms of said document.
- 6. Adjacent Parcels. This Easement shall not be construed to preclude development or development planning activities on lands adjacent to the In-City Open Space and shall not be construed to preclude boundary line adjustments of parcels within Section 15, 22, 23 to revise lot lines. This Easement shall not be construed as separating Grantor's adjacent parcels within Section 15, 22, 23 so as to restrict transfers of development rights or otherwise change the applications of development regulations to Grantor's parcels.

WHEN RECORDED RETURN TO:

Brenda Martinez

City of Black Diamond

P.O. Box 599

Black Diamond, WA 98010

Document Title: CONSERVATION EASEMENT

Grantor: BD Village Partners, LP

Grantee: City of Black Diamond

Legal Description:

Abbreviated Legal Description: PTN, SECTION 23

Full Legal Description: See Exhibit A-2 attached

Assessor's Tax Parcel Nos.:

232106-9003, 232106-9046, 232106-9047, 232106-9048, 232106-9049, 232106-9050, 232106-9051, 232106-9052, 232106-9053, 232106-9054, 232106-9057, 232106-9058

Reference Nos. of Documents Released or Assigned: N/A

CONSERVATION EASEMENT DEED

1. Date and Parties.

This Conservation Easement Deed ("Easement") is dated, for reference purposes, the ___ day of December, 2009, by BD VILLAGE PARTNERS, L.P., a Washington limited partnership, as "Grantor," and the CITY OF BLACK DIAMOND, a Washington municipal corporation, as "Grantee."

2. General Recitals.

- 2.1 Grantor is the fee owner of certain real property located in King County, Washington, that is depicted in the map attached as Exhibit A-1 (hereafter "UGA Open Space") and by reference incorporated herein. The UGA Open Space is not comprised of existing tax parcels, therefore, this Easement is recorded against a larger existing tax parcel legally described in attached Exhibit A-2 (the "Encumbered Property"). The restrictions on use shall only apply to the UGA Open Space. Village Partners may amend this Easement to conform to subsequently established separate tax parcels for the UGA Open Space, in accordance with paragraph 4 of Exhibit B attached herein.
- 2.2 This Easement is granted pursuant to and fulfills Grantor's obligations under section 5.4(c)(1) of the Black Diamond Urban Growth Area Agreement.
- 2.3 Grantee is authorized, pursuant to RCW 64.04.130 and RCW 84.34.210, to acquire an interest in real property for the purpose of preserving, maintaining, improving, restoring, limiting the future use of, and otherwise conserving open space land.
- 2.4 Open space land includes any land, the preservation of which in its present use would (i) conserve and enhance natural or scenic resources, or (ii) protect streams or water supply, or (iii) promote conservation of soils and wetlands, or (iv) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space, or (v) enhance recreation opportunities, or (vi) preserve historic sites, (vii) preserve visual quality along highway, road, and street corridors or scenic vistas, or (viii) retain in its natural state lands within or adjacent to the City of Black Diamond that are at least one acre in size and may be open to public use for purposes defined by the City of Black Diamond.

For purposes of this Easement, the definition of Open Space Lands shall include Public Benefit Lands as defined in City of Black Diamond Ordinance 752, the terms of which are incorporated herein by reference. Open Space Land also includes UGA Open Space as defined in Section 7 of

the Black Diamond Urban Growth Area Agreement, dated December 1996 (“BDUGAA”).

- 2.5 The UGA Open Space possesses one or more features of open space land, the permanent preservation and protection of which has value to Grantor, Grantee, the people of the City of Black Diamond, the City of Black Diamond, and King County. These values are referred to herein as the “Conservation Values” of the UGA Open Space.
- 2.6 The purpose of this conveyance is to permanently protect one or more of the Conservation Values, listed in paragraph 2.4 herein, of the UGA Open Space as more specifically described in Exhibit B attached hereto and by reference incorporated herein.

