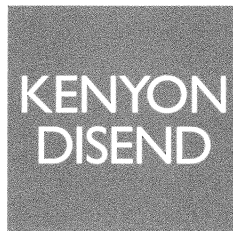


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August 1, 2017

Mr. Christopher J. Soelling  
Christopher J. Soelling, PLLC  
3000 Wells Fargo Center  
999 Third Avenue  
Seattle, WA 98104-4088

Re: *Forster Woods Homeowners Association v. City of North Bend*  
Mediation: August 8, 2017, 9:00 a.m.

Dear Mr. Soelling:

Thank you for serving as the mediator in this matter involving a dispute between the City of North Bend and the Forster Woods Homeowners Association (“HOA”) regarding ownership and maintenance responsibilities related to sidewalks and street trees within the landscape strips adjacent to public streets within the Forster Woods subdivision.

We represent the City of North Bend (“the City”), and look forward to a successful mediation session. In addition to my colleague Hillary Evans Graber, attending the mediation with me from the City will be City Administrator Londi Lindell and Public Works Director Mark Rigos.

In general, this matter involves the HOA’s assertion that the City is responsible to repair damaged sidewalks within the Forster Woods neighborhood caused by the growth of street trees over the past twenty or more years. Based on a bill of sale provided by the Forster Woods developer to the City after completion of the plat infrastructure, the HOA is demanding that the City promptly repair the sidewalks and remove the street trees. Based on the terms of the CC&Rs burdening Forster Woods, the final plat approval, and City code, the City denies that it is responsible for the claimed repairs.

The HOA drafted a Summons and Complaint seeking equitable relief compelling the City to immediately repair the sidewalks and remove the street trees to the HOA’s satisfaction, and asking that the superior court retain jurisdiction in order to “monitor City compliance with maintenance requirements of the Court.” Even if the HOA was to prevail, however, it would truly be a hollow victory. The bill of sale upon which it relies expressly obligates the City only

Mr. Christopher J. Soelling  
August 1, 2017  
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to maintain the sidewalks and street trees “in the same manner as though they had been constructed by the City.” Like every city throughout the state and beyond, North Bend has many sidewalks and other infrastructure that require repair and maintenance. The City works on those repairs in the normal course, and would do the same – no more and no less – for Forster Woods.

Even more fundamental to the failure of the HOA’s claims, however, the courts lack the authority to order the City to repair the sidewalks and remove the trees. “Further, the decision whether to repair the street in question, how to repair it or not to repair it at all is a discretionary decision not subject to judicial invasion of legislative power by the issuance of mandamus.”<sup>1</sup>

Finally, the HOA owns a storm water retention pond that it has not properly maintained. The HOA would very much like the City to assume ownership and future maintenance responsibility over the pond. Given the significant long-term costs associated with such an assumption, the City is unlikely to agree to do so. The City will, however, listen respectfully to and consider in good-faith any related proposals that the HOA may care to offer.

#### A. Factual Background.

The Forster Woods subdivision was built in four phases: Division 1 was completed in 1992, Divisions 2 and 4A were completed in 1993, and Division 3 was completed in 1994. The Forster Woods Homeowners Association (“HOA”) CC&Rs were recorded in 1992 (with two amendments recorded in 1993) and include the following language:

[E]ach Owner shall be responsible for landscaping and thereafter maintaining the planting strip along the right-of-way adjacent to each Owner’s Lot. The planting strip shall be planted with grass sod and street trees no more than thirty-five (35) feet apart, according to an approved list of street tree species designated by Declarant.<sup>2</sup>

Understandably, nothing in the CC&Rs conveys any responsibility for street trees or the planting strips to the City. Further, the CC&Rs state that “each Owner shall be responsible for landscaping and thereafter maintaining the planting strip along the right-of-way adjacent to each Owner’s Lot.” Ex. A, Section 4.07.018, p. 13.

In 1998, a “Bill of Sale” was executed as part of the City’s approval of a developer extension agreement, which provided:

---

<sup>1</sup> Burg v. City of Seattle, 32 Wn. App. 286, 296, 647 P.2d 517 (1982).

<sup>2</sup> Recording No. 9208200364, at Section 4.07.018, p. 13, attached hereto as Exhibit A (emphasis added). The July 1993 CC&R Amendment (Recording No. 9307282599 at p. 2, attached hereto as Exhibit B) provides “Section 4.07.18 is hereby amended to provide that front yard landscaping, in addition to the specific requirements set forth in Section 4.07.18, shall include evergreen and deciduous trees and shrubs.”

Mr. Christopher J. Soelling  
August 1, 2017  
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By accepting and recording this instrument, the City accepts and agrees to maintain the . . . sidewalks, street trees, . . . and other miscellaneous improvements that lie in the Public Right of Way, in the same manner as though they had been constructed by the City.

Notwithstanding the bill of sale, the mandatory provisions of the North Bend Municipal Code (NBMC) provide:

Landscape strips and sidewalks in the right-of-way shall be maintained by the adjacent landowner, or homeowners' association in the case of low-impact development (LID) residential streets designed per the provisions under subsection V of this section. The landowner or homeowners' association may modify the landscaping strip with city approval. If no trees exist in the landscape strip, the landowner may plant trees that meet requirements of the city, pursuant to Chapter 18.18 NBMC, Landscaping Regulations, or per the LID provisions under subsection V of this section. The adjacent landowner shall not allow landscaping to obstruct the sidewalk or parking area along the curb, shall keep grass mowed, and shall not create an obstruction to visibility for drivers negotiating a driveway, alley, or intersection. The adjacent landowner shall keep sidewalks free of all obstructions, snow, ice, and other substances that may be a hazard to the walking public.

NBMC 19.05.010(N) (emphasis added).

In early 2016, the HOA identified deficiencies in the sidewalks within Forster Woods. The HOA claimed that the roots of the growing street trees caused sidewalk panels to lift thereby creating a trip hazard, and requested that the City remedy the identified problems. On May 18, 2016, the HOA sent a letter to the City Council, demanding that the City acknowledge responsibility to maintain the street trees and sidewalks and insisting that the City take action immediately to address the resulting damage.

While disputing liability, the City has nonetheless taken the HOA's request seriously. The City had investigated the alleged damage and created an inventory, which it sent to the HOA by letter dated March 13, 2017, attached hereto as Exhibit C. It does appear that some of the trees planted by the Forster Woods developer have damaged the Forster Woods sidewalks. The City itemized and measured each sidewalk crack, and assigned a priority ranking to each sidewalk crack ranging from 1 (highest priority) to 8 (lowest priority). The City then placed the repairs into three separate categories. "Category 1" identified the 28 largest sidewalk

separations, all taller than 2.5 inches. “Category 2” included 40 smaller sidewalk separations. “Category 3” encompassed the remaining sidewalks and trees identified by the HOA that do not present any significant risk at this time.

The City then calculated the cost of the repairs demanded by the HOA. City Staff could undertake tree removal and stump grinding. The City’s Public Works Department does not pour concrete, place forms, or install rebar; those tasks would require a third-party contractor. The City has collected bids for the concrete work and estimates the cost to remove 68 trees and repair the sidewalks identified in Categories 1 and 2 would exceed \$500,000<sup>3</sup> and take several months.

The City has negotiated with the HOA, despite the City’s position that it is not responsible for repairs. The City has outlined realistic timelines for Category 1 and 2 sidewalk repairs and tree removal, and has asked the HOA to contribute 33% of the cost and to install replacement landscaping at its cost. The HOA has rejected any offer that does not provide immediate repairs or that requires the HOA to pay for more than 10% of the total repairs. The HOA’s April 20, 2017, counteroffer includes the unreasonable demand that the City remove 230 trees and repair and replace all sidewalk panels with a 2-inch separation—all by the end of 2017.

B. The City Is Not Responsible for Forster Woods’ Sidewalks and Trees.

The City does not own Forster Woods’ sidewalks and trees. To the extent that the 1998 Bill of Sale is intended by the HOA to be a contract executed subsequent to and apparently independent of final plat approval, it likely lacks the necessary consideration. The final plat approval required the Forster Wood developer to build the sidewalks and planting strips, and to plant the trees. The final plat approval required the developer to adopt CC&Rs, which obligate the lot owners to landscape and maintain the planting strips. Exs. A and B. The North Bend Municipal Code likewise assigns that obligation to the lot owners. NBMC 19.05.010(N).

Based on the plain terms of adopted City Code, the homeowners and the HOA are responsible for the cost of repairs to the sidewalks in Forster Woods, including the costs of tree removal. In fact, a homeowner’s failure to maintain the sidewalk fronting his or her home can constitute a public nuisance, subject to abatement by City code enforcement action:

Obstruction of the Public Right-of-Way. Use of property abutting a public street or sidewalk or use of a public street or sidewalk which causes any obstruction to traffic or to open access to the streets or sidewalks; provided, that this subsection shall not apply to events, parades, or the use of the streets or public rights-of-way when authorized by the city. This section includes the existence of drainage onto or over any sidewalk, street, or public right-of-way,

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<sup>3</sup> This cost assumes the City contracts for the work described and pays the required prevailing wages. If the HOA hires a contractor to perform the work, this cost could decrease.

and the existence of any debris or plant growth on sidewalks adjacent to any property;

NBMC 8.08.040(3)(j) (emphasis added). Here, private homeowners and/or the HOA are responsible for maintaining the trees and sidewalks in their community, regardless whether the HOA “sold” the sidewalks to the City or whether City owns the right-of-way itself.

C. If the City Is Responsible for Sidewalks and Trees in Forster Woods, There Is no Obligation to Make the Repairs Demanded by the HOA.

Even if it is determined that the City owns the sidewalks and trees in Forster Woods, the City has no duty to repair sidewalks or remove trees in Forster Woods at the homeowners’ demand.

A municipality’s decision whether and when to repair a sidewalk is discretionary. Burg v. City of Seattle, 32 Wn. App. 286, 291, 647 P.2d 517 (1982), citing State ex rel. Good Hope Gold & Copper Mining & Dev. Co. v. Morgan, 117 Wash. 214, 216, 200 P. 1085 (1921) and Hoquiam v. Grays Harbor County, 24 Wn.2d 533, 166 P.2d 461 (1946). In Burg v. City of Seattle, a landslide resulted in partial closure of a street that provided the only access to several residents on Perkins Lane West. Id. at 287. The residents sued for damages and a writ of mandamus to force the City of Seattle to repair the street. Id. The trial court granted a writ of mandamus, but the court of appeals reversed, holding:

The duty to maintain streets in a reasonably safe condition or suffer possible liability for damages proximately caused by a breach of such a duty does not create a duty to repair . . .

[W]e find no duty clearly imposed on the City of Seattle to repair or restore the damaged portion of Perkins Lane West enforceable by mandamus. Further, the decision whether to repair the street in question, how to repair it or not to repair it at all is a discretionary decision not subject to judicial invasion of legislative power by the issuance of mandamus.

Id. at 294, 296.

Similarly, our Supreme Court determined that a Grays Harbor County commissioner’s decision to close a bridge serving many Hoquiam residents was likewise discretionary, even though a statute authorized the expenditure of county funds for the construction and operation of a bridge within the city. Hoquiam, 24 Wn.2d 533 (1946).

