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Summary of Comprehensive School Mitigation Agreement between the City of Black Diamond; Enumclaw School District; and developers of The Villages and Lawson Hills Master Planned Developments (BD Village Partners LP and BD Lawson Partners LP)

The City of Black Diamond, Enumclaw School District, BD Village Partners LP and BD Lawson Partners LP have jointly developed an agreement that provides for adequate schools to support planned growth from the developers' projects in the City of Black Diamond. The agreement mitigates the impacts of two proposed Master Planned Developments on school facilities through a combination of land conveyance for school sites and the payment of mitigation fees to the Enumclaw School District. As a result of this agreement, the future locations for schools are secured while flexibility regarding when and where to build each school is maintained.

The school agreement is a necessary component of the developers' plan to build two Master Planned Developments over the next 15 years in Black Diamond: The Villages and Lawson Hills. Together, these projects could include 6,000 new homes with a range of affordability, as well as up to seven school sites for new students. The project will also include significant open space, trails, parks, retail and office space.

Schools are a vital part of the success of the proposed projects. The term of the agreement is 15 years or four years after the last subdivision is approved, whichever is longer. The District also has the option to extend the term of the agreement for one year if the District needs to present a bond measure to the public to finance school construction on one of the identified school sites.

This comprehensive agreement represents a thorough and thoughtful effort by all parties to effectively and appropriately plan for Black Diamond's future.

Key points of the school agreement:

Number of School Sites

The developers will convey to the District up to:

- Four elementary school sites;
- Two middle school sites; and
- One high school site.

The number of school sites is based on the developers' proposed number of homes, the estimated number of additional students, and the District's standards for student capacity per school.

Size of School Sites

The minimum size of the school sites are:

Elementary School Sites

- Three, 10-acre elementary school sites
- One, 13-acre elementary school site

Middle School Sites

- One, 20-acre middle school site
- One, 24-acre middle school site

High School Site

- One, 35- to 40-acre high school site. If the high school site is less than 40 acres, the City will reserve up to six acres in Lake Sawyer Regional Park for high school sports and recreation facilities such as ball fields and tennis courts (though not a stadium).

In addition, the developers have offered to set aside additional land to accommodate larger elementary schools, increasing from 10-acre sites to 12.5-acre sites. This provides the District with the option to build three larger schools instead of four smaller schools. The District must make this decision before construction begins on the first elementary school.

Location of School Sites

Three elementary schools sites are located in the new neighborhoods (two in The Villages and one in Lawson Hills), while the fourth elementary school site and both middle school sites are either adjacent to or near homes in The Villages. The majority of homes are within a half-mile walking distance of an elementary school and middle school.

As three of the school sites are located in unincorporated King County and not subject to City of Black Diamond permitting, the District has the option, if it cannot secure necessary approvals to build the fourth elementary school site or either middle school site, to sell the properties, using the proceeds to buy an alternative site or fund other capacity improvements. In the case of the elementary school the District can also shift the site north onto land in Black Diamond.

The proposed second middle school site is adjacent to The Villages project, but currently within the Auburn School District's corporate boundary. The Enumclaw and Auburn School Districts

have begun discussing adjusting the boundary, so that the site will be within the Enumclaw School District. There is an established process for such boundary adjustments. If the Enumclaw School District is unsuccessful in securing the boundary adjustment, the developers will pay the District mitigation fees equal to the appraised value of the second middle school site. The mitigation fees will be due at the time the middle school would have been conveyed to the District.

High School Site

The developers have identified a high school site within The Villages. Although the site is adequate, there might be suitable alternative locations outside of the project boundaries. The developers have 10 years to identify an alternative high school site. The alternative site must be within the District's boundaries and near the new communities. It can be located within the City of Black Diamond near Lake Sawyer Regional Park, or the developer can identify a 40-acre site in unincorporated King County north of the Green River within the Enumclaw School District. However, if the developers identify a site in the unincorporated area they must secure all entitlements for locating a high school there before designating it as the high school site. The District will give the developers mitigation fee credits equal to the fair market value of the high school site if it acquires the property during the term of the agreement. For three years after the end of the agreement, the District will have an option to purchase the high school site for fair market value, as long as it costs no more than what was collected in mitigation fees from the projects.

Timing

The developer will convey the first elementary school site to the District shortly after the approval of its Master Planned Developments. The developers' obligation to convey the remaining school sites to the District is contingent on final plat approval for the following number of total homes:

- 2nd Elementary School Site – 1,750 units approved
- 3rd Elementary School Site – 3,000 units approved
- 4th Elementary School Site – 4,500 units approved
- 1st Middle School Site – 1,600 units approved

Once the developers receive final plat approval for the required number of homes, the school sites will be conveyed as the District secures construction financing. If the District does not receive financing approval for each school by the end of the term of the agreement, the developer

will still convey the second elementary school property and the first middle school property, but would use the other sites for alternative purposes.

Joint Use of School Sites

The developer may request that portions of the playfields on the school sites in the City be used to serve both the District and City residents. The City and the District must agree that the identified areas are appropriate for joint use. If the sites are used jointly, the developers will receive credit toward their parks and open space obligations. The developer would be required to develop the joint park space to City specifications.

School Mitigation Fees and Developer Credit for School Sites

As part of the agreement the developer will pay mitigation fees for each home that is developed. The District and the developer have agreed on minimum and maximum amounts of these fees, and the total will be between \$35 million and \$50 million, presuming all planned units are approved and built. The developer will receive credits against the mitigation fees in an amount equal to the appraised value of the land that is conveyed to the District. The land will be appraised before it is conveyed, and the District will not be required to reimburse the developers for the value of any site beyond these credits. The funds remaining after the developer receives credits will be used for construction and improvements to school facilities within Black Diamond or the developments' service area (north of the Green River).

The mitigation fee payments will be made over time as building permits are requested, and the fees will remain in place even if construction occurs after the term of this agreement.

Due Diligence of the School Sites

The District has 180 days from the date that the agreement is signed by all of the parties to perform its due diligence and evaluate each school site. This due diligence will involve a thorough review and assessment of the physical nature of each site and its appropriate use for school purposes. If the District does not accept a school site, the City, District and developers will meet again to determine if an alternative site is suitable. If an alternative is not identified by the parties, the developer must pay mitigation fees equal to the value of the unacceptable site.

COMPREHENSIVE SCHOOL MITIGATION AGREEMENT

This COMPREHENSIVE SCHOOL MITIGATION AGREEMENT (the "Agreement") is made this ____ day of _____, 2009, between the CITY OF BLACK DIAMOND, a Washington municipal corporation (the "City"), the ENUMCLAW SCHOOL DISTRICT, a Washington municipal corporation (the "District"), BD LAWSON PARTNERS, LP, a Washington limited partnership ("BDLP"), and BD VILLAGE PARTNERS, LP, a Washington limited partnership ("BDVP").

1. Background Information and Agreement Purposes.

1.1 The City, by entering into the BDUGAA, started a process where it would expand its boundaries and use innovative development techniques, such as MPDs and transferable development rights, to create a walkable, sustainable community interconnected by a series of trails, sensitive areas, wildlife corridors, parks and other spaces.

1.2 The Developer desires to create vibrant, sustainable master planned communities that foster a strong sense of community and promote quality of life. The Developer intends to develop the Projects in various phases, consistent with the Comprehensive Plan, as it may be amended from time to time.

1.3 The approved Units in each Project are projected to generate school-age children.

1.4 The District does not have the facilities available to accommodate the additional students who will be generated from the Projects.

1.5 Pursuant to RCW 58.17.110 and City Municipal Code Title 17 and Chapter 18.98, as a part of Master Plan Development and subdivision approval, the City is required to ensure that appropriate provisions are made for schools and school facilities necessary to serve the residential subdivisions that will be part of the Projects.

1.6 Pursuant to Chapter 43.21C RCW and its implementing regulations, the City is required to consider and, if necessary, require mitigation for probable adverse environmental impacts of the Projects on the built environment.

1.7 The Parties agree that adequate school facilities to serve the Projects will be necessary to preserve the existing quality of life in the City, to ensure the appropriate provision of schools and school programs through the District, and to create viable and livable communities within the Projects.

1.8 The Parties agree that schools should be an integral part of the community they serve and that neighborhood schools are preferred in order to permit

students to walk or bike to school, to reduce school transportation needs, and to create a community focus.

1.9 The Developer is willing to go above and beyond simply paying Mitigation Fees to the District to mitigate the impacts of the Projects. The Developer is willing to convey real property to the District in exchange for Mitigation Fee Credits in order to achieve the goals of the Parties in a manner coordinated with the development of the Projects and to help ensure that Agreed School Sites are available so that the District may effectively serve the residents of the Projects. The Developer desires certainty regarding mitigating the impacts of the Projects on School Facilities and this Agreement reflects the Parties' agreement with respect to that mitigation.

1.10 The Parties agree that, if appropriate and subject to the District's priority use rights, open space areas at certain Identified School Sites may be used, through a joint use agreement, to satisfy the City's open space and park lands requirements related to the Projects.

1.11 The Parties agree that the District will not be required to pay any amount, other than the issuance of Mitigation Fee Credits or the reimbursement of Mitigation Fees, to the Developer for the conveyance of the Agreed School Sites, subject to this Agreement.

1.12 A material and substantial consideration for the Parties entering into this Agreement at this time is to support and encourage the passage of school construction bond issues in the near and long-term for the financing of schools in the City and on the Agreed School Sites.

1.13 The Parties have the authority to enter into a voluntary agreement to mitigate the impact of the development on the District and to agree that performance of the terms of this Agreement constitute adequate mitigation of the environmental impacts on school facilities and appropriate provision of schools and school grounds.

1.14 The Parties intend this Agreement to provide a mechanism to achieve the vision of the Parties as articulated above.

2. Definitions. The words used in this document shall be given their common, ordinary meaning, unless otherwise indicated herein, or, unless a specific definition is given in this section. If a word or phrase is to have a specialized definition for use in this document, then the word, or, if a phrase then each word in a phrase, shall be capitalized.

2.1 "Actual Joint Use Land Values" shall mean the actual market value, as adjusted to recognize any open space limitation imposed on the property, whether by code, comprehensive plan, land use approval, or as acknowledged by the Parties in this

Agreement, of the District's rights to use for the District's intended school purposes any Joint Use Land conveyed to the City pursuant to this Agreement.

2.2 "Actual School Site Value" shall mean the market value of an Identified School Site determined pursuant to Section 10.4.

2.3 "Agreed Acreage" shall mean ten (10) Usable Acres for each of the Elementary School Sites, fifteen (15) Usable Acres for each of the two Middle School Sites, and forty (40) Usable Acres for the High School Site.

2.4 "Agreed School Sites" shall mean the Elementary School Sites, the Middle School Sites, and the High School Site, all with the Agreed Acreage.

2.5 "Agreed Student Capacity" shall mean 450 students per elementary school, 550 students per middle school, and 1,200 students per high school, all as set forth in Section 4.

2.6 "Agreement" shall mean this document, which is entitled Comprehensive School Mitigation Agreement, and all attachments to this document which are referenced within the body of the document, and which are by this referenced incorporated herein.

2.7 "Agreement Effective Date" shall mean the date of full execution of the Agreement, which shall be consistent with the date of execution by the last of the Parties, as provided in the signature blocks at the end of this Agreement.

2.8 "Agreement Term" shall mean the period of time that the Agreement remains in full force and effect, as further described in Section 30.

2.9 "Alternative Elementary School Site" shall mean the site depicted on Exhibit A, which is a portion of the property legally described in Exhibit A.1.

2.10 "Alternative High School Site" shall mean a high school site of no less than forty (40) Usable Acres, except that the Parties agree that such site may be less than 40 Usable Acres but in no event less than thirty-five and thirty-one/one hundredths (35.31) Usable Acres if the site is located within the City of Black Diamond and in the general area identified on Exhibit B.

2.11 "Appraised Value" shall mean the market value of an Agreed School Site determined by an appraiser based on the factors described in Section 10.4.3.

2.12 "Approval Work" shall mean work that is necessary to be performed on an Identified School Site after the Agreement Effective Date in order to meet the Land

Use Approval conditions associated with the Project or to facilitate development or site planning of the Projects consistent with the Land Use Approval conditions.

2.13 "Approved Exceptions" shall mean Permitted Exceptions and other title exceptions approved by the District in writing or deemed approved as provided in Section 12.

2.14 "BDLP" shall mean BD Lawson Partners, LP, a Washington limited partnership.

2.15 "BDLP's Actual Knowledge" shall mean the actual knowledge of Brian Ross, David MacDuff, Colin Lund and Ryan Kohlmann, without additional inquiry or investigation.

2.16 "BDVP" shall mean BD Village Partners, LP, a Washington limited partnership.

2.17 "BDVP's Actual Knowledge" shall mean the current actual knowledge of Brian Ross, David MacDuff, Colin Lund and Ryan Kohlmann, without additional inquiry or investigation.

2.18 "BDUGAA" shall mean the document entitled Black Diamond Urban Growth Area Agreement that is dated December 31, 1996, and was entered into between King County, the City, Palmer Coking Coal Company and Plum Creek Timber Company, Limited Partnership.

2.19 "CCRs" shall mean the Covenants, Conditions and Restrictions that will be recorded against certain Identified School Sites in connection with the development of the Projects.

2.20 "City Municipal Code" shall mean the municipal code adopted by the City as well as any amendments to the code adopted during the Agreement Term.

2.21 "Closing" shall mean the process of recording the deed to convey title to a particular Agreed School Site from the Developer to the District.

2.22 "Community Development Director" shall mean the City's designee responsible for planning and development functions.

2.23 "Community Recreational Facility" shall mean an improvement on Joint Use Lands that is above and beyond what may be required to meet the City park and recreational facilities requirements and the MPD permit condition.

2.24 "Comprehensive Off-Site Improvements" shall mean the General Off-Site Improvements and the School-Specific Off-Site Improvements.

2.25 "Comprehensive Off-Site Utilities" shall mean the General Off-Site Utilities and the School-Specific Off-Site Utilities.

2.26 "Comprehensive Plan" shall mean that certain Comprehensive Land Use Plan adopted by the City of Black Diamond on June 18, 2009.

2.27 "Contingency Period" shall mean the period ending one hundred eighty (180) days from the Agreement Effective Date.

2.28 "Deed" shall mean each statutory warranty deed conveying any Identified School Site to the District pursuant to this Agreement.

2.29 "Deed Restriction" shall mean that certain use restriction recorded at Closing for the Elementary School Sites A-C, a form of which is attached hereto as Exhibit C.

2.30 "Developer" shall mean BDLP with respect to the Lawson Hills Project and BDVP with respect to the Village Project, collectively or individually as the context requires, and subject to Section 32.

2.31 "Development Encumbrances" shall mean the title encumbrances described in Section 13.1, and the CCRs after approval or deemed approval by the District pursuant to Section 13.2.

2.32 "Development Use" shall mean the placement of temporary structures, temporary storage or stock piling of equipment, soil, gravel, vehicles, supplies and materials used in the development of the Projects.

2.33 "District" shall mean the Enumclaw School District No. 216.

2.34 "District's Capital Facilities Plan" shall mean the Enumclaw School District's 2008-2013 Capital Facilities Plan dated May, 2008, and adopted by the District's Board of Directors on July 28, 2008.

2.35 "EISes" shall mean the Environmental Impact Statements for the Projects.

2.36 "Elementary School Site" shall mean Elementary School Site A, Elementary School Site B, Elementary School Site C, and Elementary School Site D, collectively, or individually as the context requires.

2.37 "Elementary School Site A" shall mean the site depicted on Exhibit D, which is a portion of the property legally described in Exhibit D.1.

2.38 "Elementary School Site B" shall mean the site depicted on Exhibit E, which is a portion of the property legally described in Exhibit E.1.

2.39 "Elementary School Site C" shall mean the site depicted on Exhibit F, which is a portion of the property legally described in Exhibit F.1.

2.40 "Elementary School Site D" shall mean the site depicted on Exhibit G, which is a portion of the property legally described in Exhibit G.1.

2.41 "Environmental Laws" shall mean federal, state or local law, ordinance, code, regulation, rule, order or decree regulating, relating to or imposing liability or standards of conduct concerning, any environmental conditions, health or industrial hygiene, including without limitation, (i) chlorinated solvents, (ii) petroleum products or by-products, (iii) asbestos, (iv) polychlorinated biphenyls, and (v) anything that would be a hazardous waste, material or substance, toxic substance or pollutant, as defined under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et. seq.; Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et. seq., the Clean Water Act, 42 U.S.C. § 1251 et. seq., the Washington Environmental Policy Act, RCW Ch. 43.21, the Washington Water Pollution Control Act, RCW Ch. 90.48.010 et seq., the Washington Hazardous Waste Management Act, RCW Ch. 70.105, the Washington Model Toxics Control Act, RCW Ch. 70.105D, and the regulations promulgated thereunder.

2.42 "Escrow Agent" shall mean Chicago Title Insurance Company, located at 701 Fifth Avenue, Suite 2300 in Seattle, Washington 98104, or the then-current address, or, in the event the aforementioned Chicago Title Insurance Company is no longer in existence, an escrow agent mutually agreeable to the District and the Developer .

2.43 "Estimated School Site Value" shall mean the estimated market value of an Identified School Site as determined pursuant to Section 10.7.

2.44 "Estimated Student Population" means the number of students estimated to be generated by the Projects calculated by using the District's student generation ratios set forth in Section 5.1.1 and the Projected Units in the Projects.

2.45 "First Middle School Site" shall mean shall mean the site depicted on Exhibit H, which is a portion of the property legally described in Exhibit H.1.

2.46 "General Off-Site Improvements" shall mean roads, sidewalks, curbs, and gutters within the public right-of-way serving as the point of access for each Identified School Site and located outside the Identified School Sites, in whole or in part within the Project boundaries, which improvements may be required by applicable City or County standards, or MPD requirements to provide General Off-Site Improvements to the

relevant Identified School Site, but shall not include School-Specific Off-Site Improvements to the extent such School-Specific Off-Site Improvements require oversizing or otherwise increase the cost of the General Off-Site Improvements.

2.47 "General Off-Site Utilities" shall mean stormwater, sewer, water, natural gas, electricity, and communication lines, all as based upon applicable City or County standards and set forth in the approved engineering plans for the Lawson Hills Project and the Village Project and/or that are a part of the MPD requirements, but shall not include the School-Specific Off-Site Utilities to the extent such School-Specific Off-Site Utilities require oversizing or otherwise increase the cost of the General Off-Site Utilities.

2.48 "Hazardous Substance" shall mean any hazardous or toxic substance, material or waste, pollutants or contaminants, as defined, listed or regulated now or in the future by any Environmental Laws.

2.49 "High School Site" shall mean the site consisting of thirty-five and thirty-one/one hundredths (35.31) Usable Acres depicted on Exhibit I, which is a portion of the property legally described in Exhibit I.1.

2.50 "High School Sports and Recreation Area" shall mean the approximately six (6) acre site reserved in the City's Lake Sawyer Regional Park area, generally in the area depicted on Exhibit J, to be used jointly by the District and the City for District High School programmatic and recreational activities and City outdoor recreation and park purposes, all as further described in section 8.8.

2.51 "Identified High School Site" shall mean the Developer's selection pursuant to Section 7.2 between the High School Site, the Alternative High School Site, and the Rural High School Site, as applicable.

2.52 "Identified School Sites" or "Identified School Site" shall mean the four (4) Elementary School Sites and two (2) Middle School Sites, or any one of the foregoing as the context so requires, and the High School Site or the Identified High School Site.

2.53 "Included Costs" shall mean the closing costs described in Section 19 and the cost of any Surveys (as described in Section 12).

2.54 "Indemnified Parties" shall mean agents, members, partners, officers, directors, contractors, subcontractors, employees, and invitees.

2.55 "Joint Use Agreement" shall mean an agreement, as further described in Section 8, which will govern the use of Joint Use Land.

2.56 "Joint Use Land" shall mean that certain real property located in the City on an Identified School Site in one of the Projects that is conveyed either to the City or the District to be used jointly by the District and the City for District programmatic, open space, and playfield facilities and City outdoor recreation purposes and for which the Developer receives credit toward the City's park requirements under the City Municipal Code, all as further described in Section 8.

2.57 "Land Use Approvals" shall mean those certain Comprehensive Plan Amendments necessary for the Projects, Code amendments (if any) necessary for the Projects, MPD approvals, segregation and related approvals (whether by boundary line adjustment, subdivision, binding site plan or alternate mechanism), site development and construction permits, utility and road permits, including permits for off-site infrastructure, and similar land use and construction approvals necessary to complete the Projects or necessary to segregate or subdivide an Identified School Site from the rest of the Projects or other property or other approvals necessary to complete the Projects.

2.58 "Lawson Hills Project" shall mean that certain MPD project on certain real property as generally depicted on Exhibit K attached hereto.

2.59 "Maximum Acreage" shall mean twelve and one-half acres for each of the Elementary School Sites.

2.60 "Middle School Sites" shall mean the First Middle School Site and the Second Middle School Site.

2.61 "Mitigation Fee" or "Mitigation Fees" shall mean the mitigation fees per Unit described in Section 9.

2.62 "Mitigation Fee Account" shall mean the segregated interest bearing account maintained by the District that is used solely for Mitigation Fees collected pursuant to this Agreement.

2.63 "Mitigation Fee Credits" shall mean the credits against Mitigation Fees issued by the District to the Developer pursuant to Section 10 that are evidenced by Mitigation Fee Credit Certificates.

2.64 "Mitigation Fee Credit Certificates" shall mean the certificate in the form attached hereto as Exhibit L that the District issues as evidence of Mitigation Fee Credits.

2.65 "MPD" shall mean a Master Planned Development designation under the City Municipal Code.

2.66 "MPD Service Area" shall mean any portion of the District located north of the Green River.

2.67 "Notices" shall mean all notices or other communications required or desired to be given by any Party pursuant to this Agreement.

