

16739

Attachment A

**OPEN SPACE AGREEMENT
BETWEEN
KING COUNTY
and
BD VILLAGE PARTNERS, LP**

2009-0645

1. DATE, PARTIES AND TERMS.

This Open Space Agreement (“**Agreement**”) is entered into this ___ day of _____, 2009, by and between KING COUNTY, a municipal corporation and political subdivision of the State of Washington (“**King County**” or “**County**”) and BD VILLAGE PARTNERS, LP, a Washington limited partnership (“**Village Partners**”). King County and Village Partners 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.

2.1.1 The County is a home rule charter county under the laws of the State of Washington with authority to enact laws and enter into agreements to promote the health, safety and welfare of its citizens, including land use plans, development regulations, annexation agreements, and development agreements.

2.1.2 Villages Partners is a Washington limited partnership authorized to do business in Washington and has significant real property interests in and around the City and the County, and is the successor in interests under the BDUGAA to the Plum Creek Timber Company, L.P.

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2.1.3 The BDUGAA, Section 3.5, provides that the acres reflected in the Agreement are estimates subject to change following more detailed study and survey. Per Section 8.4 of the BDUGAA, adjustments of boundaries and substitutions of parcels for County Open Space may be permitted "so long as the ratios of open space lands to urban lands contained in this Agreement are maintained and so long as the open space lands are part of significant natural systems, corridors, trails and are otherwise consistent with the other open space principles that have formed the basis for this Agreement." The County Council must approve any adjustments or substitutions of County Open Space which individually exceed 50 acres or cumulatively exceed 100 acres.

2.2 Purpose. The City of Black Diamond, the County, Plum Creek Timber Company, L.P., the predecessor in interest to Village Partners, and Palmer Coking Coal Company, are parties to the BDUGAA. Pursuant to the BDUGAA, annexation of the South Annexation Area is conditioned on, among other things, the protection or conservation of open space. The BDUGAA open space requirements applicable to the South Annexation Area, as set forth in BDUGAA paragraph 5.4, are estimates based on a 4 to 1 ratio of combined County Open Space, UGA Open Space and In-City Open Space to Urban Development Areas. This Agreement sets forth the agreement of Village Partners and the County with respect to the adjustment of boundaries and substitution of parcels for the County Open Space requirements of the BDUGAA. As this Agreement relates only to County Open Space, per Section 8.4 of the BDUGAA, the Parties to this Agreement are the County and the Village Partners.

2.3 BDUGAA. The open space acreages required to be conserved or protected as set forth in the BDUGAA are estimates and, per Section 3.5 of the BDUGAA, are subject to change following more detailed study and survey. Urban Development Areas are defined in the BDUGAA as "areas intended for future urban development upon annexation and shown as 'Urban Development Areas' on Appendix A, Map 7." Within the South Annexation Area, approximately 151.9 acres were intended for urban development and shown as mapped Urban Development Area in the BDUGAA. Village Partners has performed detailed studies and surveys that have determined that the amount of land available for urban development within the

South Annexation Area is less than the estimated amount of land in the BDUGAA that was intended for urban development and identified as Urban Development Area. Pursuant to Section 2009-0645 3.5, Village Partners has accordingly recalculated the amount of Urban Development Area in the South Annexation Area and the resulting amount of combined County Open Space, UGA Open Space and In-City Open Space that is required to maintain the 4 to 1 ration of open space to Urban Development Area. The new calculations are set forth in attached EXHIBIT A, (the "Acreage Chart"), which is incorporated herein by this reference.

2.4 South Annexation Area. The City of Black Diamond has accepted Village Partner's intent to annex the South Annexation Area. The legal description of said property having been approved by the City of Black Diamond, and is attached hereto as EXHIBIT B and illustrated in EXHIBIT C, each incorporated herein by this reference (the "South Annexation Area"). The Parties agree that the terms of this Agreement shall implement the BDUGAA County Open space requirements.

2.5 Additional Open Space. Per Section 7.1 of the BDUGAA, the amount of County Open Space to be conveyed in fee in association with the South Annexation is estimated to be 339 acres. Using the 4 to 1 ratio of combined County Open Space, UGA Open Space and In-City Open Space to the actual Urban Development Area, as studied and surveyed by Village Partners, the required amount of combined open space is 158.1 acres less than the 615.7 acres of combined open space estimated in BDUGAA Appendix B. The Parties accordingly agree that the amount of County Open Space required to be conveyed in fee may be reduced by 158.1 acres to 180.9 acres. Recognizing the value of conserving open space, Village Partners has agreed to conserve more open space than is required per the 4 to 1 ratio. In association with annexation of the South Annexation Area, King County will receive a total of 255.3 acres of County Open Space in fee. An additional 83.7 acres of open space will be preserved with conservation easements as detailed in Section 5 below. These conservation easements will preserve most of the County Open Space originally identified in the BDUGAA.

