

Gregory F. Cromwell	Michael M. Hanis	Erik R. Olsen	*Also admitted in VA
Janay L. Farmer	Patrick M. Hanis	Kushal S. Patel	**CPA/LLM
Gregory L. Girard	Cynthia A. Irvine*	Dennis J. Shanlian**	
Brian J. Hanis	Deborah K. Neighbors		

Mark W. Prothero – 1956-2014

February 28, 2020

Dear Homeowners:

The Board of Directors asked me to write a letter to provide an update on the lawsuit filed against the City of North Bend and explain its resolution.

Recall from earlier web postings and information sent you that for several years the City disputed that it owned and was responsible for maintenance and repair of the street trees and sidewalks in the community. The City signed a Bill of Sale Agreement (the "Agreement") with the Association that was recorded March 1, 1999. In that Agreement the City was granted and accepted ownership of the street trees and sidewalks and agreed to maintain them. Initially the City negotiated with the Association regarding doing something about the continuing deterioration of the trees and sidewalks. However, at a mediation of the parties the City took the surprising position that the Agreement was invalid, and null and void from inception, and that the Association owned the trees and sidewalks and therefore was solely responsible for maintaining them. Subsequently, owners at an annual meeting made an advisory vote for the Board to not pursue litigation against the City over the Agreement based on the fact that Washington case law said that you cannot force a City regarding when or how it will maintain or repair such things as streets, sidewalks or street trees.

The Board remained concerned about the Association's liability if it is considered owner of the trees and sidewalks and someone is injured due to their condition. If the Association owns the trees and sidewalks, it will be primarily liable to persons injured due to their condition. We realized that the establishing and protecting the validity and application of the Agreement to the City would be the only way to ensure that the City would be primarily liable if such injuries occurred. Accordingly, protecting the Agreement's validity as to the City became of paramount concern. The problem is that the City repudiated validity and enforceability of the Agreement. This initially occurred June 15, 2016 when it wrote the Association stating that a City ordinance removed its obligations under the Agreement. This started the clock ticking on the statute of limitations. In essence, a party has 6 years to sue to enforce an agreement from the date the other party denies its obligations under it. We determined that the six (6) year statute of limitation would expire in about June of 2021 (based on the June 2016 repudiation). This meant that if the City continued to maintain the Agreement is invalid, the Agreement would, in fact, become unenforceable and legally invalid. If that

occurred, it would make the City's position, that the Agreement is invalid and unenforceable, legally true. Once the statute of limitation expires with no action to enforce or prove the validity of a contract, the contract does become unenforceable. The City later more forcefully repudiated the Agreement at the mediation mentioned above. However, given the language of the City's June 15, 2016 letter we considered it necessary to use that date as to when the six (6) year statute of limitation began to run.

The Board decided it essential that the validity of the Agreement be protected so that the City would remain as legal owner and responsible for maintenance of the trees and sidewalks under the terms of the Agreement. Accordingly, the Association sued the City. The lawsuit's sole objective was to have the Court issue an order or declaratory judgment ruling that the Agreement was, in fact, valid and enforceable as to the City. Interestingly, a new City Attorney was appointed by the City. I was authorized to contact her to discuss the case. I did so. As a result, a "settlement" was reached that literally gave the Association everything it asked for in its lawsuit. The settlement was memorialized in a pleading signed by the parties and filed with the Court. Attached is a copy of the pleading, titled Stipulations, Order and Dismissal. The Association's case was dismissed as part of the settlement since all issues in it were resolved by the Stipulations.

At this point, due to the signed Stipulation on file with the Court, the City has acknowledged the Agreement is a valid and binding contract, that it conveys to the City ownership of the streets trees and sidewalks and that the Agreement states that the City agrees to maintain the sidewalks and trees. The Association acknowledges in the Stipulation that it cannot by court action force the City as to when or how it may maintain or repair, but that is simply a recitation of what the case law of our State Supreme Court already states and therefore not a concession by the Association.

