

RESOLUTION NO. 05-385

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH BNK, LLC REGARDING VESTING OF PLAT APPLICATION

WHEREAS, BNK is the owner of that certain real property real property known as Bruckner's Way Plat, legally described in Exhibit "A" attached hereto ("Subject Property"); and

WHEREAS, the City approved, subject to conditions, a Preliminary Plat for the Subject Property which is known as the Bruckner's Way Plat; and

WHEREAS, the parties hereto have previously been parties to litigation under King County Superior Court Cause No. 99-2-16864-0 KNT relative to the Bruckner's Way Plat. The litigation was settled and Stipulation and Order of Dismissal was signed by the parties and entered by the Court ("Stipulation"). Since the Stipulation was entered a dispute has arisen with regards to whether or not the Preliminary Plat has expired; and

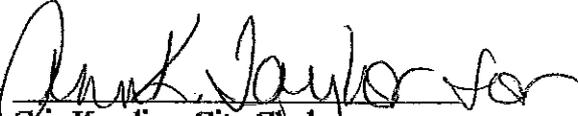
WHEREAS, in order to avoid further litigation and the uncertainties with regards thereto, the parties have agreed to enter into the Agreement Regarding Vesting of Plat Application (attached hereto as Exhibit "A") in order to define with certainty the expiration date for the Bruckner's Way Preliminary Plat; now, therefore,

BE IT RESOLVED that the Mayor is hereby authorized to execute the agreement with BNK, LLC, attached hereto as Exhibit "A".

ADOPTED by the City Council at an open public meeting held on the 16th day of June, 2005


Howard Botts, Mayor

Attest:


Cris Kandior, City Clerk

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AGREEMENT REGARDING VESTING OF PLAT APPLICATION

1. Date and Parties. This Agreement, for reference purposes only, is dated the 13th day of June, 2005 and is entered into by and between BNK, LLC, and its members, Steven A. Beck, Barry Kombol, William Kombol and ^{Chris} Kevin Slatt, herein collectively referred to as "BNK", and the City of Black Diamond, herein referred to as the "City".

2. General Recitals.

a. BNK is the owner of that certain real property legally described in Exhibit "A" attached hereto and by reference incorporated herein ("Subject Property").

b. The City approved, subject to conditions, a Preliminary Plat for the Subject Property which is known as the Bruckner's Way Plat.

c. The parties hereto have previously been parties to litigation under King County Superior Court Cause No. 99-2-16864-0 KNT relative to the Bruckner's Way Plat. The litigation was settled and Stipulation and Order of Dismissal was signed by the parties and entered by the Court ("Stipulation"). Since the Stipulation was entered a dispute has arisen with regards to whether or not the Preliminary Plat has expired.

d. In order to avoid further litigation and the uncertainties with regards thereto, the parties have agreed to enter into this Agreement in order to define with certainty the expiration date for the Bruckner's Way Preliminary Plat.

3. Preliminary Plat Expiration.

a. The Preliminary Plat shall expire, including all approvals associated therewith, without further notice, unless all improvements required by the conditions of approval for the Bruckner's Way Plat and the Stipulation are constructed and approved by the City no later than April 1, 2006. Provided, however, if the City certifies that all required improvements are substantially complete prior to April 1, 2006, final completion can be delayed until no later than January 1, 2007, so long as a Performance and Maintenance Bond in the form attached hereto as Exhibit "B" is executed and delivered to the City prior to April 1, 2006, in order to assure final completion of all improvements by January 1, 2007. The amount of the Performance Bond shall be 150% of the City Engineer's estimate of the cost to complete the improvements. The Maintenance Bond shall be effective for all Plat improvements through December 31, 2008.

b. The City agrees to review all complete submittals within a reasonable period of time, and to conduct inspections during normal City work hours, after appropriate notice of a request for inspection.

c. If the plat approval expires, then the owner of the Subject Property will be required to submit a new plat application, which will be governed by the City Codes in effect at the time the complete application is submitted.

4. Plat Conditions and Stipulation Not Modified. Except as expressly modified above all of the conditions of the Stipulation and the conditions of Preliminary Plat approval shall remain in full force and effect. All payment amounts required to be paid by the Stipulation shall be paid no later than April 1, 2006 or final plat approval, whichever shall sooner occur.

5. Attorney Fees Recoverable. In the event any suit or action is instituted to enforce or interpret any of the terms of this Agreement including any action or participation in or in connection with a case or proceeding under any Chapter of the Bankruptcy Code or any

successor statute, the prevailing party shall be entitled to such sum as the court may adjudge reasonable as attorney fees in such suit, action or proceeding or upon any appeal from any judgment, order or decree entered therein.

6. Notice. All notices required by this Agreement shall be deemed delivered to the respective party on the date that it is personally delivered to the address set forth below, or two days after the document is mailed, Certified Mail, Return Receipt Requested by U.S. Mail to the address set forth below.

City: | City of Black Diamond
C/o Loren D. Combs, Esq.
McGavick Graves, P.S.
1102 Broadway, Suite 500
Tacoma, WA 98402
Facsimile: (253) 627-2247

BNK, LLC C/o Steven A. Beck
19129 S.E. 145th St.
Renton, WA 98059
Facsimile: 425-227-5224

7. Entire Agreement. The parties have negotiated in good faith with regards to each and every term of this agreement. This agreement embodies all agreements, representations and warranties to which the parties have agreed to be bound. This agreement shall be construed to accomplish the intent and purpose set forth herein, and shall be presumed to have been drafted by both parties hereto. There are no verbal or other agreements that modify or affect this Agreement unless specifically referenced herein.

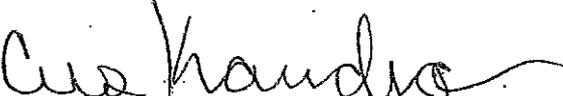
CITY OF BLACK DIAMOND

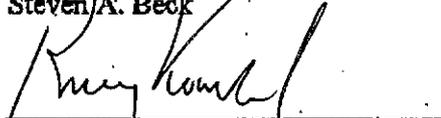

Howard Botts, Mayor

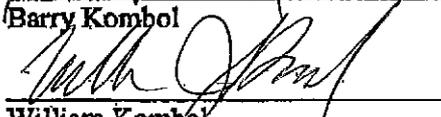
BNK, LLC


Steven A. Beck

ATTEST:


Cris Kandior, City Clerk


Barry Kombol


William Kombol

Approved as to form:


Loren D. Combs, City Attorney
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Kevin Slatt
Chris

EXHIBIT "A"

That portion of the east half of the northwest quarter of the northeast quarter of Section 15, Township 21 North, Range 6 East, W.M. in King County, Washington lying north of the Black Diamond Auburn Highway;

EXCEPT that portion of the northeast quarter of Section 15, Township 21 North, Range 6 East, W.M., in King County, Washington, lying south of the westerly projection of the northerly line of Lot 16, Sunny Lane, according to the plat thereof recorded in Volume 162 of Plats, pages 31 through 33, inclusive, in King County, Washington, and lying north of the north line of the Auburn Black Diamond Highway, and easterly of the following described line:

Commencing at the southwest corner of Lot 11;
thence south $82^{\circ}30'30''$ west along the northerly right of way line of the Auburn Black Diamond Highway a distance of 2.97 feet to the true point of beginning of said line;
thence north $0^{\circ}00'26''$ east along said line a distance of 562.7 feet, more or less, to a point on the north line of Lot 16, said plat of Sunny Lane, and the terminus of said line.