2.6 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 with respect to Village Partner's obligation to convey County Open Space. 2009-0645

3. IDENTIFICATION OF COUNTY OPEN SPACE.

3.1 Credit for Open Space Previously Conveyed. As part of the annexation of the West Annexation Area, Village Partners' predecessor, Plum Creek Land Company, conveyed 27 acres in Section 21 which shall be credited toward Village Partner's satisfaction of the County Open Space requirement for the South Annexation. Plum Creek's conveyance was made pursuant to the Purchase and Sale Agreement with King County wherein it is stated that: "County Open Space: Buyer [King County] agrees that the conveyance of the Property results in the Seller [Plum Creek Land Company] having conveyed more than the amount that was required for the West Annexation Area by 27 acres, and that as a result the 27 acres shall be a credit toward the County Open Space requirement for the annexation of the South Annexation Area, whether or not Seller is the then-current owner of the South Annexation Area."

3.2 County Open Space. To complete the requirement of Section 5.4(c)(2) of the BDUGAA for annexation of the South Annexation Area, Village Partners will convey to King County through a bargain and sale deed fee title to 228.3 acres of land legally described on attached EXHIBIT D (the "County Open Space"), which is incorporated herein by this reference, pursuant to a purchase and sale agreement. This conveyance shall be consistent with the terms of BDUGAA Section 7.1 and the conveyed County Open Space shall be dedicated as permanent open space and shall be owned and managed by the County as part of the King County Open Space and Trail System or for its forest resource value.

3.3 Adjustment of Open Space. In connection with the reduction of County Open Space referred to in paragraph 2.5, the parties have agreed to adjustments of boundaries and substitutions of parcels. In determining how to configure the County Open Space the parties gave consideration to wildlife corridors and the desire to preserve contiguity between new and existing open space corridors. The County Open Space is part of significant natural systems, corridors, trails and is otherwise consistent with the other open space principles that formed the

basis of the BDUGAA. The new configuration of County Open Space is shown on the attached EXHIBIT E, which is incorporated herein by this reference. 2009-0645

4. **ADDITIONAL OPEN SPACE.**

4.1 Additional Open Space. In addition to the fee conveyance of the County Open Space, Village Partners will execute and record a conservation easement in the form of attached as EXHIBIT F (the "Temporary Conservation Easement"), which is incorporated herein by this reference, on the 83.7 acres located within Sections 21 and 23 on portions of the property legally described on attached EXHIBIT G, (the "Additional Open Space"), which is incorporated herein by this reference. The Additional Open Space is a portion of the County Open Space identified in the BDUGAA that is not being conveyed to the County per paragraph 2.5 of this Agreement. The Additional Open Space will be permanently conserved because the land will ultimately be included in an open space tract pursuant to a development agreement that implements the provisions of King County Code 21A.14.040; or alternatively as detailed in paragraph 5.4 below, the Temporary Conservation Easement will be converted to a permanent conservation easement or transferred in fee to King County.

4.2 Development Buffer. Village Partners owns substantial property in Section 21 adjacent to the west border of the City of Black Diamond as shown on the map attached as EXHIBIT H ("Section 21 Property"), which is incorporated herein by this reference. Village Partners agrees that as of the effective date of this Agreement a "Temporary Buffer" will be established within the easternmost five hundred (500) feet of its Section 21 Property. The Temporary Buffer will remain in place until the earlier of (a) execution of a fully approved and authorized development agreement with King County, as authorized by RCW 36.70B.170, for a rural clustered subdivision within the Section 21 Property, (b) when twelve (12) years have passed since the effective date of this Agreement and the Temporary Conservation Easement has been converted to a permanent conservation easement or the land subject to the Temporary Conservation Easement has been conveyed to King County in fee as provided for in Section 5.4 of this Agreement, or (c) when Village Partners elects to terminate the Temporary Buffer and the Temporary Conservation Easement has been converted to a permanent conservation easement or

the land subject to the Temporary Conservation Easement has been conveyed to King County in fee as provided for in Section 5.4 of this Agreement ("Temporary Buffer Period").²⁰⁰⁹⁻⁰⁶⁴⁵ During the Temporary Buffer Period no structures or roads may be applied for or constructed within the Temporary Buffer, except that utility lines that cross through but do not provide service in the Temporary Buffer and storm water facilities may be applied for and constructed within the Temporary Buffer to the extent they are permitted under applicable law. Village Partner's willingness to temporarily limit development activity in the easternmost five hundred feet of its Section 21 Property shall not be construed as consent to any permanent limitation on development within the Temporary Buffer. Village Partners has indicated that it may eventually propose a regional storm water facility on lands within the Section 21 Property and the Temporary Buffer. The Parties agree that any negotiation of a development agreement will include discussion of an appropriate buffer adjacent to the westerly border of the City of Black Diamond.