3. **Consideration.**

The parties hereto acknowledge there is good and valuable consideration for the assumption of the rights and responsibilities inherent in agreeing to preserve and protect the Conservation Values of the UGA Open Space.

4. **Easement Conveyance.**

- 4.1 Grantor grants, conveys and warrants to Grantee, a conservation easement (the “Easement”) in perpetuity over the UGA Open Space on the terms and conditions set forth herein, exclusively for the purpose of conserving, preserving and protecting the Conservation Values of the UGA Open Space as defined in Exhibit B attached hereto and by reference incorporated herein.

4.2 a. The specific Conservation Values of the UGA Open Space are documented in an inventory of relevant features to be maintained on file at the offices of Grantee and are incorporated into this Easement by this reference (“Present Conditions Report”). The Present Conditions Report shall be completed, reviewed, and accepted by Grantee by January 31, 2010, and shall consist of reports, maps, photographs, and/or other documentation that provide, collectively, an accurate representation of the UGA Open Space at the date of grant of this Easement and that is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement.

b. If Grantor disagrees with the Present Conditions Report: (1) it shall notify Grantee within 30 days of its receipt; and (2) the Agreed Present Conditions Report shall be recorded as an addendum to this Easement.

c. If agreement is not reached, the Grantor may seek binding arbitration. The demand for arbitration must be made within 30 days after the expiration of the period in 4.2 b (2).

5. Grantee's Rights.

5.1 The following rights are conveyed to Grantee:

5.1.1 To preserve and protect the Conservation Values of the UGA Open Space, as detailed in Exhibit B;

5.1.2 To prevent any use of the UGA Open Space that is restricted pursuant to Exhibit B and to require the restoration of such areas or features of the UGA Open Space that may be damaged by any improper use, pursuant to the remedies set forth in Section 8;

5.1.3 To enter upon the UGA Open Space at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement in accordance with Section 8; provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not in any case unreasonably interfere with Grantor's quiet use and enjoyment of the UGA Open Space;

5.1.4 To assign, convey, or otherwise transfer all or a portion of Grantee's rights and obligations under this Easement only to a government unit or other organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold Easements under RCW 64.04.130 or RCW 84.34.250 (or any successor provision(s) then applicable; and

5.1.5 Such other rights as are set forth in Exhibit B.

6. Use Restrictions.

Uses restricted on the UGA Open Space are set forth in Exhibit B.

7. Reserved and Retained Rights and Responsibilities.

7.1 Grantor reserves all rights accruing from ownership of the UGA Open Space, except for such rights that are specifically granted herein and such activities that are specifically restricted or prohibited herein.

7.2 Grantor retains responsibility for the following obligations:

7.2.1 Taxes. The Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the UGA Open Space. Upon five days written notice to the Grantor, the Grantee shall have the right, but not the obligation, to pay any taxes or assessments levied against the Property in accordance with any bill, statement or estimate procured from the appropriate authority. If the Grantee ever pays any taxes or assessments levied against the Property, the Grantor shall reimburse the Grantee for the same, with interest until reimbursed at the maximum rate allowed by law. The Grantor shall reimburse the Grantee for these sums plus any reasonable attorneys' fees and court costs incurred to collect such sums.

7.2.2 Upkeep, Maintenance, Costs, Legal Requirements, and Liabilities. Except to the extent limited in Exhibit B, Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the UGA Open Space, including the maintenance of adequate liability insurance coverage. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall prevent the perfection of any liens against the Conservation Zone that are not subordinate to this Easement arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

7.2.3 Control. Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the UGA Open Space, or

any of Grantor's activities on the UGA Open Space, or otherwise to become an owner or operator with respect to the UGA Open Space within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), or the Model Toxics Control Act, as amended ("MTCA").

