

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6299

AN ORDINANCE 1) repealing Section 1.1 of Ordinance No. 5625, 2) creating a new Section 1.1 establishing new requirements for Wasatch Management & Development LLC (now known as BV Holdings, LLC) to construct the required mid-block pedestrian and vehicular Connector Road through the Wasatch Superblock, and 3) authorizing the City Manager or his designee to execute documents necessary to accomplish the requirements of this Ordinance.

WHEREAS, in 2004, Wasatch Management & Development LLC ("Wasatch") applied for Design Review approval for development of the northwest corner of the "Wasatch Superblock," bounded by NE 10th Street on the north, NE 8th Street on the south, 106th Avenue NE on the west, and 108th Avenue NE on the east; and

WHEREAS, since the time of the submission, Wasatch has become BV Holdings, LLC; and

WHEREAS, in 2005, Council passed Ordinance No. 5609 (subsequently amended by Ordinance No. 5625) vacating the Fox's Addition plat which comprised the Superblock owned by Wasatch; and

WHEREAS, Council approved the plat vacation based on a number of conditions; and

WHEREAS, one of those conditions required Wasatch to complete construction of the Connector Road by September 28, 2015; and

WHEREAS, construction of the superblock mixed use improvements by Wasatch did not proceed as originally anticipated due in part to the economic downturn; and

WHEREAS, the deadline to build the Connector Road has passed and the Connector Road has not been completed; and

WHEREAS, BV Holdings, LLC has sought relief from this deadline in the form of an extension of time in which to complete the Connector Road; and

WHEREAS, completion of the Connector Road continues to remain an obligation of BV Holdings under the terms of the plat vacation; and

WHEREAS, the parties have engaged in prolonged negotiations to find a mutually agreeable solution for the provision of the Connector Road and has finally reached an agreement; now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES  
ORDAIN AS FOLLOWS:

Section 1. Section 1.1 of Ordinance No. 5625 is hereby repealed in its entirety and a new section 1.1 is hereby created as follows:

Section 1.1 The Fox Addition plat, legally described as "FOX ADDITION TO BELLEVUE, according to the Plat thereof recorded in Volume 49 of Plats, Page 39, record of King County Washington" located in Bellevue; King County Washington is vacated subject to the following conditions:

- A. Mid-Block Connection. 106<sup>th</sup> Avenue NE to 108<sup>th</sup> Avenue NE.** BV Holdings, LLC dba BV-Wasatch Holdings, LLC [or successor in interest] (hereafter "BV Holdings") shall record a Public Access Easement with King County Records and the Bellevue City Clerk for public access that will provide a mid-block vehicular and pedestrian connection between 10<sup>th</sup> Avenue NE and 108<sup>th</sup> Avenue NE as depicted on the Road Plan (the "Connector Road"). For purposes of this ordinance, the Connector Road is defined as the full two-way permanent road, including curbs, gutters sidewalks, travel lands and any applicable on-street parking consistent with City adopted standards. The Connector Road shall be distinguished from the Interim Road described below. BV Holdings shall execute the Covenant Regarding Public Access easement within 30 days following the effective date of the Plat Vacation Ordinance. The easement for the Connector Road shall be no less than 36 feet wide throughout its length, but the final alignment and corridor design (such as roadway width, street lighting, sidewalk width and sidewalk materials) will be determined during the Design Review process. In addition, the applicant shall agree to grant to the City a public, non-exclusive ingress and egress easement on and above the connector road. The Public Access Easement may be granted in phases concurrent with development of the superblock. If the development does not proceed, the obligation to complete the Connector Road and provide the Public Access Easement still remains and shall run with the land. Further, the obligation to complete the Connector Road and provide the Public Access Easement shall be a condition of any additional or future development undertaken on any of the parcel within the Superblock. Provided that BV Holdings or its successors or assigns, may, at its sole discretion, accelerate the timing of the plat vacation and transfer of title of NE 9<sup>th</sup> Street by either i) providing a security device for the construction of the Connector Road improvements; or ii) execution and recordation of the Public Access Easement of the Connector Road. If BV Holdings elects to record the Public Access prior to construction of the Connector Road, the public right to access shall commence as the phases of the improvements are

completed. In the event the two-way Connector Road is not constructed in its entirety on or before that date which is the twentieth (20<sup>th</sup>) anniversary of the date of this ordinance, the City, at its option, shall be entitled to execute on the bond and using the proceeds thereof, construct and/or complete the two-way Connector Road.