Put simply, there is no legal mechanism for the HOA to force the City to repair a sidewalk panel or remove a single tree.<sup>4</sup> If the City owns the trees and sidewalks, the City may either utilize code enforcement to compel the abutting landowners to maintain the trees and sidewalks or may determine the need and priority of repairs under its discretionary authority and make repairs if and when the City determines it will do so.

D. The Repairs Demanded Are Unreasonable and Cost-Prohibitive.

Although the City has a duty to maintain its streets and sidewalks in a reasonably safe condition, it is not an insurer of the safety of pedestrians who traverse its streets.

[T]he municipality need not keep sidewalks absolutely safe, and is not responsible for every accident on them. Sidewalks do not have to be kept in perfect condition. A city is not an insurer of safety of those using its public ways. It is not actionable negligence that such walks are not exactly on the same level and that there are no steps or incline, provided the difference is slight and there is no apparent danger.

Sidewalks - Care required, 19 McQuillin Mun. Corp. § 54:53 (3d ed.); see also Edmonds v. Pac. Fruit & Produce Co., 171 Wash. 590, 591, 18 P.2d 507 (1933) (“[S]idewalks are not required to be perfect.”).

The repairs requested by the HOA are unreasonable and, in some cases, wholly unnecessary. The HOA recently asked the City to, among other things, remove 230 trees within the year and to repair and replace all associated sidewalk panels *prior* to tree removal. Even if the City believed the repairs were appropriate, and even if the City budget could accommodate such an enormous obligation, the project simply could not physically be completed in the time provided.

E. Retention Pond.

The HOA is unquestionably the owner of the storm water retention pond serving the Forster Woods neighborhood. The HOA sent a letter to the City indicating its belief that the “best interests of the public” would be served if the City would assume ownership and maintenance of the Forster Woods drainage pond. The City is unlikely to accept the HOA’s offer in that regard, but will consider in good faith any proposals that the HOA offers in the context of the mediation.

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<sup>4</sup> Whether the City is liable for damages resulting from dangerous conditions present on the sidewalks is a different question. But liability for injury proximately caused by disrepair is not the same as a mandate to repair.

Mr. Christopher J. Soelling  
August 1, 2017  
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F. Conclusion.

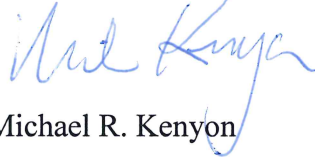
This is one neighborhood's attempt to force the City to pay for its desired repair work. Even if the City is legally responsible for the claimed damage, no legal basis exists by which the HOA can compel the City into taking action. Though the City has made reasonable attempts to accommodate the HOA, the HOA's demands exceed what is possible, both financially and logistically, for the City.

The City remains optimistic that the mediator can assist the parties to reach an acceptable resolution.

Please let me know if you have any specific questions or would like further information in advance of the mediation session.

Very truly yours,

KENYON DISEND, PLLC



Michael R. Kenyon

Enclosures

cc: Hon. Kenneth G. Hearing, Mayor  
Londi Lindell, City Administrator  
Mark Rigos, P.E., Public Works Director  
Gregory F. Cromwell, Esq.

RECORDED AT THE REQUEST OF  
AND AFTER RECORDING RETURN TO:

Beth A. Clark  
Foster Pepper & Shefelman  
Suite 3400, 1111 Third Avenue  
Seattle, Washington 98101

**DECLARATION  
AND  
COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS  
AND RESERVATIONS  
FOR  
FORSTER WOODS**

9208200364

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KING COUNTY RECORDS

09:23:00 AM

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8/18/92 3:03pm

**EXHIBIT A-1**

*rec'd  
8/18/92*



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THIS DECLARATION AND COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND RESERVATIONS FOR FORSTER WOODS (the "Declaration") is made by Forster Woods Limited Partnership, a Washington Limited Partnership ("Declarant"), as of this 20<sup>th</sup> day of August, 1992.

#### RECITALS

Declarant is the owner of certain real property (the "Plat of Forster Woods") located in the City of North Bend, King County, Washington. The Plat of Forster Woods has been granted preliminary plat approval by the City of North Bend, as depicted in the approved site plan which is a part of the preliminary plat approval granted pursuant to City of North Bend Ordinance No. 797 ("Preliminary Plat Approval").

Division 1 of the Plat of Forster Woods consists of Lots 1 through 50, legally described in Exhibit A hereto and depicted in the final plat of Division 1 of Forster Woods, recorded in Volume 161 of Plats, pages 67-76, records of King County, Washington. Division 1 also is referred to herein as the "Property."

Declarant wishes to subject the Property to this Declaration.

As hereinafter provided in this Declaration, Declarant retains and reserves the right, privilege and option to submit to the provisions of this Declaration at a later time and from time to time as a part of the Forster Woods community, all or any portion of certain of the property comprising the Plat of Forster Woods, as legally described in Exhibit B hereto (the "Additional Property").

NOW, THEREFORE, Declarant declares that all of the property described in Exhibit A, and any Additional Property described in Exhibit B as may by amendment be subjected to this Declaration, shall be held, transferred, sold, conveyed, leased, used and occupied subject to the covenants, conditions, restrictions, easements, assessments, and liens hereinafter set forth which are for the purpose of protecting the value and desirability of and which shall touch and concern and run with title to the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the described property or any portion thereof, and their respective heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

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**ARTICLE 1**  
**DEFINITIONS**

Section 1.01 Words Defined. For the purposes of this Declaration and any amendments hereto, the following terms shall have the following meanings and all definitions shall be applicable to the singular and plural forms of such terms:

1.01.01 "Additional Property" shall mean the real property shown on Exhibit B which may be included in the Forster Woods community, together with all improvements thereon.

1.01.02 "Association" shall mean the Forster Woods Owners' Association described in Article 4 of this Declaration, its successor and assigns.

1.01.03 "Board" shall mean the board of directors of the Association.

1.01.04 "Common Area" and "Common Area Improvements" shall mean all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners. The Common Areas may include maintenance areas, storm-water retention and detention tracts and areas, native growth protection easements, sidewalks, street lighting, if any, planted landscape features, signage and any other areas owned by the Association and designated as Common Areas by Declarant. The Common Areas to be owned by the Association at the time of conveyance of the first Lot to an Owner other than Declarant are described herein and depicted on the final recorded plat of the Property. Additional Common Areas designated as such on later divisions of the Plat of Picnic Point may be dedicated at the time Additional Property is added to the Property by amendment hereto.

1.01.05 "Construction" and "Constructed" shall mean any construction, reconstruction, erection or alteration of an improvement on a Lot, except wholly interior alterations to a then existing Structure.

1.01.06 "Declarant" shall mean Forster Woods Limited Partnership, a Washington Limited Partnership.

1.01.07 "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions, and Reservations for Forster Woods, as it may from time to time be amended.

1.01.08 "First Mortgage" and "First Mortgagee" shall mean, respectively: (a) a recorded Mortgage on a Lot that has legal priority over all other Mortgages thereon; and (b) the holder of a first mortgage. For purposes of determining the percentage of First Mortgagees approving a proposed decision or course of action in cases where a Mortgagee holds First Mortgages

on more than one Lot, such Mortgagee shall be deemed a separate Mortgagee for each such First Mortgage so held.

1.01.09 "Lot" shall mean any one of the fifty (50) lots numbered lots 1 through 50, together with the Structures and improvements, if any, thereon, and shall include any subsequent lots intended for a single-family dwelling shown on any recorded plat for a subsequent division within the Plat of Forster Woods at such time as such subsequent division is added hereto.

1.01.10 "Mortgage" shall mean a recorded mortgage or deed of trust that creates a lien against a Lot and shall also mean a real estate contract for the sale of a Lot.

1.01.11 "Mortgagee" shall mean the beneficial owner, or the designee of the beneficial owner, of an encumbrance on a Lot created by a mortgage or deed of trust and shall also mean the vendor, or the designee of a vendor, of a real estate contract for the sale of a Lot.

1.01.12 "Owner" shall mean the record owner, whether one or more Persons, of fee simple title to a Lot within the Property, including a contract seller except those having such interest merely for the performance of an obligation.

1.01.13 "Participating Builder" shall mean a Person who acquires from Declarant two or more Lots for the purpose of improving the same for resale to future Owners.

1.01.14 "Person" shall mean an individual, corporation, partnership, association, trustee, or other legal entity.

1.01.15 "Plat of Division 1" shall mean the recorded plat of Division 1 of Forster Woods and any amendments, corrections or addenda thereto subsequently recorded.

1.01.16 "Property" shall mean the land described on Exhibit A, together with all improvements thereon, and upon submission to the provisions of this Declaration, the land described in Exhibit B or any portion thereof, together with improvements thereon.

1.01.17 "Structure" shall mean any residence, accessory building, fence, wall, driveway, walkway, patio, deck, swimming pool, or the like constructed on a Lot.

1.01.18 "Transition Date" is defined in Section 4.10.

Section 1.02 Form of Words. The singular form of words shall include the plural and the plural shall include the singular. Masculine, feminine, and neuter pronouns shall be used interchangeably.

**ARTICLE 2**  
**PLAN OF DEVELOPMENT**

Section 2.01 Development of Property. The Forster Woods community initially shall consist of the Property described in Exhibit A. The Property contains fifty (50) Lots and one single-family residence may be constructed on each such Lot. The Property also includes the Common Areas owned by the Association and designated as such on the Plat of Division 1. All Lots within Forster Woods shall be and are hereby restricted exclusively to a single-family residential use and shall be subject to the standards and restrictions set forth in Article 4 hereof.

Declarant shall have the right, but not the obligation, for so long as Declarant owns any Lot or has the unexpired option to add the Additional Property or any portion thereof to the property, to make improvements and changes to all Common Areas for:

- (a) installation and maintenance of any improvements; and
- (ii) installation and maintenance of any water, sewer and other utilities systems and facilities.

Section 2.02 Plan of Development of Additional Property; Multi-Family Residential Areas. Declarant hereby reserves the option, to be exercised in its sole discretion, to submit from time to time the Additional Property or portion or portions thereof to the provisions of this Declaration and thereby to cause the Additional Property or a portion or portions thereof to become part of the Property. At this time, Declarant intends that the Forster Woods community shall include three (3) additional single-family residential divisions, in addition to the Property. Declarant intends that in the event all divisions are included in the Property, there shall be approximately 230 single-family residences, together with certain Common Areas devoted to passive and active recreational use by all Owners on an equal basis. However, Declarant is not obligated to include any Additional Property or improvements to the Property as presently configured and reserves the right to develop more or fewer Lots, and more or less recreational improvements within the Common Areas, at Declarant's sole option, consistent with the following:

2.02.01 The option to add the Additional Property as described herein may be exercised from time to time by Declarant in its sole discretion at any time prior to the expiration of the ten (10) year period commencing on the recording date of this Declaration;

2.02.02 Portions of the Additional Property may be added to the Property at different times, and there are no limitations fixing the boundaries of those portions or regulating the order, sequence or location in which any of such portions may be added to the Property;

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2.02.03 If the Additional Property or any portion thereof is added to the development, the layout and design of the Property shall be substantially in accordance with the Plat of Forster Woods previously approved by the City of North Bend;

2.02.04 The option reserved by Declarant to cause all or any portion of the Additional Property to become part of the development shall in no way be construed to impose upon Declarant any obligation to add all or any portion of the Additional Property or to construct thereon any improvements of any nature whatsoever. The option reserved to Declarant to add the Additional Property may be exercised by execution of an amendment to this Declaration which shall be filed with the Department of Records and Elections of King County, Washington, together with a revision of or addition to the site plan showing the Additional Property or such portion or portions thereof as are being added. Simultaneously therewith, Declarant shall convey to the Association all Common Areas contained within the Additional Property. Any such amendment shall expressly submit the Additional Property or such portion thereof to all the provisions of this Declaration. If the Additional Property or any portion thereof is added to the Property, then the number of votes in the Association shall also increase accordingly by the number of Lots in the Additional Property so that there shall continue to be a uniform and consistent method of voting an assessment within the Property.