5. TEMPORARY CONSERVATION EASEMENT.

5.1 Location. The Additional Open Space is not comprised of existing tax parcels, therefore, the Temporary Conservation Easement will be recorded against any existing parcel that includes a portion of the Additional Open Space. The restrictions on use shall only apply to the Additional Open Space. Village Partners may survey and establish separate tax parcels for the Additional Open Space. At such time as the Additional Open Space is established as a separate parcel or parcels, the Parties shall amend the Temporary Conservation Easement so that it applies only to the parcel or parcels that are part of the Additional Open Space.

5.2 Allowed Uses. The Additional Open Space shall allow road and utility corridors consistent with the terms applicable to County Open Space under BDUGAA Section 7.5. to the extent permitted by applicable law. All other uses shall be limited to those consistent with the purposes included in King County Code 26.04.020.L, such as preservation of wetlands and other critical areas, passive recreational areas and as an urban/rural separator. Village Partners may locate road and utility corridors consistent with this Agreement and the Temporary Conservation Easement through the Additional Open Space provided that in doing so Village Partners accepts

the risk that the portion of the Additional Open Space used for road or utility corridor may not qualify as a open space per King County Code 21A.14.040. 2009-0645

5.3 Rural Clustered Subdivision. The Parties agree that the Additional Open Space that will be subject to the Temporary Conservation Easement may be used for density calculations and to satisfy the open space requirements of King County Code 21A.14.040 for a rural clustered subdivision on the Section 21 Property only if such subdivision is carried out under a development agreement as authorized by RCW 36.70B.170. The Parties acknowledge that this Agreement creates no right to approval of a clustered development. Any future proposal for clustered development will be reviewed under the regulations in place when an application for such development is submitted and vests. If the parties cannot agree on the terms of a development agreement, or the County Council declines to approve a development agreement, then Village Partners may terminate the Temporary Buffer pursuant to Section 4.2(c) of this Agreement and the Temporary Conservation Easement pursuant to Section 5.4(c) of this Agreement. If Village Partners elects to do so, and after the Temporary Conservation Easement has been replaced with a permanent conservation easement or the Additional Open Space has been conveyed to the County in fee as provided for in Section 5.4(c) of this Agreement, then all other obligations under the Agreement will automatically terminate and Village Partners will retain all its property and development rights in the Section 21 Property, except for those rights conveyed to the County in the Additional Open Space.

5.4 Term. The Temporary Conservation Easement shall continue in effect and be terminated as follows:

(a) If Village Partners executes a fully approved and authorized development agreement with King County, as authorized by RCW 36.70B.170, for a rural clustered subdivision within the Section 21 Property that includes the Additional Open Space in a tract or tracts to satisfy the requirements of King County Code 21A.14.040, then King County shall execute an appropriate document to relinquish the Temporary Conservation Easement at the time that the tract or tracts are permanently protected under the terms of the development agreement.

(b) If the Additional Open Space has not been included in a permanent open space tract as part of a development agreement for a rural clustered subdivision prior to the expiration

of a twelve (12) year term that shall commence on the effective date of this Agreement, the Parties agree that the Temporary Conservation Easement shall be replaced with a permanent conservation easement with terms that are substantially similar to the County's then standard form of conservation easement for protecting natural areas. The permanent conservation easement shall allow road and utility corridors consistent with the terms applicable to County Open Space under BDUGAA Section 7.5. If the Parties are unable to agree on the form of a permanent conservation easement prior to the expiration of the twelve (12) year term, then Village Partners shall within one hundred twenty (120) days thereafter convey the Additional Open Space to the County in fee pursuant to a purchase and sale agreement substantially similar to the agreement used to convey the County Open Space as called for by Section 3.2. Any Additional Open Space conveyed in fee shall be subject to use by Village Partners consistent with the terms applicable to County Open Space under BDUGAA Section 7.5. The exercise of such rights will require execution of appropriate easements to be granted by the County. Conveyance of the Additional Open Space in fee shall terminate the Temporary Conservation Easement.

(c) Village Partners may elect to terminate the Temporary Conservation Easement at any time. Village Partners may only terminate the Temporary Conservation Easement, however, if it contemporaneously replaces the Temporary Conservation Easement with a permanent conservation easement on the Additional Open Space in a form agreed to by the County and consistent with the terms and in the manner described in Section 5.4(b) of this Agreement, or if it conveys the Additional Open Space to the County consistent with the terms and in the manner described in Section 5.4(b).

6. CLOSING.

6.1 Village Partners shall give notice of the scheduled date of adoption of the ordinance annexing the South Annexation Area fifteen (15) days prior to that date. The deed, Temporary Conservation Easement, and other items contemplated by this Agreement shall be duly executed and deposited in escrow ("Escrow") five (5) calendar days prior to the scheduled date of the City Council's final vote on the ordinance to annex the South Annexation Area. Escrow will be handled by Chicago Title Insurance Company, and the Parties agree to provide a

single form of detailed Closing instructions to the Escrow Agent ten (10) calendar days prior to the Closing date. "Closing" shall occur in Escrow on the effective date of the ordinance ²⁰⁰⁹⁻⁰⁶⁴⁵ approving the South Annexation ("Effective Date") unless otherwise extended as provided in Section 6.2 below. The Parties shall each pay one-half (1/2) of all Escrow fees and recording fees.

