

ORDINANCE NO. 05-802

AN ORDINANCE OF THE CITY OF BLACK
DIAMOND, KING COUNTY, WASHINGTON,
AUTHORIZING THE MAYOR TO EXECUTE THE
PRE-ANNEXATION AND DEVELOPMENT
AGREEMENT FOR NORTH TRIANGLE OF THE WEST
ANNEXATION AREA

WHEREAS, RCW 36.70B.170 authorizes a city to enter into an agreement regarding the development of real property outside its boundaries as part of a proposed annexation with any person having an ownership interest or control of such real property; and;

WHEREAS, The City and Plum Creek Timber Company, L.P., the predecessor in interest to Plum Creek Land Company, a Delaware Corporation ("Plum Creek"), are parties to the Black Diamond Urban Growth Area Agreement dated December 31, 1996 (the "BDUGAA"). BDUGAA paragraph 6.1 requires that the City shall enter into a development agreement with Plum Creek which shall establish land uses, zoning and development standards for the Urban Development Areas in the West Annexation Area consistent with the terms of the BDUGAA; and

WHEREAS, Plum Creek has petitioned the City to annex the West Annexation Area. Due to King County Boundary Review Board ("BRB") requirements, the West Annexation Area was submitted to the BRB as three separate annexations, thus necessitating the preparation of three separate Pre-Annexation and Development Agreements; and

WHEREAS, this Agreement applies to that portion of the West Annexation Area assigned BRB file number 2204; the legal description to said property having been approved by the Parties and the BRB, and is attached hereto as Exhibit A and illustrated in Exhibit B, each incorporated herein by this reference (the "Plum Creek Property"); and

WHEREAS, on November 3, 2005 and December 8, 2005 the City Council held public hearings regarding the zoning to be applied to the Plum Creek Property and on December 8, 2005 held a public hearing regarding the adoption of a Development Agreement as authorized by RCW 36.70B.170; now, therefore

THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON DOES ORDAIN, AS FOLLOWS:

Section 1. The Mayor is hereby authorized to execute the agreement entitled Pre-Annexation and Development Agreement by and between the City of Black Diamond and Plum Creek Land Company Relating to the Development of the Plum Creek West Annexation Area, BRB Number 2204, substantially in the form attached hereto as Exhibit C and incorporated herein.

Section 2. The Mayor is authorized to make minor changes prior to signing the Agreement and any exhibits thereto in order to take into account scrivener's corrections or administrative matters that do not affect the document's primary intent and purpose.

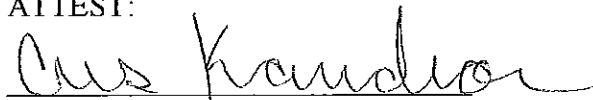
Section 3. If any provision of this Ordinance is determined to be invalid or unenforceable for any reason, the remaining provisions of this Ordinance and Ordinances and/or Resolutions modified by it shall remain in force and effect.

Introduced the 8th day of December, 2005.

Passed unanimously by the City Council on the 8th day of December, 2005.


Howard Botts, Mayor

ATTEST:


Cris Kandior, City Clerk

Published: 12-13-05
Posted: 12-9-05
Effective Date: December 8, 2005

APPROVED AS TO FORM:

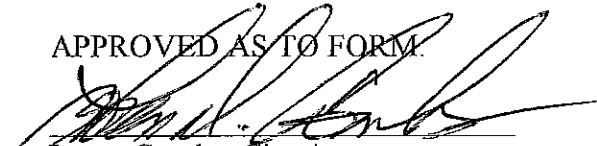

Loren Combs, City Attorney
I:\docs\18256\ord\adoptPDA27

EXHIBIT A
To
Ordinance No. 05-802

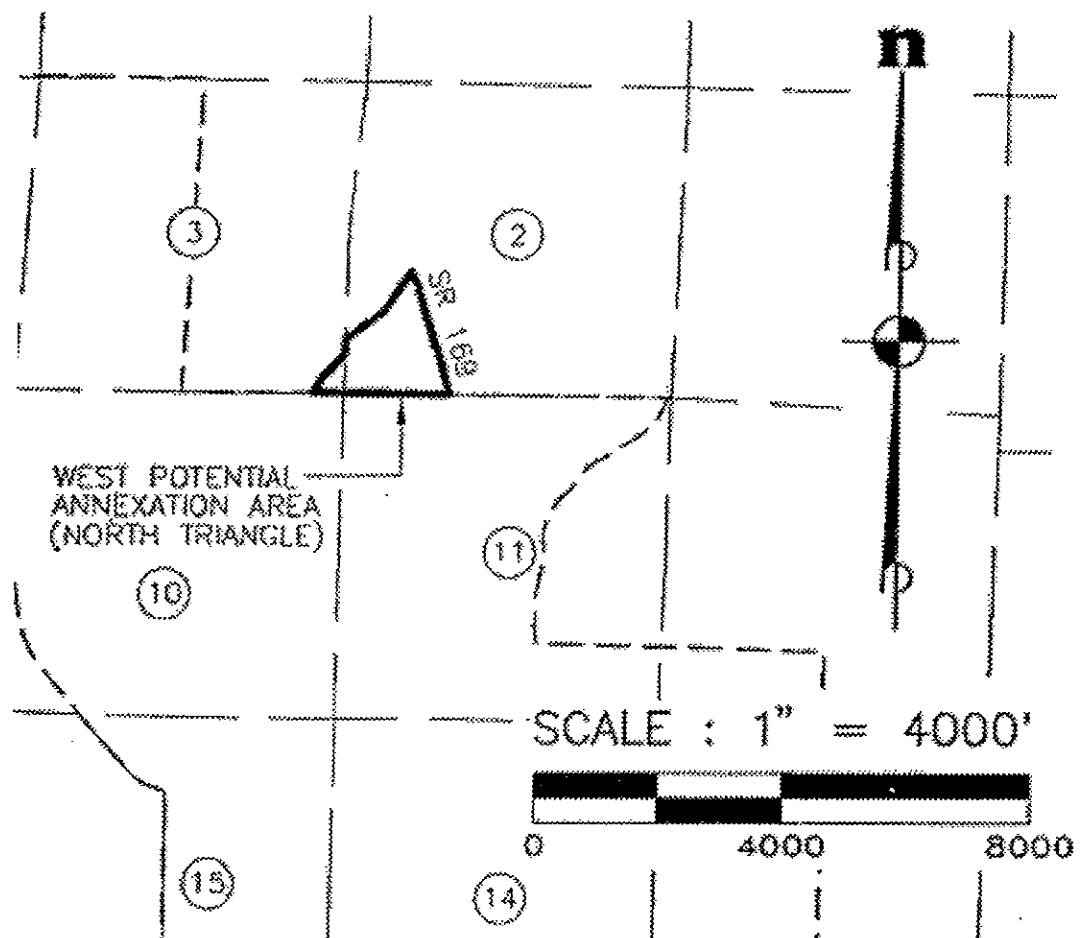
The proposed Black Diamond annexation named North Triangle is situated in portions of the Southwest Quarter of Section 2, Township 21 North, Range 6 East, W.M., and in portions of the Southeast Quarter of the Southeast Quarter of Section 3, Township 21 North, Range 6 East, W.M. all situate in King County, Washington, described as follows.

Lot A, as depicted on King County Boundary Line Adjustment Number L03L0021, as recorded under King County recording number 20030908900027, said Lot A being a portion of the Southwest Quarter of Section 2, described above, containing 53.03 acres more or less. Except all portions of Maple Valley Highway right-of-way

Together with: a portion of the Southeast Quarter of the Southeast Quarter of Section 3, as described above, lying within the following. Commencing at the southeast corner of said Section 3, herein being the Point of Beginning, thence N00-58-16E along the common section line of sections 2 and 3, described above, a distance of 600.00 feet, thence leaving said section line S42-33-21W a distance of 543.00 feet, thence S20-49-37W a distance of 301 feet more or less to intersect with the south section line of said section 3, thence S89-30-43E along the south line of said section 3, a distance of 312.00 feet to the Point of Beginning, containing 4.27 acres more or less.

The above two proposed annexation parcel descriptions combined form and contain a total of 57.30 acres more or less as shown on the King County, Washington Assessor maps, designated by notes referring to, Proposed Black Diamond Annexation Name: North Triangle.

