Exhibit R

COVINGTON TRANSPORTATION MITIGATION AGREEMENT

SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into as of this 14TH day of December, 2010 (the "Effective Date"), by and between the **CITY OF COVINGTON**, a municipal corporation organized and existing under the laws of the State of Washington ("Covington") and **BD LAWSON PARTNERS, L.P.** a Washington limited partnership ("Lawson Partners") and **BD VILLAGE PARTNERS, L.P.** a Washington limited partnership ("Village Partners") (Lawson Partners and Village Partners are hereinafter collectively referred to as the "Developer").

RECITALS

WHEREAS, Developer has applied and received approval from the City of Black Diamond, adjacent to Covington, for the Villages Master Planned Development (the "Villages MPD") and the Lawson Hills Master Planned Development (the "Lawson Hills MPD"), City of Black Diamond Ordinance Nos. 10-946 and 10-947, respectively, for which full build-out collectively includes construction of mixed-use projects including 6,050 dwelling units and 1,165,000 square feet of retail, office and light industrial (collectively, the "Black Diamond MPDs"); and

WHEREAS, on December 11, 2009, the City of Black Diamond issued a final Environmental Impact Statement ("FEIS") for Lawson Hills MPD and an FEIS for the Villages MPD, and, each FEIS included a section evaluating the cumulative transportation impacts from both the Lawson Hills MPD and the Villages MPD; and

WHEREAS, Covington was a party of record in the City of Black Diamond's land use review process for the Villages MPD and Lawson Hills MPD, and requested the imposition of conditions to require mitigation of the Black Diamond MPDs' transportation impacts on streets and highways in Covington; and

WHEREAS, the FEISs identified probable significant adverse transportation impacts at three intersections within Covington – SR 516/SE Wax Road (the "Wax Road Intersection"), SR 516/168th Place SE (the "168th Intersection"), and SE 272nd Street/160th Avenue SE (the "272nd/160th Intersection") – that are expected to occur as a result of the cumulative trips generated by the Lawson Hills MPD and the Villages MPD; and

WHEREAS, the Developer's transportation engineers, The Transpo Group, Inc., determined that the Black Diamond MPDs, collectively at full build-out, would represent about twenty-one percent (21%) of the total p.m. peak-hour vehicle trips entering the Wax Road Intersection, thirteen percent (13%) of the total p.m. peak-hour vehicle trips entering the 168th Intersection, and eight percent (8%) of the p.m. peak-hour vehicle trips entering the 272nd/160th Intersection; and

WHEREAS, Covington believes that it can justify a higher proportionate share contribution from the Black Diamond MPDs at the Wax Road Intersection and desires mitigation from the Developer to address the impacts it expects to occur at the Jenkins Creek Bridge as a result of the cumulative trips generated by the Black Diamond MPDs; and

WHEREAS, prior to the commencement of negotiations between the Developer and Covington, the City of Covington had already improved the 168th Intersection with the traffic mitigation measures recommended in the FEISs for the Lawson Hills MPD and the Villages MPD; and

WHEREAS, the Developer desires to mitigate adverse transportation impacts from the Black Diamond MPDs and to avoid Covington appeals of the Black Diamond MPDs; and

WHEREAS, the Developer and Covington are now willing to compromise and fully agree on the appropriate mitigation required for transportation impacts generated by the Black Diamond MPDs to streets and intersections within the City of Covington;

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer and Covington hereby agree as follows:

AGREEMENT

1. **Developer's Mitigation Fee**. To fully mitigate the transportation impacts of the Black Diamond MPDs within the City of Covington (including those impacts identified in the FEISs at the Wax Road Intersection, the 168th Intersection, and the 272nd/160th Intersection), the Developer shall pay to Covington Eight Hundred Thousand Dollars and 00/100 Dollars ($800,000) (the "MPD Mitigation Fee") pursuant to the fee payment schedule set forth in Section 2.

2. **MPD Mitigation Fee Schedule.** The Developer shall pay the MPD Mitigation Fee in four installments (the "MPD Mitigation Fee Installments") as follows:

    A. First Installment: Within ninety (90) days of the City of Black Diamond's issuance of an occupancy permit for the 1st dwelling unit within the Black Diamond MPDs, the Developer shall pay to Covington One Hundred Fifty Thousand and 00/100 Dollars ($150,000) (the "First Installment Payment").

    B. Second Installment: Within thirty (30) days of the City of Black Diamond's issuance of the building permit for the 2000th dwelling unit within the Black Diamond MPDs, the Developer shall pay to Covington Three Hundred Thousand and 00/100 Dollars ($300,000).

    C. Third Installment: Within thirty (30) days of the City of Black Diamond's issuance of the building permit for the 4000th dwelling unit within the Black Diamond MPDs, the Developer shall pay to Covington One Hundred Fifty Thousand and 00/100 Dollars ($150,000).