6.2 All obligations and requirements in this Agreement are conditioned upon successful annexation by the City of Black Diamond of the entire South Annexation Area on or prior to March 1, 2010 ("Termination Date"). The failure of the South Annexation Area to be annexed into the City by the Termination Date, regardless of the cause or efforts of any of the Parties, shall result in the automatic termination of this Agreement and any and all responsibilities related thereto. Provided, however, the Termination Date may be extended by the agreement, in writing of the Parties. Provided further, the Termination Date shall be automatically extended for an amount of time equal to the time period, if any, between the invoking of jurisdiction and the completion of BRB review or subsequent court review of the BRB decision. Provided further, if the annexation ordinance is adopted, but subsequently appealed or otherwise legally challenged, then the Closing, and the Termination Date, shall automatically be extended until twenty (20) days after the appeal/challenge is finally determined. In the event of termination of this Agreement any monies or documents deposited into Escrow shall be promptly returned to the Party that deposited such items into Escrow.

6.3 Closing is also contingent on approval of the Metropolitan King County Council of this Agreement and the adjustments of boundaries and substitutions of parcels contained herein.

6.4 Closing is also contingent on agreement by the Parties to a purchase and sale agreement for conveyance of the County Open Space. Failure of the Parties to reach agreement prior to the Termination Date, including any extension of that date under Section 6.2 of this Agreement, shall result in the automatic termination of this Agreement and any and all responsibilities related thereto.

7. GENERAL MATTERS.

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7.1 Entire Agreement and Modifications. This Agreement and its Exhibits set forth the entire agreement between the Parties with respect to the subject matter hereof. No provision of this Agreement may be amended or added to except by agreement, in writing, signed by the Parties or their respective successors in interest.

7.2 Applicable Law. Washington law shall govern the interpretation of this Agreement. King County shall be the venue for any action arising out of this Agreement.

7.3 Authority. Each individual executing this Agreement on behalf of a Party represents and warrants that such individuals are duly authorized to execute and deliver the Agreement on behalf of that Party.

7.4 Binding on Successors and Assigns. The terms of this Agreement shall be binding on the parties and their successors and assigns, including specifically any person or entity that acquires from Village Partners any of the land that is the subject of this Agreement. Notice of and reference to this Agreement shall be included in the Temporary Conservation Easement. Upon execution of this Agreement the Parties will record a Memorandum of Open Space Agreement on title of the Section 21 Property. The Memorandum shall be removed or amended as appropriate consistent with the actions of the parties pursuant to the provisions of this Agreement.

7.5 Notices. Any notices required to be given by the Parties shall be delivered at the addresses set forth below. Any notices may be delivered personally to the addressee of the notice, may be faxed and emailed to the addressee of the notice, or may be deposited in the United States mail, postage prepaid, to the addressee. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

King County:

King County Department of Natural

Resources and Parks
Water and Land Resources Division
201 South Jackson Street, Suite 600
Seattle, WA 98104
Fax: (206)

2009-0645

With a copy to:
King County Prosecuting Attorney's Office, Civil Division
Attn: Pete Ramels
W400 King County Courthouse
516 Third Avenue
Seattle, WA 98104
Fax: (206) 296-0191

BD Village Partners, LP:

Yarrow Bay Development, LLC
Attn: Brian Ross
10220 NE Points Drive, Suite 120
Kirkland, WA 98033
Fax: (425) 898-2139

With a copy to:
Cairncross & Hempelmann
Attn: John Hempelmann and Nancy Rogers
524 Second Avenue, Suite 500
Seattle, WA 98104-2323
Fax: (206) 587-2308

Dated as of the date first written above.

King County

By: _____

Its: _____

BD Village Partners, LP

By: _____
Brian Ross

Exhibit List

2009-0645

- Exhibit A: Acreage Chart
- Exhibit B: Legal Description of South Annexation Area
- Exhibit C: Map of South Annexation Area
- Exhibit D: Legal Description of "County Open Space"
- Exhibit E: Map of "County Open Space"
- Exhibit F: Temporary Conservation Easement
- Exhibit G: Legal Description of "Additional Open Space"
- Exhibit H: Map of Section 21 Property

Exhibit A

2009-0645

Open Space Required for South Annexation Area Per BDUGAA - 4 to 1 calculation		
		acres
Urban Development Area	114.4 x 4 =	457.6
(less) In City Open Space	-	195
(less) UGA Open Space	-	81.7
Total County Open Space Required		180.9
(less) Section 21 acreage already conveyed	-	27
Remaining County Open Space to meet 4:1		153.9

EXHIBIT B

1015

Legal Description of South Annexation Area



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;