2.68 "Option to Purchase" shall mean the right of the Developer to purchase certain Identified School Sites that are not used for or ceased to be used for a School Facility or as otherwise described in this Agreement, upon the terms and conditions set forth in the option agreement attached as Exhibit M (also referred to as the "Developer's Option Agreement").

2.69 "Other Property" shall mean real property that: (1) is not currently within the Lawson Hills Project or the Village Project; (2) is either currently owned or to be acquired by the Developer during the Agreement Term; (3) is subsequently included in one of the Projects by an amendment to the Project's MPD permit approval; and (4) does not cause an increase in the total number of estimated students at each grade level as contemplated herein by multiplying the student generation rate set forth in Section 5.1.1 by the Projected Units.

2.70 "Other Work" shall mean any work or activities that do not constitute Approval Work or Development Use.

2.71 "Parties" or "Party" shall mean the City, the District, BDLP and BDVP, collectively, or individually, as the context requires.

2.72 "Permitted Exceptions" shall mean the following certain title encumbrances with respect to the following School Sites: mineral reservations in favor of Meridian Minerals and/or PCTC, Inc., as reserved under King County Recording Nos. 8907070390, 9112301746, 9206230401, and 9301152402, mineral reservations in favor of Weyerhaeuser Company as reserved under King County Recording No. 8501040307, partial termination of deed reservations in favor of Palmer Coking Coal Company as granted under King County Recording No. 20070725001858, and that certain Conservation Easement in favor of King County as shown in King County Recording No. 9708110711.

2.73 "Project" or "Projects" shall mean the Lawson Hills Project and the Village Project, individually, or collectively, as the context so requires.

2.74 "Projected Lawson Hills Units" shall mean a projected 930 single family Units and 320 multi-family Units resulting from the full build out of the Lawson Hills Project.

2.75 "Projected Units" shall mean the Projected Lawson Hills Units and the Projected Village Units, collectively.

2.76 "Projected Village Units" shall mean a projected 3,600 single family Units and 1,200 multi-family Units resulting from the full build out of the Village Project.

2.77 "Remaining Elementary School Sites" shall mean the second, third and fourth Elementary School Sites to be conveyed to the District.

2.78 "Rural High School Site" shall mean a high school site of no less than forty (40) Usable Acres located in the MPD Service Area and within the District's boundary.

2.79 "School Facility" or "School Facilities" shall mean the school building and related facilities, including but not limited to vehicle parking areas, school bus parking areas, internal site access areas, portable facilities, other related impervious surfaces, walkways, landscaping, playfields, and open spaces.

2.80 "School Financing Approval" shall mean the approval of financing to construct a new School Facility, whether that approval is the District's issuance of non-voted debt, the District voter's approval of a school construction bond, or any other documented action that allocates sufficient school construction dollars to construct a School Facility on an Agreed School Site.

2.81 "School-Specific Off-Site Improvements" shall mean any necessary added capacity or over sizing of General Off-Site Improvements solely to accommodate additional demand from the Identified School Sites or which exceed the base cost of the General Off-Site Improvements.

2.82 "School-Specific Off-Site Utilities" shall mean any necessary added capacity or over sizing of General Off-Site Utilities that are needed solely to serve the Identified School Sites or which exceed the base cost of the General Off-Site Utilities.

2.83 "Second Middle School Site" shall mean the site depicted on Exhibit N, which is a portion of the property legally described in Exhibit N.1.

2.84 "Title Binder" shall mean the preliminary commitment therefore as in the case of the due diligence title review referenced in Section 12, issued by the Title Company, and the Title Documents, collectively.

2.85 "Title Company" shall mean Chicago Title Insurance Company, located at 701 Fifth Avenue, Suite 2300 in Seattle, Washington, or the then-current address, or, in the event the aforementioned Chicago Title Insurance Company is no longer in existence, a title company mutually agreeable to the District and the Developer.

2.86 "Title Documents" shall mean the true, correct and legible copies of all documents referred to in the title insurance policy, or the preliminary commitment for title insurance as the case may be, that is included with the Title Binder that are the basis for the listed exceptions to title to the School Site.

2.87 "Unit" or "Units" shall mean the single family units and multi-family units from the Projects for which the City issues development approvals or building permits, collectively, or individually, as the context requires, with the exception of age restricted units or accessory dwelling units.

2.88 "Usable Acres" shall mean acreage that can be fully utilized for School Facilities or other improvements to serve the School Facilities and devoid of wetlands, wetland buffers, steep slopes, and any other environmentally sensitive areas.

2.89 "Valuation Conditions" shall mean the conditions described in Section 10 to be satisfied prior to determining a particular Actual School Site Value.

2.90 "Valuation Notice" shall mean the written notice from the District informing the Developer that the Valuation Conditions are satisfied with respect to a particular Identified School Site and the District desires to commence the process to determine the Actual School Site Value for such Identified School Site.

2.91 "Village Project" shall mean a MPD project on certain real property generally depicted on Exhibit O attached hereto.

2.92 "Water Supply and Facilities Funding Agreement" shall mean that certain agreement originally between the City the following Developer's predecessors in interest, Plum Creek Land Company and Palmer Coking Coal Co. dated August 11, 2003.

3. Mitigation.

3.1 Complete Mitigation. The Parties agree that: (a) BDLP's performance of its obligations in this Agreement with respect to the Lawson Hills Project, shall constitute full, total, complete and sufficient mitigation of the impact of full build out of the Lawson Hills Project on school facilities in the District; and (b) BDVP's performance of its obligations in this Agreement with respect to the Village Project, shall constitute full, total, complete and sufficient mitigation of the impact of full build out of the Village Project on school facilities in the District. The District and City hereby covenant and agree that neither entity will seek or impose any mitigation measures or impact fees with respect to the Projects in addition to the Mitigation Fees and land conveyances described herein. The Parties acknowledge and agree that this Section 3 is not intended to address or preempt any requirements that may be subsequently imposed on the Projects pursuant to RCW 58.17.110 and BDMC Title 18 regarding safe walking conditions for students who walk to and from schools or for utility related improvements

including but not limited to roads, stormwater, sanitary sewer, public water, etc. The Parties further acknowledge and agree that, for purposes of RCW 58.17.110 and BDMC Title 18, the City shall treat the Identified School Sites and the existing Black Diamond Elementary School as the sites relevant for purposes of determining safe walking conditions.

3.2 Land Use Approvals. This Agreement shall be incorporated into the record for all appropriate Land Use Approvals.

3.2.1 The City agrees that this Agreement, if fully implemented, will fully and adequately mitigate the probable significant environmental impacts of the Projects on schools facilities and the City will find that appropriate provision will be made for school and school grounds to serve the MPDs. The Parties agree that the City shall include, and the other Parties will support, the inclusion of this Agreement as the recommended mitigation for school impacts that could have been mitigated by the use of impact fees or land conveyance within the Land Use Approvals for the Projects, and none of the Parties shall appeal the Land Use Approvals as to this mitigation measure. The City agrees to impose the terms of this Agreement as the mitigation conditions for school impacts that could have been mitigated by school mitigation fees or land conveyance in all relevant Land Use Approvals, including, without limitation, the approval of the MPDs. Provided, however, if the City, in its quasi-judicial capacity, after receiving public testimony is presented with clear and convincing evidence that the terms of this Agreement do not provide for adequate mitigation of the Project's school impacts, the Parties shall meet to discuss how, if necessary, the Agreement can be modified to the satisfaction of all the Parties so that the clear and convincing evidence is appropriately addressed in a manner that permits the realization of the intent and purpose of this Agreement. If the Parties cannot agree on a solution, then they agree to submit the matter to a one-day non-binding mediation, in accordance with paragraph 28, to be held within 10 days of the Hearing Examiner's recommendation on the MPD Application, and agree that City Council action on the MPD Applications shall not occur until the mediation is complete. In the event that the Parties are unable to agree to a solution during mediation, the Parties agree that the City Council shall as soon as possible thereafter take action on the Developer's MPD Applications and shall enter such decision at it deems appropriate to adequately address the impacts and mitigation measures for which clear and convincing evidence was presented.

3.2.2 In the event of an appeal of the EISes or any other Land Use Approvals brought by a third party seeking additional mitigation for school impacts, all Parties agree to cooperate in the defense of that appeal and the District, if requested by the City or Developer to do so, shall present either oral or written testimony indicating that, in the District's perspective, the Agreement provides for the mitigation of impacts to schools and that adequate provision has been made for schools and school grounds. In the event that such an appeal is successful and additional mitigation is imposed, the Developer shall have the rights outlined in Section 25.

4. Agreed School Sites and Agreed Capacity.

4.1 Agreed School Sites and Agreed Capacity. The Parties agree, for purposes of calculating the number of school sites required to be conveyed pursuant to this Agreement, the anticipated increased student population from the residents of the Projected Units of the Projects requires the following additional Agreed School Sites and Agreed Student Capacity.

School Type	Minimum Acreage	Agreed Student Capacity	Agreed School Sites
Elementary School	10 Usable Acres	450 students	4
Middle School	15 Usable Acres	550 students	2
High School	40 Usable Acres	1,200 students	1

With regard to the High School Site, the Parties agree that the minimum acreage may be adjusted to 35.31 Usable Acres so long as the High School Sports and Recreation Area is available in close proximity (i.e. within one mile) to the Identified High School Site.

4.1.1 The Parties agree that the Agreed School Sites are the maximum number of school sites that the Developer may be required to convey under this Agreement. The District agrees that, with the exception of the High School Site, School Facilities constructed on the Agreed School Sites shall have a minimum capacity of no less than 90% of the Agreed Student Capacity, except to the extent construction of the School Facility on the Agreed School Sites is limited or prohibited by applicable federal, state, City or King County law or condition of approval. If for any reason the District constructs a School Facility with less than 100% of the Agreed Capacity, the District shall use reasonable efforts to increase the capacity of the School Facility on the next Agreed School Site to make up the difference.

4.1.2 The Parties acknowledge that three of the Agreed School Sites are larger than the minimum acreage for school sites identified in Section 4.1 and that these size variations are negotiated terms of this Agreement. Specifically, the First Middle School Site is 24 acres, the Second Middle School Site is 20 acres, and Elementary School Site D is 13 acres.

4.2 Agreed Acreage, Student Capacity, and School Sites. The Parties acknowledge that the District's student generation rates may change over time from those identified in the District's Capital Facilities Plan and that the District's Capital Facilities

Plan has service standards for school size and for minimum school site acreage that differ from those listed in Section 4.1. The Parties further acknowledge that the District's service standards as set forth in any capital facilities plans adopted by the District in the future during the Agreement Term may be different from those set out in the District's Capital Facilities Plan. Nonetheless, for purposes of the obligations of the Developer with respect to the Projects, the requirements of Section 4.1 shall control the Agreed Acreage, Agreed Student Capacity and the Agreed School Sites; except as provided in Section 5 below.

5. Adjustment to Number of Agreed School Sites.

5.1 Reduction in Number of Projected Units.

5.1.1 The Developer's obligation to convey the Agreed School Sites is based on the number of Projected Units described in this Agreement. If the approved number of Projected Units as set forth in the MPD Permit approval or amendments thereto because the City does not approve or otherwise reduces the development of any such Projected Units or the Developer applies for a MPD permit or amends its MPD permit application to request approval of less than the number of Projected Units, the Parties agree that the Agreed School Sites shall be adjusted to reflect the reduced number of approved Projected Units according to the formula set forth in Section 5.1.2 below. The reduced number of Projected Units shall be multiplied by the student generation rates that are identified in the District's Capital Facilities Plan as set forth below:

Unit Type	Elementary Students	Middle School Students	High School Students
Single Family Unit	.401	.135	.166
Multi-Family Unit	.137	.045	.056

5.1.2 In the event the number of Projected Units is reduced as described in Section 5.1.1 or there is a change, as documented in the MPD approval for the Projects, in the planned ratio between multi-family or single-family Units, the number of Elementary School Sites to be conveyed hereunder shall be determined by the product of the reduced Projected Units or multi-family or single family ratio of Units and the student generation rates set forth in Section 5.1.1 above divided by the Agreed Student Capacity set forth in Section 4.1. Notwithstanding anything herein to the contrary, the Developer shall not be obligated to convey an Elementary School Site if the projected number of students generated from the Projects will make up less than thirty-three percent (33%) of the Agreed Student Capacity. For example, with respect to the Elementary School Sites, if the number of Projected Units for the Village Project is reduced from 3,400 to 2,500 single

family Units and from 1,200 to 400 multi-family Units, but the Projected Lawson Hills Units remain the same, the maximum number of Elementary School Sites the Developer would be obligated to convey would be reduced from four to three using the following methodology:

- 2,500 Village single family Units + 930 Lawson Hills single family Units = 3,430 single family Units. 3,430 single family Units x .401 student generation rate = 1,375.43 total elementary students from single family Units.
- 400 Village multi-family Units + 320 Lawson Hills multi-family Units = 720 multi-family units x .137 student generation rate = 98.64 total elementary students from multi-family Units.
- 1,375.43 total elementary students from single family Units + 98.64 total elementary students from multi-family Units = 1,474.07 total elementary students from the Projects.
- 1,474.07 students ÷ 450 (the Agreed Student Capacity for elementary schools) students per Elementary School Site = 3.276 School Sites).
- The Developer would only be required to provide the fourth of the Elementary School Sites if the final equation resulted in 3.33 School Sites or greater.

The Parties shall amend this Agreement to reflect any decrease in the Agreed School Sites as provided above.

5.2 Larger School Sites.

5.2.1 Recognizing that it may be more efficient for the District to build schools with a capacity that is greater than the Agreed Student Capacity, the Developer, will set aside the Maximum Acreage for each of the Elementary School Sites A-C to provide the District, in its sole discretion, with flexibility to build schools with larger student capacity than the Agreed Student Capacity. To provide flexibility with regard to this concept, the Parties agree as follows:

5.2.2 As of the Agreement Effective Date, Elementary School Site A, Elementary School Site B and Elementary School Site C, are legally described to reflect both the Agreed Acreage and the Maximum Acreage.

5.2.3 The District shall have the option, in its sole discretion, to construct schools with a capacity that exceeds the Agreed Student Capacity. In such event, the District may request from Developer the Maximum Acreage for Elementary School Site A, Elementary School Site B, and Elementary School Site C. To exercise this option, the District must give Developer notice of its intent to accept the Maximum Acreage for each of the above-referenced Elementary School Sites prior to the District's receipt of the building permit for construction of the school on the first of the Elementary School Sites. If the Closing on the first of the Elementary School Sites has already occurred, the

Developer will immediately convey to the District the remaining 2.5 acres necessary to constitute the Maximum Acreage for the school site, all as consistent with Section 6.2.1 below.

5.2.4 If the District elects to accept the Maximum Acreage for the first, second and third of the Elementary School Site to be conveyed, the Developer shall be relieved of its obligation to convey the fourth of the Elementary School Sites. Any revised plan agreed to by the District and the Developer as provided above shall be reflected in an amendment to this Agreement. The amendment shall reflect the District and the Developer's agreement regarding the amount of acreage to be conveyed at each Closing and the reduced number of Elementary School Sites.

5.2.5 If the District does not provide the Developer with notice of its election to accept the Maximum Acreage prior to the District's receipt of a building permit for the first of the Elementary School Sites to be built, the Developer shall have no obligation to reserve the Maximum Acreage for the Remaining Elementary School Sites and shall only be obligated to convey the Agreed Acreage to the District.

6. Conveyance of Identified School Sites.

6.1 Agreed Conveyance. Upon and subject to the terms and conditions set forth in this Agreement, the Developer shall convey to the District, and the District shall accept and acquire from the Developer such Identified School Sites with the Agreed Acreage described in Section 4.1 above or as provided in Section 5.2. With the exception of the Second Middle School Site which is currently located in unincorporated King County, the actual boundaries and configuration of the Identified School Sites will be established upon City approval of the final plat or master plat containing such Identified School Sites prior to Closing but no later than one hundred eighty (180) days after the approval of the MPD for the first of the Projects and the expiration of the appeal period related to such approval without any appeal, or if an appeal is made, when the appeal is finally resolved (without any further possibility of appeal) in a manner that upholds the Developer's right to proceed with the Project as contemplated in the MPD application. The District and Developer shall cooperate and work together in good faith to choose which Identified School Site for which the District will seek School Financing Approval such that the conveyance of each Identified School Site is geographically coordinated, to the extent possible, with Developer's phasing schedule and build-out of the Projects. The Parties agree that conveyance of an Identified School Site that is located in an area where General Off-Site Utilities and General Off-Site Improvements are complete or under design and construction shall occur prior to conveyance of an Identified School Site that is located in an area where General Off-Site Utilities and General Off-Site Improvements are not complete or under design or construction. The District and the Developer shall prioritize walkable schools in such coordination.

6.2 Conveyance of the First Elementary School Site and First Middle School Site. Conveyance of the First Elementary School Site and First Middle School Site shall be as follows:

6.2.1 The Developer shall convey and the District shall acquire the first of the Elementary School Sites at the Agreed Acreage within one hundred eighty (180) days of the earlier of: (1) approval of the first MPD of the Projects and the expiration of the appeal period related to such approval without any appeal, or if an appeal is made, when the appeal is finally resolved (without any further possibility of appeal) in a manner that upholds the Developer's right to proceed with the Project as contemplated in the MPD application; or (2) the first of the Elementary School Sites is a separate legal lot. The Developer shall continue to reserve the area consisting of the Maximum Acreage for such school site and shall convey and the District shall acquire such additional acreage at the time the District elects to accept the Maximum Acreage pursuant to paragraph 5.2.3 above.

6.2.2 The Developer shall convey and the District shall acquire the First Middle School Site within sixty (60) days after the later of the following: (1) approval of the first MPD of the Projects and the expiration of the appeal period related to such approval without any appeal, or if an appeal is made, when the appeal is finally resolved (without any further possibility of appeal) in a manner that upholds the Developer's right to proceed with the Project as contemplated in the MPD application; (2) the First Middle School Site is a separate legal lot; and (3) the District receives School Financing Approval for the First Middle School Site. The Developer shall convey the First Middle School Site to the District at the end of the Agreement Term regardless of School Financing Approval so long as the City has granted final plat approval for at least one thousand six hundred (1,600) Units in the Projects; provided the 1,600 Unit threshold shall be adjusted to one thousand four hundred (1,400) Units if the total Units for which the City has granted final plat approval include less than ten percent (10%) of multi-family Units.

6.2.3 If the first of the Elementary School Sites to be conveyed to the District or the First Middle School Site are not separate legal parcels within 180 days of the City's approval of the first of the MPD applications for the Projects, then the Developer will submit an application to the City for a boundary line adjustment or short plat legally sufficient to create the first of the Elementary School Sites or the First Middle School Site, as applicable, subject to later boundary line adjustment when the final boundaries are determined through the platting process, if necessary.

6.3 Conveyance of the Remaining Elementary School Sites. The Remaining Elementary School Sites shall be conveyed as follows:

6.3.1 The Developer shall convey the second of the Elementary School Sites to be conveyed to the District when: (1) the District receives School Financing Approval for the second of the Elementary School Sites; and (2) the City has

granted final plat approval for at least one thousand seven hundred fifty (1,750) Units in the Projects; provided the 1,750 Unit threshold shall be adjusted to one thousand four hundred fifty (1,450) Units if the total Units for which the City has granted final plat approval include less than ten percent (10%) of multi-family Units. The Developer shall convey the second of the Elementary School Sites to the District at the end of the Agreement Term regardless of School Financing Approval so long as the City has granted final plat approval for the thresholds set forth in this Section 6.3.1.

6.3.2 The Developer shall convey the third of the Elementary School Sites to be conveyed to the District when: (1) the District receives School Financing Approval for the third of the Elementary School Sites; and (2) the City has granted final plat approval for at least three thousand (3,000) Units in the Projects; provided the 3,000 Unit threshold shall be adjusted to two thousand seven hundred (2,700) Units if the total Units for which the City has granted final plat approval include less than ten percent (10%) of multi-family Units.

6.3.3 The Developer shall convey the fourth of the Elementary School Sites to be conveyed to the District when: (1) the District receives School Financing Approval for the fourth of the Elementary School Sites; and (2) the City has granted final plat approval for at least four thousand five hundred (4,500) Units in the Projects; provided the 4,500 Unit threshold shall be adjusted to four thousand (4,000) Units if the total Units for which the City has granted final plat approval include less than ten percent (10%) of multi-family Units; and provided if the District elects to acquire the Maximum Acreage pursuant to Section 5.2, the Developer shall be released from any obligation to convey the fourth of the Elementary School Sites.

6.3.4 The Developer shall convey the Second Middle School Site to the District if all of the following conditions are met:

(a) The District's boundaries have been modified to include the Second Middle School Site; and

(b) The District receives School Financing Approval for the Second Middle School Site.

6.4 Rural Middle School Sites and Permitting. The First Middle School Site and the Second Middle School Site are currently located outside of the City's boundaries in rural unincorporated area. The District shall use its best efforts to obtain the necessary permits and approvals to construct School Facilities on the Middle School Sites. If the District acquires the First Middle School Site or the Second Middle School Site, but, despite the District's best efforts, King County and/or another applicable permitting or approval agency will not issue a building permit or other required permit or approval (including, without limitation, the provision of necessary sanitary sewer service) for construction of the School Facilities to be located thereon, the District shall have the right,

as its sole and exclusive remedy, to sell the First Middle School Site or the Second Middle School Site, as applicable, subject to the Option to Purchase on the First Middle School Site. If the First or Second Middle School sites are sold by the District, the Developer shall have no obligation to perform under Section 23 of this Agreement with respect to the sold site. The District shall be required to use all proceeds from such sale to acquire an alternative middle school site or sites, as applicable, and fund any improvements to be located thereon or, if a suitable alternative middle school site or sites cannot be located, to fund capacity improvements at District schools located within the City or within the MPD Service Area. The District agrees to use good faith efforts to acquire an alternative middle school site within the MPD Service Area, and if one is not reasonable available for acquisition, to use good faith efforts to use all proceeds from such sale to fund capacity improvements at existing schools within the MPD Service area, before acquiring any land for an alternative middle school site outside of the MPD Service Area.