    D. Fourth Installment: Within thirty (30) days of the City of Black Diamond's issuance of the building permit for the 5800th dwelling unit within the Black Diamond MPDs, the Developer shall pay to Covington Two Hundred Thousand and 00/100 Dollars ($200,000).

E. Annual Adjustment. Each MPD Mitigation Fee Installment payment shall be subject to an annual adjustment based on the Construction Cost Index ("CCI") published in Engineering News Record ("ENR") commencing on January 1, 2012.

Developer shall have the option, in its sole discretion, to pay any of the MPD Mitigation Fee Installments to Covington prior to the time the trigger for that installment payment is reached.

3. **Covington's Use of MPD Mitigation Fee.** Except for the Jenkins Creek Bridge Portion (defined in subsection 3.A below), Covington shall have flexibility in determining how to use the MPD Mitigation Fee Installments paid by the Developer, provided that Covington must use the MPD Mitigation Fee Installments to fund transportation improvements on the SR 516 corridor or a bypass of the SR 516 corridor.

   A. Jenkins Creek Bridge. A portion of the MPD Mitigation Fee totaling Three Hundred Thousand and 00/100 Dollars ($300,000) shall be used by Covington for transportation improvements to the Jenkins Creek Bridge (the "Jenkins Creek Bridge Portion"). The Jenkins Creek Bridge Portion of the MPD Mitigation Fee cannot be used to fund any other transportation improvements within the City of Covington. If, however, Covington has constructed and funded its Jenkins Creek improvement project prior to receiving $300,000 from the Developer, then Covington may use the Jenkins Creek Bridge Portion to fund other transportation improvements on the SR 516 corridor or a bypass of the SR 516 corridor.

   B. Transportation Improvements. Transportation improvements for the purposes of this section include acquisition of right-of-way, design, and construction costs but shall not include maintenance or road overlays.

4. **Nonrefundable**. The MPD Mitigation Fee Installments shall be nonrefundable when paid, provided Covington uses the each installment payment within six (6) years of the date of payment. If Covington fails to use the installment payment within such time period, it shall be returned to the Developer. For purposes of this Section 4, an installment payment shall be considered "used" if earmarked by Covington for a specific transportation improvement(s) on the SR 516 corridor or a bypass of the SR 516 corridor.

5. **Transportation Capacity**. The Developer and Covington agree that this Agreement requires the Black Diamond MPDs to contribute more mitigation to Covington than described in the FEISs. As a result, the Developer and Covington agree to negotiate in good faith with the goal of entering into a separate agreement to address the transportation capacity created as a result of the Developer's payment of the MPD Mitigation Fee Installments.

6. **Contingencies**. The Developer's obligation to fulfill its obligations as set forth herein is contingent on the following: (i) the City of Black Diamond approving the Lawson Hills MPD development agreement; (ii) the City of Black Diamond approving the Villages

MPD development agreement; and (iii) in the event either the Black Diamond MPD permit approvals or development agreements are appealed by a third party, the final resolution of any such appeal in a manner that upholds the City of Black Diamond's decision. The Developer may be released from the terms of this Agreement should the Developer elect not to proceed with the Black Diamond MPDs prior to making the First Installment Payment.

7. **Waiver and Mutual Release of Claims**. Covington and the Developer acknowledge and represent that the terms of this Agreement have been jointly negotiated and that each party enters into this Agreement voluntarily. Further, the parties acknowledge and agree that the Developer's performance of the obligations set forth in this Agreement shall constitute full, sufficient and complete mitigation of the transportation impacts occurring within Covington as a result of full build-out of the Lawson Hills MPD and Villages MPD, and as to Covington transportation matters, this Agreement assures that the Villages MPD and the Lawson Hills MPD has made all appropriate provisions for the public health, safety and welfare. The parties agree that this Agreement is authorized under law and both Covington and the Developer waive any claims that this Agreement is invalid or illegal. Further, Covington hereby covenants and agrees that it will not seek or impose any mitigation measures or fees with respect to the Villages MPD or Lawson Hills MPD in addition to the terms and obligations set forth herein and Covington waives any right to appeal or contest the approval of either the Lawson Hills MPD or the Villages MPD, the development agreements, or any implementing plats or projects or interim reviews, processes, or MPD approval amendments prior to full build-out so long as those reviews, processes and approvals do not increase the number of units or commercial square feet allowed as part of full build-out of the Black Diamond MPDs.

8. **Joint and Several Liability**. Lawson Partners and Village Partners each hereby acknowledge and assume all of the obligations as set forth in this Agreement and each agree, as necessary, to fulfill the obligations of the other as if Lawson Partners or Village Partners, on its own, were the Developer.

9. **Binding on Successors**. This Agreement shall bind and inure to the benefit of the parties and their successors in interest, and may be assigned to any successor in interest to the Lawson Hills MPD property or Villages MPD property.

