

RESOLUTION NO. 06-405

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN THE FINAL PLAT DOCUMENTS FOR EAGLE CREEK PLAT (Formerly known as BRUCKNER'S WAY)

WHEREAS, Norris Homes, Inc., a Washington corporation, is the owner of that certain real property commonly known as Bruckner's Way Plat, now referred to as "Eagle Creek", and legally described in Exhibit "A" attached hereto and by reference incorporated herein (the "Subject Property"); and

WHEREAS, a preliminary plat for the subdivision of the Subject Property was approved by the City; and

WHEREAS, the owner of the Subject Property has applied for final plat approval; and

WHEREAS, the Planning Commission held a public meeting on the request, and recommended approval, subject to conditions; and

WHEREAS, on October 19, 2006 the City Council held a public hearing on the final plat approval request; and

WHEREAS, the City Council finds that adequate provisions will be made to protect the public health, safety and welfare, and that all requirements of the City Codes and Chapter 58.17 RCW will be met, if the final plat is approved with the following conditions:

1. The Final Plat dedication shall be signed by all parties having an ownership interest in the Subject Property as shown on the title report and as required by the City Code, namely Norris Homes, Inc. and Banner Bank, Inc., and shall provide proof of signatory authority prior to signing the final plat.

2. With regards to Title Report exception number 3 relating to a reserved mineral right recorded under King County recording number 2847063 that allows disturbance of the surface of the property, the applicant cause one of the following to occur:

a. The holder of the mineral right signs the dedication language on the face of the final plat document; or

b. The holder of the mineral right releases its interest to the extent it authorizes disturbance of the property surface and the disruption of city utilities; or

c.. The applicant enters into an agreement with the City that he will either acquire the interest referenced in condition 2(b) above by December 31, 2006, or, if he is unsuccessful in doing so he will then pay the City costs for condemning that portion of the mineral right that would allow the disturbance of the property surface, or interference with underground utilities related to the property, and pay the condemnation award resulting there from.

3. The Covenants, Conditions and Restrictions ("CC&R's") approved by the City be recorded no later than the recording of the final plat documents.

4. The Homeowner's Association be legally established, and enter into an agreement with the City to pay for the costs associated with the removal of the temporary cul de sac, including an attorney's fees reimbursement provision and provisions for special assessments against the lots if the costs are not timely paid.

5. The property owner complete and have approved by the City, all conditions of preliminary plat approval, other than the item listed in item 6 below.

6. The property owner will enter into an agreement with the City, and provide the City with a bond equal to 150% of the estimated costs to complete the final asphalt lift by September 30, 2008, or when building permits have been issued for 80% of the buildable lots, whichever sooner occurs, with a two (2) year maintenance bond to be effective starting with the date the final lift is accepted and approved by the City. The City form bond has been provided to the property owner.

Now, therefore,

IT IS HEREBY RESOLVED that the final plat for the Eagle Creek subdivision is hereby approved, subject to the above six conditions, and the Mayor is authorized to execute the final plat documents and to cause the final plat documents to be recorded once he has proof that the above referenced conditions have been met and that all required signatures and certifications have been placed upon the final plat document.

BE IT FURTHER RESOLVED that ^{upon} compliance with the above conditions and the recording of the final plat documents, the conditions of Resolution 05-385 shall be deemed satisfied, and the conditions in the agreement attached to said Resolution superceded.

ADOPTED by the City Council at an open public meeting held on the 2d day of November, 2006.



Howard Botts, Mayor

Attest:

Brenda Streepy, City Clerk

CITY OF BLACK DIAMOND
PERFORMANCE & MAINTENANCE BOND WITH GUARANTY

Project # _____
Performance Bond Amount \$ 90,000
Maintenance Bond Amount \$ _____
Bond # 577992S

1. Date and Parties

This performance bond and guaranty is dated, for reference purposes only, the 26th day of October, 2006 and is executed by _____ as Principal(s), and NORRIS HOMES, INC. as Surety. _____
DEVELOPERS SURETY AND INDEMNITY COMPANY

2. General Recitals

A. The Principals have requested that the City of Black Diamond, King County, Washington ("City") grant final plat approval for the Bruckner's Way (Eagle Creek) ("Plat").