7.2.4 Liability and Liability and Indemnification. Grantor hereby agrees to release, hold harmless, indemnify, and defend Grantee, its officers, employees and agents from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, judgments or administrative actions, including, without limitation, reasonable attorney's and consultant's fees, regardless of cause, except to the extent caused by the negligent acts or omissions of Grantee, its officers, employees or agents, arising from or in any way connected with (1) injury to or death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the UGA Open Space; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation or requirement, including without limitation, CERCLA and MTCA, by any person other than Grantee, its officers, employees and agents; or (3) the presence or release in, on, from; or about the UGA Open Space, at any time, of any hazardous substances, unless caused solely by the Grantee.

8. Grantee's Remedies.

- 8.1 Notice of Failure. If the Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, the Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the UGA Open Space resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the UGA Open Space so injured.
- 8.2 Grantor's Failure to Respond. The Grantee may bring an action as provided in subsection 8.3 if Grantor:

- 8.2.1 Fails to cure the violation within thirty (30) days after receipt of a notice of violation from the Grantee; or
 - 8.2.2 Under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty (30) day period and fails to continue diligently to cure such violation until finally cured.
- 8.3 Grantee Action. The Grantee may bring an action at law or in equity in a court having jurisdiction to enforce the terms of this Easement. This right shall include, but not be limited to:
- 8.3.1 Enjoining the violation, ex-parte as necessary and as allowed under applicable civil rules, by temporary or permanent injunction;
 - 8.3.2 Recovering any damages to which it may be entitled for violation of the terms of this Easement or for injury to any Conservation Values protected by this Easement, including damages for the loss of Conservation Values; and
 - 8.3.3 Requiring the restoration of the UGA Open Space to the condition that existed prior to any such injury. The Grantee shall be entitled to a mandatory injunction, requiring restoration, even if the monetary value of the loss is less than the restoration cost, as the parties acknowledge that the diminution in monetary value is not an adequate remedy at law, unless both parties agree thereto.
- 8.4 Immediate Action Required. The notice provisions of sections 8.1 and 8.2 notwithstanding, if the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the UGA Open Space, the Grantee may pursue its remedies authorized by the provisions of this Easement, without prior notice to Grantor or without waiting for the period provided for cure to expire.
- 8.5 Nature of Remedy. The Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement. The Grantee shall be entitled to the injunctive relief described in this section in addition to such other relief to which the Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Grantee's remedies described, in

this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

- 8.6 Cost of Restoration. In the event the Grantee must enforce the terms of this Easement, the costs of restoration necessitated by acts or omissions of Grantor, its agents, employees, contractors, invitees or licensees in violation of the terms of this Easement shall be borne by Grantor or those of its successors, or assigns, against whom a judgment is entered. In the event that the Grantee secures redress for an Easement violation without initiating or completing a judicial proceeding, the costs of such restoration shall be borne by Grantor or those of its successors and assigns who are otherwise determined to be responsible for the unauthorized use or activity.
- 8.7 The Grantee's Forbearance. The Grantee acknowledges its commitment to protect the Conservation Values associated with the UGA Open Space, including enforcement of the terms of this Easement. Any forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any right under this Easement. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver. The exercise of any remedy by the County or a private party, as authorized by paragraph 10, shall not be deemed as a waiver of the Grantee's right to enforce the same, or a different right or remedy at a subsequent time.
- 8.8 Waiver of Certain Defenses. Grantor acknowledges that the Grantee and its successors and assigns have limited resources for monitoring compliance with the terms of this Easement. In recognition of this fact, Grantor hereby waives any technical defense it may have against an enforcement action undertaken by the Grantee or its successors or assigns based upon laches (e.g., delay by the Grantee in enforcing the terms of this Easement), estoppels (e.g., a claim by Grantor that, in reliance on a prior oral rather than written statement of the Grantee, it undertook a use or activity on the UGA Open Space deemed by the Grantee to be inconsistent with the Purpose of this Easement) or prescription.
- 8.9 Acts Beyond Grantor's Control. Unless modified by the terms of Exhibit B, Grantor shall not be in default or violation as to any obligation created hereby and no condition precedent or subsequent shall be deemed to fail to occur if Grantor is prevented from fulfilling such obligation by, or such condition fails to occur due to, (a) actions upon the UGA Open Space by trespassers or other third parties not under Grantor's reasonable control, including, without limitation, natural changes, fire, flood, storm, or earth movement, or (b) any prudent action taken by Grantor under emergency

conditions to prevent, abate, or mitigate significant injury to the UGA Open Space resulting from such causes.