10. **Event of Default**. If the Developer fails to pay the full amount of the mitigation fees in a timely manner as provided above, then the Developer shall be in default of such obligation. In the event of such default, Covington may enforce its rights under this Agreement by an action for damages or specific performance, or any other remedy available at law or in equity. Any unpaid portion of the MPD Mitigation Fee shall bear interest after its due date at the rate of twelve percent (12%) per annum. Provided, however, that in the event of default, Covington shall not take any action to enforce its rights or pursue any remedy hereunder without first giving the Developer an opportunity to cure the default as follows: In the event of the Developer's default, Covington shall notify the Developer in writing of such default, and the Developer shall have thirty (30) days following receipt of such notice to cure the default without payment of any interest or penalty.

11. **Governing Law**. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington. Venue for any action to enforce the terms of this Agreement shall be in King County Superior Court.

12. **Authority**. Covington and the Developer each represents and warrants to the other that it has the authority, and is duly authorized, to execute and deliver this Agreement and that the persons signing on its behalf are duly authorized to do so.

13. **Term**. When fully executed this Agreement shall be in full force and effect until the City of Black Diamond's issuance of the 6050th building permit for a lot within the Black Diamond MPDs.

    A. Major Amendments. Major amendments to the Black Diamond MPDs and/or the development agreements for the Black Diamond MPDs shall not terminate this Agreement; provided, however, if a major amendment allows an increase above the 6050 dwelling units or 1,165,000 square feet of retail, office and light industrial originally approved for the Black Diamond MPDs, Covington and the Developer agree to promptly meet and negotiate in good faith regarding mitigation to address the transportation impacts on streets and highways in Covington associated with the Black Diamond MPDs' increase in dwelling units or commercial square footage.

    B. Release of Large Lots on Expiration/Revocation. Any lot or parcel 5-acres or larger that has not been built on during the term of the MPD permit approval for the Black Diamond MPDs and/or accompanying development agreements, and that is not the subject of a pending application for preliminary plat approval, final plat approval, binding site plan approval, or other land use processes, shall be automatically released from the purview of this Agreement upon the: (i) expiration of the applicable MPD permit approval; (ii) expiration of the applicable development agreement; (iii) revocation of the applicable MPD permit approval; or (iv) revocation of the applicable development agreement. Any subdivision of real estate released under this provision shall be subject to whatever future traffic mitigation measures are imposed at the time such property is approved for development.

14. **Amendments**. This Agreement may not be amended or modified except by a writing, signed by the parties to be bound thereby.

15. **Headings**. The headings in this Agreement are inserted for reference only and shall not be construed to expand, limit or otherwise modify the terms and conditions of this Agreement.

16. **Integration; Scope of Agreement**. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein. This Agreement sets forth all conditions desired or requested by Covington with respect to the Black Diamond MPDs.

17. **No Third Parties**. This Agreement is made and entered into for the benefit of the parties hereto and their successors and assigns. No other person or entity is an intended third party beneficiary. No other person or entity shall have any right of action under this Agreement.

18. **Attorney Fees**. In the event that either party resorts to litigation to enforce any term of this Agreement, the substantially prevailing party in any such litigation shall be entitled to an award of reasonable attorney fees, together with actual court costs, expended in such litigation.

19. **Drafting**. The parties have had an equal opportunity to participate in the preparation of this Agreement.

20. **Full Understanding**. The parties each acknowledge, represent and agree that they have read this Agreement; that they fully understand the terms thereof; and that they have been fully advised by their independent legal counsel or have had the opportunity to be so advised in connection with the terms of this Agreement.

21. **Notices**. Any notice or other communication to any party given under this Agreement will be effective only if in writing and delivered (1) personally, (2) by certified mail, return receipt requested and postage prepaid, (3) by facsimile transmission with written evidence confirming receipt, or (4) by overnight courier (such as UPS, FedEx, or Airborne Express) to the following addresses:

If to Developer:

Yarrow Bay Holdings
10220 NE Points Drive, Suite 120
Kirkland, WA 98033
Attn: Brian Ross
Phone: 425-894-2100

With a copy to:

Yarrow Bay Holdings
10220 NE Points Drive, Suite 120
Kirkland, WA 98033
Attn: Megan Nelson

If to Covington:

City of Covington
16720 SE 271st Street, Suite 100
Covington, WA 98042
Attn: Derek Matheson, City Manager

The addresses and addressees to which notice is to be given may be changed by written notice given in the manner specified in this Section 21 and actually received by the addressee.

22. **Execution in Counterparts**. This Agreement may be executed in one or more counterparts and as executed shall constitute one Agreement, binding on all parties, notwithstanding that all parties are not signatory to the same counterpart.

BD LAWSON PARTNERS, L.P.

by **YARROW BAY DEVELOPMENT LLC.,** a Washington limited liability company, Its General Partner

_____
Brian Ross, CEO

Date: _____

BD VILLAGE PARTNERS, L.P.

by **YARROW BAY DEVELOPMENT LLC.,** a Washington limited liability company, Its General Partner

_____
Brian Ross, CEO

Date: _____

CITY OF COVINGTON

Derek Matheson
By Derek Matheson, City Manager

Date: 12/17/10