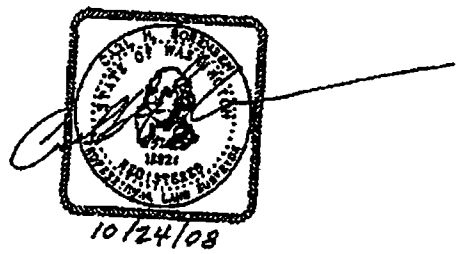
THENCE SOUTHERLY, ALONG THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SOUTHWEST QUARTER, TO THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER;

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



TRIAD ASSOCIATES

SYNOPSIS: 23112115 TRIAD LEAD 7-013347000-0-0-0 LGA APPROV 000
 12112115 Approval #2 Change: 20110808 10024-0-0-0
 *23 22 0 1 10 100 100 0750 Fax 425 821 3481
 www.triadassoc.com

Land Development Consultants

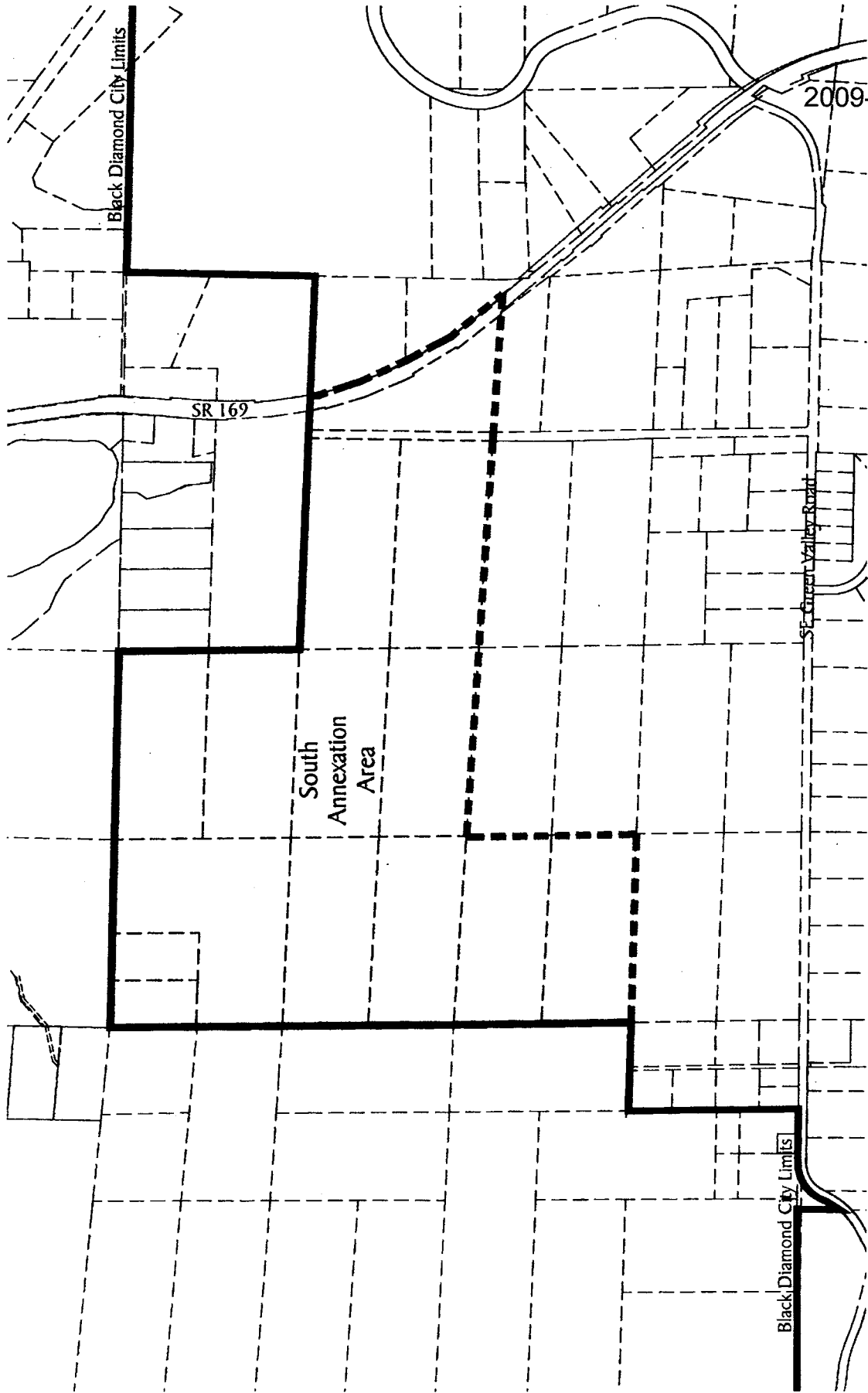


Exhibit C - South Annexation Area




2009-0645

EXHIBIT D

Legal Description of "County Open Space"

forthcoming

Legend

-  BDUGAA KCOS Area proposed by Yarrow Bay
-  Additional KCOS Area proposed by Yarrow Bay
-  BDUGAA KCOS under Temporary Conservation Easement