EXHIBIT B
To
Ordinance No. 05-802



**EXHIBIT C
TO
ORDINANCE NO. 05-802**

After Recording Return To:

Cairncross & Hempelmann, P.S.
Attn: John W. Hempelmann
524 Second Avenue, Suite 500
Seattle, Washington 98104-2323

PRE-ANNEXATION AND DEVELOPMENT AGREEMENT

BY

AND

BETWEEN

THE CITY OF BLACK DIAMOND

AND

PLUM CREEK LAND COMPANY

RELATING TO THE DEVELOPMENT OF THE PLUM CREEK

WEST ANNEXATION AREA, BRB NUMBER 2204

**PRE-ANNEXATION AND DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF BLACK DIAMOND, WASHINGTON AND
PLUM CREEK LAND COMPANY
RELATING TO THE DEVELOPMENT OF THE PLUM CREEK
WEST ANNEXATION AREA, BRB NUMBER 2204**

1. DATE, PARTIES AND TERMS.

This Pre-Annexation and Development Agreement (“**Agreement**”) is entered into this ___ day of December, 2005, by and between the CITY OF BLACK DIAMOND, a non charter code city in the State of Washington, operating under the provisions of chapter 35A RCW (“**Black Diamond**” or “**City**”), and PLUM CREEK LAND COMPANY, a Delaware Corporation (“**Plum Creek**”). Plum Creek and Black Diamond are collectively referred to herein as the “**Parties**.” All capitalized terms in this Agreement shall have the meanings set forth herein, and if not defined herein such terms shall have the meaning given to them in that certain Black Diamond Urban Growth Area Agreement, dated December 31, 1996 (the “**BDUGAA**”).

2. GENERAL RECITALS.

2.1 Authority. RCW 36.70B.170 authorizes a city to enter into an agreement regarding the development of real property outside its boundaries as part of a proposed annexation with any person having an ownership interest or control of such real property.

2.2 BDUGAA. The City and Plum Creek Timber Company, L.P., the predecessor in interest to Plum Creek, are parties to the BDUGAA. BDUGAA paragraph 6.1 requires that the City shall enter into a development agreement with Plum Creek which shall establish land uses, zoning and development standards for the Urban Development Areas in the West Annexation Area consistent with the terms of the BDUGAA.

2.3 Plum Creek Property. Plum Creek has petitioned the City to annex the West Annexation Area. Due to King County Boundary Review Board (“**BRB**”) requirements, the West Annexation Area was submitted to the BRB as three separate annexations. There will thus be separate Pre-Annexation and Development Agreements for the three parts of the West

Annexation Area. This Agreement applies to the portion of the West Annexation Area assigned BRB file number 2204, the legal description to said property having been approved by the Parties and the BRB, and is attached hereto as EXHIBIT A and illustrated in EXHIBIT B, each incorporated herein by this reference (the “**Plum Creek Property**”).

2.4 Material Consideration. The Parties acknowledge that they enter into this Agreement in consideration of the mutual promises contained in the BDUGAA and that this Agreement implements the terms and conditions of the BDUGAA.

3. EFFECTIVE DATE AND TERM.

This Agreement shall become effective five (5) days after the publication of the City Ordinance that annexes the Plum Creek Property (the “**Effective Date**”).

4. PERMITTED LAND USES AND ZONING.

4.1 Upon the Effective Date, the Plum Creek Property shall be zoned MPD Overlay and the City zoning map shall be amended to reflect this action.

4.2 The land uses allowed on the Plum Creek Property shall be those shown on Appendix A, Map 7, of the BDUGAA as implemented in Chapter 10 of the City’s Comprehensive Plan; provided that the City and Plum Creek may agree to such other mixes of urban land uses as may be necessary to respond to real estate market and finance conditions.

4.3 Plum Creek shall be vested to the land uses set forth in this section for fifteen (15) years from the Effective Date, or until modified by a Master Planned Development permit (“**MPD Permit**”) approval, whichever shall sooner occur.