6.5 Second Middle School Site and Boundary Issue. The Second Middle School Site is located in an area outside of, but adjacent to, the District's boundaries. No later than ninety (90) days after the City's approval of the first of the MPD applications for a Project, the District shall prepare and present a proposal to the Auburn School District to amend the boundaries of the District to include the Second Middle School Site. If the District is unable, despite its best efforts, to amend its boundary to include the Second Middle School Site, the Developer shall have no further obligation to convey to the District the Second Middle School Site, or any other site for a second middle school; provided however, the Developer shall be required to pay Mitigation Fees, regardless of whether the Developer is in need of Mitigation Fee Credits to complete the Projects in an amount equal to the Actual School Site Value of the Second Middle School Site as determined pursuant to Section 10.4 at such time as the District receives School Financing Approval for construction of a second middle school within the city or the MPD Service Area or, at the District's discretion, any time following construction and occupancy of the First Middle School Site or a sale of the First Middle School Site pursuant to Section 6.4 above; and provided further, and subject to Section 9.7, that the Developer's obligation to pay Mitigation Fees at set forth herein shall be reduced by the amount of any funds in the District's Mitigation Fee Account at the time the District receives School Financing Approval for construction of the second middle school.

6.6 Elementary School Site D.

6.6.1 Elementary School Site D is located in rural unincorporated King County. The District shall use its best efforts to obtain the necessary permits and approvals to construct School Facilities on Elementary School Site D. If the District acquires Elementary School Site D, but despite its best efforts King County or another applicable permitting or approval agency will not issue a building permit or other required permit or approval (including, without limitation, the provision of necessary sanitary sewer

service) for construction of the School Facilities to be located thereon, the District shall have the option of:

(a) locating the School Facilities for the fourth elementary school on the Alternative Elementary School Site; or

(b) selling Elementary School Site D, subject to the Option to Purchase, and using the proceeds therefrom solely for the purpose of acquiring an alternative site for the fourth elementary school in the City or within the MPD Service Area or, if a suitable alternative elementary school site cannot be located in such areas, to fund capacity improvements at District schools located within the City or within the MPD Service Area.

6.6.2 To exercise the option described in Section 6.6.1(a) and (b), the District shall provide the Developer with written notice of its election within sixty (60) days from the date the District learns that it is unable to obtain a required permit, but in no event later than eighteen (18) months from the date of Closing on Elementary School Site D. If the District does not provide timely written notice as described herein, the District shall be deemed to have elected option 6.6.1(b).

6.6.3 In the event the District timely elects option 6.6.1(a), the District must convey to the Developer, at no cost to the Developer, Elementary School Site D. The Closing on the Developer's conveyance of the Alternative Elementary School Site to the District, and the District's conveyance of Elementary School Site D to the Developer, shall occur simultaneously on a date that is no later than ninety (90) days after the date the Developer receives the written notice required in Section 6.6.2.

6.6.4 As of the Agreement Effective Date, the Alternative Elementary School Site is located partially within the City's boundaries and partially within unincorporated King County. The Parties agree that in the event the Developer conveys the Alternative Elementary School to the District, the portion of the Alternative Elementary School Site that shall be located on MPD land shall be limited to the minimum amount necessary to construct the structural components of the School Facility and any required parking areas. Any playfields and open spaces shall be located on the portion of the Alternative Elementary School Site that is located in unincorporated King County. The City agrees to use its best efforts to enter into an interlocal agreement or some other coordinated agreement with King County that would provide for the City's permitting of the entire Alternative Elementary School Site.

6.7 Elementary School Site C. Elementary School Site C is currently located within the Lawson Hills Project MPD. The Parties agree that the Developer may, in the future but prior to any conveyance of Elementary School Site C to the District, propose an alternative elementary school site consisting of the same or greater acreage to replace Elementary School Site C subject to the following: (a) the location of the

replacement property must be within the boundaries of the Lawson Hills Project MPD or adjacent to the Lawson Hills Project MPD and within the City's boundaries; (b) the City and the District's approval of the location of the proposed replacement site and the benefit of the replacement; (c) the District's review and approval of the site pursuant to Sections 11 and 12 herein, provided the applicable Contingency Period shall be triggered by the Developer's notice of the alternative elementary school site selection and with the exception that the provisions of 11.6.2 and 12.3.2 shall be inapplicable and the appropriate remedy in the event of the District's objection to the alternative elementary school site shall be continued designation of Elementary School Site C as the school site; and (d) the proposal must be submitted and approved through the MPD amendment process set forth in the City municipal code. If the alternative school site is approved, the Parties shall amend this Agreement to reflect the modification.

7. High School Site. The following terms shall govern the conveyance of a high school site:

7.1 Identification of a High School Site and Developer's Alternatives. The Developer has identified the High School Site, which is located on MPD Property, and consists of 35.31 acres. The Developer shall cause the deed of trust attached as Exhibit P that will be in first position to be recorded against the title of the High School Site. Notwithstanding the designated High School Site, the Developer shall have the option, in the Developer's sole and absolute discretion subject to the Developer's fulfillment of all obligations set forth in Sections 7.1.1 and 7.1.2, as applicable, and subject to the District's acceptance of the site pursuant to Sections 11 and 12 herein, of conveying to the District any one of the High School Site, the Alternative High School Site, or the Rural High School Site as the Identified High School Site.

7.1.1 The Developer may choose to convey an Alternative High School Site subject to the Developer's compliance with the following:

(a) The Developer agrees to be solely responsible for the removal and remediation of any Hazardous Substances and underground storage tanks (if any) located on the Alternative High School Site.

(b) If the Developer acquires the Alternative High School Site before the District receives School Financing Approval for construction of a high school on the High School Site and the Developer wishes to retain the option of conveying such site to the District, at the closing of the Developer's acquisition of the Alternative High School Site, the Developer shall cause the deed of trust in the form attached as Exhibit P to be recorded against the title of the Alternative High School Site that will be in first position.

7.1.2 The Developer may choose to convey the Rural High School Site subject to the Developer's compliance with the following:

(a) The Developer agrees to be solely responsible for the removal and remediation of any Hazardous Substances and underground storage tanks (if any) located on the Rural High School Site.

(b) If the Developer acquires the Rural High School Site before the District receives School Financing Approval for construction of a high school on the High School Site and the Developer wishes to retain the option of conveying such site to the District, at the closing of the Developer's acquisition of the Rural High School Site, the Developer shall cause the deed of trust in the form attached as Exhibit P to be recorded against the title of the Rural High School Site that will be in first position.

(c) Prior to selecting the Rural High School Site as the Identified High School Site, the Developer shall be solely responsible for securing either: (i) inclusion of the Rural High School Site within the City's corporate boundaries and City zoning and comprehensive plan designation allowing for the siting of a high school on the Rural High School Site; or (ii) securing all required entitlements for siting a high school of no less than 1,200 students on the Rural High School Site, including, without limitation: King County and/or another applicable permitting or approval agency approval of the provision and extension of necessary sanitary sewer service necessary to provide service to the high school site; King County and/or another applicable permitting or approval agency approval of the provision and extension of all utilities other than sanitary sewer necessary to provide service to the high school site; King County and/or another applicable permitting or approval agency approval of a conditional use permit, or any such land use permit that may be required; and the provision of any transportation improvements required to serve the Rural High School Site to the extent such improvements would not be required if the District were to build a high school in the City. Provided, however, the provisions of this paragraph shall not be construed to obligate the City Council or the City Mayor to approve any changes to the City's corporate boundaries, Urban Growth Area, Comprehensive Plan, zoning regulations, or any of its development regulations.

7.2 Developer's Selection of the Identified High School Site. No later than ten (10) years after the Agreement Effective Date, the Developer shall select the Identified High School Site. The Developer's selection shall be subject to the requirements set forth in Section 7.1 above and the following:

7.2.1 The District's obligation to accept the Alternative High School Site or the Rural High School Site as the Identified High School Site shall be subject to and contingent upon the satisfaction or waiver by the District of the conditions set forth in Sections 11 and 12 herein, provided the applicable Contingency Period shall be triggered by the Developer's site selection in Section 7.2 and with the exception that the provisions of 11.6.2 and 12.3.2 shall be inapplicable and the appropriate remedy in the event of the District's objection to the Alternative High School Site or the Rural High School Site (as selected by the Developer) shall be identification of the High School Site or the remaining Alternative High School Site or the Rural High School Site (if the Developer

has met the contingencies in Section 7.1 for such site and such site is acceptable to the District following the satisfaction or waiver by the District of the conditions set forth in Sections 11 and 12 herein) in the Identified High School Site. Once the District has deemed a site acceptable and following the satisfaction or waiver by the District of the conditions set forth in Sections 11 and 12 herein, the deed of trust on the site or sites not selected shall automatically terminate and be of no further force or effect.

7.2.2 The conveyance of the Alternative High School Site or the Rural High School Site shall be subject to the provisions of Sections 13 (as applicable), 15, 16, 17, 18, 19, and 20 herein, all in the same manner as applicable to the High School Site.

7.2.3 In the event the Developer fails to select the Identified High School Site by the last day of the tenth year following the Agreement Effective Date, the High School Site shall automatically be deemed to be the Identified High School Site.

7.2.4 If the High School Site or the Alternative High School Site is located on lands identified in the Village Project as being used for commercial purposes, then prior to the conveyance of the Alternative High School Site the Developer in its sole discretion shall either (a) amend, or (b) shall already have amended, its MPD application to add additional Commercial-zoned expansion areas to offset the fiscal impact to the City for the loss of the commercially zoned property, or (c) shall otherwise show that the Village Project, even with the loss of the commercially zoned property will still be at least fiscally neutral for the City.

7.3 Conveyance of High School Site. The Identified High School Site shall be conveyed by the Developer to the District no earlier than ten (10) years after the Agreement Effective Date and after such date only if the District receives School Financing Approval for the construction of a high school on the Identified High School Site before the end of the Agreement Term. In such case, the closing of the conveyance of the Identified High School Site to the District shall be within one hundred eighty (180) days of School Financing Approval. In the event the District does not receive School Financing Approval for the construction of a high school on the Identified High School Site before the end of the Agreement Term, the deed of trust shall automatically terminate and be of no further force or effect; provided that the District shall have the option to purchase the Identified High School Site from the Developer for a period of three (3) years, as set forth in the option agreement attached as Exhibit Q (“High School Option Agreement”), which High School Option Agreement shall be recorded against the Identified High School Site at the end of the Agreement Term.

7.4 District’s Use of Mitigation Fees for Acquisition of High School Site During Agreement Term. Consistent with Section 9.7, and without including the value of any Mitigation Fees received pursuant to Sections 6.5, 11.6.2, or 12.3(b) and subject to other restrictions on the use of Mitigation Fees as may be contained in this Agreement, if the District receives School Funding Approval for the high school during the

Agreement Term, the District shall use Mitigation Fees collected pursuant to Section 9.3, to fund the purchase, from the developer, of the Identified High School Site. If the funds in the District's Mitigation Fee Account are insufficient to fully fund the acquisition price, the District may use a combination of Mitigation Fee Credits and cash from the Mitigation Fee Account to compensate the Developer, provided that the use Mitigation Fees Credits to compensate Developer shall only be an option if the Identified High School Site is acquired during the first fifteen (15) years following the Effective Date of this Agreement and Mitigation Fee Credits shall not total more than the product of the number of remaining un-built Units times the minimum Mitigation Fee in effect at such time. Notwithstanding the preceding sentence, in no event shall the District be required to transfer any funds to the Developer for the purchase of the Identified High School Site over and above the total amount of funds collected pursuant to Section 9.7.3.

8. Joint Use Land.

8.1 Use of Portions of Agreed School Sites as Joint Use Land. As part of the development approval process or as conditions to the MPD permit approvals, the Developer may request Land Use Approvals that include use of portions of the Agreed School Sites, with the exception of the Alternative Elementary School Site and the High School Site, that are located within the City and within the Projects for the purpose of satisfying the City's park and recreational facilities requirements. The City and the District will allow the use of portions of the Agreed School Sites for such purposes, to the extent the portions of the Agreed School Sites and the improvements to be located thereon, in the reasonable discretion of each party: (1) meet the needs of the District for the programmatic, open space, and playfield facilities associated with the intended school use; and (2) satisfy the City's park and recreational facilities requirements.

8.2 Developer's Identification of Proposed Joint Use Land. The Developer has identified it is MPD application the portions of Agreed School Sites that the Developer proposes as Joint Use Land. The Developer has also included in its MPD application how the proposed Joint Use Lands meet City park requirements and what amenities, if any, the Developer intends to construct on the Joint Use Lands in order to meet the City's park standards.

8.3 City and District Agreement to Joint Use Land. If the Developer identifies proposed Joint Use Lands, the City and District shall meet to discuss in good faith and determine in each entity's reasonable discretion if the identified lands: (1) meet the needs of the District for the programmatic, open space, and playfield facilities associated with the intended school use; and (2) satisfy the City's park and recreational facilities requirements. In particular, the District shall have the right, in its reasonable discretion, to determine if the park and recreational facilities would conflict with or otherwise materially limit the use of the proposed Joint Use Land for the District's programmatic, open space, and playfield facilities needs or the District's ability to

construct a School Facility on the remaining portion of the Agreed School Site. In such case, the proposed Joint Use Land shall not be deemed appropriate as Joint Use Lands. If the City and the District agree, in each entity's reasonable discretion, that the proposed Joint Use Lands are acceptable for such purposes, the City and the District shall negotiate in good faith acceptable terms for a Joint Use Agreement.

8.3.1. The City and the District agree that the following provisions will be included within the Joint Use Agreement:

(a) The District shall have primary use of any recreational facilities during the school hours and programmed after school hour events and the City will have primary use for all other times.

(b) If the District holds title to the Joint Use Lands, then there shall be a condition subsequent that if the District ceases to use the Agreed School Site for school purposes, then fee title to the Joint Use Land shall automatically be conveyed to the City without further consideration. The other provisions of this Agreement notwithstanding, the Deed Restriction and the Option to Purchase shall not apply to Joint Use Lands.

(c) Any facilities that the District identifies as necessary to meet the programmatic needs of the District, above what has been constructed by the Developer to meet the City park and recreational facilities requirements, shall be constructed at the sole cost of the District.

(d) The operation and maintenance costs of the Joint Use Land shall be divided between the City and the District twenty five percent (25%) for the City and seventy-five (75%) for the District based on the assumption that the District will have exclusive scheduling priority for nine (9) months each year. The percentage shall be adjusted accordingly if this assumption is modified.

(e) The District and City shall include such other provisions as are necessary and appropriate to provide cost savings by efficient and effective use of each jurisdiction's personnel and assets instead of creating duplicative systems.

8.3.2 If the Developer elects to use Joint Use Land to satisfy the City parks and recreational requirements, the facilities to be constructed on the Joint Use Land shall be those required to be constructed by the Developer in order to meet the City park requirements and shall be paid for by the Developer.

8.3.3 The Joint Use Agreement will be effective upon its approval by the City and the District.

8.4 Conveyance of the Joint Use Land. If the Developer is required to convey Joint Use Land to the City before the Developer is required to convey the Agreed School Site to the District, then the Joint Use Land shall be conveyed to the City and the Developer shall be deemed to have met its conveyance obligation to the District for the portion of the Agreed School Site that constitutes Joint Use Land.

8.5 Mitigation Fee Credits for Joint Use Land. The Developer shall receive Mitigation Fee Credits for the Appraised Value of the Joint Use Land. The determination of the Appraised Value for the Agreed School Site shall be determined based upon the sum of the Appraised Value of the Joint Use Land at the time of transfer to the City and the Appraised Value of the remaining portion of the Agreed School Site as determined pursuant to Section 10.4. The Parties agree that the Developer shall not receive any Mitigation Fee Credit for the Joint Use Land until the Agreed School Site adjoining the Joint Use Land is conveyed to the District or, if applicable, the Developer requests a Mitigation Fee Credit for an Estimated School Site Value.

8.6 Maintenance of Joint Use Land. The City shall be responsible for all of the operation and maintenance costs on the Joint Use Land until such time as this Agreement requires the conveyance to the District of the remainder of the Agreed School Site. The City's obligation pursuant to this Section 8.6 shall not extend to any improvements related to a Community Recreational Facility; rather, the Developer shall be solely responsible for any operation and maintenance costs associated with a Community Recreational Facility.

8.7 Community Recreational Facility. It is possible that, prior to the time the Developer is required to convey to the District the Agreed School Site upon which the Joint Use Land is located, the Developer may choose to construct a Community Recreational Facility on the Joint Use Land. Prior to construction of a Community Recreational Facility, the Developer shall seek the District's approval of the proposed Community Recreational Facility. The District shall have the right, in its sole and absolute discretion, to review and approve the proposal for purposes of determining if the Community Recreational Facility will be consistent with the development and operation of the Agreed School Site. If the District approves the proposed Community Recreational Facility, the following shall apply:

8.7.1 The Developer shall construct the Community Recreational Facility at its own cost and expense, with no cost to the District or City through, without limitation, direct billing, maintenance costs, user fees, or latecomer's fees; provided the Developer may seek District contribution pursuant to Section 8.7.3 below.

8.7.2 The District's approval may be conditioned on the Developer's agreement to remove the Community Recreational Facility and restore the

affected area of the Joint Use Land to the condition existing prior to installation, at no cost to the District, at the time that the Agreed School Site is conveyed to the District.

8.7.3 At the time the Developer seeks the District's approval of any proposed Community Recreation Facility or following conveyance of the Agreed School Site, the Developer may request the District to consider whether a Community Recreational Facility located on the adjacent Joint Use Lands is an amenity that will benefit the School Facility to be located on the Agreed School Site. In such case, the District, in its sole and absolute discretion, may agree to pay a portion of the Developer's costs to construct the Community Recreational Facility; provided that, the District's portion shall be determined based upon the District's documented programmatic need for such a facility at the School Site; and provided further that, the District's portion shall be determined based upon the depreciated value of the Developer's actual costs (as evidenced by actual billings, purchase orders, or other reliable financial documents) to construct the Community Recreational Facility. The Parties expressly agree that in no case shall the District be deemed to be required, absent its express and discretionary approval described herein, to pay any costs of a Community Recreational Facility.

8.7.4 The Community Recreational Facility must first be approved by the City. The Community Recreational Facility must be consistent with the City's Comprehensive Park Plan and not interfere with the City's programmatic planning and operations for the Joint Use Land

8.8 High School Sports and Recreation Area. If the District acquires the High School Site or the Alternative High School Site, then it is intended that the High School Sports and Recreation Area will be used for outdoor sports facilities, such as regulation-size ball fields, soccer fields, tennis courts and associated accessory uses (e.g., parking, spectator seating, restroom/locker room facilities, etc.), but not to include a stadium, that cannot be located on the main high school campus due to lot size constraints. The City and the District will work diligently and in good faith to negotiate and execute within one year of the Effective Date a joint use agreement for the High School Sports and Recreation Area that shall include the provisions set forth in paragraphs 8.3.1 (a), (c) (d) and (e), as well as provisions that address the items listed below.

8.8.1 The District and City shall work cooperatively to seek and apply for funding to construct the improvements to be constructed within the High School Sports and Recreation Area.

8.8.2 Until such time as the District receives School Financing Approval to construct a high school on the High School Site or the Alternate High School Site, the City shall have the exclusive use of the High School Sports and Recreation Area, unless the parties have jointly acquired funding to construct the improvements prior to that time. If alternate funding is jointly acquired, then the City and District shall negotiate an

alternate agreement that will allow the facilities to be used for programmatic activities of other District schools within the MPD Service Area.

8.8.3 Until such time as the District receives School Financing Approval to construct a high school on the High School Site or the Alternate High School Site, and the City has the exclusive right of use of the High School Sports and Recreation Area, the City shall only use the area for uses that will not adversely affect the fitness of the area to be developed and used for high school recreational facility purposes. In the event the City's use does adversely affect the District's ability to use the High School Sports and Recreation Area, the City shall be solely responsible for any restoration or site development work necessary to develop and use the High School Sports and Recreation Area as intended herein. Provided, however, if the City constructs improvements that are consistent with the concept site plan referenced in paragraph 8.8.4, then those improvements shall not be deemed to trigger the obligation of the City to restore the High School Sports and Recreation Area. The District shall have the option of either utilizing the facilities constructed by the City, or, at the District's expense, removing and replacing those facilities with such other facilities as are consistent with the joint use agreement terms.

8.8.4 A concept site plan drawing shall be developed and included in the joint use agreement that illustrates the types and general locations of uses that will be constructed on the area. The City and the District agree that the concept site plan may include alternatives and that such alternatives shall in no event be deemed to be the only alternatives for development of the High School Sports and Recreation Area but rather as examples of the potential uses and site configuration. The concept site plan shall be used to guide future use and development of the High School Sports and Recreation Area.

8.8.5 The joint use agreement restrictions shall expire if the District fails to acquire the High School Site or the Alternative High School Site pursuant to the terms of this Agreement, including any option periods related to the site conveyance, or fails to receive School Financing Approval for the construction of a high school on the site, with said bond issue including funding for the construction of the intended improvements on the High School Sports and Recreation Area, within ten (10) years after acquiring the High School Site or the Alternative High School Site

8.8.6 The School District may, but is not obligated to, use Mitigation Fees or mitigation fees or impact fees from other development in the District to construct any of the agreed improvements.

8.8.7 The joint use agreement shall provide for flexibility in the proposed outdoor recreational facilities to be constructed to take into account the possibility that the type and nature of outdoor sports and recreational activities for youth recreational purposes may change over the joint use agreement term.