- 8.10 Violations of Easements by Third Parties. Unless modified by the terms of Exhibit B, Grantor will not be deemed to be in violation of this Easement when there are violations of the terms of this Easement by parties other than Grantor, its officers, employees, agents or contractors and Grantor takes reasonable steps to prevent such violations. Provided, however, Grantor has an affirmative duty to cooperate in the prosecution of any third parties violating the terms of this Easement.
- 8.11 Costs and Attorneys Fees. In any legal action commenced to enforce the provisions of this Easement, the substantially prevailing party shall be entitled to their costs, and reasonable attorneys fees incurred in said action.

9. Enforcement by King County.

- 9.1 King County shall have the right, but not the obligation, to exercise Grantee's remedies set forth in paragraph 8 if the Grantee fails or refuses to enforce the use restrictions.
- 9.2 King County shall not have the authority to exercise this right without first giving the Grantee written notice that there is a violation of the use restriction, and requesting the City to exercise its enforcement authority within a reasonable period of time.
- 9.3 This grant of authority does not create a cause of action against the City for failure to enforce the use restrictions, or, a right to compel the City to enforce the use restrictions. King County is deemed to have irrevocably waived any and all claims against the City for failing or refusing to enforce the use restrictions. This subsection shall not apply if the City acquires fee title to the Protected Property, as contemplated in section 10.2.
- 9.4 This grant of authority does not create a cause of action against King County for failure to enforce the use restrictions, or a right to compel King County to enforce the use restrictions. The City is deemed to have irrevocably waived any and all claims against King County for failing or refusing to enforce the use restrictions.

10. Grant in Perpetuity.

- 10.1 This Easement shall be recorded in the records of King County, Washington and shall be a burden upon and shall run with the UGA Open Space in perpetuity and shall bind the Grantor, its successors and assigns forever.

10.2 In the event that the Grantee acquires the fee title to all or a portion of the real estate covered by this Easement, it is the intent of the Parties, both the Grantor and the Grantee, that no merger of title shall take place that would merge the restrictions of this Easement with fee title to the UGA Open Space, notwithstanding any otherwise applicable legal doctrine under which such property interests would or might be merged. As the Parties intend that no such merger take place, and in view of the public interest in the enforcement of this Easement, the restrictions on the use of the UGA Open Space, as embodied in this Easement shall, in the event fee title becomes vested in the Grantee, become and remain permanent and perpetual restrictions on the use of the UGA Open Space. The Grantee, as successor in title to the Grantor under the circumstances described in the foregoing sentence, shall observe and be bound by the obligations of the Grantor and the restrictions imposed on the UGA Open Space by this Easement.

11. Exhibits.

The following exhibits are attached hereto:

- Exhibit A-1 – Map Depicting UGA Open Space
- Exhibit A-2 - Legal Description for Encumbered Property
- Exhibit B – Property Specific Terms

12. Written Notices.

12.1 All Notices required by this Agreement shall be in writing, signed by the sending party, and shall be considered properly delivered when personally delivered, when received by facsimile, or on the third day following mailing, postage prepaid, certified mail, return receipt requested to:

Grantee: City Administrator
CITY OF BLACK DIAMOND
P.O. Box 599
Black Diamond, WA 98010
Fax: (360) 886-2492

With a copy to:

Grantor: Jami Balint or successor
YARROW BAY DEVELOPMENT
LLC
10220 NE Points Drive, Suite120
Kirkland, WA 98033

And to: Brian Ross

YARROW BAY DEVELOPMENT
LLC
10220 NE Points Drive, Suite 120
Kirkland, WA 98033

With a copy to:

John Hempelmann or other known
counsel of record
CAIRNCROSS & HEMPELMANN
524 Second Avenue, Suite 500
Seattle, WA 98104

12.2 Either party may modify the above notice delivery information by providing written notice to the other party at the address set forth above, or such subsequent address that has been properly provided in accordance with the paragraph's terms.