5. DEVELOPMENT STANDARDS AND VESTING.

The Plum Creek Property shall be developed in accordance with the development standards in effect when a complete MPD application is submitted. Vesting as to the development standards only occurs as to the portion of Plum Creek Property included within the MPD Permit application. Provided, any stormwater standards applied by the City shall at least equal the standards set forth in the King County Surface Water Design Manual or the State Department of Ecology Stormwater Manual in effect at the time a complete MPD Permit application is submitted. Further, affordable housing standards applied by the City shall at least require affordable housing to be provided to the extent necessary to meet the affordable housing

goals for the City, as set forth in the County Wide Planning Policies in effect at the time a complete MPD Permit application is submitted.

6. DENSITY.

The portion of the Urban Development Area of the Plum Creek Property to be developed for residential uses shall have a minimum average residential density of four units per acre. The base residential density shall be two (2) dwelling units per acre and any and all additional residential density shall be achieved by acquiring Development Rights through the City's Transferable Development Right ("TDR") Program. The City Council will set the final maximum density as a condition of the MPD Permit. In no event, however, may the City Council approve any density that exceeds twelve (12) dwelling units per acre.

7. OPEN SPACE.

7.1 BDUGAA Open Space. BDUGAA paragraph 7 sets forth a requirement that certain amounts and types of open space be provided in order to implement the BDUGAA open space provisions. In order to implement the BDUGAA open space requirements the Parties, and others, entered into the Open Space Agreement. No additional open space will be required on the Plum Creek Property, other than that set forth in the Open Space Agreement, as a condition of development of the Plum Creek Property unless it is needed to meet some other applicable development regulation.

7.2 Park and Recreational Facilities. The provisions of paragraph 7.1 notwithstanding, the City may require additional park, playfields and other recreation amenities as part of the MPD and/or subdivision process to the extent those requirements are consistent with the City policies and regulations in place at the time a complete MPD Permit application is submitted. If the open space provided in the Open Space Agreement does not include sufficient park and recreational facilities of the type and in the location as necessary to satisfy development standards for the Plum Creek Property, the City may require such park and recreation facilities to be located on the Plum Creek Property.

8. WATER.

All potable water shall be provided by the City through the City's public water system. The Parties, and others, entered into an agreement dated the 11th day of August, 2003 entitled

the Water Supply and Facilities Funding Agreement (“WSFFA”). Water service for the Plum Creek Property shall be provided in accordance with the terms of the WSFFA. Plum Creek, upon the Effective Date, shall be deemed to have irrevocably waived its right to terminate the WSFFA as authorized by WSFFA paragraph 28.4. Any water system improvements, other than those specified in the WSFFA that are necessary to provide water service to serve any portion of the Plum Creek Property, shall be constructed by Plum Creek, under the standards in effect at the time a complete preliminary plat application is submitted for the affected portion of the Plum Creek Property, unless a separate vesting date is specified in the applicable MPD Permit.

9. ROADS.

9.1 Major Road Access. Plum Creek commits to construct and provide major road access, including an east-west connection (“**Pipeline Road**”), to that portion of the Plum Creek Property known in the BDUGAA as the West Annexation Area, as shown on Map 1, Appendix A of the BDUGAA, and as legally described in Exhibit A attached hereto, so major road access service for the West Annexation Area can be provided at the time of project completions. The details, timing and phasing for the construction of said major road access improvements shall be determined during the MPD Permit approval process and shall be incorporated into the MPD Permit approval conditions.

9.2 Other Roads. Plum Creek shall construct such other roads as are required to adequately serve the development on the Plum Creek Property, as authorized in any MPD Permit approvals.

9.3 Road Design and Construction Standards. The road design and construction standards that will be applied shall be those determined during the MPD Permit approval process. Since road construction may be phased, as determined by the MPD Permit, different road design and construction standards may apply to subsequent road phases.

10. SANITARY SEWER SERVICE.

10.1 Public Sanitary Sewer Service. All sanitary sewer service shall be by the City’s public sewer system. Plum Creek shall be responsible for constructing such sanitary sewer improvements as are necessary to serve the Plum Creek Property. If Plum Creek is required to construct sanitary sewer service improvements that will benefit other properties, Plum Creek

shall be entitled to recapture a pro-rata portion of the costs as authorized by State law.

10.2 System Capacity. The City currently does not have sufficient capacity to serve all of the Plum Creek Property and that the City is relying upon the Soos Creek Utility District and King County to provide needed sanitary sewer treatment capacity, and the main collection lines to wheel the sanitary sewage to the treatment facility. Plum Creek acknowledges that if service capacity is not available the City may have to restrict development on some or all of the Plum Creek Property until the capacity becomes available. The City reserves the right to ration the current City capacity to assure that equal opportunity for access to available capacity is provided.