Approximately 226.4 ac

Approximately 28.9 ac

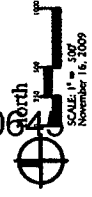
Approximately 83.7 ac

In-City Open Space

UGA Open Space



Exhibit E - County Open Space



North
 6000 ft = 1" = 500'
 November 16, 2009

TEMPORARY CONSERVATION EASEMENT DEED

1. Date and Parties.

This Temporary Conservation Easement Deed ("Easement") is dated, for reference purposes, the ___ day of _____, 2009, by BD VILLAGE PARTNERS, L.P., a Washington limited partnership, as "Grantor," and the King County, 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 legally described in Exhibit A (hereafter "Protected Property") attached hereto and by reference incorporated herein.
- 2.2 This Easement is being granted in conjunction with an Open Space Agreement between King County and BD Village Partners, LP, dated _____ ("Open Space Agreement"), and is intended to be implemented and enforced in conjunction with the Open Space Agreement. The Open Space Agreement implements the Black Diamond Urban Growth Area Agreement dated December 31, 1996 ("BDUGGA").
- 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 passive recreation opportunities, or (vi) preserve historic sites, or (vii) retain in its natural state lands within King County that are at least one acre in size and may be open to public use for purposes defined by King County.
- 2.5 The Protected Property possesses all of the open space features worthy of preservation that are identified in Section 2.3 of this Easement, except for

historic sites. The Protected Property and these open space features possesses natural, open space, scenic, recreational, and educational values that are of great importance to Grantor, Grantee, the people of King County and the people of the State of Washington. These values are referred to herein as the "Conservation Values" of the Protected Property. The Purpose of this conveyance is to protect for so long as this Easement remains in place these Conservation Values.

2.6 The Protected Property is currently in a vacant and undeveloped state and substantially all of the Protected property is covered with forest or brush.

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 Protected Property.

4. **Easement Conveyance.**

4.1 Grantor grants, conveys and warrants to Grantee, a temporary conservation easement (the "Easement") over the Protected Property on the terms and conditions set forth herein, exclusively for the purpose of conserving, preserving and protecting the Conservation Values of the Protected Property.

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 Protected Property;

5.1.2 To prevent any use of the Protected Property that is restricted by this Easement, and to require the restoration of such areas or features of the Protected Property that may be damaged by any improper use, pursuant to the remedies set forth in Section 8;

5.1.3 To enter upon the Protected Property 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 ~~2009~~ 0645 shall not in any case unreasonably interfere with Grantor's quiet use and enjoyment of the Protected Property;

- 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).

6. Use Restrictions.

6.1 Subject to the Permitted Encumbrances, the following uses and practice are inconsistent with the purposes of this Temporary Conservation Easement and shall be prohibited upon or within the Protected Property, except as convenient or necessary to maintain the Property responsibly in its natural condition and except as necessary for the Grantor to exercise the rights reserved hereunder:

- 6.1.1 Construction or placing buildings, residences, mobile homes, enclosures, wells, septic systems, or any structures, except as otherwise provided herein.
- 6.1.2 Dumping any materials, or releasing any liquids or gasses on or in the Protected Property, except as otherwise provided herein.
- 6.1.3 Disturbing the surface of the Property including but not limited to excavating, filling, removing soils or sub-soils, or changing the topography of the Protected Property in any manner, except as provided herein.
- 6.1.2 Removing, cutting, uprooting or otherwise destroying trees and other vegetation or animals, living or dead, except for the taking of animals as may be permitted by current Department of Fish and Wildlife regulations, except as otherwise provided herein.

7. Reserved and Retained Rights and Responsibilities.

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7.1 Grantor reserves all rights accruing from ownership of the Protected Property and adjacent properties except for such rights that are specifically granted herein and such activities that are specifically restricted or prohibited herein.

7.1.1 The Protected Property may be used for road and utility corridors consistent applicable law and with the terms governing County Open Space under the BDUGAA Section 7.5, the applicable provisions of which say:

"Furthermore, dedications of County Open Space shall not cut off road and utility access to adjacent [Grantor] parcels. Temporary access across County Open Space and permanent buried utility lines will be permitted so long as disturbed land is restored. Reasonably necessary permanent road access will be permitted so long as substitute open space is provided on a one to one basis, unless otherwise agreed by the [Grantee] and [Grantor]."

7.1.2 This Easement shall not be construed to preclude development or development planning activities on lands adjacent to or within the same tax parcel as the Protected Property and shall not be construed to preclude boundary line adjustments of parcels within the Section 21 property owned by Grantor to revise lot lines.

7.1.3 The Parties agree that the Protected Property may be used for density calculations and to satisfy the open space requirements of King County Code 21A.14.040 for a rural clustered subdivision on the Section 21 property owned by Grantor only if such subdivision is carried out under a development agreement as authorized by RCW 36.70B.170.

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 Protected Property. 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 ~~2000-0645~~ 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.