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In addition, Declarant intends to develop a portion of the Plat of Forster Woods with multi-family residential apartment units as approved by the City of North Bend in the Preliminary Plat Approval. At the present time, Declarant's intent is to develop the multi-family area in two divisions which will include a total of 250 multi-family residences, together with certain recreational areas for the exclusive use of the residents of the multi-family units. The property to be developed as a multi-family residential area is not part of the Forster Woods Community and is not subject to this Declaration. In addition, the residents of the multi-family units are not "Owners" as that term is defined herein and shall not have the right or privilege to use the Common Areas owned by the Association nor shall they have any maintenance obligations therefor. Declarant may in its discretion develop separate covenants, conditions and restrictions which shall be binding upon the multi-family residential divisions.

Section 2.03 Interest Subject to Plan of Development.  
Every purchaser of a Lot within the Property shall purchase such interest and every Mortgagee and lienholder holding an interest therein shall take title, or hold such security interest with respect thereto, with notice of Declarant's plan of development as herein set forth and Declarant shall have and does hereby specifically reserve the right to add the Additional Property or any portion thereof to the Property as hereinabove provided. Declarant further reserves the right with respect to all Lots



within the Additional Property to convey to the Purchaser thereof the title to such interest, together with its appurtenant membership and voting rights in the Association. Any provision of this Declaration to the contrary notwithstanding, the provisions of the foregoing plan of development as set forth in this Article 2 may not be abrogated, modified, rescinded, supplemented or amended in whole or in part without the prior written consent of Declarant.

**ARTICLE 3**  
**COMMON AREAS AND EASEMENTS**

Section 3.01 Common Areas. "Common Areas" and "Common Area Improvements" shall include the Common Areas in tracts described or depicted in the Plat of Division 1 and as further described below. Specifically, Common Areas shall include the following tracts, all of which are depicted and described in the Plat of Division 1, and are to be maintained by the Association as further described herein:

- Tract A: Open Space and Landscaping Berm
- Tract B: Storm Detention Ponds A and B
- Tract C: Storm Detention Pond C, Open Space, Playfield, Tot Lot and Walking Paths
- Tract I: Open Space and Native Growth Protection Easement
- Tract J: Open Space and Native Growth Protection Easement
- Tract K: Open Space and Native Growth Protection Easement
- Tract L: Community Hall site, Tot Lot, Sport Court with basketball hoop and Walking Paths
- Tract M: Open Space and Native Growth Protection Easement with trail access to Tract C
- Tract N: Open Space and Native Growth Protection Easement

In addition, Common Areas shall include all recreational facilities from time to time constructed therein by Declarant in connection with development of the Additional Property. At the present time, Declarant's intent is to construct three tot lots with "big boy" type play equipment and a playfield within the Common Areas in connection with development of the Additional Property. ALL RECREATIONAL FACILITIES WITHIN COMMON AREAS, WHENEVER AND WHEREVER LOCATED, SHALL BE AVAILABLE FOR USE ON A NON-DISCRIMINATORY BASIS BY ALL OWNERS WITHIN THE PROPERTY, INCLUDING ANY ADDITIONAL PROPERTY FROM TIME TO TIME MADE A PART HEREOF.

Section 3.02 Association to Maintain Common Areas. The Association shall have the right and the obligation to maintain the Common Areas.

Section 3.03 Alteration of Common Area. Nothing shall be altered or constructed upon or removed from the Common Areas except upon the prior written consent of the Board. With respect to those Common Areas which include native growth protection

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easement areas, no construction or alteration shall be allowed within such native growth protection easement areas without the prior written consent of the City of North Bend.

Section 3.04 Easements for Utilities and Drainage.  
Declarant does hereby establish, create and reserve for the benefit of itself, the Association and all Owners, and their respective heirs and assigns, the following easements:

(a) An easement to TCI Cable, Tanner Electric, the City of North Bend, Washington Natural Gas Co., and Pacific Telecon, and their successors and assigns, under and upon the exterior ten (10) feet, parallel with and adjoining the street frontage of all lots and tracts, in which to install, lay, construct, renew, operate, and maintain underground conduits, cable, pipelines, water and sewer mains, and wires with necessary facilities and other equipment for the purpose of service to this subdivision and other property with electric, telephone, gas, cable T.V. service, sewer and water, together with the right to enter upon the lots at all times for the purposes stated; and,

(b) Easements two and one-half (2.5) feet in width, parallel with and adjacent to all interior lot lines, and five (5) feet in width, parallel with and adjacent to all rear lot lines for the purposes of utilities and private drainage

(hereinafter, the "Utilities and Drainage Easements"). No Lot Owner shall allow or permit any Structure, fill or landscaping to be located, installed or grow upon the area subject to the Utilities and Drainage Easements which might in any way damage or interfere with the installation and operation of such utilities and systems. In particular, no lines or wires for the transmission of electric current or for telephone use, cable t.v., fire or police signals, or for other purposes, shall be placed upon any Lot outside the Structures thereon unless the same shall be underground or in conduit attached to a Structure. Each person utilizing the Utilities and Drainage Easements areas located on another's Lot shall promptly restore such area to a condition as close to its original condition as reasonably practical after making such use. Each Lot Owner shall maintain the area of his Lot subject to the Utilities and Drainage Easements in a condition which will not interfere with the operation and maintenance of said utilities and systems.

Section 3.05 Storm Water Facilities. All storm water detention and retention facilities located in tracts or easements outside of the City of North Bend right-of-way shall be owned and maintained by the Association as a Common Area expense.

Section 3.06 Public Areas. Any public areas within the Property shall be subject to all ordinances, rules and regulations of the appropriate governmental agencies with jurisdiction.

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**ARTICLE 4**  
**CONSTRUCTION ON LOTS AND USE OF LOTS**

Section 4.01 Permitted Structures. No Structure of any kind shall be constructed, altered, added to or maintained upon any Lot or any other part of the Property, except: (a) improvements or structures which are constructed by Declarant or its agents or assigns; (b) such structures as are approved by the Board in accordance with this Article 4; or (c) structures which pursuant to this Article 4 do not require consent of the Board.

Section 4.02 Uniformity of Use and Appearance. One of the purposes of this Declaration is to assure within the Property: (a) a uniformity of use and quality of workmanship, materials, design, maintenance and location of Structures with respect to topography and finish grade elevation; and (b) that there will be no undue repetition of external designs. It is in the best interests of each Owner that such uniformity of use be maintained as hereinafter provided. Architecture of all structures shall be limited to traditional styles. Contemporary style architecture will not be considered for approval under Section 4.03. No building (except for accessory structures) shall be erected, altered, placed or permitted to remain on any Lot other than one single family dwelling. Accessory structures including storage buildings are permitted as allowed by the requirements of this Article 4. Notwithstanding anything herein set forth, the Construction of any Structure shall comply with the more restrictive of either (i) the terms and conditions of this Declaration or (ii) the laws, codes, ordinances and regulations of any governmental entity having jurisdiction.

Section 4.03 Submission of Plans. At least twenty (20) days before commencing Construction of any Structure on any Lot, the Owner shall submit to the Board two (2) complete sets of detailed building, Construction, surface water run-off control and landscaping plans and specifications and a site plan showing the location of all proposed Structures (the plans, specifications and site plans are individually and collectively referred to herein as the "Plans"). The Plans shall be submitted in a form satisfactory to the Board, which may withhold its approval by reason of its reasonable dissatisfaction with the location of the Structure on the Lot, color scheme, finish, architecture, height, impact on view from another Lot or Lots, appropriateness of the proposed Structure, materials used therein, or because of its reasonable dissatisfaction with any other matter which, in the reasonable judgment of the Board, would render the proposed Structure inharmonious with the general plan of development of the Property or other Structures nearby. The Board's approval or disapproval of Plans shall be in writing and approval shall be evidenced by written endorsement on such Plans, one copy of which shall be delivered to the Owner of the Lot upon which the Structure is to be Constructed. In any judicial action to enforce the Board's decision the losing party shall pay the

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prevailing party's attorney's fees and costs including those incurred in connection with any appeal.

Section 4.04 Construction. No Structure shall be Constructed or caused to be Constructed on any Lot unless the Plans for the Structure, including landscaping, have been approved in writing by the Board. The Board's review and approval or disapproval of Plans on the basis of cost, aesthetic design, harmony with previously approved Structures on or about other Lots in the Property, location, or consistency with this Declaration shall be absolute and enforceable in any court of competent jurisdiction. The Board's approval of any Plans, however, shall not constitute any warranty or representation whatsoever by the Board or any of its members that such Plans were examined or approved for engineering or structural integrity or sufficiency or compliance with applicable governmental laws, codes, ordinances and regulations, and each Owner hereby releases any and all claims or possible claims against the Board or any of them, and their heirs, successors and assigns, or of any nature whatsoever, based upon engineering or structural integrity or sufficiency or compliance with applicable governmental laws, codes, ordinances and regulations.

If, after the expiration of two (2) years from the closing of any sale or other conveyance of a Lot to Owner, Owner shall not have in good faith commenced the construction of an acceptable Structure thereon, Declarant may, at its option, rescind such sale or conveyance, refund all or such portion of the purchase price as has been paid, if any, without interest thereon, and enter into possession of such Lot.

Section 4.05 Minimum Size.

4.05.01 Floor Area. The floor area of the main house Structure, exclusive of open porches and garages shall be not less than: (a) 1,350 square feet for a dwelling containing a single level; and (b) 1,650 square feet for a dwelling containing two levels. The Board shall have the discretion to reduce minimum floor area requirements upon a showing of topographical or other physical constraints which limit buildable area.

4.05.02 Lot Size. No lot or portion of a lot in this plat shall be divided and sold or resold, or ownership changed or transferred whereby the ownership of any portion of this plat shall be less than the area required for the use district in which the lot is located.

Section 4.06 Maximum Height. All buildings or Structures shall be Constructed in accordance with the City of North Bend and other applicable codes.

Section 4.07 Use Restrictions.

4.07.01 Residential Use. The dwellings within the Structures are intended for and restricted to use as single

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family residences only, on an ownership, rental, or lease basis, and for social, recreational, or other reasonable activities normally incident to such use. In addition to the foregoing, Declarant and any Participating Builder may use dwellings it owns as sales offices and models for sales of other Lots.

4.07.02 Maintenance of Buildings and Lots. Each Owner shall, at the Owner's sole expense, keep the interior and exterior of the Structure on the Owner's Lot, as well as the Lot, in a clean and sanitary condition, free of rodents and pests, and in good order, condition and repair and shall do all redecorating, painting, landscaping, and maintenance at any time necessary to maintain the appearance and condition of the Structure and the Lot.