9. Mitigation Fees.

9.1 Maximum and Minimum Mitigation Fee Amounts. The District's Capital Facilities Plan sets forth impact fee calculations that demonstrate the unfunded need to mitigate the impacts of new development on District facilities as of the Agreement Effective Date. The Parties acknowledge that the District's Capital Facilities Plan only contemplates construction costs (and no land costs) to construct elementary capacity improvements. By the Agreement Effective Date, the City shall adopt Growth Management Act school impact fees for both single family and multi-family dwelling units, as authorized under RCW 82.02.050 through RCW 82.02.090 and Chapter 36.70A RCW of no less than \$4,670.00 per single family unit and no less than \$1,501.00 per multi-family unit. Notwithstanding the City's adoption of any school impact fee or mitigation fee ordinance, \$12,453 for single-family dwelling units and \$4,003 for multi-family dwelling units shall be the maximum Mitigation Fee that will apply to the Projects during the Agreement Term, even if the District's Capital Facilities Plan is subsequently amended to increase the amount needed to pay the unfunded portions of the impacts of new development on District facilities.

9.2 Minimum Mitigation Fees. Notwithstanding the foregoing in Section 9.1, during the first five years following the Agreement Effective Date, the Mitigation Fees due for the Projects shall be \$4,670.00 per single family Unit and \$1,501.00 per multi-family Unit. Thereafter, and until all Units are built, the Mitigation Fees due for the Projects shall be the rate adopted by the City pursuant to any school impact fee or school mitigation fee ordinance, provided that in no event shall the Mitigation Fee be less than \$7,783 per single family unit and \$2,502 per multi-family unit or greater than \$12,453 for single-family dwelling units and \$4,003 for multi-family dwelling units regardless of the existence of any City school impact fee or school mitigation fee ordinance. The following language shall be reflected on the face of the plats:

School mitigation fees shall be due prior to building permit issuance for each single family and multi-family dwelling unit. During the first five years of the MPD the school mitigation fees shall be \$4,670.00 per single family unit and \$1,501.00 per multi-family unit. Thereafter, the mitigation fee shall be the rate adopted by the City of Black Diamond school impact fee or school mitigation fee ordinance, if any, provided that the maximum school mitigation fee due for each dwelling unit shall be \$12,453 per single family dwelling unit and \$4,003 per multi-family dwelling unit, as applicable, but in no event, even in the absence of a school impact fee or mitigation fee ordinance, shall the mitigation fees be less than \$7,783.00 per single family dwelling unit and \$2,502.00 per multi-family dwelling unit.

The District and the Developer agree that the minimum Mitigation Fees as stated in this Section 9.2 shall apply even if the City subsequently repeals by Council vote or by

operation of law its code provisions applicable to a Growth Management Act school impact fee ordinance or other school mitigation fee ordinance.

9.3 Due Date. All Mitigation Fees, or application of Mitigation Credits, as applicable, in connection with the Projects shall be due to the District and collected by the City at the time the building permit for a particular Unit is issued by the City using the rate then in effect, subject to the terms of this Agreement.

9.4 Direct Payment. The Developer shall have the option to have the then-current owner of the lot on which a Unit is to be developed pay any Mitigation Fee owing to the District directly to the City at the time the building permit is issued for such Unit instead of off setting such Mitigation Fee from any Mitigation Fee Credit. Such direct payments shall not relieve the Developer's obligation to convey School Sites pursuant to the terms of this Agreement.

9.5 Payment Date and Related Agreements. The Parties agree that, for purposes of this Agreement, the Mitigation Fees shall not be subject to the time constraints of RCW 82.02.020(2) or RCW 82.02.070(3) due to the fact the Agreement is a mechanism for the dedication of land that is reasonably necessary to mitigate the impacts that are a direct result of the Projects. If for any reason it should be determined that the provisions of RCW 82.02.020(2) or RCW 82.02.070(3) are applicable, then the issuance of Mitigation Fee Credits shall be deemed the acknowledgement of payment as of the date the Agreed School Sites are conveyed to the District.

9.6 City Disbursement of Mitigation Fees. The City shall disburse the collected fees on a monthly basis to the District for uses consistent with Section 9.7.

9.7 Mitigation Fee Account and Use of Mitigation Fees. The District shall place all Mitigation Fees collected from the Projects in the Mitigation Fee Account. The Mitigation Fees shall be held and used as follows:

9.7.1 The District shall segregate any Mitigation Fees received from the Developer pursuant to Sections 6.4, 6.5, 11.6.2, and 12.3.2 and shall only use such fees to purchase relevant replacement sites or capacity for the sites subject to Sections 6.4, 6.5, 11.6.2, and 12.3.2.

9.7.2 Subject to the restrictions on funds set forth in Section 9.7.1, the District shall disburse Mitigation Fees to the Developer as provided in Section 10.5.

9.7.3 After satisfying its obligations under Sections 9.7.2, as applicable, and subject to the restrictions on funds set forth in Section 9.7.1, the District shall use Mitigation Fees for the purposes of acquiring the Identified High School Site as described in Section 7.

9.7.4 Following conveyance of all of the Agreed School Sites during the Agreement Term and acquisition of the Identified High School Site, if such Identified High School Site is acquired during the Agreement Term or pursuant to the High School Option Agreement, the District shall use Mitigation Fees for site acquisition, engineering, architectural, legal, and construction management services, and for construction costs, all of which must be associated with the acquisition and/or the design and construction of improvements of the Agreed School Sites or other school sites in the City or within the MPD Service Area.

10. Mitigation Fee Credit; Actual School Site Value.

10.1 Mitigation Fee Credits. The Developer shall be entitled to Mitigation Fee Credits as and when described in this Agreement. The Parties intend that Mitigation Fee Credits will offset at least a portion of the Mitigation Fees due in connection with the Projects. The Developer shall receive Mitigation Fee Credits for (i) the aggregate of all of the Actual School Site Values (less any Joint Use Land) for Identified School Sites conveyed to the District or cash paid in lieu of conveyance pursuant to Sections 6.4, 6.5, 11.6.2 and 12.3.2, (ii) the Actual Joint Use Land Values for the District's right to use, if applicable, the Joint Use Land conveyed to the City, (iii) the Included Costs, and (iv) any other credits described in this Agreement.

10.2 Vesting of Mitigation Fee Credits. All Mitigation Fee Credits shall be fully and irrevocably vested with the Developer at the time the District issues the Mitigation Fee Credit Certificates. The District shall provide the Developer with Mitigation Fee Credits equal to the Actual School Site Value or the Estimated School Site Value, whichever is applicable.

10.3 Actual School Site Value for Identified High School Site. For purposes of the Mitigation Fee Credit, the Actual School Site Value for the Identified High School Site shall be equal to the greater of (i) the purchase price of the Alternative High School Site, or (ii) the Actual School Site Value of the Identified High School Site as determined using the process set forth in 10.4 below without the assumption that the Identified High School Site is served by all necessary General Off-Site Utilities and General Off-Site Improvements unless that fact is true; and less any Mitigation Fees collected by the District and reimbursed to the Developer for the purchase of that site pursuant to Sections 9.7.3 and 10.5.

10.4 Actual School Site Value for Identified School Sites. At the Closing of an Identified School Site, the District shall provide the Developer a Mitigation Fee Credit equal to the Actual School Site Value for the particular Identified School Site. If the Developer obtained a Mitigation Fee Credit equal to the Estimated School Site Value for the Identified School Site, the Mitigation Fee Credit due at Closing shall be the difference between the Actual School Site Value and the Estimated School Site Value. If

the Estimated School Site Value exceeds the Actual School Site Value, credits shall be subtracted from the Developer's total and, if not enough credits exist or remain to cover the difference, the Developer shall pay Mitigation Fees equal to the unmitigated amount. The Actual School Site Value shall be determined as follows:

10.4.1 Within five (5) days after the District's Board of Directors adopts a resolution authorizing a bond issue to be placed on the ballot for the construction of a School Facility on the Identified School Site or authorizing the District to seek or accept other School Financing Approval for construction of a School Facility on the Identified School Site, the District shall provide the Developer the Valuation Notice for the particular Identified School Site. The Valuation Notice shall also contain the name and contact information for the appraiser the District intends to use to value the Identified School Site.

10.4.2 Within ten (10) days after receipt of the District's Valuation Notice, the Developer shall provide the District with the name and contact information for the appraiser the Developer intends to use to value the Identified School Site. Each Party shall pay for its own appraisal.

10.4.3 Each appraiser will determine the Appraised Value per acre of the Identified School Site, less any Joint Use Land located thereon previously conveyed to the City, using the following assumptions: (1) the Identified School Site's highest and best use as a school site and not for development of residential, commercial, or industrial purposes; and (2) the Identified School Site is served by all necessary General Off-Site Utilities and General Off-Site Improvements except the utilities and improvements that the District will be required to pay the cost, pursuant to Section 23, either directly or through payment of latecomer fees, including regional stormwater collection fees or similar fees or assessment. Notwithstanding the foregoing, the appraiser shall be instructed not to assume the Identified School Site is served by General Off-Site Utilities and General Off-Site Improvements if the Identified School Site is located outside of Project boundaries and the Developer does not construct the General Off-Site Utilities and General Off-Site Improvements necessary to serve the Identified School Site.

10.4.4 The District's and the Developer's appraisal establishing each Party's Appraised Value shall be delivered to the other within sixty (60) days of the Valuation Notice. If either Party fails to deliver an Appraised Value within the time period, the other Party's Appraised Value shall be deemed the Actual School Site Value.

10.4.5 If both Parties submit a timely Appraised Value to the other Party, the Actual School Site Value shall be the average of the two Appraised Values, unless the Appraised Values vary by more than ten percent (10%).

10.4.6 If the Appraised Values vary by more than 10%, the Parties shall use good faith efforts to agree on an Actual School Site Value within ten (10) days after receipt of the other Party's Appraised Value. If the Parties cannot agree on the Appraised Value, the two appraisers shall appoint a third appraiser who shall independently determine the Appraised Value of the Identified School Site. The Actual School Site Value shall be the average of the third appraiser's Appraised Value and the next closest Appraised Value. The Developer and the District agree to share on an equal basis (i.e., 50/50 percent) the cost of the third appraisal.

10.4.7 Any appraiser selected under Section 10.4 shall be an MAI, state certified appraiser with at least five (5) years of experience appraising vacant land in King County, Washington.

10.4.8 The Actual School Site Value shall be effective until the earlier of the following: two failed bond passage measures, or one (1) year from the date the Actual School Site Value was determined. After such period, upon a new Valuation Notice from the District, the Parties shall have the School Site re-appraised using the same process described in Section 10.4.

10.4.9 The Parties agree that, with respect to the first of the Elementary School Sites and the First Middle School Site, the following conditions must be met before the District may issue a Valuation Notice: (1) the satisfaction of all of the conditions to the Developer's right to terminate this Agreement as provided in Section 25; and (2) such Identified School Site is a separate legal lot.

10.5 Reimbursement of Mitigation Fees. Consistent with Section 9.7.2, as applicable, at each Closing of an Agreed School Site for which the Developer did not receive an Estimated School Site Value, or as soon as possible thereafter, the District shall disburse funds from the Mitigation Fee Account to the Developer in an amount equal to the Actual School Site Value (less any Joint Use Land) for the Agreed School Site less any Mitigation Fee Credits already received in connection with any Agreed School Site. Subject to Section 9.7.1, if the eligible funds in the Mitigation Fee Account are less than the Actual School Site Value, the District shall issue Mitigation Fee Credits to the Developer in an amount equal to the difference between the funds disbursed and the Actual School Site Value.

10.6 Assignment of Mitigation Credits. Subject to the restriction on the use of Mitigation Fee Credits contained in this Agreement, the Developer may assign its interest in the Mitigation Fee Credits and/or Mitigation Fee Credit Certificate to any person or entity that purchases a lot in either the Lawson Hills Project or the Village Project. Such an assignment shall not require the consent of either the District or the City, but notice of the assignment shall be provided to all Parties and any affected Mitigation Fee

Credit Certificate shall be surrendered by the Developer to the District, and the District shall promptly reissue such Mitigation Fee Credit Certificates in the name of the assignee.

10.7 Estimated School Site Value for Identified School Sites. At any time following the Agreement Effective Date and satisfaction of the conditions set forth in Section 10.4.9 with respect to the first and second of the Elementary School Sites and the First Middle School Site, the Developer shall have the right to obtain a Mitigation Fee Credit equal to the Estimated School Site Value of the particular Identified School Site not yet conveyed to the District according to the following process: (i) the Developer shall send written notice to the District that it intends to determine an Estimated School Site Value; (ii) such notice shall identify the Identified School Site(s) to be valued; (iii) the Parties shall follow the process outlined in Section 10.4.1 through Section 10.4.8 to determine the Estimated School Site Value, provided that only one appraisal shall be necessary and the appraiser shall be chosen by Developer and subject to approval, in its reasonable discretion, by the District; and (iv) the Mitigation Fee Credit for the Identified School Site shall be subsequently adjusted pursuant to Section 10.4. In the event a school site for which the Developer obtained an Estimated School Site Value is not conveyed to the District prior to the last day of the Agreement Term, the Developer shall be required to pay to the District Mitigation Fees equal to the Estimated School Site Value. The Developer shall pay for appraisals required to determine Estimated School Site Value.

10.8 Mitigation Fee Credit Certificates. Once the High School Site or an Identified School Site is valued pursuant to the provisions of this Section 10 and conveyed to the District the District shall issue to the Developer, with a copy to the City, a Mitigation Fee Credit Certificate that sets forth the dollar value of the Mitigation Fee Credit. In the case of Mitigation Fee Credits for an Estimated School Site Value, the District shall issue a Mitigation Fee Credit Certificate, noting the future adjustment that will be required pursuant to Section 10.4.

10.9 Use of Mitigation Fee Credits. The Mitigation Fee Credits shall only be used to offset Mitigation Fees due in connection with the Projects or any Other Property and may not be used in connection with the development of other real property.

10.10 Mitigation Fee Credit Accounting. The Mitigation Fee Credit accounting shall be as follows:

10.10.1 The City shall maintain records of the total Mitigation Fee Credits for the Lawson Hills Project and the Village Project. Each time a building permit is issued with respect to the Lawson Hills Project or the Village Project, the City shall reflect a debit in its records of the Mitigation Fee Credits for the applicable Project, in the amount of the Mitigation Fee, unless fees are actually paid pursuant to Section 9.4.

10.10.2 At any time, upon three (3) days prior written notice from both BDLP and BDVP, the City shall reallocate the Mitigation Fee Credits from one Project to the other in the amount reflected in such notice.

10.10.3 At any time upon three (3) days prior written notice from any Party, the City shall provide such Party with notice of the total Mitigation Fee Credits available with respect to either Project.

11. Contingency Period. The District's obligation to accept conveyance of the Identified School Sites shall be subject to and contingent upon the satisfaction or waiver by District of the conditions set forth in this Section 11 at or prior to expiration of the Contingency Period.

11.1 Developer's Provision of Site Information. Within twenty (20) days after the Agreement Effective Date, the Developer shall deliver or make available to the District copies of all available plans and specifications relating to the Identified School Sites, including, all surveys, topographical and plat maps, results of soil tests, engineering studies, environmental reports and permits and any other test results, reports and other information pertaining to the physical condition of the Identified School Sites reasonably requested by the District and in Developer's possession or control. At a minimum, the Developer shall provide the District with copies of the reports referenced on the attached Exhibit R. Notwithstanding anything herein to the contrary, the Developer shall be entitled to redact any portion of the reports, studies or documents that contains confidential or proprietary information.

11.2 License to Enter. Upon at least five (5) business days prior written notice to the Developer: (a) during the Contingency Period, and (b) at all times thereafter during the Agreement Term and prior to conveyance of a particular Identified School Site, if the District has waived its contingencies with respect to a particular Identified School Site as described herein, the District and its agents shall have a license to enter upon each Identified School Site and, if reasonably necessary, to cross any other Developer owned property within the Project as and where indicated by the Developer to access the Identified School Site, for the limited purposes of performing reasonable feasibility investigations, tests, and studies, and site plan development tasks. The notice shall describe the nature of the review work or site development tasks to be undertaken, the name of the agents or representatives of the District who will be conducting the work, and the estimated duration of the review. The Developer shall have the right to designate one or more representatives for purposes of coordinating and overseeing the District's on-site due diligence investigation; provided that, if the District provides proper notice consistent with this Section 11, the failure of the Developer to respond to such notice shall not preclude the District from performing such tests or other due diligence on or about the Identified School Sites. A representative of the Developer shall have the right to accompany the District and its agents and contractors when they are performing tests on or about the Identified School Sites. The

District shall conduct its inspections and tests in compliance with all applicable laws, regulations and ordinances, and so as to not unreasonably interfere with any business or development activities of the Developer or any third parties on the Identified School Sites or adjacent property. The District shall not conduct any invasive testing or sampling at the Identified School Sites without the Developer's prior written approval, which approval shall not be unreasonably withheld. The District agrees to indemnify, defend, and hold the Developer and the Developer's Indemnified Parties, harmless from any and all damages, claims demands, losses, fines, penalties, causes of action, expenses and liabilities to or by the District, its contractors or third parties, including without limitation the District's own employees and agents or arising from resulting from, or connected in any way with presence, or acts performed or to be performed under this grant of this license to enter the Identified School Sites, both before and after Closing, including but not limited to clean-up costs related to Hazardous Substances resulting from the District's presence or activities. THE FOREGOING INDEMNITY IS EXPRESSLY INTENDED TO CONSTITUTE A WAIVER OF THE DISTRICT'S IMMUNITY UNDER WASHINGTON'S INDUSTRIAL INSURANCE ACT, RCW TITLE 51, TO THE EXTENT NECESSARY TO PROVIDE THE DEVELOPER AND THE DEVELOPER'S INDEMNIFIED PARTIES WITH A FULL AND COMPLETE INDEMNITY FROM CLAIMS MADE BY THE DISTRICT AND ITS EMPLOYEES. DEVELOPER AND THE DISTRICT ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISION OF THIS SECTION WAS SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM. The District agrees to keep the Identified School Site free and clear of any liens at all times, and to return the property to its original condition promptly after any such due diligence work on the Identified School Sites. The District shall provide the Developer with copies of any plans and specifications, surveys, topographical and plat maps, results of soil tests, engineering studies, environmental reports and permits and any other test results, reports or information obtained in connection with such Identified School Site at the time such documents are received by the District.

11.3 Physical Condition of Site. During the Contingency Period, the District shall be satisfied, in its reasonable discretion, with the physical condition of each Identified School Site, including, without limitation, the results of soil tests (including borings), toxic and hazardous waste studies, wetlands information, geotechnical studies, surveys, engineering, historical use, traffic and access studies, structural studies and review of zoning, fire, safety and other compliance matters.

11.4 Site Performance. During the Contingency Period, the District shall be satisfied, in its reasonable discretion, with the past performance and potential future performance of each Identified School Site for the District's intended purposes, including, without limitation, the zoning and other codes, covenants and/or restrictions affecting the use and future development of the Identified School Site, school district boundaries, the certificates, licenses and permits existing with respect to the relevant site and likelihood and anticipated cost of obtaining additional certificates, licenses and permits that the District desires to obtain with respect thereto, the availability and access to public roads.

11.5 Wavier of Non-wavier of Contingencies. At the end or prior to the end of the Contingency Period, the District shall give notice in writing to the Developer of whether or not the District waives the contingencies described in this Section 11. If the District determines, in its reasonable discretion, that any Identified School Site cannot be used to construct School Facilities, the District shall set forth in the notice its reasons for reaching that conclusion, citing specific programmatic, title, or environmental factors that caused it to reach that conclusion. Failure to timely give notice as to any particular Identified School Site shall mean that the Identified School Site is acceptable to the District.

11.6 Remedy for Non-waiver of Contingencies. If the District timely objects to an Identified School Site, as provided in this Section 11, then the Parties will meet within fifteen (15) days to discuss whether or not an alternative site is available that would meet the District's requirements.

11.6.1 If an alternative school site is identified and agreed upon, the Parties shall execute an addendum to the Agreement to reflect the modification.

11.6.2 If the Parties are unable to reach an agreement on an alternate site within sixty (60) days from the date the Developer receives the District's written notice that an Identified School Site is not acceptable, then the Parties shall amend the Agreement to exclude the Identified School Site and the Developer will be required to pay Mitigation Fees in an amount equal to the Actual School Site Value for the unacceptable school site as set forth in Section 10.4 regardless of whether the Developer is in need of Mitigation Fee Credits to complete the Projects; provided that, and subject to Section 9.7, the amount of Mitigation Fees required above shall be reduced by the amount of funds in the District's Mitigation Fee Account at the time the Developer pays the Mitigation Fees pursuant to this Section 11.6.2. The Developer shall pay the Mitigation Fees at such time as the Developer would have conveyed the unacceptable Identified School Site to the District, as set forth in Section 6 or, at the District's discretion, any time after the City provides final plat approval for Units where the product of such Units and the student generation rate set forth in Section 5.1.1 is equal to 33% of the Agreed School Capacity of the school that would have been constructed on the Identified School Site; and provided further that the unacceptable site shall be treated as though it were the last to be conveyed, for example, if the District disapproves of Elementary School Site B the District must accept conveyance of Elementary School Sites A, C and D before the Developer will be obligated to pay Mitigation Fees pursuant to this Section 11.6.2.

12. Title and Survey. The Developer and the District agree to the following title and Survey matters as to the Identified School Sites:

12.1 Title Binder/Commitment. The Developer shall, within twenty (20) days after the Agreement Effective Date, obtain at its cost and cause the Title Company to

deliver to the District a Title Binder consisting of a commitment for a 2006 ALTA owner's standard title insurance policy covering each of the Identified School Sites (and the other legal lots on which an Identified School Site is located), showing recorded matters pertaining to the Identified School Site and listing the District as the prospective named insured. The Title Binder shall include true, correct copies of all of the Title Documents referred to in such title commitment as conditions or exceptions to title to the Identified School Site.