13. Public Access.

No general public access to any portion of the UGA Open Space is conveyed by this Easement unless specifically referenced in the Exhibits attached hereto.

14. Interpretation.

This Deed shall be interpreted under the laws of Washington, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

15. Severability.

If any provision of this Deed is found to be invalid, illegal or unenforceable, that finding shall not affect the validity, legality, or enforceability of the remaining provisions, unless the remaining provisions cannot be construed in such a way as to protect any of the Conservation Values intended to be protected by this Grant of Easement.

16. Acceptance.

The Grantee hereby accepts the granting of this Conservation Easement Deed.

GRANTOR: BD VILLAGE PARTNERS, L.P.

By: [Signature]

Name: BREAN FOS

Title: CEO YARROW BAY DEVELOPMENT
GENERAL PARTNER

GRANTEE:

CITY OF BLACK DIAMOND

By: Howard Botts
Howard Botts, Mayor

Attest: Brenda L Martinez
Brenda Martinez, City Clerk

Approved as to form:

By: Yvonne Amashita Ward
Yvonne Ward, Interim City Attorney

STATE OF WASHINGTON)

)ss:

COUNTY OF KING)

On this 17TH day of DECEMBER, 2009 before me personally appeared BRIAN ROSS, to me known to be the CHIEF EXECUTIVE OFFICER, of YARROW BAY DEVELOPMENT, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument on behalf of the corporation and that the seal affixed is the seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.



Daina Lynn Mereness
Notary Public in and for the
State of Washington
Residing at: Edmonds, WA
My Commission Expires: 3/28/13
Printed Name: Daina Lynn Mereness

STATE OF WASHINGTON)

)ss:

COUNTY OF KING)

On this 17TH day of DECEMBER, 2009 before me personally appeared HOWARD BOTTS, to me known to be the MAYOR, of THE CITY OF BLACK DIAMOND, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the

uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument on behalf of the municipal corporation and that the seal affixed is the seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Yvonne Kimashita Ward

Notary Public in and for the
State of Washington

Residing at: AUBURN, WA

My Commission Expires: 3/2/13

Printed Name: YVONNE KIMASHITA WARD

(Attached)

EXHIBIT "A-1"