B. City Code section 17.20.050 requires that all improvements required to be constructed as conditions of preliminary plat approval, must be either constructed or bonded prior to final plat approval

C. The Principals have requested that the City allow them to bond the following improvements (collectively referred to as the "Improvements"):

Installation of the final 1 1/2" lift of asphalt upon all public streets located within the plat of Bruckner's Way (Eagle Creek)

3. Agreement to Perform

A. The principals hereby agree that construction of the Improvements shall be completed in accordance with City Code, and accepted by the City, no sooner than the time of final Building Department approval for the 32nd home within the plat and in no case later than September 30th of 2008.

B. The Principals further agree to maintain the Improvements to City standards for two years after the Improvements are constructed and accepted by the City.

4. Indemnity Agreement



The Principals hereby agree to indemnify and hold the City harmless from any and all claims that may be made against the City resulting directly or indirectly from any action or inaction of the Principals or their agents, employees or independent contractors relating directly or indirectly to work performed or to be performed under the terms of this agreement. This indemnity and hold harmless shall include City Costs related to defending against said claims, or in enforcing the terms of this agreement.

5. Obligation of Surety

A. If the Principals fail to construct the Improvements and receive City approval within the time limits set forth above, then the Surety shall be liable to the City for City Costs resulting from said failure to perform, but not to exceed the Bond amount

B. If the Principals fail to maintain the Improvements as required herein for length of time set forth above, then the Surety shall be liable to the City for City Costs resulting from the failure to maintain the Improvements, but not to exceed one tenth of the Bond amount.

C. For purposes of this document, the term "City Costs" shall mean all City expenditures, obligations or debt incurred, including, but not limited to: construction, equipment and material costs; City staff time; legal consultant fees; engineering consultant fees; financial consultant fees; publication, service or process and filing fees; mailing fees; cost of right-of-way, real property and easement acquisition; and fees and costs to other governmental jurisdictions, that are made or incurred by the City, whether or not legal action is commenced.

6. Address for Notices

All notices required hereunder shall be considered properly delivered when personally delivered, when received by facsimile, or on the third day following mailing, postage prepaid, certified mail, return receipt requested, to:

Principals:	Surety:
<u>Norris Homes, Inc.</u>	<u>Developers Surety and Indemnity Company</u>
name	name
<u>2053 Faben Drive</u>	<u>9750 Third Avenue NE, Suite 305</u>
street address	street address
<u>Mercer Island, WA 98040</u>	<u>Seattle, WA 98115</u>
City, State and zip code	City, state and zip code
<u></u>	<u>206-525-8288</u>
facsimile number	facsimile number

7. Default

A. If the Principals fail to complete the Improvements, as required hereunder in a timely manner then the City shall notify the Principal and the Surety that the Improvements must be completed to the satisfaction of the City Public Works Department within thirty days from the date of the Notice. If the Improvements are not so completed and approved within said thirty day

period then the Surety, upon written demand by the City, shall immediately tender to the City the full amount of the Performance Bond and the City will complete the improvements, deduct from the amount tendered the City Costs, and refund the remainder, if any, to the surety.

B. If the Principals fail to maintain the Improvements, as required hereunder, then the City shall notify the Principal and Surety that the Improvements must be repaired to the satisfaction of the City Public Works Department within 10 days from the date of the Notice. If the Improvements are not repaired and approved within said 10 day period, then the Surety shall tender to the City the full amount of the Maintenance bond, and the City shall retain that amount until the end of the maintenance period. If at the end of the maintenance period the tendered monies have not been expended for City Costs associated with Improvement maintenance, then the remaining amount shall be refunded to the Surety.

C. If the amount of the Maintenance and/or Performance Bond is inadequate to pay for City Costs, either because the City Costs exceed the Bond amounts or the Surety is no longer solvent or fails to timely tender the appropriate amount, then the City shall forthwith notify the Principals and they shall tender the deficiency to the City within five days of said notification. If the City commences legal action to collect said deficiency then the prevailing party in said legal action shall be entitled to judgment for their reasonable costs and attorney fees incurred therein. Each principal is jointly and severally liable for the obligations set forth herein.

8. Modification.

This document cannot be modified, nor the obligations created hereunder terminated, without the City's express written consent.

PRINCIPAL:

NORRIS HOMES, INC.

By: John Norris Pres
Title President

SURETY:

DEVELOPERS SURETY AND INDEMNITY COMPANY

By: Dan Bouc
Dan Bouc
Title Attorney-in-fact

PRINCIPAL:

Accepted by the City this _____ day of _____, 200__

By: _____

By: _____

Title _____

Title _____



*Alicia Mandy Warren
11-10-07
Kent, Washington*