12.2 Title Review. The District shall review the Title Binder and Survey for each Identified School Site and, on or before ninety (90) days after the Agreement Effective Date, shall notify the Developer what exceptions to title, if any, will be rejected by the District and specifically identify the reasons why, in the District's reasonable discretion. Only those exceptions that are not rejected by the District in this Agreement, in writing, or deemed to be approved by the District, as provided herein, shall constitute Approved Exceptions. The Parties acknowledge that the Identified School Sites are subject to certain Permitted Exceptions. The Permitted Exceptions shall be Approved Exceptions. The Developer will have fifteen (15) days after receipt of the District's notice of Approved Exceptions to notify the District if it will remove any title exception that is not an Approved Exceptions. The Developer shall use reasonable efforts to remove any exceptions that are not Approved Exceptions, provided that the Developer shall not be required to institute any litigation or incur any liabilities or unreasonable costs to remove such exceptions, except the Developer agrees to pay any monetary liens prior to Closing affecting title to the School Sites, and thus, eliminate any such title exception. If the Developer does not respond to the District within such 15 day time period, or notifies the District that it will not remove any title exception that is not an Approved Exception, then the District shall have the right within ten (10) days of receipt of the Developer's notice, or the date such notice was due, whichever is earlier, to either (i) reject conveyance of the Identified School Site; or (ii) waive its objection with respect to such title exception. If the District fails to respond within such 10-day period, the District will be deemed to have waived its objection and such title exceptions shall be deemed Approved Exceptions.

12.3 Remedy for Rejection of an Identified School Site. If the District timely rejects an Identified School Site as described in Section 12.2, the Parties will meet within fifteen (15) days to discuss whether or not an alternative site is available that would meet the District's requirements.

12.3.1 If an alternative school site is agreed to by the Parties in their sole discretion, the Parties shall amend this Agreement to reflect the modification.

12.3.2 If the Parties are unable to reach an agreement on an alternate site within sixty (60) days from the District rejects an Identified School Site pursuant to Section 12.2, then the Parties shall amend this Agreement to exclude the Identified School Site and the Developer will be required to pay Mitigation Fees in an

amount equal to the Actual School Site Value for the rejected Identified School Site regardless of whether the Developer is in need of Mitigation Fee Credits to complete the Projects; provided that and subject to Section 9.7, the amount of Mitigation Fees required shall be reduced by the amount of funds in the District's Mitigation Fee Account at the time the Developer pays the Mitigation Fees pursuant to this Section 12.3.2. The Developer shall pay the Mitigation Fees at such time as the Developer would have conveyed the rejected Identified School Site to the District, as set forth in Section 6 or, at the District's discretion, any time after the City provides final plat approval for Units where the product of such Units and the student generation rate set forth in Section 5.1.1 is equal to 33% of the Agreed School Capacity of the school that would have been constructed on the Identified School Site. For purposes of this Section, as applicable, any rejected Identified School Site shall be treated as the fourth of the Elementary School Sites or the second Middle School Site, such that the Mitigation Fees shall not be due and owing until after all of the acceptable Identified School Sites have been conveyed.

12.4 Supplemental Title Commitment. Following expiration of the Contingency Period and within twenty (20) days following the Developer's receipt of a Valuation Notice from the District regarding a particular Identified School Site, the Developer shall obtain, at its cost, and deliver to the District a supplement to the Commitment for such Identified School Site that includes the Title Documents for any exceptions that were not listed in the title Binder provided pursuant to Section 12.1. Within ten (10) business days after the District's receipt of a supplement to any Commitment together with a copy of such intervening lien or matter, the District shall notify the Developer in writing of any additional Approved Exceptions and such exceptions that are not Approved Exceptions; provided however, the District shall not object to any Permitted Exceptions or Development Encumbrances. Notwithstanding the foregoing, the District shall not object to any title exceptions created by the Developer after the Contingency Period unless, in the District's reasonable discretion, the title exception materially adversely affects the District's ability to construct a School Facility on and use the Identified School Site for its intended purpose. The Developer and the District shall have the same rights and duties with respect to an objection by the District to a Commitment supplement as they do with respect to an objection by the District to a matter contained in the Commitment, except that if the District reasonably objects to an exception that was added to the Title Commitment after the end of the Contingency Period with the consent of the Developer, and the exception is not an authorized Development Encumbrance, then the Developer shall remove the exception prior to Closing. Any other exceptions that the District approves in writing or is deemed to have approved hereunder shall be referred to as an Approved Exception.

12.5 Title Policy. The District shall receive as soon after Closing as reasonably possible, an Owner's Policy of Title Insurance (ALTA Form 2006) issued by the Title Company to the District. The Title Policy shall insure fee simple, to the Identified School Site in the District, subject to the Deed Restriction if applicable, and the

Approved Exceptions. The District shall have the right to obtain such endorsements as the District may reasonably require at its sole cost and expense. The District may also elect to request extended coverage title insurance. If the District seeks endorsements or extended coverage, the District shall pay the additional premium for such endorsements and extended coverage and the Developer shall cooperate to the extent it does not result in any costs, expense or liability, by executing such affidavits and agreements reasonably acceptable to the Developer (from the Title Company's standard forms) as the Title Company may require for extended coverage. The District's obligation to close this transaction shall not be contingent on the District's receipt of any such endorsements or extended coverage.

12.6 Survey. BDLP with respect to the Lawson Hills School Sites and BDVP with respect to the Village School Sites shall provide to the District with an ALTA/ACSM Survey of each Identified School Site prepared by a licensed or registered surveyor which Survey prior to the Closing of each Identified School Site.

13. Development Encumbrances.

13.1 Development Encumbrances. Subject to the terms herein, the Developer expressly reserves the right to grant the following Development Encumbrances: all utility related easements, agreements and covenants, temporary constructions or other easements, or title encumbrances directly related to MPD or preliminary or final plat approval. However, in no event shall any permanent Development Encumbrance be located on any portion of the Agreed School Sites except the area extending twenty (20) feet from the external boundary of an Agreed School Site and provided further that such Development Encumbrance shall not materially interfere with the District's ability to construct a School Facility on the Agreed School Site.

13.2 Covenants, Conditions and Restrictions. Before recording the CCRs against the Agreed School Sites, the Developer will provide the District with a copy of the CCRs that it intends to record against each Agreed School Site located within the Projects for its review and consent, not to be unreasonably withheld, conditioned or delayed. The District's review shall be limited only to that portion of the CCRs that affect the Agreed School Site. To the extent the CCRs are subject to the approval of the City, the Developer shall provide the District with a copy of the CCRs when the Developer submits the CCRs to the City for review and approval.

13.2.1 The District shall have thirty (30) days after receipt of the CCRs to make a reasonable objection to such CCRs. If the District does not respond within such 30-day period, the District's consent to the CCRs shall be deemed given. If the District makes a timely objection to the CCRs, then the Developer may amend or modify the CCRs to make them reasonably acceptable to the District, or the Developer may elect not to record such CCRs against the Agreed School Sites. Any such proposed CCRs shall

not require the District to pay any latecomer fees or similar assessments, costs or fees that are not directly related to the District's development or use of the Agreed School Site, or any common area maintenance charges, or other similar fees or costs related to the ongoing operations of the Projects.

13.2.2 It is intended by the Parties that the design of the School Facilities to be constructed on the Agreed School Sites is compatible with the design standards for the rest of the Projects. The CCRs may provide design guidelines that are reasonably acceptable to the Developer and the District for the Agreed School Sites; provided that, the cost of any improvements required by the Developer or required under the design guidelines that increase the cost of the exterior façade of the School Facility by ten percent (10%) or more than the cost of a typical exterior façade for the same School Facility within the District's boundaries (for example, and not by way of limitation, architectural elements, landscaping, screening, particular materials) shall be paid by the Developer and such amounts shall be deposited with the District prior to commencement of construction of the School Facility, or the District shall not have any obligation to incorporate such improvements. The Developer shall have sole discretion in determining whether to pay the additional cost or waive the application of the design guideline. The Parties hereby agree that the District shall not be required to go through a design review process with any association that is created by the CCRs. If the Developer and the District cannot agree as to any design issues, after consultation as required by Section 13.2.3, then the Community Development Director shall select a qualified architect with school design experience to serve as the arbitrator of any dispute, and the architect's decision shall be binding on the Parties. The District and the Developer shall jointly be responsible for the architect's fees.

13.2.3 Prior to pursuing a building permit for a School Facility on an Agreed School Site within or adjacent to the Projects, the District shall provide the Developer with a copy of the plans, specifications, and elevation drawings of buildings to be constructed on the Agreed School Site. If notice of the Developer's disapproval is not given within forty-five (45) days following delivery of such plans, specifications, or elevations, such documents shall be deemed approved. If the Developer disapproves of the School Facility, the Developer's notice to the District shall state with specificity the elements of the proposed design of the School Facility that violates the CCRs or other design guidelines. The reasons for disapproval shall not compromise the District's ability to construct a School Facility that is materially consistent with a typical School Facility within the District's boundaries. The Developer and the District shall meet within ten (10) days of any disagreement regarding applicable design requirements to attempt in good faith to resolve the dispute. If the Parties are unable to resolve the dispute, the matter shall be referred to the dispute resolution process referenced in Section 13.2.2.

14. Condition of Title.

14.1 Deed Restriction. Title to the Identified School Sites, with the exception of the Elementary School Site D, the First Middle School Site, the Second Middle School Site, and any High School Site acquired pursuant to Section 7, shall be conveyed by Deed to the District in fee simple absolute subject to the Deed Restriction. The Deed Restriction shall require the Identified School Site to be used for a School Facility for a period of forty (40) years from the date of conveyance, unless earlier terminated as provided in Section 14.2.

14.2 Option to Purchase. At the Closing of all Identified School Sites, with the exception of the Second Middle School Site and any High School Site acquired pursuant to Section 7, the District and the Developer shall execute an Option to Purchase and record a Memorandum of the Option to Purchase in the forms attached hereto as Exhibit M. If the Identified School Site ceases to be used for school purposes during the term of the Deed Restriction or if the District is unable to use the Identified School Site as set forth in Sections 6.4 and 6.6.1(b), the Developer shall have the right to exercise the Option to Purchase. Under the Option to Purchase, the Developer shall have the right to purchase such Identified School Site, less any Joint Use Lands, back from the District for the lesser of (a) the then-current market value of the Identified School Site (less any Joint Use Lands), based on an appraisal to be performed by an MAI, state certified appraiser with at least five (5) years of experience appraising land in King County, Washington that is acceptable to the Developer and the District, in each Party's reasonable discretion, and the cost of such appraisal shall be equally shared between the Developer and the District; or (b) the Actual School Site Value of the Identified School Site (less any Joint Use Lands) escalated at an annual compound rate equal to the lesser of: (i) four percent (4%); or (ii) the increase in the two month Consumer Price Index for all urban consumers (CPI-U) published by the U.S. Department of Labor for the Seattle/Tacoma/Bremerton Standard Metropolitan Statistical Area, 1982-84=100 from the date the Identified School Site is conveyed to the District until the Option to Purchase is triggered. Notwithstanding the foregoing, in no event shall the Developer's right to repurchase an Identified School Site be for a price that is less than the Actual School Site Value at the time of the conveyance of the Identified School Site from the Developer to the District. If the Developer elects not to exercise the Option to Purchase within sixty (60) days of the District's notice, the Deed Restriction will automatically terminate and the District may surplus and rent, lease, or sell the Identified School Site (less any Joint Use Lands) free and clear of the Deed Restriction and the Option to Purchase.

15. Representations and Warranties.

15.1 Developer Representations and Warranties. The Developer represents and warrants with respect to the Identified School Sites the following, which shall be deemed made by Developer also as of the Closing Date:

15.1.1 This Agreement, and all documents executed by the Developer which are to be delivered to the other Parties at the Closing, are and at the time of Closing will be duly authorized, executed and delivered by the Developer.

15.1.2 The Developer's Actual Knowledge with respect to the Identified School Sites, except as disclosed in any documents described in Section 11.1: (i) such Identified School Site is not in violation of any applicable Environmental Laws; (ii) the Developer has not used, generated, manufactured, produced, stored, released, discharged or disposed of on, under or about the Identified School Sites or transported from the Identified School Sites, any Hazardous Substance in violation of applicable Environmental Laws; and (iii) the Developer has not removed underground storage tanks from any Identified School Sites, and no underground storage tanks are located on any Identified School Sites.

15.1.3 Without limiting the Developer's representations and warranties herein, the Developer further represents and warrants that Brian Ross, Colin Lund, David MacDuff and Ryan Kohlmann, are the officers, employees and/or principals of the Developer who have the most knowledge regarding the ownership and operation of the Identified School Sites.

15.2 District Representations and Warranties. The District represents and warrants as follows, which shall be deemed made by the District also as of the Closing, that this Agreement, and all documents executed by the District, which are to be delivered to the other Parties and the District at the Closing, are and at the time of Closing will be duly authorized, executed and delivered by the District.

15.3 City Representations and Warranties. The City represents and warrants as follows, which shall be deemed made by City also as of the Closing Date, that this Agreement, and all documents executed by the City, which are to be delivered to the other Parties at the Closing, are and at the time of Closing will be duly authorized, executed and delivered by the City.

15.4 Limitation on Representations. All the representations and warranties made by the Parties in Section 15.1 through 15.3 above shall survive Closing for a period of two (2) years, and no claim brought for misrepresentation or breach of warranty shall be valid unless brought within two (2) years after Closing.

16. Conditions Precedent to Closing.

16.1 Preservation of Representations and Warranties. All representations and warranties of the Parties contained herein shall be true, accurate and complete at the time of the Closing as if made again at such time.

16.2 Performance of Obligations. The Parties shall have performed all obligations to be performed by it hereunder on or before Closing (or, if earlier, on or before the date set forth in this Agreement for such performance) unless the affected party waives the right to require such obligation.

16.3 Casualty/Condemnation. The District's obligation to accept conveyance of an Identified School Site is conditioned upon, and subject to, the following: there shall not have been any casualty materially and detrimentally affecting all or any significant portion of the Identified School Site, any eminent domain or condemnation proceeding commenced or consummated for all or any material and significant portion of the Identified School Site, except any eminent domain or condemnation proceeding by the City or the District shall not excuse the District's obligation to accept the Identified Site. In the event of any condemnation or casualty as described herein, the District may elect, by written notice to the Developer, to forego conveyance. In such case, the Developer and the District shall have the same rights and duties as set forth in Section 12.3. Notwithstanding anything herein to the contrary, if the City or the District threatens or commences any eminent domain or condemnation proceeding for any of the Agreed School Sites, without the Developer's prior consent, in its sole discretion, the City or the District, as applicable, shall be in default of this Agreement and the Developer shall have the rights and remedies described herein.

17. Timing of Closing.

17.1 First Elementary School Site and First Middle School Site. The Closing of the first of the Elementary School Sites and the First Middle School Site will occur on a day mutually agreed upon by the District and the Developer that is no later than sixty (60) days after the conditions precedent described in Section 6 as to conveyance of the particular Identified School Site have been satisfied.

17.2 Conveyance of Remaining School Sites. The Closing of the remaining Identified School Sites will occur on a day mutually agreed upon by the District and the Developer that is no later than sixty (60) days after the conditions precedent described in Section 6 or Section 7 as to conveyance of the particular Identified School Site have been satisfied.

17.3 Earlier Closing. The Parties shall have the right in their sole and absolute discretion to Close on an Agreed School Site earlier than the times described in this Section 17.

18. Closing Documents.

18.1 District Closing Documents and Items. The following documents and items shall be executed by the District and timely provided to the Escrow Holder for each Identified School Site closing:

18.1.1 REETA.

18.1.2 Permanent and Temporary Easements to the Developer for Approval Work.

18.1.3 Temporary Easements to Developer, if applicable, for the purpose of providing access and temporary utilities to the Identified School Sites substantially in the form of the attached Exhibit S.

18.1.4 License Agreements, if applicable, for the purpose of providing the District with access over the Developer's property to the Identified School Sites substantially in the form of the attached Exhibit T.

18.1.5 Closing instructions as necessary to implement the Agreement terms.

18.1.6 Deed Restriction, for Elementary School Sites A-C and Option to Purchase for the Elementary School Sites and the First Middle School Site.

18.1.7 Mitigation Fee Credit Certificates, if applicable, showing the total Mitigation Fee Credits earned based on the Actual School Site Value of the Identified School Site.

18.1.8 Joint Use Agreement, if applicable.

18.1.9 Funds necessary to pay closing costs attributable to the District.

18.2 Developer Closing Documents and Items.

18.2.1 Deed conveying fee title, subject to Permitted Exceptions relevant to the applicable Identified School Site.

18.2.2 REETA.

18.2.3 FIRPTA.

18.2.4 Temporary Construction Easements to the District, if applicable, for the purpose of providing access and temporary utilities to the Identified School Sites substantially in the form of the attached Exhibit U.

18.2.5 License Agreements, if applicable, for the purpose of providing the District with access over the Developer's property to the Identified School Sites substantially in the form of the attached Exhibit T.

18.2.6 Deed Restriction, for Elementary School Sites A-C and Option to Purchase for the Elementary School Sites and the First Middle School Site.

18.2.7 Closing instructions as necessary to implement the Agreement terms.

18.2.8 Title Documents.

18.2.9 Funds necessary to pay closing costs attributable to the Developer.

18.3 City Closing Documents.

18.3.1 Joint Use Agreement, if applicable.

18.3.2 REETA if the Joint Use Lands are to be conveyed to the City.

18.3.3 Closing Instructions as necessary to implement the Agreement terms.

19. Closing Costs; Prorations. The Developer and the District shall each pay an equal one-half (50/50) share of the costs of the escrow services and recording fees related to the conveyance of any Identified School Site. Developer shall pay any excise taxes due in connection with conveyance of any Identified School Site. All real estate taxes for the Identified School Site shall be prorated as of the Closing Date.

20. Taxes and Impositions. The Developer shall pay to the Escrow Agent the estimated real estate taxes affecting each Identified School Site for the time prior to Closing. Except as provided herein, special assessments or impositions payable in installments (whether now existing or arising in connection with the Projects) payable for the Agreed School Sites shall be paid in full by the Developer and shall not be prorated between the Parties. Except as provided herein, the District shall not be required to pay any costs or fees in any way arising out of construction of the on-site improvements constructed for the Projects, or any common area maintenance charges, or other similar

fees or costs related to the ongoing operation of the Projects. The District shall pay the Developer for any applicable latecomer's fees, a proportionate share of the cost of constructing a regional stormwater collection facility, costs of School-Specific Utilities and Improvements as set forth in Section 23.4 and any Identified School Site-specific permit fees, utility connection charges, general facilities charges, including but not limited to reimbursable amounts allowed under the Water Supply and Facilities Funding Agreement, or other like fees or charges, due and owing to the City or other utility purveyors on the same basis as any other connecting property owner. Latecomer's fees, a proportionate share of the cost of construction of a regional stormwater collection facility, reimbursable amounts under the WSSFA, and the cost of School-Specific Off-Site Utilities and the School-Specific Off-Site Improvements owed by the District to the Developer may be payable through Mitigation Fee Credits, provided that the costs and/or fees may not be payable through Mitigation Fee Credits if the product of the remaining un-built units multiplied by the applicable Mitigation Fee is less than the cost and/or fee.

21. District's Covenants.

21.1 On-Site Improvements. District for itself, its subcontractors, vendors, suppliers and materialmen, agrees to the following with respect to any Agreed School Site:

21.1.1 To pay the cost of all on-site improvements and to perform all work in a neat and workmanlike manner and to use its best efforts to not allow excessive dirt, debris, or other material to be scattered on other adjacent properties or Units or on the streets;

21.1.2 To the extent that the District's construction activities cause excessive dirt, debris, or other material to be scattered on other adjacent properties or Units or on the streets, the District shall ensure that such excessive dirt, debris, or other material is promptly removed and the relevant area restored to the manner existing before the scattering of the excessive dirt, debris, or other material;

21.1.3 To comply with all life safety rules and regulations which may apply to roads and common areas within the Project; provided, that, the Parties agree that such life safety rules and regulations shall not preclude the normal and reasonable use of such roads and common areas by the District's construction contractors and subcontractors for purposes of transporting construction-related equipment and supplies to the Identified School Sites and gaining necessary access to the Identified School Sites for purposes of constructing school facilities;

21.1.4 To perform all work in such a manner as not to unreasonably interfere with neighboring properties in the Project and to preserve lateral support for adjoining properties.

21.2 Location of School. If the District acquires an Identified School Site, the District shall not use funds from the School Financing Approval for that Identified School Site toward school facilities in a different location unless the other location is also within the City or within the MPD Service Area. The District shall use commercially reasonable efforts to construct the School Facilities on the Agreed School Sites.

21.3 Cooperation.

21.3.1 The District agrees to cooperate with the Developer in any actions reasonably necessary or convenient to effect approvals relevant to the development of the MPDs in which an Agreed School Site is located. Such actions may include the signing and recording of temporary or permanent easements for utilities and the approval of reasonable ingress/egress for construction and the dedication of roads over which the District has beneficial easement rights; provided that, the Parties agree that any actions pursuant to this Section 21.3 shall be consistent with the design review criteria in Section 13.2 and, with the exception of utilities, shall not include any permanent disturbance of the Agreed School Sites that materially interferes with the District's ability to develop the Agreed School Site with a School Facility. The District further agrees to execute, subject to review and approval by the District's legal counsel not to be unreasonably withheld, conditioned or delayed, any and all documents reasonably necessary and relevant to the development of the MPDs in which an Agreed School Site is located, including the Approval Work, within ten (10) business days after being provided those documents; provided that, if such documents require approval of the District's Board of Directors, approval will be sought at the next regularly scheduled Board meeting. The District further agrees to cooperate with the Developer in any efforts by the Developer to include all portions of the MPDs within the District's boundaries; provided that, such cooperation shall not require the expenditure of any District funds for such purposes; and provided further that, in no event shall this Section 21.3 be construed to require the District to initiate any such action.