- B. BV Holdings shall ensure that, within twelve (12) months of the effective date of this ordinance, an Interim Road within the area defined by the Access Easement, as described in Permit Number 13-135687 GD, Post Revisions 3 and 4 (the "Interim Road") is constructed. For purposes of this ordinance, the Interim Road is the one lane Connector Road.
- C. As development takes place on each parcel encumbered by the Public Access Easement for construction of the Connector Road, an adjacent corresponding two-way section of the Connector Road shall be completed by the then owner of such Parcel (in each case, an "Owner"), and completion of such section of the Connector Road shall occur within thirty (30) months after building permits for construction of the development on that Parcel have been issued. Similarly, if for some reason the entire two-way Connector Road is built at the same time and not in phases, such completion shall occur within thirty (30) months after building permits for construction of the development have been issued. During construction, access, other than via the Interim Road, will be available to existing buildings. Each Owner shall provide to the City, prior to demolition of a section of the Interim Road, a completion bond, or assignment of savings, or a letter of credit (each being "Security") equal to 150% of the road construction costs for the segment of the two-way Connector Road that corresponds to the demolished portion of the Interim Road, as determined by a valid construction estimate provided by Owner's contractor assigned to build that portion of the Connector Road. Unless otherwise agreed to in writing, in the event an Owner does not complete its portion of the two-way Connector Road as provided above, City may execute on its Security after the thirty (30) months has elapsed and 180 days' notice has been given to Owner or assignee.
- D. When all development of the property encumbered by the Public Access Easement has been substantially completed, the two-way Connector Road must be completed and approved by the City, but in no event shall any portion of the two-way Connector Road fail to be completed more than thirty (30) months after issuance of the building permits for such parcel.
- E. Any permits issued by the City for development of the property encumbered by the Public Access Easement shall require that the adjacent portion of the remainder of the Connector Road must be completed and shall require that the Connector Road be constructed in accordance with the then existing City requirements.

- F. For purposes of this Ordinance, Exhibit A represents the vicinity map and Exhibit B represents the site location map, which show the location of the Connector Road and Interim Road, the expectations for the frontage improvements, and other relevant aspects of the location and design of the Connector Road.
- G. The City agrees that the Interim Road can be demolished temporarily and rendered unusable pursuant to development of the property encumbered by the Public Access Easement and any subterranean parking pursued by BV Holdings, or its successors and/or assigns, under the location of the Connector Road. For purposes herein, the term “temporarily” shall not be construed to be any amount of time less than that required to fully develop the portion of the parcel or parcels being developed.
- H. BV Holdings may enter into agreements with a third party to complete the requirements of this Ordinance.
- I. BV Holdings shall initially bond for the completion of the entire Connector Road. As each segment of the Connector Road is completed, inspected, and approved by the City, the bond will be reduced proportionally. The initial bond shall cover the cost of completion of the entire Connector Road. The full amount of the bond shall be for 150% of the cost to construct the full Connector Road, including required frontage improvement. When, and if, the Interim Road is completed in accordance with this Ordinance, the City will reduce the bond to 150% of the cost to complete construction of the remaining portion of the Connector Road. In other words, BV Holdings shall bond for any portion of the Connector Road that has not been completed. The bond shall keep pace with inflation, tied to CPI-W, and shall be adjusted annually on the anniversary of the effective date of this Ordinance.

BV Holdings will continue to bond each year and carry the cost to provide the necessary assurances to the City that the Connector Road will ultimately be constructed at the time of future development of the adjacent parcels. If development of the Superblock occurs in phases, and if requested by BV Holdings in writing, the City will reduce the amount of the bond commensurate to the portion left to be completed. If development has not taken place, the bond obligation remains until such time as the two-way Connector Road is completed.

- J. The Connector Road will be a private road owned by the persons or entities on whose land the Connector Road is located, subject to the rights of the public and other persons described in the Access Easement. The cost and responsibility for maintenance shall be governed by a separate agreement between BV Holdings and third parties in accordance with that certain Road Maintenance Agreement recorded under King County Recording Number 20131001001961 (the “Road Maintenance Agreement”). In no event shall the

City have any responsibility for the costs and expenses incurred by BV, any third party or their successors in constructing, operating and maintaining the Connector Road, or under the Road Maintenance Agreement.