4.07.03 Completion of Construction. Any Structure erected or placed on any Lot shall be completed as to external appearance within nine (9) months from the date Construction is started, however, with good cause shown, the Board may extend this term. All yards and landscaping must be completed within three (3) months from the date of completion of the Structure, however, with good cause shown, the Board may extend this term. All Lots shall be maintained in a neat and orderly condition during Construction.

4.07.04 Parking. No trucks, campers, trailers, boats, motorcycles or other vehicle or any part thereof shall be parked or permitted to remain on any Lot, unless the same is stored in a garage. No such vehicles shall be parked overnight on any street adjoining any Lot; provided that such vehicles belonging to guests may occasionally be so parked.

4.07.05 Signs. No sign of any kind shall be displayed to the public view on or from any Lot without the prior written consent of the Board, except for "For Rent" or "For Sale" signs in a form not prohibited by any rules and regulations of the Board. This Section shall not apply to the Declarant or any Participating Builder.

4.07.06 Animals. Animals, including horses, livestock, poultry, reptiles or pigs, shall not be kept on any lot. Household pets shall not exceed three in number; provided that unweaned puppies or kittens may be kept. All animal enclosures must be kept in a clean, neat and odor-free condition at all times. All animals must be kept at a distance of not less than forty (40) feet from abutting Structures and storm water facilities. The Board may at any time require the removal of any pet which it finds is disturbing other Owners or tenants unreasonably, in the Board's determination, and may exercise this authority for specific pets even though other pets are permitted to remain. Notwithstanding anything set forth herein all Owners shall comply with all applicable governmental laws, codes, ordinances, and regulations pertaining to animals.

4.07.07 Temporary Structures. No Structure of a temporary character, trailer, tent, shack, garage, barn, or other outbuilding shall be installed, placed or used on any Lot as a residence, either temporarily or permanently.

4.07.08 Clothes Lines. No washing, rugs, clothing, apparel or any other article shall be hung from the exterior of any Structure or on a Lot so as to be visible from the streets and roadways adjoining the Lots.

4.07.09 Radio and Television Aerials. No television or radio aerial shall be erected or placed on any Lot which is more than six (6) feet in height above the highest point (exclusive of chimneys) on the Structure upon which it is erected. No rotary beams, separate towers or other similar devices shall be constructed on any Lot without the written approval of the Board. No satellite receiving dishes or other such electronic receiving devices shall be located on any Lot in a location that is visible from the adjoining homes, streets, and roadways. All aerial installations must receive prior written approval from the Board.

4.07.10 Trash Containers and Debris. All trash shall be placed in sanitary containers either buried or screened so as not to be visible from adjoining Structures or streets or roadways. No Lot or any portion thereof shall be used as a dumping ground for trash or rubbish of any kind. Yard rakings, dirt and debris resulting from landscaping work or Construction shall not be dumped onto adjoining lots or streets or roadways. Compost piles may be kept upon the Lots provided they are kept in a clean, neat and sanitary condition.

4.07.11 Offensive Activity. No trade, craft, business, profession, commercial or manufacturing enterprise or business or commercial activity of any kind, including day schools, nurseries, or church schools, shall be conducted or permitted on any Lot, nor shall goods, equipment, vehicles or materials used in connection therewith, be kept, parked, stored, dismantled or repaired outside of any Lot or any street within the Property. No noxious or offensive activity, including but not limited to the creation of excess levels of noise, shall be carried on in any Lot, nor shall anything be done therein which may be or become an annoyance or nuisance to other Owners or tenants.

4.07.12 Setbacks. Unless a greater setback is required by the City of North Bend, no Structure shall be located closer than: (a) twenty (20) feet from the front line of any Lot; or (b) ten (10) feet from the sidelines of any Lot. Rear setbacks will be per City of North Bend requirements. A special setback is required for Lots 34 and 35 as follows: A fifty (50) foot building setback from the upland edge of the adjacent wetland is required for all Structures. For purposes of this subsection 4.07.12, eaves, steps and open porches shall not be considered as part of the Structure; provided that this Section

shall not be construed to permit any portion of a Structure on any Lot to encroach upon any other Lot. All Structures shall also comply with all applicable governmental laws, codes, ordinances and regulations pertaining to setbacks. ALL LOTS WHICH ARE SUBJECT TO NATIVE GROWTH PROTECTION EASEMENTS SHALL MAINTAIN A TEN (10) FOOT BUILDING SETBACK THEREFROM.

4.07.13 Fences. No fence shall be constructed on any Lot without the prior written approval of the Board, which approval may be granted or denied in the Board's sole discretion. All fences shall be 1" x 6" cedar construction or better and shall otherwise be constructed in a good and workman-like manner, shall be artistic in design and shall not detract from the appearance of any adjacent Structures. In addition, the finished wood side of the fence shall face the adjacent Lot(s). No fence shall exceed six (6) feet. No fence shall be allowed within the front yard setback. Any fence adjacent to a garage shall be located a minimum of fifteen (15) feet back from the front elevation of the garage, and any fence located adjacent to a residence shall be located a minimum of fifteen (15) feet back from the front elevation of the residence.

4.07.14 Underground Utilities. All utility lines or wires located outside a dwelling unit shall be in conduits attached to such units or underground.

4.07.15 Drainage. All building downspouts, footing drains, and drains from all impervious surfaces, including without limitation, patios and driveways, shall be connected to the approved permanent storm drain outlet as shown on the approved construction drawings No. 13 and 23 of Forster Woods Division 1, dated March 5, 1992, on file with the City of North Bend. This plan shall be submitted with the application for any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. All roof drains shall be connected to public storm sewer system. Absolutely no dumping of any pollutants into the storm sewer systems shall be permitted.

4.07.16 Damage. Any damage to streets, plat improvements, entry structure, fences, landscaping, mailboxes, lights and lighting standards by Lot Owners, their children, contractors, agents, visitors, friends, relatives or service personnel shall be repaired by such Owner within twelve (12) days from the occurrence of such damage.

4.07.17 Driveways. All driveways shall be paved with concrete from the edge of the paved street to connect with the paved surface of the floor of the garage.

4.07.18 Front Yard Landscaping. All front yards of Lots shall be landscaped primarily with grass sod from the edge of the right-of-way to within ten (10) feet of the residence; provided, however, that within such front yard areas may be

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located flower beds, paths and patio areas. In addition, each Owner shall be responsible for landscaping and thereafter maintaining the planting strip along the right-of-way adjacent to each Owner's Lot. The planting strip shall be planted with grass sod and street trees no more than thirty-five (35) feet apart, according to an approved list of street tree species designated by Declarant.

4.07.19 Street Planter Island Maintenance. The street planter islands within the Property shall be landscaped by Declarant and thereafter maintained by the Association as a Common Area expense.

4.07.20 Access Tract Maintenance. The access tract located between Lots 46 and 49 as designated on the Plat of Division 1 is to provide access to Lots 47 and 48 and shall be maintained solely by the Owners of Lots 47 and 48.

4.07.21 View Control Plan. The Board shall have the authority to promulgate, alter, amend and enforce a view control plan for the purpose of providing a uniform and equitable system for the maintenance of views from Lots within the Property. Such plan may obligate Owners to prune, trim or remove trees, shrubs or other vegetation as necessary to protect and maximize views. The expense of any such required pruning, trimming or removal shall be borne as agreed between affected parties or as determined by the Board.

4.07.22 Mailboxes. All mailboxes must be of a standard accepted by the U.S. Postal Authorities and must be located in those areas so designed by the U.S. Postal Department. Structures containing mailboxes must be approved by the Board.

4.07.23 Compliance with Laws. Notwithstanding anything to the contrary set forth herein, each Owner and the Association shall comply with the more restrictive of either (a) the terms and conditions of this Declaration, or (b) the laws, codes, ordinances, and regulations of any governmental entity having jurisdiction.

Section 4.08 Damage Deposit. For any undeveloped Lot, each Owner shall deposit with Declarant at closing, a damage deposit of \$500 for each Lot that is the subject of said closing. The Damage Deposit is security to Declarant that Owner will comply with Owner's obligations and undertakings as set forth herein. As such time as Owner has completed a dwelling on said Lot, together with all appurtenances, and said dwelling is landscaped, as required herein, and upon written request by Owner for inspection, Declarant and Owner shall jointly inspect said plat improvements in the immediate area of the specific Lot for which the written inspection was requested. The purpose of the inspection will be to ascertain if there has been damage occasioned to the plat improvement by acts of Owner or those for whom Owner is responsible, and final compliance with landscape



and design plans and specifications as provided previously by Declarant.

If there has been no damage to plat improvements occasioned by Owner or those for whom Owner is responsible, and there has been full compliance with the undertakings of Owner as set forth herein, and in accordance with prior approval as given by the Board and/or Declarant, the Damage Deposit shall be returned to Owner, without interest, as applicable to said respective Lot.

If there has been damage to plat improvements, or other violations of Owner's undertakings as set forth herein, the parties will endeavor to list the same and will attempt to attach a monetary cost thereto, and will attempt to resolve responsibility therefor and the date by which the same will be repaired. At such time as the damages or violations have been fully repaired, restored or replaced, then the Damage Deposit applicable to said Lot will be refunded without interest.

If there has been damage to plat improvements or violations of undertakings assumed by Owner herein, and the matter is not otherwise resolved to the satisfaction of Owner and Declarant, then in said event and after expiration of thirty (30) calendar days from said joint inspection, Declarant may, but shall not be obligated to, repair, replace or correct the same and deduct the cost from the Damage Deposit and remit any balance to Owner.

If the cost of repair, restoration, replacement or correction, or cost of complying with any undertaking assumed by Owner as provided herein, is in excess of \$500, and irrespective of whether Declarant elects to effectuate said repair, restoration, replacement or correction, Owner shall remain liable for the full cost of any repair, restoration, replacement or correction.

#### ARTICLE 5

#### **FORSTER WOODS OWNERS' ASSOCIATION**

Section 5.01 Organization. The Forster Woods Owners' Association is an unincorporated association of all Owners. It is contemplated that Declarant shall file articles of incorporation after the date hereof in order to incorporate the Association under the laws of the state of Washington relating to nonprofit corporations. Declarant also shall adopt bylaws which, together with the articles and this Declaration shall govern the affairs of the Association.

Section 5.02 Board of Directors. The affairs of the Association shall be governed by a Board of Directors (the "Board") which shall be composed of one or more members, to be determined in the reasonable discretion of the Board. The Declarant initially shall constitute the Board and shall be fully authorized to exercise the powers of the Association until the

Transition Date as defined in Section 5.10. Subject to any specific requirements hereof, the Board shall have authority to establish operating rules and procedures. In the event of death or resignation of any member or members of the Board, the remaining member or members, if any, shall have full authority to appoint a successor member or members. Members of the Board shall not be entitled to any compensation for services performed pursuant to this Declaration.

Section 5.03 Qualification for Membership. Each fee owner of a Lot (including Declarant) on the Property shall be a member of the Association and shall be entitled to one membership and one vote for each Lot owned; provided, that if a Lot has been sold on contract, the contract purchaser shall exercise the rights of an Owner for purposes of the Association, and this Declaration except as hereinafter limited, and shall be the voting representative unless otherwise specified. Ownership of a Lot shall be the sole qualification for membership in the Association.