Based on the Stipulation, which clearly states the Agreement is valid and binding on the City, the City, as owner, will be liable for personal injuries or property damage claims that arise due to the condition of the sidewalks and street trees. This does not mean the Association will never be named in a lawsuit by someone injured due to the sidewalks' condition. In such cases it is not unusual for the claiming party to name everyone possible to maximize the possibility of recovery. However, because of the Stipulation the City's earlier attempts to avoid ownership and maintenance responsibility are now gone. If the Association is named as a defendant in such a lawsuit it has the right to claim over against the City for it to bear all damages and costs awarded to an injured plaintiff because the City is the sole owner of the properties involved.

We encourage all owners to complete the notice forms regarding conditions of the street trees and sidewalks in front of your home, especially when you see or know of someone injured due to condition of the sidewalks. Those forms are on the Association's website. Sending those forms to the City puts additional pressure on it to do something about the

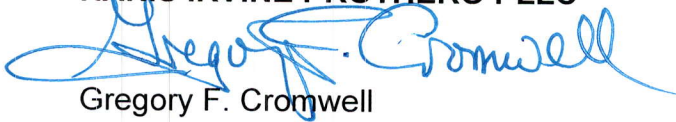
Homeowners
Forster Woods Homeowners Association
February 28, 2020
Page - 3

sidewalks and trees. Because, although the City cannot be legally forced by the Association as to when or how it repairs or maintains, it is liable to persons hurt while using them under negligence principles for failing to timely and properly maintain.

Thank you for your time and consideration. I am glad we were able to resolve the City litigation with the City finally acknowledging validity of the Agreement.

Sincerely,

HANIS IRVINE PROTHERO PLLC

A handwritten signature in blue ink that reads "Gregory F. Cromwell". The signature is fluid and cursive, with the first name "Gregory" being particularly prominent.

Gregory F. Cromwell

Enclosure

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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

Forster Woods Homeowners Association,
a Washington Non-Profit Corporation

Plaintiff,

vs.

City of North Bend, a Washington
Municipal Corporation,

Defendant.

No. 19-2-11157-7 SEA

STIPULATIONS, ORDER AND
DISMISSAL

Plaintiff Forster Woods Homeowners Association (Association) and Defendant City of North Bend (City), by and through their undersigned representatives and counsel, hereby stipulate as follows:

I. STIPULATIONS

1. The Association's lawsuit concerns a Bill of Sale recorded in King County on March 1, 1999 under recording number 9903011140, a true and correct copy of which is attached to this Stipulation and fully incorporated herein by reference (the "Agreement").

STIPULATION, ORDER
AND DISMISSAL - 1

HANIS IRVINE PROTHERO, PLLC
ATTORNEYS AT LAW
6703 S. 234TH STREET, SUITE 300
KENT, WASHINGTON 98032
Phone: 253-520-5000
Facsimile: 253-893-5007

1 2. The Agreement is a valid and binding contract. The Agreement conveys
2 to the City ownership of the street trees and approximately 5761 lineal feet of
3 sidewalks located in Division 1, and approximately 78,812 square feet of sidewalks in
4 Divisions 2, 3, 4 and 4A of the Association's residential community. The Agreement
5 states that the City agrees to maintain the sidewalks and street trees.
6

7 3. Based on the case of Burg v. City of Seattle, 32 Wn.App. 286, 647 P.2d
8 517 (1982), the Association acknowledges that the timing of and how repairs are done
9 to street trees and sidewalks is discretionary with the City; in other words, based on
10 this case law, the Association cannot by court action force the City as to when or how
11 it may maintain or repair the street trees and sidewalks.
12

13 5. The Association's Complaint's request for relief has been satisfied by
14 the within Stipulations. Each party shall bear its own costs and attorneys' fees in this
15 matter.
16

17 Stipulations agreed to by:

18 Matthew D. McHush
19 President of Association
20 Print name: MATTHEW McHush

21 [Signature]
22 Mayor, City of North Bend
23 Print name: Ken Hearing

24 **II. ORDER**

25 Based upon the above stipulations, and the Court having reviewed the files
26 and records herein, it is hereby ORDERED, ADJUGED AND DECREED as follows:

STIPULATION, ORDER
AND DISMISSAL - 2

HANIS IRVINE PROTHERO, PLLC
ATTORNEYS AT LAW
6703 S. 234TH STREET, SUITE 300
KENT, WASHINGTON 98032
Phone: 253-520-5000
Facsimile: 253-893-5007

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1. That the aforementioned stipulated terms are declared, ordered and decreed as if inserted word for word in this Order;

2. That all claims of the parties in this action are dismissed with prejudice and without costs or fees awarded.

DONE IN OPEN COURT this _____ day of _____, 2019.