- K. Within 30 days of the effective date of this Ordinance the City, BV Holdings, LLC and any other party presently to be bound by the terms of this Ordinance shall execute an agreement consistent with this Ordinance.

Section 2. The City Manager or his designee is authorized to execute any and all documents necessary to accomplish the requirements of this Ordinance.

Section 3. This ordinance shall take effect and be in force thirty (30) days after its passage and legal publication.

Passed by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2016 and signed in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

(SEAL)

\_\_\_\_\_  
John Stokes, Mayor

Approved as to form:

Lori M. Riordan, City Attorney

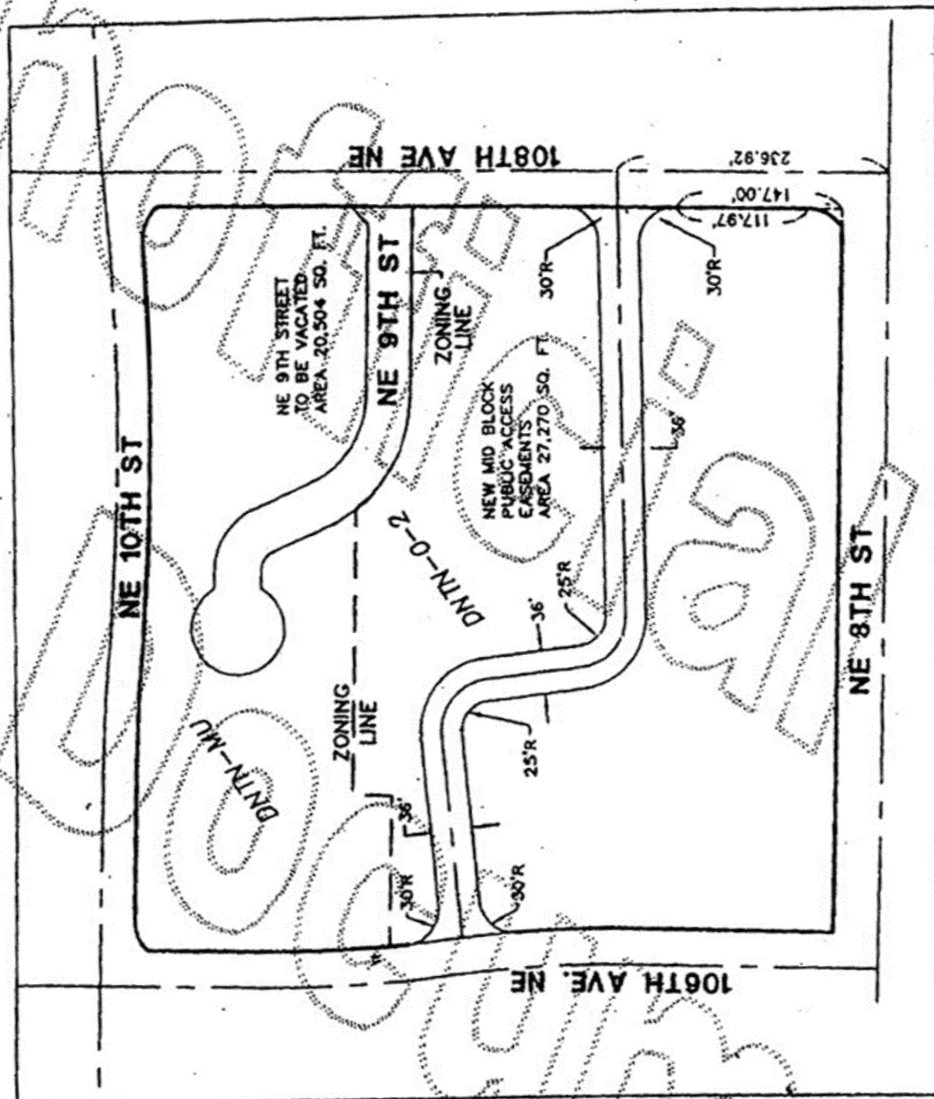
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Jerome Y. Roaché, Assistant City Attorney

Attest:

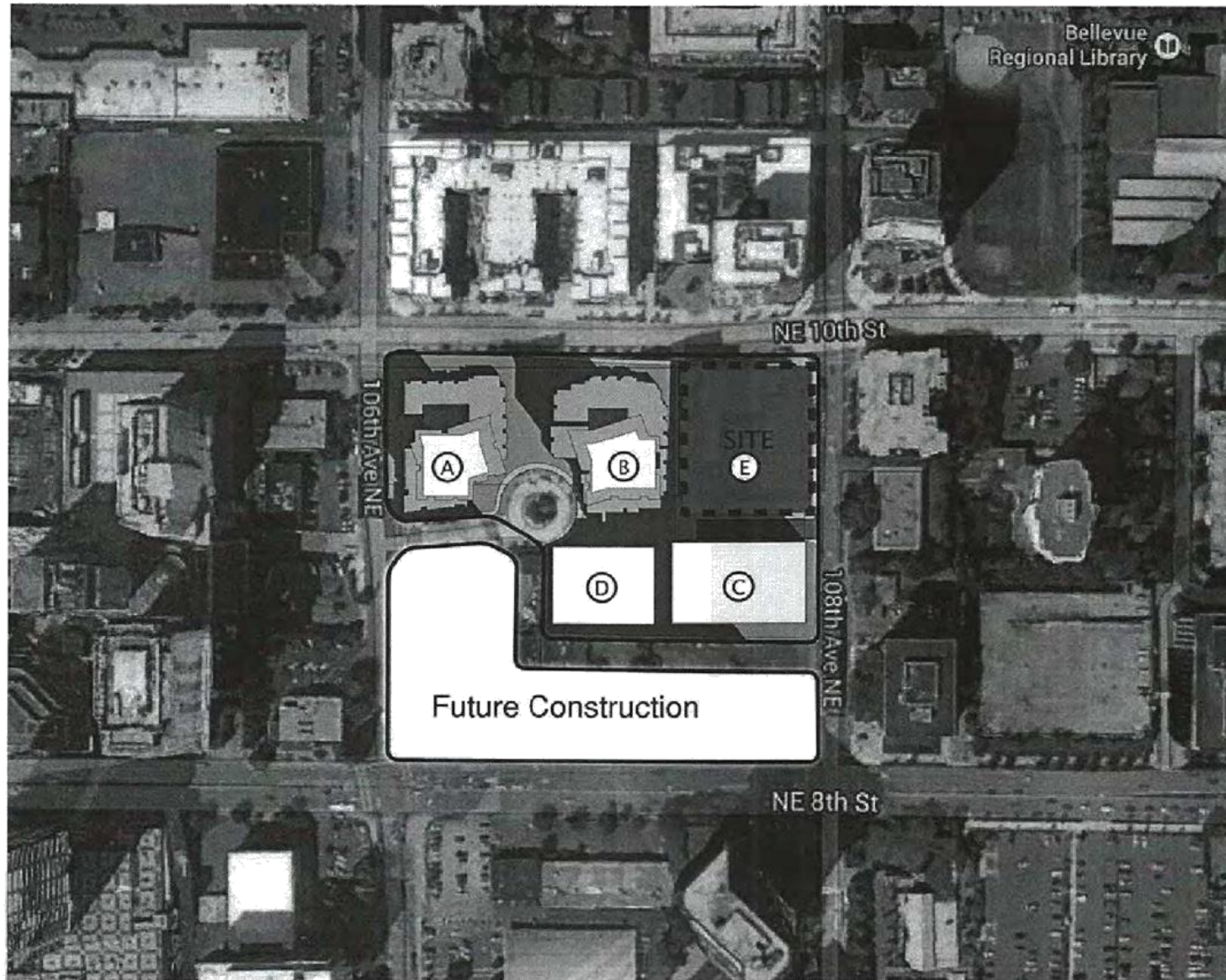
\_\_\_\_\_  
Kyle Stannert, City Clerk

Published \_\_\_\_\_

# Exhibit A Vicinity Map



## Exhibit B Site Location Map



- (A) TOWER 1
- (B) TOWER 2
- (C) 929 OFFICE  
- UNDER CONSTRUCTION
- (D) 929 PARKING GARAGE  
- UNDER CONSTRUCTION
- (E) HILTON GARDEN INN  
- UNDER DESIGN REVIEW