Section 5.04 Transfer of Membership. The Association membership of each Owner (including Declarant) shall be appurtenant to the Lot giving rise to such membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed, or alienated in any way except upon the transfer of title to the Lot and then only to the transferee of title to the Lot. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Lot shall operate automatically to transfer the membership in the Association to the new Owner.

Section 5.05 Number of Votes. The total voting power of the Association at any given time shall equal the number of Lots included within the Property at that time. The Owner or Owners of each Lot within the Property shall be entitled to one vote. If a Person (including Declarant) owns more than one Lot, he or she shall have the votes appertaining to each Lot owned.

Section 5.06 Voting. If a Lot is owned by husband and wife and only one of them is at a meeting, the one who is present will represent the marital community. The vote for a Lot must be cast as a single vote, and fractional votes shall not be allowed. If joint Owners are unable to agree among themselves how their vote shall be cast, they shall lose their right to vote on the matter in question.

Section 5.07 Pledged Votes. An Owner may, but shall not be obligated to, pledge his vote on all issues or on certain specific issues to a Mortgagee; provided, however, that if an Owner is in default under a mortgage or deed of trust on his Lot for ninety (90) consecutive days or more, the Owner's Mortgagee shall automatically be authorized to declare at any time thereafter that the Lot Owner has pledged his vote to the Mortgagee on all issues arising after such declaration and during the continuance of the default. If the Board has been notified of any

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such pledge to a Mortgagee, only the vote of the Mortgagee will be recognized on the issues that are subject to the pledge.

Section 5.08 Annual and Special Meetings. Within the period commencing thirty (30) days before the Transition Date and ending thirty (30) days after the Transition Date, there shall be a meeting of the members of the Association and thereafter there shall be an annual meeting of the members of the Association in the first quarter of each fiscal year at such reasonable place and time as may be designated by written notice from the Board delivered to the Owners no less than thirty (30) days before the meeting. At the first such meeting, and at each annual meeting thereafter, the Owners shall elect by majority vote individuals to serve as Board members until a successor is elected at the next annual meeting. Each Lot shall be entitled to one vote for each director and the voting for directors shall be noncumulative. The financial statement for the preceding fiscal year (if any) and the budget the Board has adopted for the pending fiscal year shall be presented at the annual meeting for the information of the members. Special meetings of the members of the Association may be called at any time upon not less than fourteen (14) days prior written notice to all Owners, for the purpose of considering matters which require the approval of all or some of the Owners, or for any other reasonable purpose. Any First Mortgagee of a Lot may attend or designate a representative to attend the meetings of the Association.

Section 5.09 Books and Records. The Board shall cause to be kept complete, detailed, and accurate books and records of the receipts and expenditures (if any) of the Association, in a form that complies with generally accepted accounting principles. The books and records, authorizations for payment of expenditures, and all contracts, documents, papers, and other records of the Association shall be available for examination by the Lot Owners, Mortgagees, and the agents or attorneys of either of them, during normal business hours and at any other reasonable time or times.

Section 5.10 Transition Date. As noted above, Declarant initially shall constitute the Board and shall be fully authorized to exercise the powers of the Association until such time as Declarant turns over control to the Owners or the occurrence of the Transition Date, whichever occurs sooner. The "Transition Date" shall be: (a) the date designated by Declarant in a written notice to the Owners, which date may be by Declarant's election any date after this Declaration has been recorded; or (b) ten (10) years after the recording of this Declaration, whichever occurs sooner. From and after the Transition Date, the then Owners of sixty percent (60%) of the Lots in the Property shall have the power through a written instrument recorded in the real property records of King County, Washington to restrict or eliminate all or any of the approval powers and duties of the Board set forth in this Declaration, excluding the duty to maintain the Common Areas.

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**ARTICLE 6**  
**NOTICES FOR ALL PURPOSES**

All notices given under the provisions of this Declaration or rules or regulations of the Association shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, the notice shall be deemed to have been delivered on the third day of regular mail delivery after a copy has been deposited in the United States mail, first class, postage prepaid, addressed to the Person entitled to such notice at the most recent address known to the Board. Mailing addresses may be changed by notice in writing to the Board. Notices to the Board may be given to any Board member or mailed to the following address:

Forster Woods Limited Partnership  
c/o Mr. Jeffrey Wright  
J. Wright Development Company  
Suite 3100, 1111 Third Avenue  
Seattle, Washington 98101

The Board's address may be changed from time to time by the execution and recording of an instrument in the real property records of King County, Washington which (a) refers to this Declaration and this Article 6 and (b) sets forth the Board's new address.

**ARTICLE 7**  
**AUTHORITY OF THE BOARD**

Section 7.01 Adoption of Rules and Regulations. The Board is empowered to adopt, amend, and revoke on behalf of the Association detailed administrative rules and regulations necessary or convenient from time to time to insure compliance with the general guidelines of this Declaration to promote the comfortable use and enjoyment of the Property and to govern the operation and procedures of the Association. The rules and resolutions may, without limitation, authorize voting by proxy or mail, or both, on Association matters. The rules and regulations of the Association shall be binding upon all Owners and occupants and all other Persons claiming any interest in the Property.

Section 7.02 Enforcement of Declaration, Etc. The Board shall have the power to enforce the provisions of this Declaration, and the rules and regulations of the Association for the benefit of the Association. The failure of any Owner to comply with the provisions of this Declaration, or the rules and regulations of the Association will give rise to a cause of action in the Association (acting through the Board) and any aggrieved Lot Owner for recovery of damages, or injunctive relief, or both. If a legal action is brought to interpret or enforce compliance with the provisions of this Declaration, or the rules or regulations of the Association, the prevailing party shall be entitled to

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judgment against the other party for its reasonable expenses, court costs, and attorneys' fees in the amount awarded by the Court.

Section 7.03 Goods and Services. The Board shall acquire and pay for as common expenses of the Association all goods and services reasonably necessary or convenient for the efficient and orderly maintenance of all portions of the Common Areas not maintained by public utility companies or a governmental entity. The goods and services shall include (by way of illustration and not limitation) utility services for the Common Areas; policies of insurance; and maintenance, repair, landscaping, gardening, and general upkeep of the Common Areas. The Board may hire such employees as it considers necessary.

Section 7.04 Protection of Common Areas. The Board may spend such funds and take such action as it may from time to time deem necessary to preserve the Common Areas, settle claims, or otherwise act in what it considers to be the best interests of the Association.

#### ARTICLE 8 BUDGET AND ASSESSMENT FOR COMMON EXPENSES

Section 8.01 Fiscal Year; Preparation of Budget. The Board may adopt such fiscal year for the Association as it deems to be convenient. Unless another year is adopted, the fiscal year will be the calendar year. As soon as the Board in its discretion deems advisable and prior to the expiration of each fiscal year thereafter, the Board shall establish a budget for the costs of maintaining the Common Area during the ensuing fiscal year. The Board shall then assess each Lot within the Property with its pro rata share, based upon the number of Lots then within the Property, of such estimated costs. The Board, at its election, may require the Lot Owners to pay the amount assessed in equal quarterly installments or in a lump sum annual installment. The Board shall notify each Lot Owner in writing at least ten days in advance of each assessment period of the amount of the assessment for said period, which notice shall be accompanied by a copy of the budget upon which the assessment is based. The assessments levied by the Board shall be used exclusively to promote the recreation, health, safety and welfare of the Lot Owners and for the improvement and maintenance of the Common Areas.

Section 8.02 Certificate of Unpaid Assessments. Any failure by the Board or the Association to make the budget and assessments hereunder before the expiration of any fiscal year for the ensuing fiscal year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owners from the obligation to pay assessments during that or any subsequent year, and the assessment amount and payment method established for the preceding

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fiscal year (if any) shall continue until a new assessment is established. Upon the request of any Owner or Mortgagee or prospective Owner or prospective Mortgagee of a Lot, the Board will furnish a statement of the amount, if any, of unpaid assessments charged to the Lot. The statement shall be conclusive upon the Board and the Association as to the amount of such indebtedness on the date of the statement in favor of all purchasers and Mortgagees of the Lot who rely on the statement in good faith. All assessments and other receipts received by the Association shall belong to the Association.

Section 8.03 Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to all Lots at such time as the Board in its absolute discretion deems advisable. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year.

**ARTICLE 9**  
**LIEN AND COLLECTION OF ASSESSMENTS**

Section 9.01 Assessments Are a Lien; Priority. All unpaid sums assessed by the Association for the share of the common expenses chargeable to any Lot and any sums specially assessed to any Lot under the authority of this Declaration shall constitute a lien on the Lot and all its appurtenances from the date the assessment becomes due and until fully paid. The lien for such unpaid assessments shall be subordinate to tax liens on the Lot in favor of any assessing unit and/or special district, and to all sums unpaid on all First Mortgages of record, but, to the extent permitted by applicable law, shall have priority over all other liens against the Lot. A First Mortgagee that obtains possession through a Mortgage foreclosure or deed of trust sale, or by taking a deed in lieu of foreclosure or sale, or a purchaser at a foreclosure sale, shall take the Lot free of any claims for the share of common expenses or assessments by the Association chargeable to the Lot which became due before such possession, but will be liable for the common expenses and assessments that accrue after the taking of possession. The Lot's past-due share of common expenses or assessments shall become new common expenses chargeable to all of the Lot Owners, including the Mortgagee or foreclosure sale purchaser and their successors and assigns, in proportion to the number of Lots owned by each of them. Notwithstanding any of the foregoing, however, the Owner and the real estate contract purchaser shall continue to be personally liable for past due assessments as provided in Section 9.03. For purposes of this Section, "Mortgage" does not include a real estate contract and "Mortgagee" does not include the vendor or the assignee or designee of a vendor of a real estate contract.

Section 9.02 Lien May Be Foreclosed. The lien for delinquent assessments may be foreclosed by suit by the Board, acting on behalf of the Association, in like manner as the foreclosure

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of a mortgage of real property. The Board, acting on behalf of the Association, shall have the power to bid in the Lot at the foreclosure sale, and to acquire and hold, lease, Mortgage, and convey the same.

Section 9.03 Assessments Are Personal Obligations. In addition to constituting a lien on the Lot, all sums assessed by the Association chargeable to any Lot, together with interest, late charges, costs and attorneys' fees in the event of delinquency, shall be the joint and several personal obligations of the Owner and any contract purchaser of the Lot when the assessment is made and their grantees. Suit to recover personal judgment for any delinquent assessments shall be maintainable without foreclosing or waiving the liens securing them.

Section 9.04 Late Charges and Interest on Delinquent Assessments. The Board may from time to time establish late charges and a rate of interest to be charged on assessments delinquent for a period of more than ten (10) days after the date when due. In the absence of another established, nonusurious rate, delinquent assessments shall bear interest at the rate of twelve (12%) per annum. If an installment on an assessment against a Lot is not paid when due, the Board may elect to declare the entire assessments against the Lot for the remainder of the fiscal year to be immediately due and payable.

Section 9.05 Recovery of Attorneys' Fees and Costs. In any action to collect delinquent assessments, the prevailing party shall be entitled to recover as a part of its judgment a reasonable sum for attorneys' fees and all costs and expenses reasonably incurred in connection with the action, in addition to taxable costs permitted by law.

Section 9.06 Remedies Cumulative. The remedies provided herein are cumulative and the Board may pursue them, and any other remedies which may be available under law although not expressed herein, either concurrently or in any order.