Judge/Court Commissioner

Presented by:

HANIS IRVINE PROTHERO PLLC

By Gregory F. Cromwell
Gregory F. Cromwell, WSBA #7130
Attorneys for Plaintiff

Approved as to form, notice of presentation waived:

KENYON DISEND, PLLC

By Eileen M. Keiffer
Eileen M. Keiffer, WSBA # 51598
Attorneys for City of North Bend

Unofficial

FILED FOR RECORD AT REQUEST OF:

CITY CLERK
CITY OF NORTH BEND
P O BOX 896
NORTH BEND, WA 98045



9903011140

16.00

SKN

990301-1140 10:27:00 AM KING COUNTY RECORDS 009 SKN

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS that for and in consideration of the sum of One Dollar (\$1.00) and other good and sufficient consideration, receipt whereof is hereby acknowledged, the undersigned Seller, Forster Woods Limited Partnership, does by these presents hereby convey, set over, assign, transfer and sell to the City of North Bend (the "City"), King County, Washington, a municipal corporation, the following described water distribution system, wastewater collection system, storm drainage system, curbs, sidewalks, street paving, street trees, and other right of way improvements as listed on the following attachments: A, B, C, D, E, & F.

Commonly known as: Improvements provided as a part of the plats of **FORSTER WOODS DIVISIONS 1, 2, 3, 4, AND 4A.**

Seller warrants that they are the sole owners of all the property described in the attachments and have full power to convey all rights hereunto and agree to hold the City of North Bend harmless from any and all claims which might result from execution of this document.

Seller warrants that the property above described is free from all liens and encumbrances and Seller warrants and will defend the property hereby sold to City and its successors and assigns against the lawful claims and demands of all persons.


By accepting and recording this instrument, the City accepts and agrees to maintain the water distribution system including booster stations and reservoir, wastewater collection system, storm drainage system (except detention ponds owned by the Home Owners Association), curb and gutter, sidewalks, street trees, street signage, street paving, street lights, 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.

Unofficial

IN WITNESS WHEREOF the Sellers have executed these presents this 21st of September, 1998.

Seller: Forster Woods Limited Partnership.

Purchaser: City of North Bend


By Jeffrey Wright, President of
J Wright Development Co.,
Its General Partner



APPROVED AS TO FORM:


City Attorney

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Jeffrey Wright is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.


Elaine Walker

NOTARY PUBLIC in and for the
State of Washington residing at
Kirkland.
My appointment expires: 11/29/99

9903011140

Unofficial Instrument

9903011140

STATE OF WASHINGTON)
)ss
COUNTY OF KING)

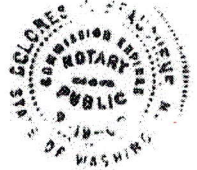
I certify that I know or have satisfactory evidence that Joan M. Simpson
is the person who appeared before me, and said person acknowledged that (he/she) signed
this instrument on oath that (he/she) was authorized to execute the instrument and
acknowledge it as the Mayor of the City of North Bend
to be the free and voluntary act of such party for the uses and purposes mentioned in the
instrument

Dated: 12/16/98

Dolores M. Beauchene
(Signature)

Dolores M. Beauchene
(Print Name)