21.3.2 The District shall cooperate with the Developer, provided that such cooperation is at no expense to the District, in the process of obtaining from the City those certain Land Use Approvals necessary to segregate or subdivide each Agreed School Site from the rest of the Projects or other property. To the extent the City requires modifications to the configuration or boundaries of any Agreed School Site as part of any Land Use Approval, or, based upon documented need, the Developer requires modifications to the configuration or boundaries of any Agreed School Site to account for site conditions, utility alignment, relocation of residential development area, road alignment or similar site and design planning reasons, such Agreed School Site shall be revised to reflect such modifications in Developer's reasonable discretion, subject to the District's approval not to be unreasonably withheld, conditioned or delayed. Any modifications to the configuration or boundaries of an Agreed School Site shall be the

minimum reasonably necessary to address the documented need. In no event shall the revised boundaries diminish the minimum Usable Acreage for the particular Agreed School Site nor shall the revised boundaries differ from the agreed site dimensions such that a School Facility can no longer be sited on the Agreed School Site in a manner similar to other School Facilities in the District. If the revised boundaries vary significantly from those approved by the District as of the end of the Contingency Period the provisions of Sections 11 and 12 shall apply with respect to the District's acceptance of the new portion of the Agreed School Site resulting from the revised boundaries. If necessary, the Developer shall prepare a final legal description for the applicable Agreed School Site and the Parties shall amend this Agreement by replacing the prior description with the final legal description of the applicable Agreed School Site.

21.4 Release. Without limiting the Developer's warranties provided for elsewhere herein, the District, for itself and on behalf of anyone claiming by, through, or under the District, hereby releases the Developer and its present and future employees, partners, members, agents, contractors, and their respective successors and assigns from any liability or claim arising out of or in connection with the District's development of the Agreed School Sites and the District's construction of School Facilities, including, without limitation, any loss, damage, injury or claim attributable to the District's use and/or development of the Agreed School Sites or any part thereof, defect in design or construction of any improvement on the Agreed School Sites, including, without limitation, grading and other surface and subsurface conditions, presence on the Agreed School Sites of any threatened or endangered species or archeological sites, artifacts, or other matters of archeological significance, except to the extent caused by the negligence of the Developer and its present and future employees, partners, members, agents, contractors, and their respective successors and assigns.

21.5 Indemnity for the District's Construction. The District shall indemnify, defend and hold the Developer and the Developer's Indemnified Parties from any and all damages, claims demands, losses, fines, penalties, causes of action, expenses and liabilities (including, without limitation, attorneys' fees) arising out of or in connection with the construction of any School Facilities, any breach of obligation in Section 21 or representation or warranty by the District, or any negligent act, omission, by the District or any of its agents, employees, licensees, invitees or contractors except to the extent caused by the negligence of the Developer and its present and future employees, partners, members, agents, contractors, and their respective successors and assigns.

21.6 Developer Right of Entry to Identified School Sites. The District shall allow the Developer to enter the Identified School Sites located within the Projects after Closing for the limited purposes of completing the Approval Work or for Development Use purposes; provided that the Developer shall provide annual written notice to the District and such written notice shall describe the nature of the Approval Work to be undertaken for the notice year and the estimated duration of Developer's entry on the

Identified School Site; provided further that, if the District has commenced a contract with a third-party for pre-construction or construction activities on an Identified School Site or has commenced school operations on any such Identified School Site, any Developer entry shall be subject to a use license which shall include limitations on the Developer's entry, including but not limited to restrictions on time of entry, area of entry, and any other such provisions necessary to avoid interference with the District's construction work or school operations; provided further that, in the event the Developer wishes to undertake Other Work on any such Identified School Site, the Developer shall request in writing the District's approval of such Other Work and within seven (7) days of the District's receipt of such written request, the District shall, in its reasonable discretion, consider whether to allow the Other Work and may require the Developer to enter into a use license that includes requirements in addition to those contained in this Agreement to govern the Developer's use of the Identified School Site for the Other Work. The District shall have the right to monitor the activities related to the Approval Work, Development Use, and Other Work.

21.7 Signage. After Closing of each Agreed School Site, the District agrees to install or maintain, as applicable, a sign stating "This property is the future site of a new Enumclaw School District [high, middle, elementary] school." All signs shall be of similar style, size coloring as Developer's other Project signage. The location of the signage shall be subject to Developer's prior approval, which shall not be unreasonably withheld.

22. Developer's Covenants.

22.1 Condition of the School Sites. Except as expressly provided herein, the Developer shall not enter into, materially modify or terminate any contracts affecting the Identified School Sites that will survive Closing and that will have a material adverse effect upon the Identified School Sites, without the prior consent of the District, which shall not be unreasonably withheld or delayed; provided that, the District shall have the absolute right to withhold consent of any contracts that will have the potential of a material adverse effect on the Identified School Sites or that would in any manner limit the District's ability to construct School Facilities on the Identified School Sites. At Closing, the physical condition of the Identified School Site shall not be materially different than the condition of the Identified School Site on the date of the District's waiver of feasibility except to the extent the Developer has offered, and the District has approved in advance, to perform improvements or modifications to any of the Identified School Sites (e.g., grading a site to make it uniformly level). Changes to the Identified School Site that are related to Approval Work or ordinary wear and tear and changes caused by the District or its agents or contractors shall not be considered material changes.

22.2 Cooperation. The Developer shall cooperate with the District, provided that such cooperation is at no expense to the Developer, in the process of obtaining from the City or King County building permits or other approvals necessary for

the construction of School Facilities on the Identified School Sites. The Developer shall also cooperate with the District, provided that such cooperation is at no expense to the Developer, in the process of amending the District's boundaries to include the Second Middle School Site and in the process of obtaining School Financing Approval for the construction of School Facilities on the Identified School Sites.

22.3 Approval Work and Other Work. The Developer shall conduct the Approval Work, Development Use, and Other Work in compliance with all applicable laws, regulations and ordinances, and so as to not unreasonably interfere with the District's use of the relevant Identified School Site, including any development activities of the District or any third parties on such site.

22.3.1 The Developer agrees to keep the Identified School Sites free and clear of any liens arising from the Approval Work, Development Use, or Other Work, and to return the Identified School Site to a substantially similar condition as existed prior to the commencement of the Approval Work, Development Use, or Other Work, or an altered condition consistent with the Approval Work.

22.3.2 In performing the Approval Work, Development Use, or Other Work, the Developer shall not alter the physical condition of the Identified School Sites in a manner that materially adversely affects the District's ability to use the Identified School Sites for the District's intended purpose.

22.3.3 The Developer shall provide the District with copies of any final plans and specifications, surveys, topographical and plat maps, results of soil tests, engineering studies, environmental reports, permits, approvals, and any other test results, reports or information obtained in connection with such Approval Work, Development Use, or Other Work, including as-built drawings for the location of all utilities that will remain on or in the Identified School Site.

22.3.4 Any other provisions of this Section notwithstanding, the Developer shall not, under any circumstances, conduct any activities on the Identified School Sites in a manner that degrades the condition of the Identified School Site. For example, and without limitation, the Developer shall not excavate soil from the Identified School Site and replace it with substandard soil, nor shall the developer use an Identified School Site to stockpile, store, or treat waste or Hazardous Substances, and, in no event shall the Developer engage in any activities on or around the Identified School Site that would compromise, weaken or disturb lateral or subjacent support of the Identified School Site.

22.4 Indemnification. The Developer agrees to indemnify, defend, and hold the District, and the District's Indemnified Parties, harmless from any and all damages, claims demands, losses, fines, penalties, causes of action, expenses and liabilities

caused by the Developer's breach of the obligations in this Section 22 and/or the exercise of the Developer's rights pursuant to Section 21.6, including but not limited to clean-up costs related to Hazardous Substances resulting from the Developer's presence or activities, except to the extent arising from the negligence of the District or the District's agents, officers, directors, contractors, subcontractors, employees or invitees. In no event shall Developer, or its successors, assigns, agents, employees and contractors in the exercise of any rights or performance arising out of this Section: (i) store Hazardous Substances on or in; (ii) dispose of Hazardous Substances from, on or into; (iii) release Hazardous Substances on or into; (iv) discharge Hazardous Substances on or into; (v) transport Hazardous Substances over; or (vi) otherwise use or keep any Hazardous Substances or other wastes or substances on the School Sites in violation of applicable Environmental Laws.

THE FOREGOING INDEMNITY IS EXPRESSLY INTENDED TO CONSTITUTE A WAIVER OF THE DEVELOPER'S IMMUNITY UNDER WASHINGTON'S INDUSTRIAL INSURANCE ACT, RCW TITLE 51, TO THE EXTENT NECESSARY TO PROVIDE THE DISTRICT OR THE DISTRICT'S INDEMNIFIED PARTIES WITH A FULL AND COMPLETE INDEMNITY FROM CLAIMS MADE BY THE DEVELOPER AND ITS EMPLOYEES. THE DEVELOPER AND THE DISTRICT ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISION OF THIS SECTION WAS SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

23. Off-Site Improvements and Off-Site Utilities.

23.1 Construction of Comprehensive Off-Site Improvements and Comprehensive Off-Site Utilities. For each Identified School Site located in whole or in part within the Project boundaries, the Developer shall construct Comprehensive Off-Site Improvements and Comprehensive Off-Site Utilities up to the property line of each Identified School Site. The Developer shall design and construct the Comprehensive Off-Site Improvements and the Comprehensive Off-Site Utilities in compliance with applicable City or King County standards and per the approved engineering plans for the Projects. If the Comprehensive Off-Site Utilities or Comprehensive Off-Site Improvements are designed prior to the construction of a School Facility on the Identified School Site, the Developer shall notify the District of such engineering and request that the District provide an estimate, based on school facilities of similar size with the District, of the Comprehensive Off-Site Improvements and Comprehensive Off-Site Utilities required to serve the intended School Facility. In the event the District fails to provide the Developer with such an estimate, the Developer may proceed with design and construction of the Comprehensive Off-Site Improvements and Comprehensive Off-Site Utilities based on the Developer's reasonable estimate of the Comprehensive Off-Site Improvements and Comprehensive Off-Site Utilities required to serve such a School Facility and shall not be liable for any additional costs. The Developer will construct the Comprehensive Off-Site

Improvements and the Comprehensive Off-Site Utilities in a diligent, reasonable and practical manner consistent with the phased development of each Project.

23.2 Construction of Comprehensive Off-Site Improvements and Comprehensive Off-Site Utilities at the District's Request. In the event the District anticipates constructing a School Facility on an Identified School Site prior to the Developer's construction of Comprehensive Off-Site Improvements and Comprehensive Off-Site Utilities and to allow the Developer sufficient time to arrange for the design and construction of Comprehensive Off-Site Improvements and Comprehensive Off-Site Utilities, the District shall provide the Developer with copies of its building and site plans at least three (3) months in advance of submitting a building permit. The Developer shall provide the District with three (3) months advance notice prior to commencing design of Comprehensive Off-Site Improvements and Comprehensive Off-Site Utilities. If the District fails to provide the Developer a copy of its building and site plan, the Developer may proceed with design and construction of the Comprehensive Off-Site Improvements and Comprehensive Off-Site Utilities based on the Developer's reasonable estimate of the Comprehensive Off-Site Improvements and Comprehensive Off-Site Utilities required to serve a School Facility and shall not be liable for any additional costs associated with designing and constructing the Comprehensive Off-Site Improvements and Comprehensive Off-Site Utilities in conformance with the District's building or site plan. If the District timely provides copies of its building and site plans to the Developer, the Developer shall use its best efforts to complete the Comprehensive Off-Site Improvements and Comprehensive Off-Site Utilities no later than six (6) months after the District has applied for a building permit for construction of a School Facility on the particular Identified School Site served by such Comprehensive Off-Site Improvements and Comprehensive Off-Site Utilities. In the event the District amends or modifies its building or site plan previously provided to the Developer, the Developer shall not be liable for any additional costs or delays associated with constructing the Comprehensive Off-Site Improvements and Comprehensive Off-Site Utilities in conformance with the District's amended building or site plan. In such case, any modification to the Comprehensive Off-Site Improvements and Comprehensive Off-Site Utilities shall be subject to the Developer's prior consent, which shall not be unreasonably withheld, conditioned, or delayed, and shall be at the District's sole cost and expense. Notwithstanding anything herein to the contrary, the Developer and its contractor and subcontractors shall not be liable for damages caused by delays in construction of the Comprehensive Off-Site Improvements and Comprehensive Off-Site Utilities if such delays are a result of a force of nature, fire, theft, casualty or other circumstance beyond the Developer's reasonable control or if the six (6) month period following the District's receipt of a building permit that includes any time in the months of November through April and the Developer is unable to perform work due to the wet conditions.

23.3 Temporary Improvements and Utilities. In the event the District needs to construct a School Facility on the First Middle School Site or Elementary School

Site D in advance of the Developer's planned build-out of southern section of the Village Project, the Developer shall, at its own expense and subject to the notice and timing provisions set forth in Section 23.2 above, construct temporary Comprehensive Off-site Utilities that meet state and local health department requirements, as well as provide all-weather safe access, per applicable King County or City standards, sufficient for school busses, pedestrians, bicyclists, and emergency response vehicles and shall maintain said facilities at its expense until such time as the permanent improvements required by the MPD permit, or other appropriate Land Use Approval, and the City Municipal Code are completed and accepted by the City. The City agrees not to object to the temporary facilities so long as they meet the performance criteria of this Section. Any temporary Comprehensive Off-Site Utilities shall be replaced, at the Developer's expense, by permanent Comprehensive Off-Site Utilities as soon as practicable in accordance with the Developer's planned build-out of the Village Project.

23.4 Cost of Utilities and Improvements. Consistent with Section 10.4.3, the cost of design and constructing the General Off-Site Utilities and General Off-Site Improvements shall be incorporated into the Actual School Site Value and, except as provided otherwise herein, the Developer shall not be entitled to any other form of reimbursement for such costs. Notwithstanding the foregoing, the District shall be responsible for the cost of constructing and installing the School-Specific Off-Site Utilities and the School-Specific Off-Site Improvements. Such costs may be payable, at the through Mitigation Fee Credits, consistent with Section 10.1, or direct cash payment to the Developer after the District has closed on acquisition of the applicable Identified School Site, provided that the costs may not be payable through Mitigation Fee Credits if the product of the remaining un-built units multiplied by the applicable Mitigation Fee is less than the cost of the improvement

24. As-Is/Where Is. The District and its agents and contractors (including environmental consultants, architects and engineers) have been or will be afforded the right and opportunity to enter upon the applicable Identified School Site and to make such inspections of the Identified School Site and matters related thereto, including the conduct of soil, environmental and engineering tests, as the District and its representatives desire, pursuant to Section 11. The District acknowledges that, except as set forth in the Deed and in this Agreement, neither the Developer nor any principal, agent, attorney, employee, broker or other representative of the Developer has made any representations or warranties of any kind whatsoever regarding the Identified School Sites, either express or implied, and that the District is not relying on any warranty, representation or covenant, express or implied, with respect to the Identified School Sites, except as set forth in the Deed and in this Agreement. The District further agrees that it is acquiring the Identified School Sites in wholly an "AS-IS" "WHERE-IS" condition, with all faults, and waives all contrary rights and remedies available to it under applicable law. In particular, but without limitation, except as set forth in the Deed and in this Agreement, the Developer makes no representations or warranties with respect to the Identified School Sites or their use or

condition of any kind or nature, express or implied, including, without limitation, none as to: (i) the condition of the soils or groundwater of the Identified School Sites or the presence or absence of hazardous or toxic materials or Hazardous Substances on or under the Identified School Sites; (ii) the compliance of the Identified School Sites with applicable statutes, laws, codes, ordinances, regulations, rules or requirements, whether relating to zoning, subdivision, planning, building, fire, safety, health or environmental matters or otherwise; (iii) the compliance of the Identified School Sites with covenants, conditions and restrictions (whether or not of record); (iv) the compliance of the Identified School Sites with other local, municipal, regional, state or federal requirements; or (v) the density that the District may achieve in developing the Identified School Sites, and the availability of building, excavation and other permits that may be necessary for the construction of improvements on the property. The District represents that it is knowledgeable in real estate matters and that upon completion of the inspections contemplated or permitted by this Agreement, the District will have made all of the investigations and inspections the District deems necessary in connection with its purchase of the Identified School Sites, and that approval by the District of such inspections pursuant to this Agreement will be deemed approval by the District without reservation of all aspects of this transaction, including, but not limited to, the physical condition of the Identified School Sites, its use, title and the financial aspects of the development and operation of the Identified School Sites, subject to the express representations, warranties and covenants of the Developer set forth in this Agreement. The District expressly understands and acknowledges that it is possible that unknown problems, conditions or claims may exist with respect to the Identified School Sites and agrees that the District explicitly took such into account in determining and agreeing to the Mitigation Fee Credit for the Identified School Sites, and that a portion of such consideration, having been bargained for between the Parties with the knowledge of the possibility of such unknown problems, conditions or claims, was given in exchange for a full accord, satisfaction and discharge of all such problems, conditions, losses and claims and all rights of contribution and indemnity.

the District's Initials

25. Termination Rights. In its sole discretion, the Developer may terminate this Agreement as to any other Parties, upon five (5) days prior written notice to the other Parties upon the occurrence of any of the following events identified in this Section 25; provided however that, the Agreed School Sites conveyed prior to the termination of this Agreement shall remain with the District, and Mitigation Fee Credits and Mitigation Fee Credit Certificates associated with the previously conveyed Agreed School Sites shall remain with the Developer.

25.1 MPD Approval. The City does not approve the MPD permit application required to implement one or both of the Projects or the City imposes conditions on its approval that are unacceptable to the Developer in its sole discretion, but

if, and only if, at the time the Developer tenders its five day notice it also includes in the notice an acknowledgment that it is abandoning one or both of its MPD applications and forfeiting its vesting rights as to the MPD approval(s), effective immediately upon termination of the Agreement.

25.2 Adverse Ruling on Third Party Appeal. A ruling by a court of competent jurisdiction on a third party's appeal of any Land Use Approval or EIS adequacy for one or both of the Projects that restricts or interferes with the Developer's ability to proceed with one or both of the Projects or results in the imposition of additional school mitigation requirements, outside and in addition to those established in this Agreement , but if, and only if, at the time the Developer tenders its five day notice it also includes in the notice an acknowledgment that it is abandoning one or both of its MPD applications and forfeiting its vesting rights as to the MPD approval(s), effective immediately upon termination of the Agreement.

25.3 Revocation of MPD Permit. The City revokes the MPD permit required to implement one or both of the Projects.

25.4 Termination for one but not both MPD Permits. In the event the Developer exercises its right to terminate the Agreement and abandons its right to one but not both of the MPD Permits pursuant to the provisions of this Section 25, the Parties agree that: (a) the City Council may reconsider its own school impact fee ordinance and associated fee schedule; (b) the termination shall be considered as requiring an amendment to the remaining MPD application, and the hearing and approval process shall be reopened solely as to the issue of the appropriate manner to address the impact of the remaining MPD on school capital facilities and siting needs, taking into account the parties expressed intent to have walkable schools at the elementary school level and for all schools to be located within the MPD Service Area; and (c) the Parties will work in good faith to negotiate changes to the Agreement to take into account the impact of removing one of the MPDs from consideration so that the changes can be incorporated into the MPD amendment approval process. The Parties agree that, for purposes of the amendment to the MPD application, all Parties shall have standing to challenge the determination regarding whether such amendment is or is not a major amendment.

26. Default. Any Party shall be in “default” on the occurrence of any one or more of the following: (a) its failure to timely perform an act, pay a sum, or satisfy a term or condition as required by this Agreement; or (b) its making of any statement, representation, or warranty in this Agreement which is untrue or misleading in any material respect at the time made or reaffirmed. The remedies for default as described below shall only be available to the other Party(ies) after twenty (20) days’ written notice and opportunity to cure. If because of the nature of the default (other than the payment of money) the default cannot reasonably be cured with 20 days, then a Party shall not be considered in default if that Party promptly commences curing the default within the 20-

day period and thereafter continues diligently to cure the default thereafter, but in no event longer than within ninety (90) days from the defaulting Party's receipt of the written notice.

27. Remedies. If any Party defaults in the performance of any obligation under this Agreement, either directly or through its agents, employees or subcontractors, the Party entitled to the benefit of such obligation or performance shall be entitled to any or all of the following: (a) to cure the default and recover the cost of correcting any such default or breach from the breaching Party; (b) to bring suit at law to recover all damages; and/or (c) to avail itself of the equitable remedy of specific performance as to any obligations not compensable by monetary damages. Notwithstanding anything herein to the contrary, in no event shall any Party be liable to any other Party(ies) for any consequential or incidental damages.

28. Mediation. If a conflict arises under this Agreement, the Parties shall have the right to file a lawsuit to enforce the rights and obligations hereunder and/or to enter into nonbinding mediation under the auspices of the Commercial Mediation Rules of the American Arbitration Association. Any Party may initiate mediation by serving on the Party upon whom the request is made and filing with the American Arbitration Association a request for mediation substantially in the form of Exhibit V. If a Party files a lawsuit, any Party thereto shall have the right to require the other Party(s) to enter into nonbinding mediation by serving on the other Party(s) and filing the request for mediation within ten (10) days after a complaint is filed. In any case, the mediation shall be scheduled for the earliest date possible, but in no event later than at least twenty (20) days before the deadline for filing dispositive motions or a motion for a permanent injunction pursuant to the court's scheduling order.

