

15.0 GENERAL PROVISIONS

15.1 DEFINITIONS

~~ALL CAPITALIZED TERMS IN THIS AGREEMENT SHALL HAVE THE MEANINGS SET FORTH
IN SECTION 14.~~

~~15.2~~ BINDING EFFECT

This Agreement is intended to constitute and shall be recorded as a covenant running with the land, benefiting and burdening the Villages Property. This Agreement shall be binding upon and inure to the benefit of the Master Developer and the City and to the successors and assigns of the Master Developer and the City.

15.23 DUTIES OF MASTER DEVELOPER

A single Master Developer (or Master Developer Transferee) shall be maintained throughout the life of this Development Agreement. The Master Developer shall function as a single point of contact for City billing purposes, shall function as a single authority for Development Agreement revisions and modifications, shall provide to the City proof of Master Developer approval of all Implementing Project permit applications (except building permits) filed by other parties prior to or with submittal to the City, and shall be responsible for distributing Development Agreement entitlements and obligations and administering such.

15.34 ASSIGNMENT

The parties acknowledge that the development of The Villages MPD likely will involve sale, conveyance or assignment of portions of the Villages Property to third parties who will own, develop and/or occupy portions of the Villages Property and buildings thereon. BD Villages Partners, LP shall have the right from time to time to assign or transfer all or any portion of its respective interests, rights or obligations under this Agreement or in The Villages MPD to a Master Developer Transferee acquiring an interest or estate in all or a portion of the Villages Property, including a transfer of all interests through foreclosure (judicial or nonjudicial) or by deed in lieu of foreclosure. Consent by the City shall not be required for any assignment or transfer of rights pursuant to this Agreement.

In any such transfer or assignment, if the transferee or assignee assumes the obligations herein pertaining to the property transferred or assigned, then the transferee or assignee shall be entitled to all interests and rights and be subject to all obligations under this Agreement, and BD Village Partners, LP shall thereupon be deemed released of liability under this Agreement for the portion of the property transferred or assigned, whether or not such release is expressly stated in such transfer or assignment; provided, however, that BD Village Partners, LP shall remain obligated for any outstanding mitigation measures set forth in this Agreement or in the MPD Approval as of the date of transfer or assignment that are not transferred or assigned. BD Village Partners, LP shall also remain liable for any breach that occurred prior to the transfer or assignment of rights to another party and for those portions of the Villages Property still owned by BD Village Partners, LP. BD Village Partners shall advise prospective transferees or assignees that obligations of this Agreement may apply to the property upon transfer or assignment.

15.54 GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington.

15.65 SEVERABILITY AND WAIVER

If any portion of this Agreement is determined by a court of law to be unenforceable or invalid, then the remaining portions of this Agreement shall remain in effect.

15.76 AUTHORITY

Each party represents and warrants to the others that the individuals signing below have full power, authority and legal right to execute and deliver this Agreement and thereby to legally bind the party on whose behalf such person signed.

15.78 EXHIBITS

The exhibits to this Agreement are hereby incorporated herein as though fully set forth as terms of this agreement. The exhibits are:

Exhibit "A" – Project Boundaries and Land Use Map

Exhibit "B" – Legal Description

- Exhibit "C" – MPD Approval
- Exhibit "D" – Summary of Prior Agreements
- Exhibit "E" – City of Black Diamond Municipal Code
- Exhibit "F" – Traffic Monitoring Plan
- Exhibit "G" – Constraint Maps
- Exhibit "H" – ~~RESERVED~~ [MPD Project Specific Design Standards and Guidelines](#)
- Exhibit "I" – High Density Residential Supplemental Design Standards and Guidelines
- Exhibit "J" – Construction Waste Management Plan
- Exhibit "K" – Phases Map and Phasing Plans
- Exhibit "L" – Street Standards
- Exhibit "M" – Mine Hazard Release Form
- Exhibit "N" – Villages MPD Funding Agreement
- Exhibit "O" – Stormwater Monitoring
- Exhibit "P" – Green Valley Road Measures
- [Exhibit "Q" – Maple Valley Transportation Mitigation Agreement](#)
- [Exhibit "R" – Covington Transportation Mitigation Agreement](#)
- [Exhibit "S" – Potential Expansion Areas](#)

15.98 TIME IS OF THE ESSENCE

Time is of the essence of this Agreement.

15.109 INTERPRETATION

The parties hereby acknowledge that this Agreement has been reached as a result of arms length negotiations with each party represented by counsel, and thus no presumption of draftsmanship shall be used in interpreting this Agreement.

15.101 **INTEGRATION**

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Waiver of any default will not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement will not be deemed to be a waiver of any other provision or subsequent breach and will not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by the Party charged with so waiving or modifying the terms of the Agreement, which written approval will be attached to the original Agreement.

15.1211 **NO THIRD-PARTY BENEFICIARY**

This Agreement is made and entered into for the sole protection and benefit of the parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

15.1312 **OTHER NECESSARY ACTS**

The parties shall execute and deliver to each other all other further instruments and documents that are reasonably necessary to carry out and implement the Agreement, with the sole exception of the City of Maple Valley as described in subsection 12.10.4.

15.1413 **REMEDIES**

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

15.1514 **NOTICE**

Any demand, request or notice which either party hereto desires or may be required to make or deliver to the other shall be in writing and shall be deemed given when personally delivered, or successfully transmitted by facsimile transmission, or when actually received after being deposited in the United States Mail in registered or certified form, return receipt requested, addressed as follows

The Villages Master Planned Development
Draft Development Agreement

To the City: _____, ~~City Administrator~~ Mayor

City of Black Diamond
PO Box 599
Black Diamond, WA 98010
Facsimile: (360) 886-2592

Mike Kenyon
City Attorney
11 Front Street S
Issaquah, WA 98027-3820
Facsimile: (425) _____

BD Village Partners: Brian Ross
BD Village Partners, L.P.
10220 NE Points Drive, Suite 120
Kirkland, WA 98033
Facsimile: (425) 898-2139

Nancy Bainbridge Rogers
Cairncross & Hempelmann, P.S.
524 Second Avenue, Suite 500
Seattle, WA 98104-2323
Facsimile: (206) 587-2308

15.1615 COUNTERPARTS

This Development Agreement may be executed in counterparts, each of which shall be deemed an original.

15.1716 TERM

The Term of this Agreement shall be from the date written in the first paragraph of this Agreement till the expiration of the Build-Out Period, as may be extended.

CITY OF BLACK DIAMOND

BD VILLAGE PARTNERS, L.P.
For BD Village Partners, LP

_____, Mayor

By: Brian Ross
Title: Managing Partner

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Attest:

_____, City Clerk

Approved as to Form:

_____, City Attorney

The Villages Master Planned Development
Draft Development Agreement

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this day personally appeared before me _____, to me known to be _____ of the City of Black Diamond, a Washington non charter code city 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 _____ is authorized to execute said instrument.

GIVEN under my hand and official seal this ____ day of _____, 2010.

(Print name of notary)
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____