NOTARY PUBLIC in and for the State of
Washington residing at: North Bend



BILL OF SALE - WATER
ATTACHMENT A

DESCRIPTION OF SYSTEM FOR
DEVELOPER EXTENSION AGREEMENT PROJECT: **FORSTER WOODS DIVISION I
AND OFFSITE WATER SYSTEM.**

<u>IN</u>	<u>FROM</u>	<u>TO</u>	<u>SIZE</u>	<u>LENGTH</u>
NORTH BEND BLVD	STA 2 (+/-)	STA 12 (+/-)	16"	1000 LF
RIBARY WAY	STA 87+40	STA 92+04	16"	433 LF
RIBARY WAY	STA 92+04	STA 106+60	12"	1618 LF
FORSTER BLVD	STA 0	STA 4+00	12"	371 LF
FORSTER BLVD, S.W.	STA 17+20	STA 35+22	8"	1802 LF
HEMLOCK AVE S.W.	STA 17+89	STA 12+00	8"	589 LF
SW 11 TH COURT, 402 ND COURT SE, SW 11 TH PLACE, AND MISC.			8"	263 LF

THE ABOVE WATER SYSTEM INCLUDES ALL MAINLINE PIPES, WATER SERVICES,
FIRE HYDRANTS, BLOW-OFFS, PRESSURE REDUCING STATIONS, AND OTHER
APPURTENANCES ASSOCIATED WITH THE WATER SYSTEM

APPROXIMATE VALUE OF WATER SYSTEM FOR FORSTER WOODS
DIVISION I INCLUDING OFFSITE WORK: **\$440,000**

9903011140

UNOFFICIAL

BILL OF SALE - SEWER
ATTACHMENT B

DESCRIPTION OF SYSTEM FOR
DEVELOPER EXTENSION AGREEMENT PROJECT: **FORSTER WOODS DIVISION I
AND OFFSITE SANITARY SEWER SYSTEM.**

<u>IN</u>	<u>FROM</u>	<u>TO</u>	<u>SIZE</u>	<u>LENGTH</u>
NORTH BEND BLVD.	STA 2 (+/-)	STA 12 (+/-)	8"	1049 LF
RIBARY WAY	STA 87+60	STA 94+35	10"	675 LF
FORSTER BLVD	STA 17+19	STA 34+04	8"	1685 LF
HEMLOCK AVE. S.E.	STA 12+72	STA 17+28	8"	456 LF
SW 11 TH COURT, 402 ND COURT S.E., SW 11 TH PLACE, AND MISC.			8"	931 LF

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THE ABOVE SANITARY SEWER SYSTEM INCLUDES ALL MAINLINE PIPES, SIDE SEWERS TO PROPERTY LINES, MANHOLES, CLEAN-OUTS, AND OTHER APPURTENANCES ASSOCIATED WITH THE SANITARY SEWER SYSTEM.

APPROXIMATE VALUE OF SANITARY SEWER SYSTEM FOR FORSTER WOODS DIVISION I INCLUDING OFFSITE WORK: **\$460,000**

UNOFFICIAL

**BILL OF SALE - STREETS AND STORM DRAINAGE
ATTACHMENT C**

**DESCRIPTION OF SYSTEM FOR DEVELOPER EXTENSION AGREEMENT PROJECT:
FORSTER WOODS DIVISION I.**

1. Approximately 4638 lineal feet of storm drainage pipe.
2. Approximately 44 storm drainage catch basins.
3. One arch culvert stream crossing.
4. Approximately 5761 lineal feet of curb and gutter.
5. Approximately 5761 lineal feet of sidewalk.
6. Approximately 11,822 square yards of asphalt pavement.
7. Approximately 235 miscellaneous street trees.

Together with miscellaneous improvements such as street lights, fencing, monuments, that have been constructed within public rights of way and public easements.

**APPROXIMATE VALUE OF STREET AND STORM SYSTEMS FOR
FORSTER WOODS DIVISION I: \$527,000**

9903011140

UNOFFICIAL

BILL OF SALE - WATER
ATTACHMENT D

DESCRIPTION OF SYSTEM FOR
DEVELOPER EXTENSION AGREEMENT PROJECT: **FORSTER WOODS**
DIVISIONS 2, 3, 4, AND 4A.