Section 9.07 No Avoidance of Assessments. No Owner may avoid or escape liability for assessments provided for herein by abandoning his or her Lot.

#### ARTICLE 10

#### FAILURE OF BOARD TO INSIST ON STRICT PERFORMANCE NO WAIVER

The failure of the Board in any instance to insist upon the strict compliance with this Declaration or rules and regulations of the Association, or to exercise any right contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of any term, covenant, condition, or restriction. The receipt by the Board of payment of any assessment from an Owner, with knowledge of any breach by the Owner, shall not be a waiver

of the breach. No waiver by the Board of any requirement shall be effective unless expressed in writing and signed for the Board.

**ARTICLE 11**  
**LIMITATION OF LIABILITY**

So long as a Board member, or Association member, or Declarant has acted in good faith, without willful or intentional misconduct, upon the basis of such information as is then possessed by such Person, then no such Person shall be personally liable to any Owner, or to any other Person, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of such Person; provided, that this Article shall not apply where the consequences of such act, omission, error, or negligence are covered by any insurance actually obtained by the Board.

**ARTICLE 12**  
**INDEMNIFICATION**

Each Board member, and Declarant shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of holding or having held such position, or any settlement thereof, whether or not he holds such position at the time such expenses or liabilities are incurred, except to the extent such expenses and liabilities are covered by insurance and except in such cases wherein such Board member or Declarant is adjudged guilty of willful misfeasance in the performance of his or her duties; provided, that in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being for the best interests of the Association.

**ARTICLE 13**  
**INSURANCE**

At such times as the Board deems appropriate, the Board shall cause the Association to purchase and maintain as a common expense a policy or policies which the Board deems necessary or desirable to provide casualty insurance; comprehensive liability insurance; with such deductible provisions as the Board deems advisable; insurance, if available, for the protection of the Association's directors, and representatives from personal liability in the management of the Association's affairs; and such other insurance as the Board deems advisable. The Board shall review the adequacy of the Association's insurance coverage at least annually.

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**ARTICLE 14**  
**DAMAGE AND REPAIR OF DAMAGE TO PROPERTY**

In the event of any casualty, loss or other damage to the Common Area for which the then current assessments by the Board are insufficient to repair, or restore or for which there are not insurance proceeds or insufficient insurance proceeds available to the Board for such restoration or repair, the Board may make a special assessment against each Lot within the Property for its pro rata share of the cost and expenses to repair and/or restore the Common Areas. The special assessment shall be payable, at the determination of the Board, in either monthly or quarterly installments or in a single lump sum amount. The Board shall notify each Lot Owner of any such special assessment not less than twenty (20) days prior to the date such special assessment or the first installment thereon is due and payable, which notice shall be accompanied by a reasonably detailed statement of the Board's estimated costs and expenses of repairing and/or restoring the Common Areas.

**ARTICLE 15**  
**AMENDMENTS OF DECLARATION**

Section 15.01 Amendments by Declarant. Prior to the Transition Date, Declarant may amend this Declaration by an instrument in writing filed and recorded in the Records of King County, Washington, without the approval of any Owner or Mortgagee; provided, however, that, with the exception of the addition of any portion of the Additional Property to the terms of this Declaration, (a) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of his Lot or the Common Areas as set forth in this Declaration or adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby, or (b) in the event that such amendment would materially and adversely affect the security, title and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees so affected. Notwithstanding the foregoing to the contrary, no consent or approval of any Owner, any Mortgagee or any other person shall be required in connection with Declarant's filing of amendments to the Declaration for the purpose of submitting the Additional Property or any portion thereof to the provisions of this Declaration as provided in Section 2.02 hereof.

Each Owner, by acceptance of a deed or other conveyance of a Lot, agrees to be bound by such amendments as are permitted by this Section 15.01 and further agrees that, if requested to so do by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Development (i) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of

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any applicable governmental statute, rule, or regulation or any judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot or other improvements subject to this Declaration, or (iv) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on the Lots or other improvements subject to this Declaration.

Section 15.02 Amendments by Association. Any Owner may propose amendments to this Declaration to the Board. A majority of the members of the Board may cause a proposed amendment to be submitted to the members of the Association for their consideration. If an amendment is proposed by Owners of 20% or more of the Lots, then, irrespective of whether the Board concurs in the proposed amendment, it shall be submitted to the members of the Association for their consideration at their next regular or special meeting for which timely notice may be given. Notice of a meeting at which an amendment is to be considered shall include the text of the proposed amendment. Amendments may be adopted at a meeting of the Association or by written consent of the requisite number of Persons entitled to vote, after notice has been given to all Persons entitled to receive notice of a meeting of the Association. The unanimous consent of all Owners shall be required for adoption of either: (a) an amendment changing the voting power or portion of assessments appurtenant to each Lot; or (b) an amendment of Section 4.07 or of this Article 15. All other amendments shall be adopted if approved by the Owners of sixty percent (60%) of the Lots. Once an amendment has been adopted by the Association, the amendment will become effective when a certificate of the amendment, executed by a member of the Board, has been recorded in the real property records of King County, Washington.

15.03 Amendments to Article 3. Notwithstanding the foregoing provisions regarding amendments, no amendment to this Declaration which affects the obligation of Owners to maintain Common Areas and Easements as set forth in Article 3 hereof shall become effective without the prior written consent of the City of North Bend.

**ARTICLE 16**  
**ANNEXATION AND SUBDIVISION**

Residential property other than the Additional Property and Common Areas may be annexed or added to the Property only with the consent of two-thirds of the Association. No Lot shall be

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subdivided or combined without the approval of all Lot Owners. Notwithstanding the foregoing, no Lot or portion of any Lot shall be divided and sold or resold or ownership transferred whereby ownership of any Lot shall be less than the area required for the use district of the City of North Bend.

**ARTICLE 17**  
**DURATION**

The covenants, conditions, and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Owners, their respective legal representatives, heirs, successors, and assigns, for a period of thirty (30) years from the date this Declaration is recorded, after which time the covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by a majority of the then Owners has been recorded agreeing to terminate the covenants, conditions and restrictions. Notwithstanding the foregoing, no such termination shall be effective so as to terminate the obligation of the Owners to maintain the Common Areas and Easements as set forth in Article 3 hereof without the prior written consent of the City of North Bend.

**ARTICLE 18**  
**SEVERABILITY**

The provisions of this Declaration shall be independent and severable, and the unenforceability of any one provision shall not affect the enforceability of any other provision, if the remainder affects the common plan.

**ARTICLE 19**  
**EFFECTIVE DATE**

This Declaration shall be effective upon recording.

**ARTICLE 20**  
**ASSIGNMENT BY DECLARANT**

Declarant reserves the right to assign, transfer, sell, lease, or rent all or any portion of the Property and reserves the right to assign all or any of its rights, duties, and obligations created under this Declaration.

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DATED as of the date first written above.

DECLARANT:

FORSTER WOODS LIMITED PARTNERSHIP, a Washington limited partnership

By: J. WRIGHT DEVELOPMENT CO., a Washington corporation, its General Partner

By Jeffrey Wright, its President

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

THIS IS TO CERTIFY that on this 18th day of August, 1992, before me, the undersigned a notary public in and for the State of Washington, duly commissioned and sworn, personally appeared Jeffrey Wright, to me known to be the President of J. Wright Development Co., a corporation, to me known to be a general partner of Forster Woods Limited Partnership, the limited partnership that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation and said partnership for the uses and purposes therein mentioned.

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Beth A. Clark  
Notary Public in and for the State of Washington, residing at Seattle, WA

My appointment expires 9/9/94

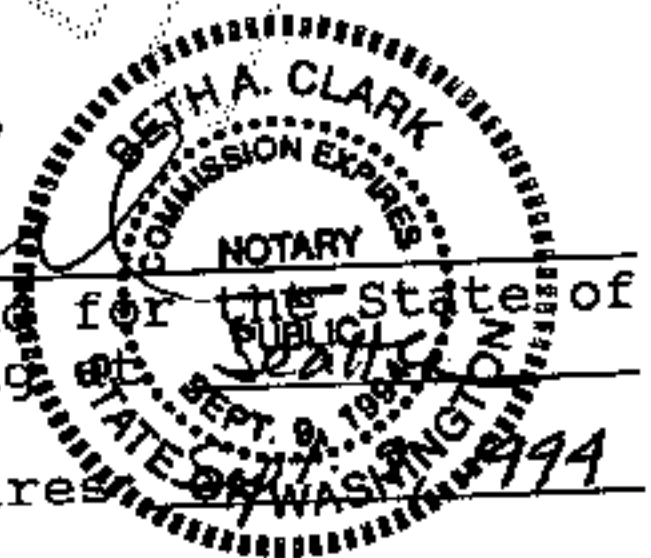


EXHIBIT A  
10 CC&RS FOR FORSTER WOODS

Legal Description of the Property  
Division 1 of Forster Woods

FORSTER WOODS (Division 1)

That portion of the Southwest 1/4 of Section 9 and that portion of the Northwest 1/4 of the Northwest 1/4 of Section 16, all in Township 23 North, Range 8 East, W.M., in King County, Washington, being more particularly described as follows:

COMMENCING at the Southeast corner of Section 8 in said Township and Range; thence N 89°32'36" W along the South line of said Section a distance of 342.52 feet; thence N 36°00'00" E 115.02 feet; thence N 68°20'00" E 137.33 feet; thence N 79°00'00" E 20.08 feet; thence S 68°00'00" E 46.26 feet; thence N 80°00'00" E 109.35 feet; thence N 39°23'00" E 243.24 feet; thence N 40°00'00" E 48.69 feet to the POINT OF BEGINNING; thence N 2°00'00" E 212.78 feet; thence N 13°20'00" E 95.47 feet; thence S 84°00'00" E 94.00 feet; thence N 0°39'11" W 60.41 feet; thence N 22°29'55" E 232.02 feet; thence N 21°00'59" E 74.82 feet; thence N 42°57'07" E 90.80 feet to the Southwesterly margin of FR-9 line right-of-way of STATE ROUTE 90 as condemned in King County Superior Court Cause No. 749908 and as conveyed by King County Recording No. 8203090574; thence along said margin the following courses and distances; S 53°35'54" E 484.22 feet to the beginning of a curve to the left having a radius of 430.00 feet; Southeasterly along said curve through a central angle of 20°31'21" an arc distance of 154.02 feet to a point of tangency; S 74°07'15" E 261.43 feet to the beginning of a curve to the right having a radius of 370.00 feet; Southeasterly along said curve through a central angle of 38°05'00" an arc distance of 245.93 feet to a point of tangency; S 36°02'15" E 682.14 feet to the beginning of a curve to the right having a radius of 1970.00 feet; and thence Southeasterly along said curve through a central angle of 0°40'17" an arc distance of 23.08 feet to the South line of the Southwest 1/4 of said Section 9; thence leaving said margin N 88°28'00" W along said line a distance of 552.33 feet to the Northeast corner of the Northwest 1/4 of the Northwest 1/4 of said Section 16; thence S 0°34'58" W along the East line of said subdivision a distance of 478.41 feet; thence N 84°50'00" W 376.51 feet to a point on a curve concaved Westerly from which the center bears N 78°49'42" W 633.00 feet distant; thence Northerly along said curve through a central angle of 16°01'18" an arc distance of 177.01 feet to a point of tangency; thence N 4°51'00" W 88.99 feet; thence N 70°00'00" W 51.01 feet; thence N 36°00'00" W 146.91 feet; thence

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N 14°07'00" W 175.55 feet; thence N 20°30'00" E 156.85 feet;  
thence N 27°10'00" E 96.92 feet; thence N 69°15'00" W 193.93  
feet; thence S 67°00'00" W 40.95 feet; thence S 26°30'00" W  
81.09 feet; thence S 45°15'00" W 233.38 feet; thence  
N 52°06'00" W 228.89 feet to a point on a curve concaved  
Northwesterly from which the center bears N 52°06'00" W 243.00  
feet distant; thence Northeasterly along said curve through a  
central angle of 12°24'00" an arc distance of 52.59 feet; thence  
N 64°30'00" W 121.31 feet to the POINT OF BEGINNING.