29. Notices. Unless applicable law requires a different method of giving notice, any and all Notices shall be in writing and shall be validly given or made to another Party if delivered either personally or by Federal Express or other overnight delivery service of recognized standing, or if deposited in the United States mail, certified, registered, or express mail with postage prepaid. If such notice is personally delivered, it shall be conclusively deemed given at the time of such delivery. If such notice is delivered by Federal Express or other overnight delivery service of recognized standing, it shall be deemed given twenty-four (24) hours after the deposit with such delivery service. If such notice is mailed as provided herein, such shall be deemed given forty-eight (48) hours after the deposit thereof in the United States mail. Each notice shall be deemed given only if properly addressed to the Party to whom such notice is to be given as follows:

To the City:

The Honorable Howard Botts
Mayor, City of Black Diamond
PO Box 599
24301 Roberts Drive
Black Diamond, Washington 98010

With a copy to:

Loren Combs
VSI Law Group, PLLC
3600 Port of Tacoma Road, Suite 311
Tacoma, Washington 98424

To the District:

Mr. Mike Nelson
Superintendent
Enumclaw School District
2929 McDougall Ave.
Enumclaw, Washington 98022

With a copy to:

Denise L. Stiffarm
Kirkpatrick & Lockhart Preston Gates Ellis, LLP
925 Fourth Avenue, Suite 2900
Seattle, Washington 98104

To BDLP:

Brian Ross
Yarrow Bay Group
10220 NE Points Drive, Suite 120
Suite 120
Kirkland, WA 98033

With copies to:

Jami L. Kuzaro-Balint
Yarrow Bay Group
10220 NE Points Drive, Suite 120
Kirkland, WA 98033

Aleana W. Harris
Alston, Courtnage & Bassetti LLP
1000 Second Avenue, Suite 3900
Seattle, WA 98104

To BDVP:
Brian Ross
Yarrow Bay Group
825 5th Avenue, Suite 202
Kirkland, WA 98033

With copies to:
Jami L. Kuzaro-Balint
Yarrow Bay Group
P.O. Box 690
Black Diamond, WA 98010

Aleana W. Harris
Alston Courtnage & Bassetti LLP
1000 Second Avenue, Suite 3900
Seattle, WA 98104

Any Party hereto may change its address for the purpose of receiving notices as herein provided by a written notice given in the manner aforesaid to the other Party hereto

30. **Term of Agreement.** Unless terminated earlier pursuant to the provisions set forth in this Agreement, this Agreement shall remain in effect for fifteen (15) years; provided that, the Agreement Term shall be automatically extended to coincide with the end of the vesting period for the longer of the MPD vesting periods approved for the Projects (including any City-approved extensions thereto or to the development agreement for the Projects) or four (4) years after the final plat approval and recording of the last plat in either Project, whichever occurs last. Notwithstanding the foregoing, the District shall have the right to extend the term of this Agreement for an additional period of one (1) year if the following conditions have been met: (i) the District's Board of Directors has passed a resolution authorizing the District to present a bond measure to the public to finance the construction of a School Facility on an Agreed School Site, or in the case of the High School Site or an Identified School Site where the location is unusable for a School Facility pursuant to Sections 6.4, 6.5, 6.6.1(b), 11.6.2, or 12.3.2, an alternative location, or has initiated receipt of any other School Financing Approval for the construction of a School Facility on an Agreed School Site, or in the case of the High School Site or an Identified School Site where the location is unusable for a School Facility pursuant to Sections 6.4, 6.5, 6.6.1(b), 11.6.2, or 12.3.2, an alternative location; and (ii) the District has otherwise met the conveyance conditions set forth in Section 5 for conveyance of the particular Agreed School Site.

31. **Recording of Agreement.** The Parties agree that this Agreement shall be recorded with the King County Recorder's Office and that the costs of recording shall be

equally shared amongst the Parties. Upon termination of this Agreement and at the request of any Party, the other Parties shall promptly execute and deliver a recordable instrument identifying the termination of the Agreement.

32. **Joint BDLP and BDVP Obligations.** BDLP and BDVP each hereby acknowledge and assume all of the obligations of the other as set forth in this Agreement and each agree, as necessary, to fulfill the obligations of the other as if BDLP or BDVP, on its own, were the Developer.

33. **Miscellaneous Terms.**

32.1 **Interpretation.** All of the Parties jointly participated in the drafting of this Agreement. Accordingly, this Agreement shall be construed neither for nor against any Party notwithstanding the Party which drafted the same, but shall be given a fair and reasonable interpretation in accordance with the meaning of its terms and the intent of the Parties.

32.2 **Attorneys' Fees.** In any proceeding to enforce any provision of this Agreement, the substantially prevailing Party shall be entitled to the payment of its attorneys' fees and costs by the substantially nonprevailing Party or Parties, including attorneys' fees and costs on appeal.

32.3 **Runs with the Land/Successors and Assigns.** This Agreement shall run with the land and shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties.

32.4 **Authority.** Each Party represents and warrants to the other Party that it has full power and authority to make this Agreement and to perform its obligations hereunder and that the person signing this Agreement on its behalf has the authority to sign and to bind that Party.

32.5 **Complete Agreement.** This Agreement contains the entire agreement and understanding of the Parties with respect to the subject matter hereof, and supersedes all prior oral or written understandings, agreements, promises or other undertakings between the Parties.

32.6 **Savings.** If any provision of this Agreement is held to be unenforceable for any reason, it shall be adjusted, rather than void, if possible, to achieve the intent of the Parties. If any portion of this Agreement becomes unenforceable, null, or void, the balance of this Agreement shall remain in full force and effect.

32.7 **Non-waiver.** No failure on the part of either Party to exercise, and no delay in exercising, any rights hereunder shall operate as a waiver thereof; nor shall any

waiver or acceptance of a partial, single or delayed performance of any term or condition of this Agreement operate as a continuing waiver or a waiver of any subsequent breach thereof.

32.8 No Third Party Rights/Obligations. The Parties expressly do not intend to create any obligation or liability, or promise any performance to, any third Party. The Parties have not created for any third Party any right to enforce this Agreement.

32.9 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

32.10 Agreement Conditions Survive Closing. Except for (a) Section 22.1; and (b) any Section expressly stating it shall not survive Closing, all Sections of this Agreement shall survive the Closing as to each Identified School Site.

32.11 Venue/Waiver of Jury Trial. If an action must be brought to enforce the terms of this Agreement, such action shall be brought in King County Superior Court. All Parties to this Agreement hereby waive the right to a jury trial in connection with this Agreement.

32.12 Time. Time is of the essence of this Agreement.

[Signatures on following page]

CITY OF BLACK DIAMOND

DATED: _____

By _____

ENUMCLAW SCHOOL DISTRICT

DATED: _____

By _____
Mike Nelson, Superintendent

BD LAWSON PARTNERS, LP, a
Washington limited partnership

DATED: _____

By _____
Name _____
Title _____

BD VILLAGE PARTNERS, LP,
a Washington limited partnership

DATED: _____

By _____
Name _____
Title _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that MIKE NELSON is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Superintendent of the ENUMCLAW SCHOOL DISTRICT to be a free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: _____, 2009.



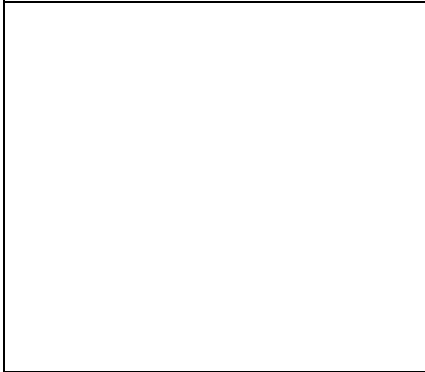
(Use this space for notarial stamp/seal)

Notary Public
Print/Type Name _____
My commission expires _____

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of the CITY OF BLACK DIAMOND to be the free and voluntary act of such Party for the uses and purposes mentioned in the instrument.

Dated: _____



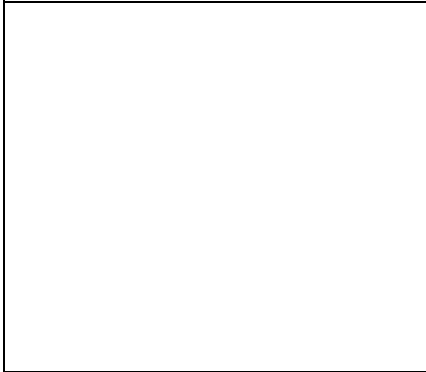
Notary Public
Print Name _____
My commission expires _____

(Use this space for notarial stamp/seal)

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of BD LAWSON PARTNERS, LP, to be the free and voluntary act of such Party for the uses and purposes mentioned in the instrument.

Dated: _____



Notary Public
Print Name _____
My commission expires _____

(Use this space for notarial stamp/seal)

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of BD VILLAGE PARTNERS, LP, to be the free and voluntary act of such Party for the uses and purposes mentioned in the instrument.

Dated: _____



Notary Public
Print Name _____
My commission expires _____

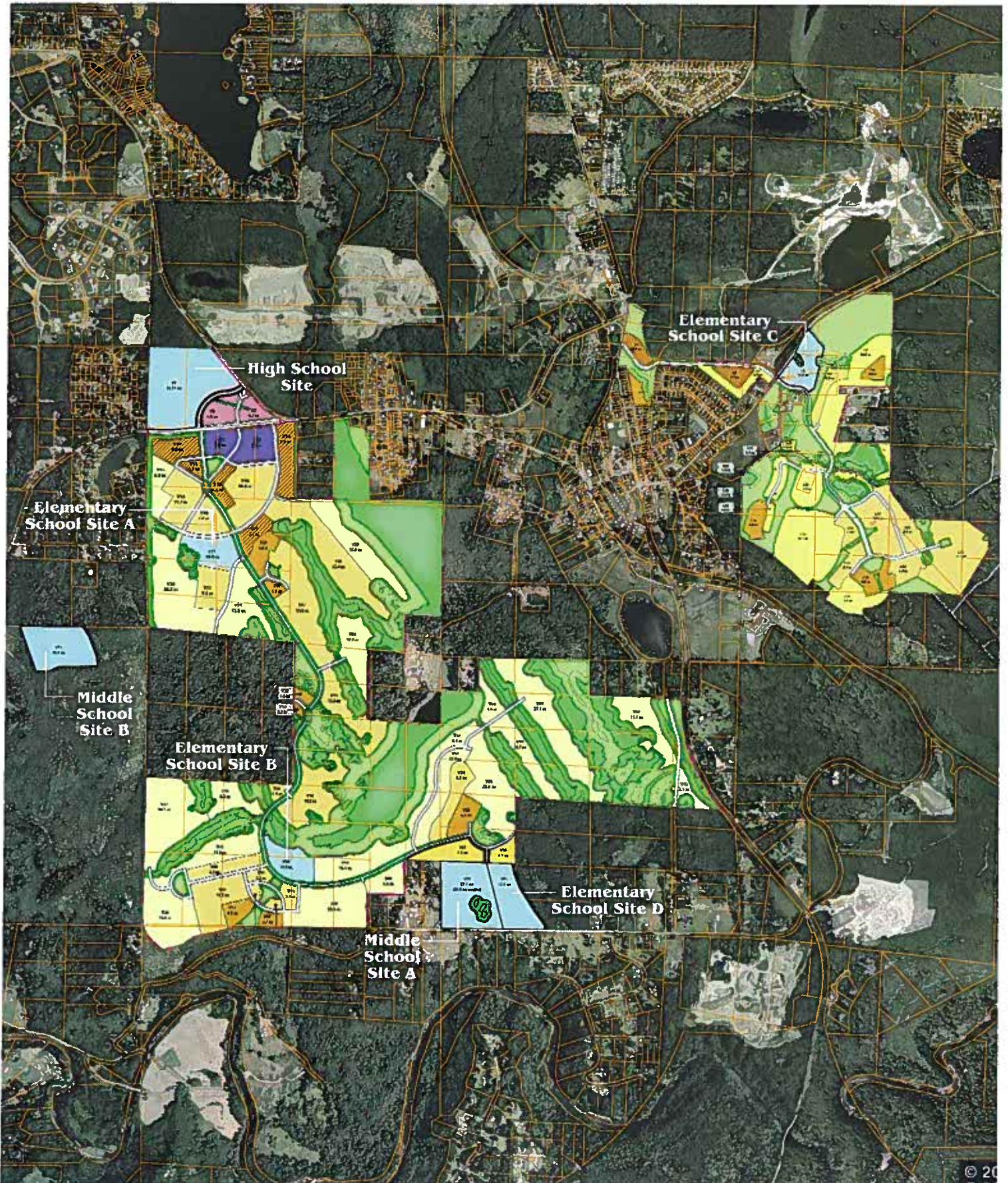
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EXHIBIT LIST

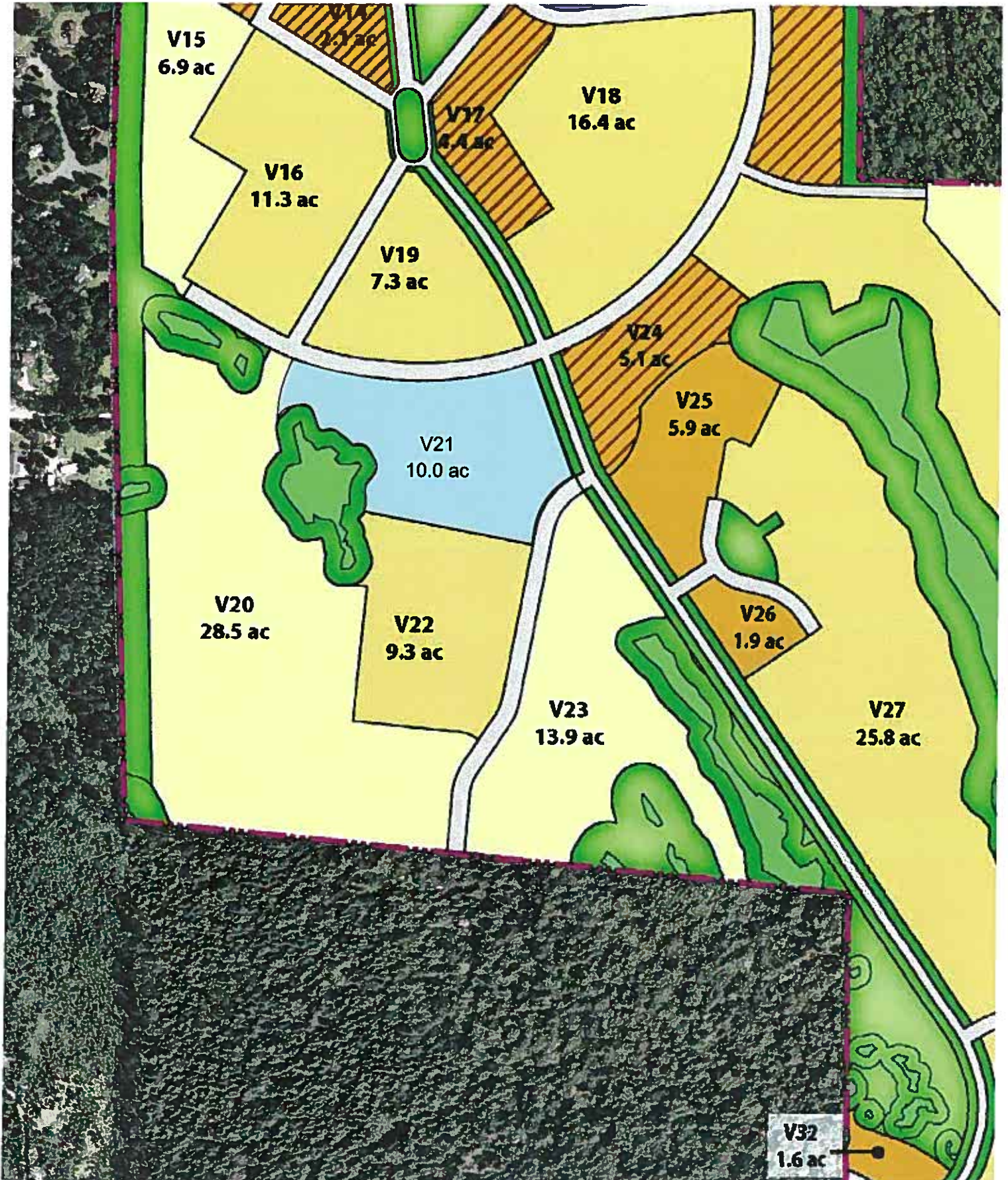
<u>Exhibit</u>	<u>Description</u>
A	“Alternative Elementary School Site” (2.9)
A.1	“Alternative Elementary School Site” Legal Description (2.9)
B	“Alternative High School Site” (2.10)
C	“Deed Restriction” (2.29)
D	“Elementary School Site A” (2.37)
D.1	“Elementary School Site A” Legal Description (2.37)
E	“Elementary School Site B” (2.38)
E.1	“Elementary School Site B” Legal Description (2.38)
F	“Elementary School Site C” (2.39)
F.1	“Elementary School Site C” Legal Description (2.39)
G	“Elementary School Site D” (2.40)
G.1	“Elementary School Site D” Legal Description (2.40)
H	“First Middle School Site” (2.45)
H.1	“First Middle School Site” Legal Description (2.45)
I	“High School Site” (2.49)
I.1	“High School Site” Legal Description (2.49)
J	“High School Sports and Recreation Area” (2.50)
K	“Lawson Hills Project” (2.58)
L	“Mitigation Fee Credit Certificates” (2.64)
M	“Developer’s Option Agreement” (2.68)
N	“Second Middle School Site” (2.83)
N.1	“Second Middle School Site” Legal Description (2.83)
O	“Village Project” (2.91)

- P High School Site Deed of Trust (7.1, 7.1.1b, 7.1.2b)
- Q High School Option Agreement (7.3)
- R Developer's Provision of Site Information Reports Reference (11.1)
- S Temporary Easements to Developer (18.1.3)
- T License Agreement (18.1.4; 18.2.5)
- U Temporary Construction Easements to the District (18.2.4)
- V Request for Mediation (28)