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, 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 Protected Property 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 Protected Property, or any of Grantor's activities on the Protected Property, or otherwise to become an owner or operator with respect to the Protected Property 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, resulting from the negligent acts or omissions of Grantor, 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 Protected Property; (2) the violation or alleged violation of 2009-0645 other failure to comply with, any state, federal, or local law, regulation or requirement, including without limitation, CERCLA and MTCA, by Grantor, its officers, employees and agents; or (3) the presence or release in, on, from; or about the Protected Property, at any time, of any hazardous substances, caused solely by the Grantor.

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 Protected Property resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Protected Property 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 the Protected Property 2009-0645 and

8.3.3 Requiring the restoration of the Protected Property 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 Protected Property, 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. All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorney's fees and reasonable consultant's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantors or those of its successors, or assigns, against whom a judgment is entered; provided, however, that if Grantors ultimately prevail in a judicial enforcement action each party shall bear its own costs.

8.7 The Grantee's Forbearance. The Grantee acknowledges its commitment to protect the Protected Property, 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.

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- 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 and 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 Protected Property deemed by the Grantee to be inconsistent with the Purpose of this Easement) or prescription.
- 8.9 **Acts Beyond Grantor's Control.** 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 Protected Property 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 Protected Property resulting from such causes.
- 8.10 **Violations of Easements by Third Parties.** 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. Provided, however, Grantor has an affirmative duty to cooperate in the prosecution of any third parties violating the terms of this Easement.

9. **Term.**

- 9.1 This Easement shall be recorded in the records of King County, Washington and shall be a burden upon and shall run with the Protected Property until terminated in one of the following ways:
- 9.1.1 If Grantor executes a fully approved and authorized Development Agreement with King County, as authorized by RCW 36.70B.170, for a rural clustered subdivision within the Section 21 property owned by Grantor that includes the Protected Property in a tract or tracts to satisfy the requirements of King County Code 21A.14.040, then King County shall execute an appropriate document to relinquish this Easement at the time that the tract or tracts are permanently protected under the terms of the Development Agreement.

9.1.2 If the Protected Property has not been included in a permanent open space tract or tracts as part of a Development Agreement for a rural clustered subdivision prior to the expiration of a twelve (12) year term that shall commence on the effective date of the Open Space Agreement, the Parties agree that the Easement shall be replaced with a permanent conservation easement with terms that are substantially similar to the Grantee's then standard form of conservation easement for protecting natural areas. The permanent conservation easement shall allow road and utility corridors consistent with the terms applicable to County Open Space under the BDUGGA Section 7.5, the applicable provisions of which are set forth in Section 7.1.1 of this Easement. If the Parties are unable to agree on the form of a permanent conservation easement prior to the expiration of the twelve (12) year term, then Grantor shall within one hundred twenty (120) days thereafter convey the Protected Property to the County in fee pursuant to a purchase and sale agreement substantially similar to the agreement used to convey the County Open Space as called for by Section 3.2 of the Open Space Agreement. Any Protected Property conveyed in fee shall be subject to use by Grantor consistent with the terms applicable to County Open Space under BDUGAA Section 7.5, the applicable provisions of which are set forth in Section 7.1.1 of this Easement. The exercise of such rights will require execution of appropriate easements to be granted by the County. Conveyance of the Protected Property in fee to Grantee shall terminate this Easement.

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9.1.3 Grantor may elect to terminate this Easement at any time. Grantor may only terminate this Easement, however, if it contemporaneously replaces the this Easement with a permanent conservation easement on the Protected Property in a form agreed to by the Grantee and consistent with the terms and in the manner described in Section 9.1.2 of this Agreement, or if it conveys the Protected Property to the County consistent with the terms and in the manner described in Section 9.1.2 of this Agreement.

10. Exhibits.

The following exhibits are attached hereto:

Exhibit A – Legal Description for Protected Property

Exhibit B - Permitted Encumbrances

11. Written Notices.

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- 11.1 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: King County Department of Natural Resources and Parks
Water and Land Resources Division
201 South Jackson Street, Suite 600
Seattle, WA 98104

Grantor: Brian Ross
BD VILLAGE PARTNERS, L.P.
10220 NE Points Drive, Suite 120
Kirkland, WA 98033

With a copy to: John Hempelmann
CAIRNCROSS & HEMPELMANN
524 Second Avenue, Suite 500
Seattle, WA 98104

- 11.2 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.

12. Public Access.

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

13. Grantor's Title Warranty.

Grantor warrants that it has good and sufficient title to the Property, free from all encumbrances except those set forth in Attachment B attached to and made a part of this Deed ("Permitted Encumbrances"), and hereby promises to defend the same against all claims that may be made against it.

13. **Interpretation.**

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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.

14. **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.

15. **Acceptance.**

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

GRANTOR: BD VILLAGE PARTNERS, L.P.