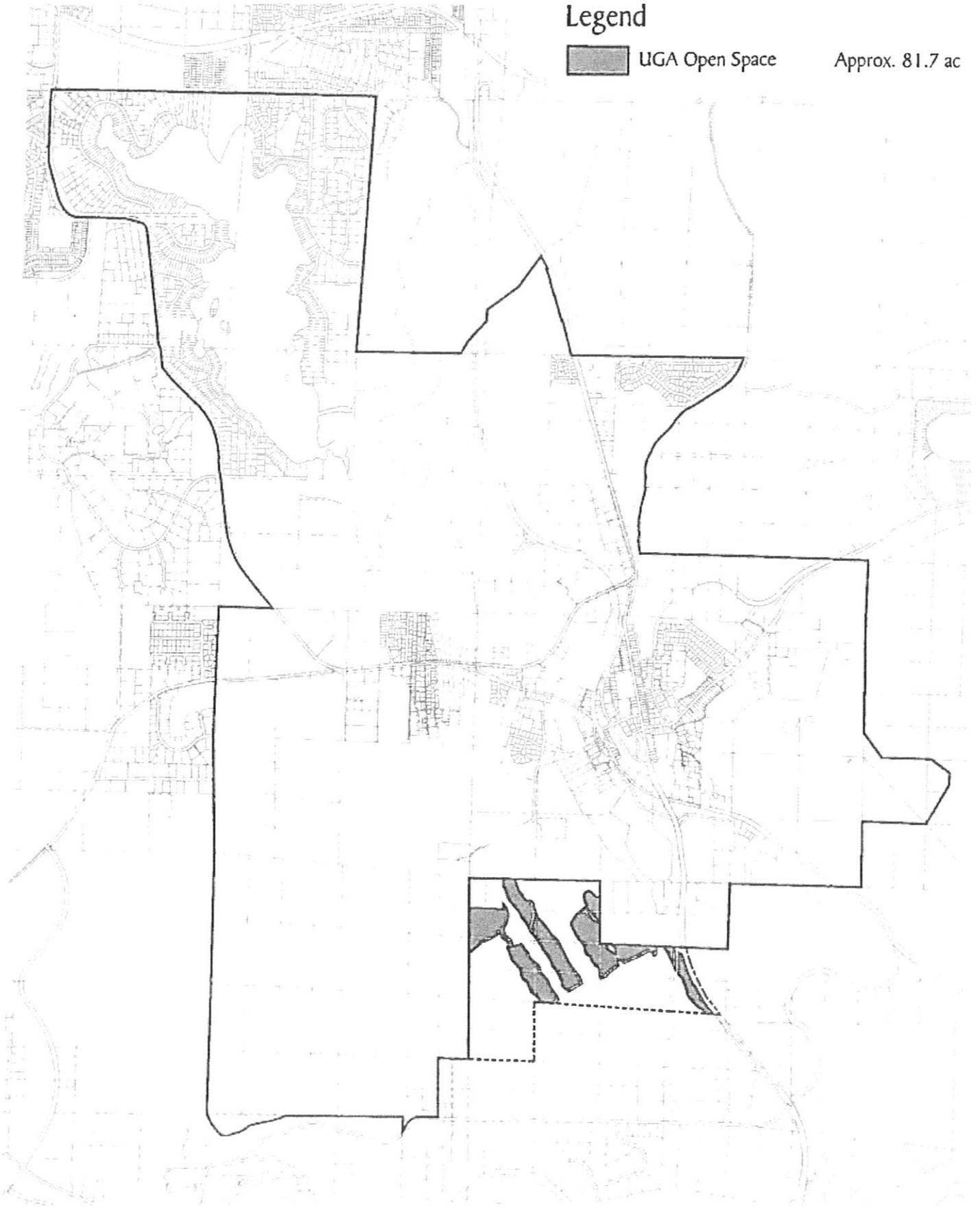
Map of UGA Open Space

Legend

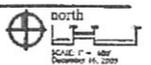


UGA Open Space

Approx. 81.7 ac



UGA Open Space Exhibit



(Attached)

EXHIBIT A-2
LEGAL DESCRIPTION

Legal Descriptions

The northwest quarter of Section 23, except the northwest quarter of the northwest quarter of the northwest quarter thereof;

Together with:

The south half of the northeast quarter of Section 23, lying westerly of the westerly margin of Enumclaw-Black Diamond Road (SR 169);

Together with:

The northwest quarter of the southwest quarter of Section 23.

Tax parcel numbers

232106-9003, 232106-9046, 232106-9047, 232106-9048, 232106-9049, 232106-9050, 232106-9051, 232106-9052, 232106-9053, 232106-9054, 232106-9057, 232106-9058

EXHIBIT "B"