3/18/92

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EXHIBIT B  
TO CC&RS FOR FORSTER WOODS

Legal Description of the Additional Property

FORSTER WOODS  
(SINGLE FAMILY PLAT; DIVISIONS TWO, THREE AND FOUR)

That portion of the Southwest 1/4 of Section 9, Township 23 North, Range 8 East, W.M., in King County, Washington, lying Southwesterly of the Southwesterly margins of SR 90 and of the fronting road (FR-9 line right of way of STATE ROUTE 90), as condemned in King County Superior Court Cause Number 749908 and as conveyed by King County Recording No. 8203090574 and that portion of the Southeast 1/4 of the Southeast 1/4 of Section 8, Township 23 North, Range 8 East, in said County all lying Southerly of the following described line:

COMMENCING at the Southwest corner of the Southeast 1/4 of the Southeast 1/4 of said Section 8; thence N 0°36'37" E along the West line of said subdivision 221.00 feet to the POINT OF BEGINNING; thence N 31°49'43" E 38.59 feet; thence N 62°06'53" E 79.65 feet; thence N 18°34'37" E 88.00 feet; thence N 63°22'32" E 48.58 feet; thence S 79°52'22" E 42.25 feet; thence S 75°41'12" E 33.50 feet; thence N 86°57'42" E 71.48 feet; thence N 67°05'04" E 102.37 feet; thence N 84°36'34" E 45.10 feet; thence N 46°02'29" E 26.85 feet; thence N 51°37'37" E 81.28 feet; thence N 57°23'36" E 105.28 feet; thence N 71°34'27" E 62.01 feet; thence N 60°13'27" E 97.01 feet; thence N 66°10'35" E 82.36 feet; thence N 81°29'15" E 155.22 feet; thence N 36°24'13" E 101.32 feet; thence N 51°47'34" E 126.87 feet; thence N 49°40'18" E 117.78 feet; thence S 88°42'16" E 86.38 feet; thence S 62°15'29" E 91.98 feet; thence N 61°19'01" E 51.04 feet; thence S 62°53'17" E 27.64 feet; thence N 85°28'49" E 39.28 feet; thence S 58°52'35" E 28.05 feet; thence N 85°07'05" E 29.20 feet; thence N 64°55'03" E 29.65 feet; thence N 86°59'35" E 84.00 feet; thence N 22°29'55" E 51.83 feet; thence N 21°00'59" E 74.82 feet; thence N 42°57'07" E 90.80 feet to the Southwesterly of margin of the FR-9 line right of way of STATE ROUTE 90 as condemned in King County Superior Court Cause No. 749908 and as conveyed by King County Recording No. 8203090574; and the terminus of said line.

TOGETHER WITH:

The Northwest 1/4 of the Northwest 1/4 of Section 16, Township 23 North, Range 8 East, W.M., in King County, Washington.

EXCEPT that portion thereof, lying within the following described tract of land:

That portion of the Southwest 1/4 of Section 9 and that portion of the Northwest 1/4

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of the Northwest 1/4 of Section 16, all in Township 23 North, Range 8 East, W.M., in King County, Washington, being more particularly described as follows:

COMMENCING at the Southeast corner of Section 8 in said Township and Range; thence N 89°32'36" W along the South line of said Section a distance of 342.52 feet; thence N 36°00'00" E 115.02 feet; thence N 68°20'00" E 137.33 feet; thence N 79°00'00" E 20.08 feet; thence S 68°00'00" E 46.26 feet; thence N 80°00'00" E 109.35 feet; thence N 39°23'00" E 243.24 feet; thence N 40°00'00" E 48.69 feet to the POINT OF BEGINNING; thence N 2°00'00" E 212.78 feet; thence N 13°20'00" E 95.47 feet; thence S 84°00'00" E 94.00 feet; thence N 0°39'11" W 60.41 feet; thence N 22°29'55" E 232.02 feet; thence N 21°00'59" E 74.82 feet; thence N 42°57'07" E 90.80 feet to the Southwesterly margin of FR-9 line right-of-way of STATE ROUTE 90 as condemned in King County Superior Court Cause No. 749908 and as conveyed by King County Recording No. 8203090574; thence along said margin the following courses and distances; S 53°35'54" E 484.22 feet to the beginning of a curve to the left having a radius of 430.00 feet; Southeasterly along said curve through a central angle of 20°31'21" an arc distance of 154.02 feet to a point of tangency; S 74°07'15" E 261.43 feet to the beginning of a curve to the right having a radius of 370.00 feet; Southeasterly along said curve through a central angle of 38°05'00" an arc distance of 245.93 feet to a point of tangency; S 36°02'15" E 682.14 feet to the beginning of a curve to the right having a radius of 1970.00 feet; and thence Southeasterly along said curve through a central angle of 0°40'17" an arc distance of 23.08 feet to the South line of the Southwest 1/4 of said Section 9; thence leaving said margin N 88°28'00" W along said line a distance of 552.33 feet to the Northeast corner of the Northwest 1/4 of the Northwest 1/4 of said Section 16; thence S 0°34'58" W along the East line of said subdivision a distance of 478.41 feet; thence N 84°50'00" W 376.51 feet to a point on a curve concaved Westerly from which the center bears N 78°49'42" W 633.00 feet distant; thence Northerly along said curve through a central angle of 16°01'18" an arc distance of 177.01 feet to a point of tangency; thence N 4°51'00" W 88.99 feet; thence N 70°00'00" W 51.01 feet; thence N 36°00'00" W 146.91 feet; thence N 14°07'00" W 175.55 feet; thence N 20°30'00" E 156.85 feet; thence N 27°10'00" E 96.92 feet; thence N 69°15'00" W 193.93 feet; thence S 67°00'00" W 40.95 feet; thence S 26°30'00" W 81.09 feet; thence S 45°15'00" W 233.38 feet; thence N 52°06'00" W 228.89 feet to a point on a curve concaved Northwesterly from which the center bears N 52°06'00" W 243.00 feet distant; thence Northeasterly along said curve through a central angle of 12°24'00" an arc distance of 52.59 feet; thence N 64°30'00" W 121.31 feet to the POINT OF BEGINNING.

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EXHIBIT A-33 192



RECORDED AT THE REQUEST OF  
AND AFTER RECORDING RETURN TO:

Beth A. Clark  
Foster Pepper & Shefelman  
Suite 3400, 1111 Third Avenue  
Seattle, Washington 98101

CERTIFICATE OF AMENDMENT  
TO  
DECLARATION AND COVENANTS, CONDITIONS, RESTRICTIONS,  
EASEMENTS AND RESERVATIONS  
FOR  
FORSTER WOODS  
(Adding Division 4A)

This Certificate of Amendment ("Certificate") is made as of this 27th day of July, 1993 by Forster Woods Limited Partnership, a Washington limited partnership ("FWLP").

FWLP, as Declarant, subjected certain real property located in the City of North Bend, King County, Washington, legally described in Exhibit A attached hereto (the "Property"), to certain covenants, conditions, restrictions, easements and reservations pursuant to the Declaration and Covenants, Conditions, Restrictions, Easements and Reservations For Forster Woods dated August 20, 1992 and recorded under King County Recording No. 9208200364 (the "Forster Woods Covenants").

FWLP is the owner of the real property (the "Division 4A Property") legally described in Exhibit B attached hereto. The Division 4A Property is part of the Additional Property referred to in Section 2.02 of the Forster Woods Covenants. FWLP, as Declarant, now desires to subject the Division 4A Property to the provisions of the Forster Woods Covenants as provided for in Section 2.02.04 thereof and pursuant to the authority granted to Declarant by Section 15.01 of the Forster Woods Covenants.

Accordingly, FWLP hereby declares:

1. The Division 4A Property which is part of the Additional Property described in Section 2.02 of the Forster Woods Covenants shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, easements and reservations contained in the Forster Woods Covenants, all of which provisions shall touch and concern and run with the title to the Division 4A Property and shall be binding upon all parties having any interest in the Division 4A Property as well as their heirs, successors and assigns.

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KING COUNTY RECORDS

2. Any and all Common Areas within the Division 4A Property shall be Common Areas of the Property for use by all Owners within the Property as contemplated in Article 3 of the Forster Woods Covenants.

3. Section 4.07.18 is hereby amended to provide that front yard landscaping, in addition to the specific requirements set forth in Section 4.07.18, shall include evergreen and deciduous trees and shrubs.

4. Section 4.07.20 is hereby amended to add the following sentence:

The access tract designated Tract R on the Plat of Division 4A is to provide access to Lots 5, 6, 7, 8 and 9 of Division 4A and shall be owned and maintained by the Owners thereof.

5. All capitalized terms as used herein and not otherwise defined have the meaning as set forth in the Forster Woods Covenants.

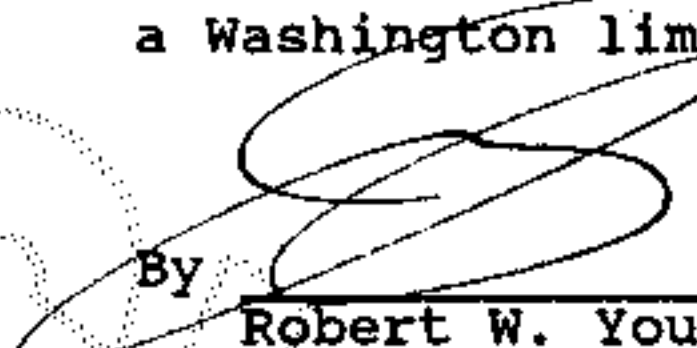
6. All other provisions of the Forster Woods Covenants shall remain in full force and effect.

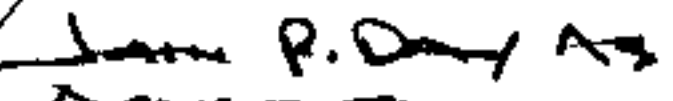
IN WITNESS WHEREOF, a duly authorized officer of the undersigned Declarant has executed this Certificate under seal and certified that the foregoing is true and correct.