By: Yarrow Bay Development, LLC
General Partner

Brian Ross, CEO

GRANTEE: KING COUNTY

By: _____
Theresa Jennings, Director
Department of Natural Resources and Parks

STATE OF WASHINGTON)
)ss:
COUNTY OF KING)

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On this _____ day of _____, 200__ before me personally appeared _____, to me known to be the _____, of _____, 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.

Notary Public in and for the
State of Washington
Residing at: _____
My Commission Expires: _____
Printed Name: _____

STATE OF WASHINGTON)
)ss:
COUNTY OF KING)

On this _____ day of _____, 200__ before me personally appeared _____, to me known to be the _____, of _____, 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.

Notary Public in and for the
State of Washington
Residing at: _____
My Commission Expires: _____
Printed Name: _____

EXHIBIT "A"

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Legal Description

EXHIBIT "B"

Permitted Encumbrances

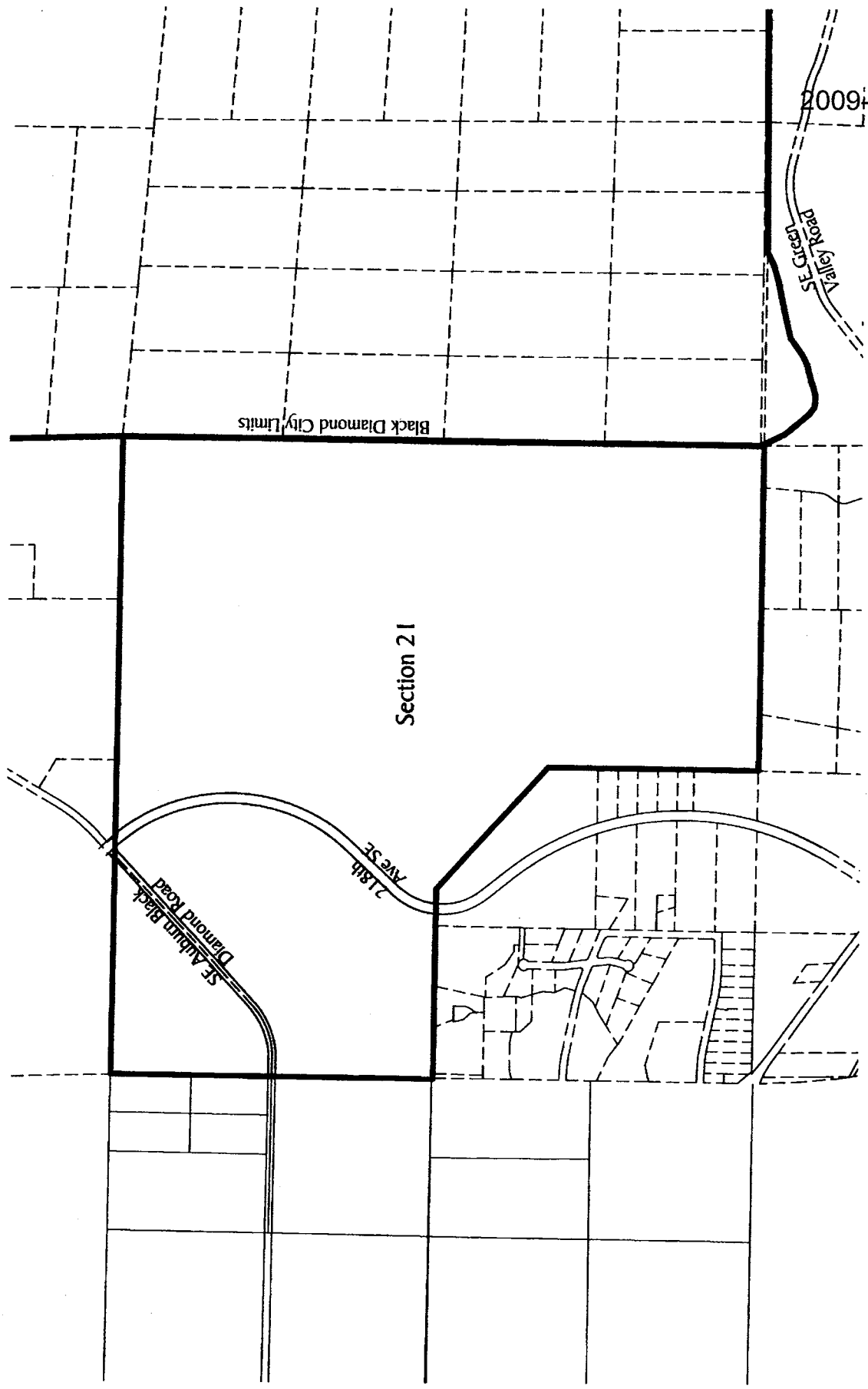
2009-0645

2009-0645

EXHIBIT G

Legal Description of "Additional Open Space"

forthcoming



2009+06

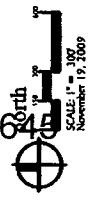


Exhibit H - Section 21