Property Specific Terms

1. Purpose and Conservation Values. The Purpose of this Easement and Conservation Values protected by this Easement, as referenced in paragraphs 2.3-2.6 thereof, are as follows: To provide open space as set forth in paragraph 2.4 of the Easement. The specific Conservation Values, of those listed in paragraph 2.4, that are ultimately to be protected will be determined as set forth in paragraph 4 herein.
2. Grantee's Rights. All of Grantee's rights are described on the face of the Easement. Those rights may be expanded, with the written consent of the Grantor and Grantee, in an amendment to this Easement.
3. Use Restrictions.
 - A. The UGA Open Space may not be developed in any manner inconsistent with the Conservation Values set forth above.
 - B. Pursuant to section 7.5 of the Black Diamond Urban Growth Area Agreement, the UGA Open Space may also be used for stormwater management and transportation and utility corridors. The UGA Open Space may be disturbed as reasonably necessary for construction activities but must be restored and replanted with native vegetation.
 - C. The Conservation Values of approximately eighty-one and seven tenths (81.7) acres of the UGA Open Space shall be permanently protected in accordance with the process set forth in paragraph 4 herein.
4. Establishing UGA Open Space and Conservation Values.
 - A. At the time of execution of this Easement, the UGA Open Space is not comprised of existing tax parcels. Therefore, this Easement is recorded against a larger existing tax parcel and will need to be amended to include the legal description of the UGA Open Space.
 - B. The parties shall subsequently add an addendum to this Easement that includes the legal description of the UGA Open Space, which shall include eighty-one and seven tenths (81.7) acres, as referenced in paragraph 3(C) above.

- C. Unless established earlier by Grantor and Grantee, the permanent boundaries of the eighty-one and seven tenths (81.7) acres of UGA Open Space shall be established as part of the MPD approval process, other development approval, through a development agreement, or other mechanism approved by the City. Any development application including the Encumbered Property shall include a site plan showing the proposed boundaries of the UGA Open Space and its relationship to all proposed improvements to, and development upon, the Encumbered Property. It shall also specify the specific Conservation Values that are intended to be preserved and protected. The configuration of the UGA Open Space shall take into account: (1) the need for transportation and utility corridors if their impact on the Conservation Values of the UGA Open Space can be adequately mitigated; and (2) the need to adjust the location of the UGA Open Space so that the Conservation Values to be permanently protected are not detrimentally impacted by pre-existing matters of record.
- D. The permanent eighty-one and seven tenths (81.7) acres of UGA Open Space shall be surveyed by the applicant prior to the MPD development agreement approval or other mechanism used to define the boundaries of the UGA Open Space set forth in paragraph 4(C) herein. The parties shall record an addendum to the Easement that sets forth the 81.7 acres UGA Open Space legal description, the specific Conservation Values, of those identified in paragraph 2.4 of the Easement, that are to be protected and conserved, and any further use restrictions on the UGA Open Space necessary to protect and preserve those Conservation Values.
- E. If the UGA Open Space is established as a separate tract during the land division processes that follow MPD approval, or another mechanism to identify the UGA Open Space approved by the City, then the addendum to the Easement described in paragraph 4(D) herein shall include a provision requiring future owners of the UGA Open Space to be responsible for the preservation and protection of the Conservation Values of the UGA Open Space and shall establish a mechanism approved by the City to implement this requirement. Such mechanism shall provide the City with legal rights to enforce this requirement. This requirement shall run with the land in the UGA Open Space.
5. Record Agreement. Grantee acknowledges that this Easement is subject to existing matters of record, including but not limited to, the prior transfer of any mineral or oil rights on the UGA Open Space or the Encumbered Property. Provided, however, the Easement is not subject to the Partial Waiver of Surface Use Rights document recorded under King County recording number 9206230401. The Grantor guarantees and warrants that there shall be no interference with meeting the

Conservation Values at all times on the UGA Open Space, as a result of the exercise of surface rights pursuant to the terms of said document.

6. Adjacent Parcels. This Easement shall not be construed to preclude development or development planning activities on lands adjacent to the UGA Open Space and shall not be construed to preclude boundary line adjustments of parcels within Section 23 to revise lot lines. This Easement shall not be construed as separating Grantor's adjacent parcels within Section 23 so as to restrict transfers of development rights or otherwise change the applications of development regulations to Grantor's parcels.