10.3 Design Standards. The sanitary sewer design and construction standards that will be applied shall be those determined during the MPD Permit approval process. Provided, said standards may be modified if required to meet the requirements of Soos Creek, and/or King County, or if necessary to protect the public health and safety, based upon certification from the City's engineer. Since sanitary sewer construction may be phased, as determined by the MPD Permit, different sanitary sewer design and construction standards may apply to subsequent sanitary sewer phases.

11. FUNDING FOR REQUIRED WATER, SEWER AND ROAD IMPROVEMENTS.

Plum Creek is responsible for funding improvements necessary to develop the Plum Creek Property. Consistent with BDUGAA section 6.5 the Parties will seek federal, state, local government and public/private funding for the infrastructure planning, engineering and construction necessary to implement the BDUGAA. Plum Creek consents to, and agrees not to protest, the formation of local improvement districts ("LIDS") to finance said improvements to the extent the Plum Creek Property is benefited. The City shall have the right, but not the obligation, to use LID's as a funding mechanism.

12. PHASING.

Phasing of all development activities on the Plum Creek Property, including constructing infrastructure, is anticipated. Phasing shall be allowed. Timing of said phasing, and the improvements to be constructed in each phase, shall be determined in the MPD Permit approval process.

13. PROCESSING FEES.

Unless specified otherwise in the Agreement, or in other written agreement between the Parties, the processing fees charged by the City for an application shall be those included in the City's fee resolution that applies to all applicants within the City and that is in effect on the date a complete application is submitted.

14. NOTICES.

Any notice or communication required by this Agreement between the City and Plum Creek must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any party may at any time, by giving ten (10) days written notice to the other party, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to the City, to:

Planning Director
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
Telephone: (360) 886-2560

With copies to:

Loren Combs
City Attorney
McGavick Graves, P.S.
1102 Broadway, Suite 500
Tacoma, Washington 98401-1317
Telephone: (253) 627-1181

If to Plum Creek, to:

Randy Hamblin
Plum Creek Land Company
999 Third Avenue, Suite 4300
Seattle, WA 98104
Telephone: (206) 467-3615

And to: Sheri Ward
Plum Creek Land Company
999 Third Avenue, Suite 4300
Seattle, WA 98104
Telephone: (206) 467-3615

With copies to: Cairncross & Hempelmann, P.S.
524 Second Avenue
Seattle, WA 98104-2323
Attn: John W. Hempelmann
Telephone: (206) 587-0700

15. MISCELLANEOUS.

15.1 Threats to Public Health and Safety. Consistent with RCW 36.70B.170(4), the City may impose new or different regulations to the extent required by a serious threat to public health and safety.

15.2 Additional Development Agreements. The Parties anticipate that additional, more detailed, development agreements will be necessary during the development process and/or MPD application process to address, among other things, vesting to the City's development regulations and standards.

15.3 Amendment. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the Parties or their successors in interest.

15.4 Assignment. Plum Creek shall have the right to assign or transfer all or any portion of its interests, rights or obligations under this Agreement.

15.5 Severability. If any term or provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

15.6 Other Necessary Acts. The Parties shall execute and deliver to each other all other further instruments and documents that are reasonably necessary to carry out and implement the Agreement.

15.7 Covenants Running with the Land. All of the provisions contained in this Agreement shall constitute covenants running with the land.

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

15.9 Washington Law. This Agreement shall be construed and enforced in accordance with the laws of the state of Washington.

15.10 Attorneys' Fees. In the event of any litigation or arbitration between the Parties regarding an alleged breach of this Agreement, the substantially prevailing party shall be entitled to any award of attorneys' fees.

15.11 Counterparts. This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original.

Dated as of the date first written above.

CITY OF BLACK DIAMOND

By: Howard Botts
Its: Mayor

Attest:



Chris Kandior, City Clerk

Approved As To Form:

Loren Combs, City of Black Diamond Attorney

PLUM CREEK LAND COMPANY, a Delaware Corporation

By: Larry Neilson
Its: Vice President, Real Estate