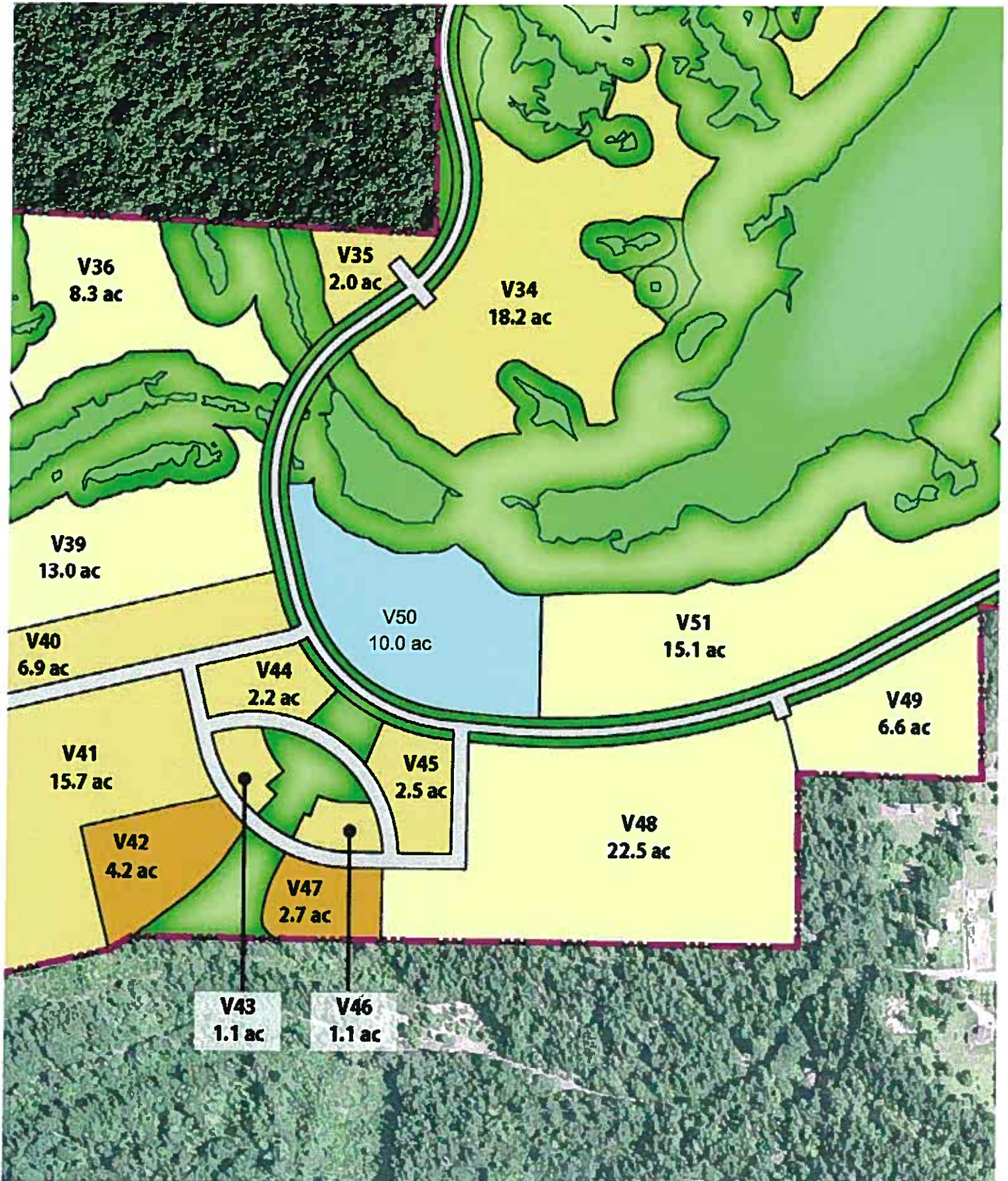
Black Diamond School Sites



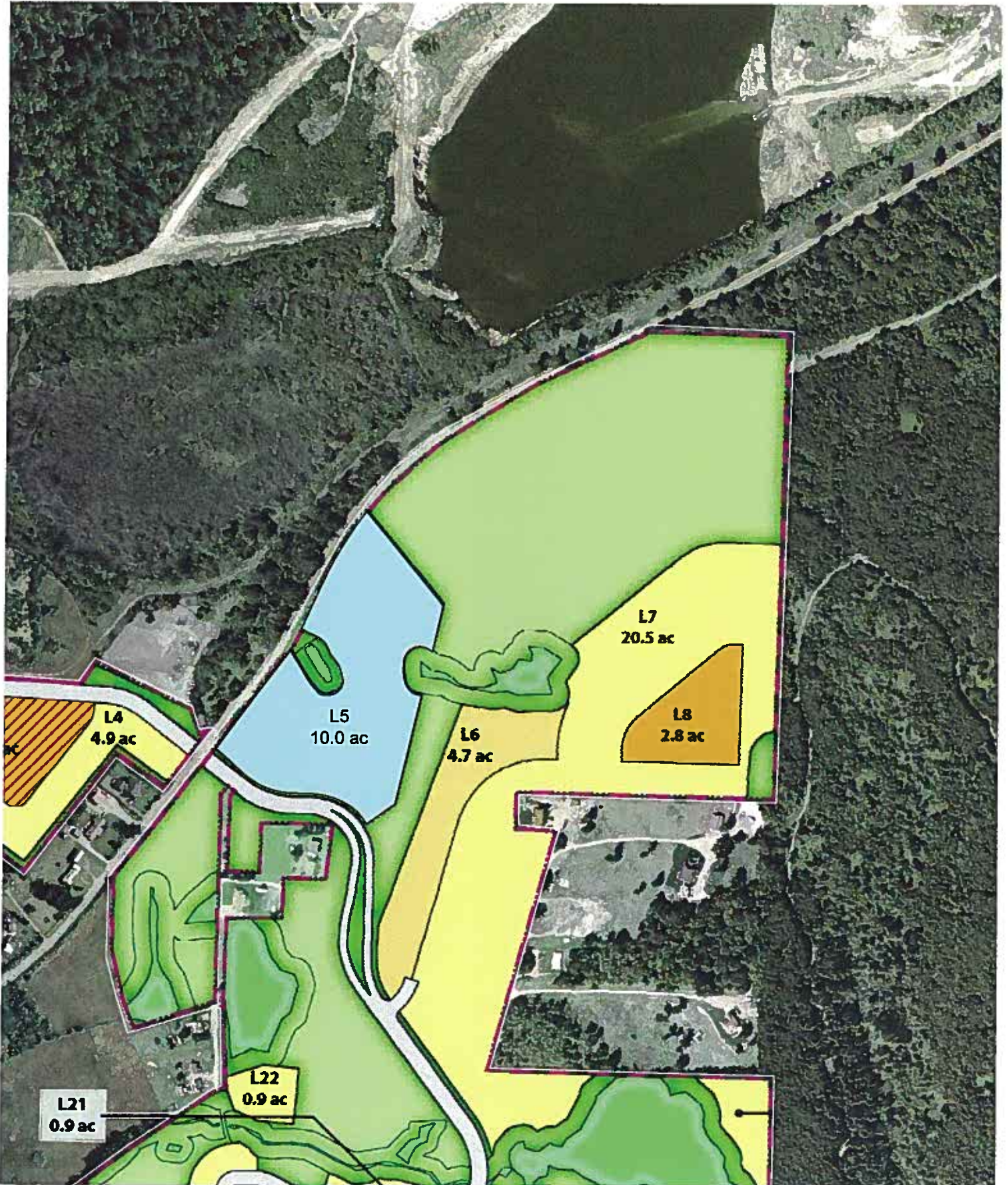
Elementary School Site A



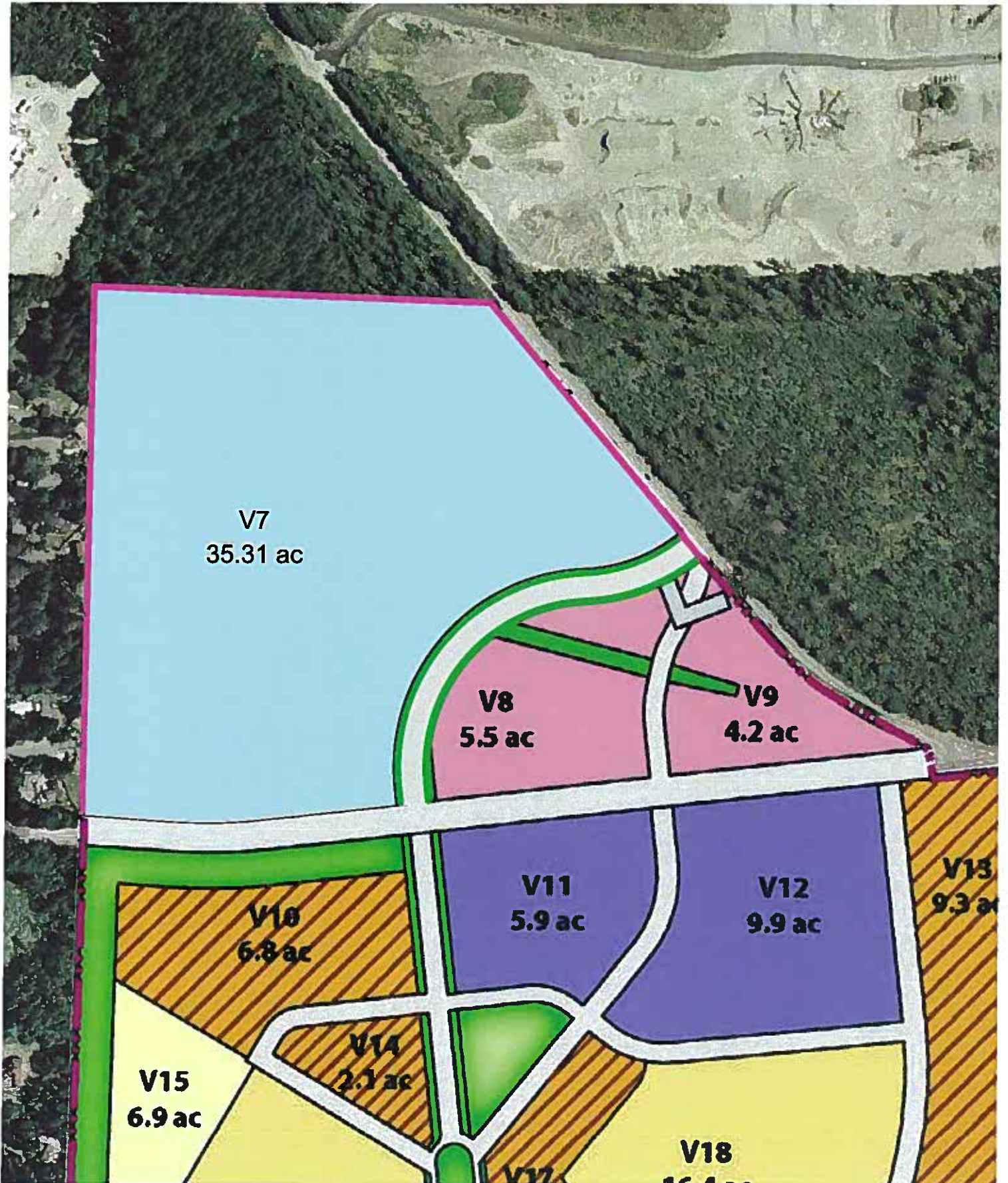
Elementary School Site B



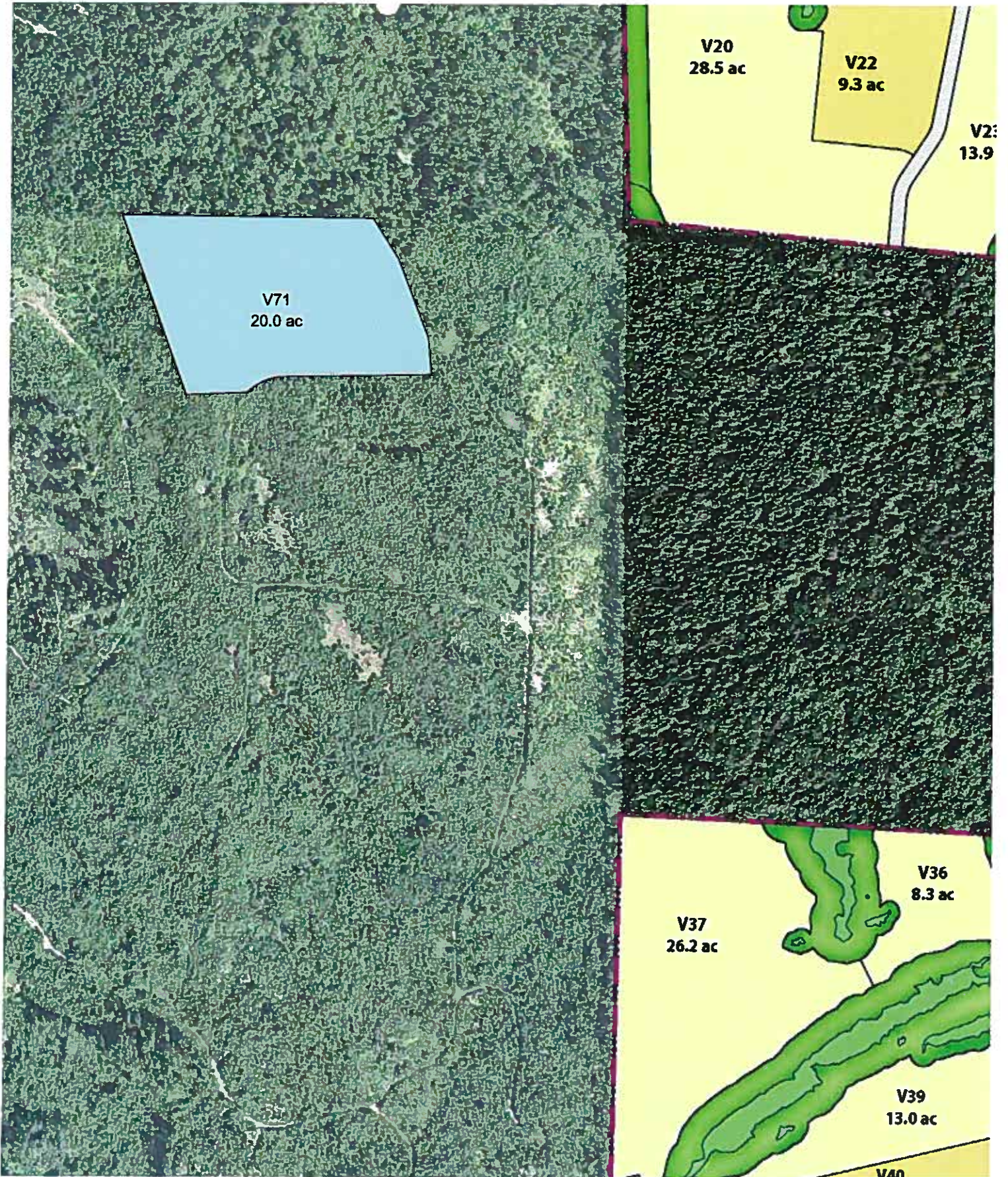
Elementary School Site C



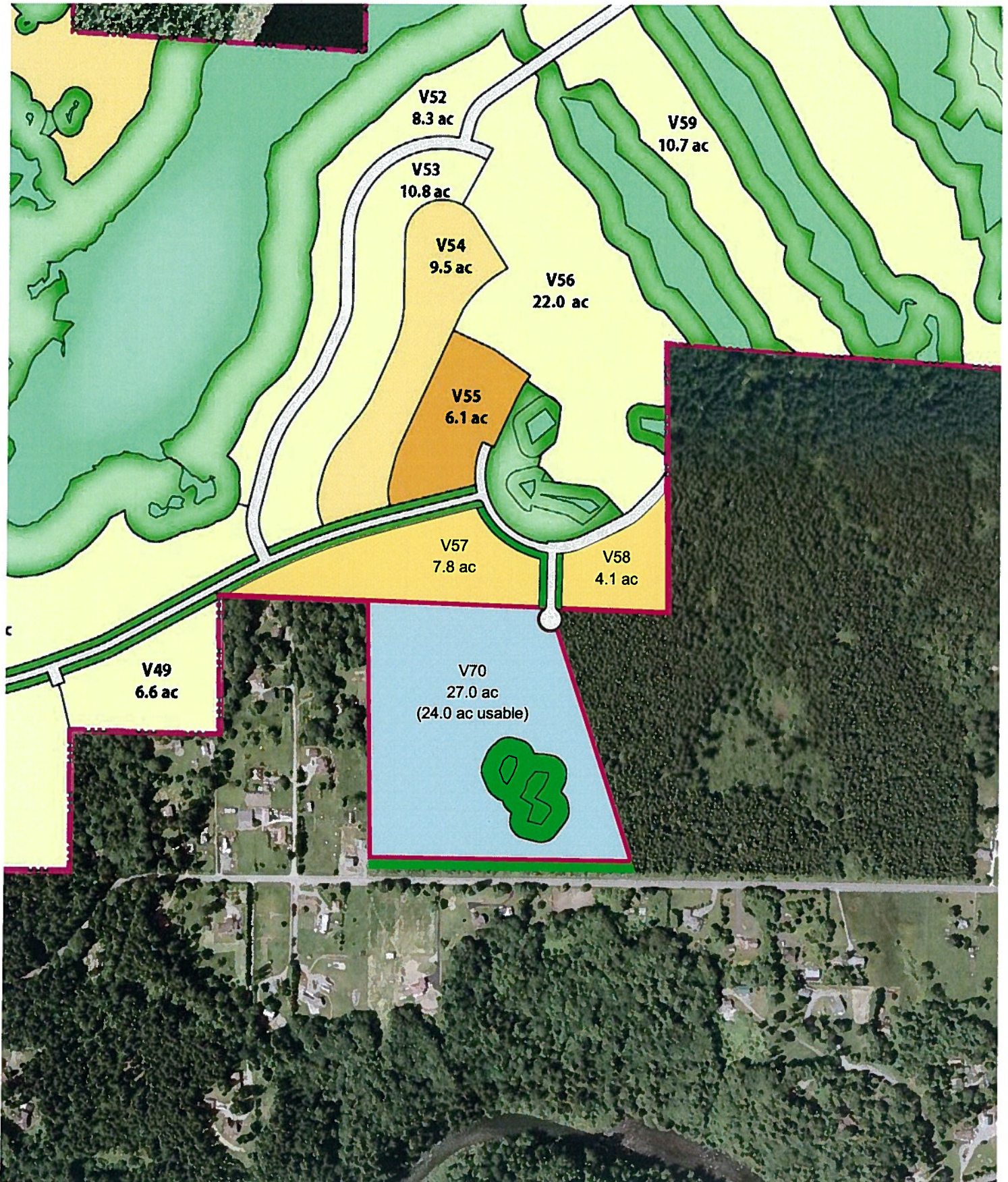
High School Site



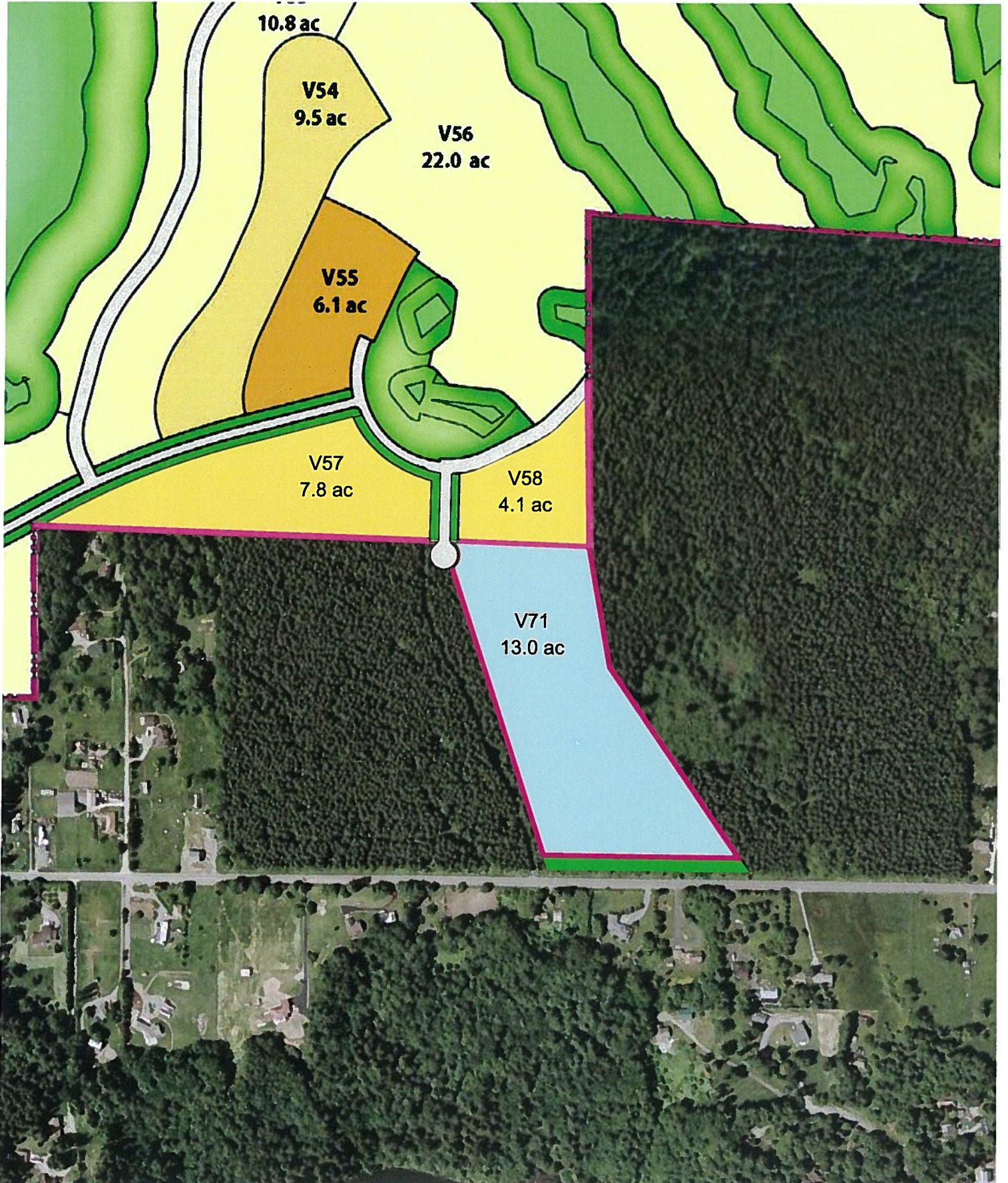
Middle School Site B



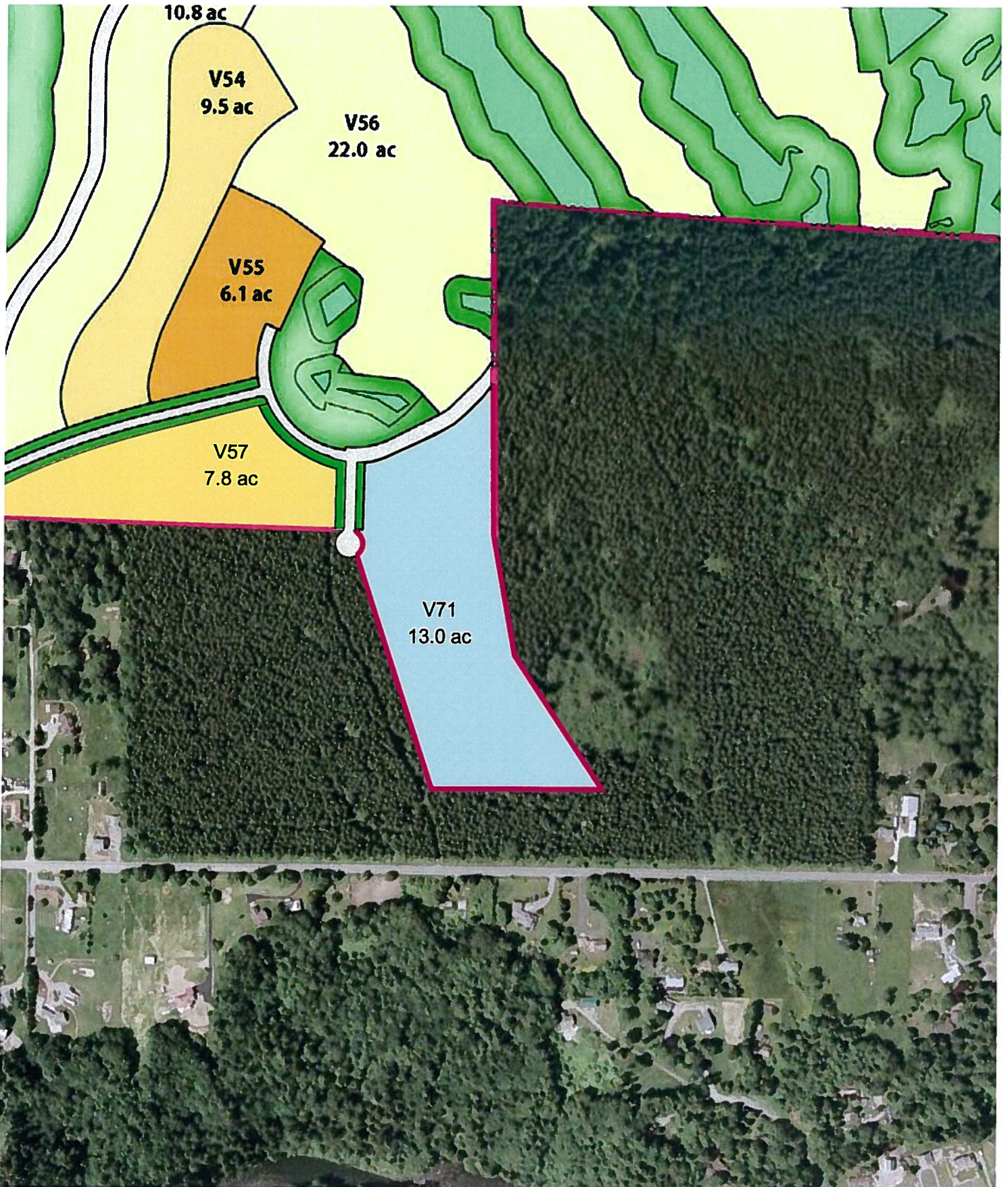
Middle School Site A



Elementary School Site D



Alternate Elementary School Site D



Lake Sawyer Regional Park