DECLARANT:

FORSTER WOODS LIMITED PARTNERSHIP,  
a Washington limited partnership

By

  
Robert W. Young  
Its General Partner

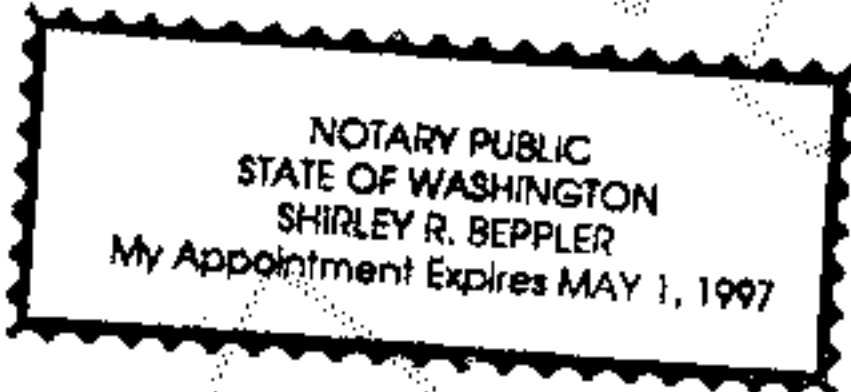
  
James P. Day AS  
AGENT FOR  
ROBERT YOUNG

9307282599

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that John R. Day is the person who appeared before me, and said person acknowledged that said person signed this instrument and acknowledged it to be said person's free and voluntary act for the uses and purposes mentioned in the instrument.

Dated this 28<sup>th</sup> day of July, 1993.



Shirley R. Bepler  
(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington, residing at Seattle

My appointment expires 5/97

9307282599

EXHIBIT A  
TO AMENDMENT TO CC&RS  
FOR FORSTER WOODS  
(Adding Division 4A)

Legal Description of the Property

FORSTER WOODS<sup>2</sup> (Division 1)

That portion of the Southwest 1/4 of Section 9 and that portion of the Northwest 1/4 of the Northwest 1/4 of Section 16, all in Township 23 North, Range 8 East, W.M., in King County, Washington, being more particularly described as follows:

COMMENCING at the Southeast corner of Section 8 in said Township and Range; thence N 89°32'36" W along the South line of said Section a distance of 342.52 feet; thence N 36°00'00" E 115.02 feet; thence N 68°20'00" E 137.33 feet; thence N 79°00'00" E 20.08 feet; thence S 68°00'00" E 46.26 feet; thence N 80°00'00" E 109.35 feet; thence N 39°23'00" E 243.24 feet; thence N 40°00'00" E 48.69 feet to the POINT OF BEGINNING; thence N 2°00'00" E 212.78 feet; thence N 13°20'00" E 95.47 feet; thence S 84°00'00" E 94.00 feet; thence N 0°39'11" W 60.41 feet; thence N 22°29'55" E 232.02 feet; thence N 21°00'59" E 74.82 feet; thence N 42°57'07" E 90.80 feet to the Southwesterly margin of FR-9 line right-of-way of STATE ROUTE 90 as condemned in King County Superior Court Cause No. 749908 and as conveyed by King County Recording No. 8203090574; thence along said margin the following courses and distances; S 53°35'54" E 484.22 feet to the beginning of a curve to the left having a radius of 430.00 feet; Southeasterly along said curve through a central angle of 20°31'21" an arc distance of 154.02 feet to a point of tangency; S 74°07'15" E 261.43 feet to the beginning of a curve to the right having a radius of 370.00 feet; Southeasterly along said curve through a central angle of 38°05'00" an arc distance of 245.93 feet to a point of tangency; S 36°02'15" E 682.14 feet to the beginning of a curve to the right having a radius of 1970.00 feet; and thence Southeasterly along said curve through a central angle of 0°40'17" an arc distance of 23.08 feet to the South line of the Southwest 1/4 of said Section 9; thence leaving said margin N 88°28'00" W along said line a distance of 552.33 feet to the Northeast corner of the Northwest 1/4 of the Northwest 1/4 of said Section 16; thence S 0°34'58" W along the East line of said subdivision a distance of 478.41 feet; thence N 84°50'00" W 376.51 feet to a point on a curve concaved Westerly from which the center bears N 78°49'42" W 633.00 feet distant; thence Northerly along said curve through a central angle of 16°01'18" an arc distance of 177.01 feet to a point of tangency; thence N 4°51'00" W 88.99 feet; thence N 70°00'00" W 51.01 feet; thence N 36°00'00" W 146.91 feet; thence

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N 14°07'00" W 175.55 feet; thence N 20°30'00" E 156.85 feet;  
thence N 27°10'00" E 96.92 feet; thence N 69°15'00" W 193.93  
feet; thence S 67°00'00" W 40.95 feet; thence S 26°30'00" W  
81.09 feet; thence S 45°15'00" W 233.38 feet; thence  
N 52°06'00" W 228.89 feet to a point on a curve concaved  
Northwesterly from which the center bears N 52°06'00" W 243.00  
feet distant; thence Northeasterly along said curve through a  
central angle of 12°24'00" an arc distance of 52.59 feet; thence  
N 64°30'00" W 121.31 feet to the POINT OF BEGINNING.



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**EXHIBIT B**  
**TO AMENDMENT TO CC&RS**  
**FOR FORSTER WOODS**  
**(Adding Division 4A)**

**Legal Description of the Division 4A Property**

That portion of Tract G, Forster Woods, **DIVISION ONE**, according to the plat recorded in Volume 161 of Plats, pages 67 through 76, records of King County, Washington, being more particularly described as follows:

**BEGINNING** at the Southeast corner of Section 8, Township 23 North, Range 8 East, W.M.; thence N 89°32'36" W along the South Line of the Southeast 1/4 of said Section a distance of 342.52 feet to the most Westerly corner of said TRACT G; thence along the Northerly line of said TRACT G the following courses and distances: N 36°00'00" E 115.02 feet; N 68°20'00" E 137.33 feet; N 79°00'00" E 20.08 feet; S 68°00'00" E 46.26 feet; N 80°00'00" E 109.35 feet; N 39°23'00" E 243.25 feet; N 40°00'00" E 48.69 feet; S 64°30'00" E 121.31 feet to a point on a curve to the right from which the center bears N 64°30'00" W 243.00 feet distant; thence Southwesterly along said curve through a central angle of 12°24'00" an arc distance of 52.59 feet; thence S 52°06'00" E 228.89 feet; thence leaving said Northerly line S 42°50'00" W 300.46 feet; thence S 55°36'40" W 113.10 feet; thence S 26°24'11" W 109.45 feet; thence S 16°41'01" W 80.54 feet; thence S 57°30'00" W 125.00 feet to the West line of the Northwest 1/4 of Section 16 of said Township and Range; thence N 0°32'27" E along said line a distance of 386.78 feet to the **POINT OF BEGINNING.**



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March 13, 2017

Dennis Howard  
Association Manager  
Forster Woods Homeowners Association  
PO Box 1294  
Edmonds, WA 98020

Mr. Howard:

North Bend Staff and Legal Counsel have discussed the Forster Woods street tree and sidewalk issue at length and have come up with the following proposal.

The cost of the tree removal, stump removal, existing sidewalk removal, and pour of new sidewalk panels can vary greatly depending on how much work is done under one contract (economy of scale). In an effort to fix the worst areas first the City has divided the work up into 3 categories based on the severity of the sidewalk separation and street tree issues.

**Category 1:**

This category is in reference to the 28 largest sidewalk separations and the street trees causing these separations as identified by City staff and shown in the table provided to you in 2016 (see attached):

- City shall remove the 28 street trees including the stumps, remove the raised sidewalk panels, and pour new sidewalk panels over the course of 4 years. The City shall contract to fix 7 of the locations each of the first 4 years. Year 1 will be 2018.
- City shall manage the work described above. As the City shall be managing this work, the City shall be required to follow all public works requirements under RCW Title 39.
- Forster Woods HOA shall pay 33% of the total cost on a yearly basis to the City.
- Forster Woods HOA shall provide and install new landscaping which shall consist of flowers, sod, or shrubs, but not street trees. This re-landscaping work shall require a no cost street use permit that can be applied for at the North Bend Public Works Office.

**Category 2:**

This category is in reference to the next 40 sidewalk separations and the street trees causing these separations as identified by City staff that are not as severe as Category 1:

- City shall remove the 40 street trees during years 5 (2022) and 6 (2023).
- City shall remove the 40 stumps during years 5 (2022) and 6 (2023).

- City shall remove the raised sidewalk panels and pour new sidewalk panels during years 7 (2024), 8 (2025), and 9 (2026) at the sole discretion of the City, certain panels may only need to be ground down and not removed.
- City shall manage the work described above. As the City shall be managing this work, the City shall be required to follow all public works requirements under RCW Title 39.
- Forster Woods HOA shall pay 33% of the total cost on a yearly basis to the City.
- Forster Woods HOA shall provide and install new landscaping which shall consist of flowers, sod, or shrubs, but not street trees. This re-landscaping work shall require a no cost street use permit that can be applied for at the North Bend Public Works Office.

**Category 3:**

This category is in reference to the remaining street trees that are not causing any issues at this time:

- Forster Woods HOA shall be responsible for any future street tree removal, stump grinding/removal, sidewalk panel removal, landscaping, installation of root barriers, and concrete sidewalk replacement for the street trees which currently are not causing any issues or for areas already addressed in Categories 1 and 2 above.

If the Forster Woods HOA is in agreement with this proposal, then the City can begin work as described in Category 1 in 2018. As a condition of the City starting any work, the HOA shall release and hold the City harmless as part of a settlement agreement in a form agreed to by the City Attorney. To indicate approval, please have the Forster Woods HOA Board President sign and date below.

X \_\_\_\_\_  
Forster Woods HOA Board President

X \_\_\_\_\_  
Date

Sincerely;

Tom Mohr, P.E.  
Deputy Public Works Director

Enclosure: 2016 Tree Table

cc: Londi Lindell, City Administrator  
Mark Rigos, P.E., Public Works Director  
Gina Estep, Community and Economic Development Director  
Susie Oppedal, City Clerk  
Mike Kenyon, City Attorney



**July 2016 Sidewalk Separation Table for Forster Woods**

<b># in 2016 study</b>	<b># from 2014 study</b>	<b>Sidewalk Separation Height (only for those greater than 2.5")</b>	<b>Street Frontage Address</b>
1		6.4"	995 SW10th Street
2		6.0"	1125 SW 10th Street
3		6.0"	1170 Forster Blvd. West
4		5.7"	995 SW 10th Street
5		5.5"	1010 SW 10th Street
6		4.5"	1085 SW 10th Street
7		3.9"	1125 SW 10th Street
8		3.6"	980 SW 10th Street
9		3.5"	980 SW 10th Street
10		3.5"	1350 SW 10th Street
11		3.5"	1420 Forster Blvd. SW
12		3.3"	1370 Forster Blvd. SW
13		3.2"	1385 SW 10th Street
14		3.2"	1235 Forster Blvd. SW
15		3.1"	1085 SW 10th Street
16		3.0"	1385 SW 10th Street
17		3.0"	1125 SW 10th Street
18		3.0"	1085 SW 10th Street
19		3.0"	1325 Forster Blvd. SW
20		3.0"	1335 Forster Blvd. SW
21		3.0"	1410 Forster Blvd. SW
22		2.8"	1410 Forster Blvd. SW
23		2.7"	1330 Forster Blvd. SW
24		2.6"	1010 SW 10th Street
25		2.6"	1165 SW 10th Street
26		2.6"	1141 Forster Blvd. SW
27		2.6"	1235 Forster Blvd. SW
28		2.6"	1365 Forster Blvd SW