9903011140

<u>IN</u>	<u>FROM</u>	<u>TO</u>	<u>SIZE</u>	<u>LENGTH</u>
FORSTER BLVD	STA 34+08	STA 46+80	8"	1272 LF
SW 10 TH STREET	STA 1-50	STA 16+50	12"	1500 LF
SW 12 TH COURT	STA 0	STA 2+00	16"	143 LF
HEMLOCK AVE SE, HEMLOCK AVE SW, 14 TH PLACE SW, 13 TH PLACE SW, SW 12 TH PLACE, 11 TH COURT SW, SW 13 TH PLACE, SW 15 TH PLACE, 11 PLACE SW, SW 14 TH PLACE AND MISC.			8" & 12"	6065 LF

THE ABOVE WATER SYSTEM INCLUDES ALL MAINLINE PIPES, WATER SERVICES, FIRE HYDRANTS, BLOW-OFFS, PRESSURE REDUCING STATIONS, THE 710 AND 780 ZONE BOOSTER PUMP STATIONS, THE WATER TANK RESERVOIR, AND OTHER APPURTENANCES ASSOCIATED WITH THE COMPLETE WATER SYSTEM

APPROXIMATE VALUE OF WATER SYSTEM FOR FORSTER WOODS
DIVISIONS 2, 3, 4, AND 4A: **\$1,393,000**

BILL OF SALE - SEWER
ATTACHMENT E

DESCRIPTION OF SYSTEM FOR
DEVELOPER EXTENSION AGREEMENT PROJECT: **FORSTER WOODS**
DIVISIONS 2, 3, 4, AND 4A.

<u>IN</u>	<u>FROM</u>	<u>TO</u>	<u>SIZE</u>	<u>LENGTH</u>
FORSTER BLVD	STA 37+04	STA 46+80	8"	976 LF
SW 10 TH STREET	STA 1+75	STA 17+19	8"	1544 LF
HEMLOCK AVE SE, HEMLOCK AVE SW, SW 12 TH COURT, 14 TH PLACE SW, 13 TH PLACE SW, SW 12 TH PLACE, 11 TH COURT SW, SW 13 TH PLACE, SW 15 TH PLACE, 11 PLACE SW, SW 14 TH PLACE AND MISC.			8"	6138 LF

THE ABOVE SANITARY SEWER SYSTEM INCLUDES ALL MAINLINE PIPES, SIDE SEWERS TO
PROPERTY LINES, MANHOLES, CLEAN-OUTS, AND OTHER APPURTENANCES ASSOCIATED
WITH THE SANITARY SEWER SYSTEM.

APPROXIMATE VALUE OF SANITARY SEWER SYSTEM FOR FORSTER
WOODS DIVISIONS 2, 3, 4, AND 4A: **\$373,000**

990301140

**BILL OF SALE -STREETS AND STORM DRAINAGE
ATTACHMENT F**

**DESCRIPTION OF SYSTEM FOR DEVELOPER EXTENSION AGREEMENT PROJECT:
FORSTER WOODS DIVISIONS 2, 3, 4, AND 4A.**

1. Approximately 8847 lineal feet of storm drainage pipe.
2. Approximately 72 storm drainage catch basins.
3. One arch culvert stream crossing.
4. Approximately 16,144 lineal feet of curb and gutter.
5. Approximately 78,812 square feet of sidewalk.
6. Approximately 35,728 square yards of asphalt pavement.
7. Approximately 120 miscellaneous street trees.

Together with miscellaneous improvements such as street lights, fencing, and monuments, that have been constructed within public rights of way and public easements.

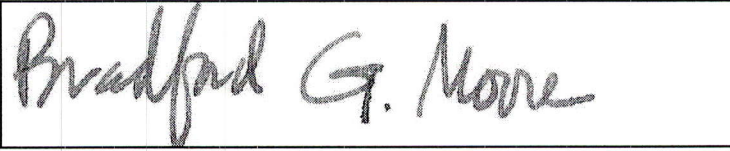
**APPROXIMATE VALUE OF STREET AND STORM SYSTEMS FOR
FORSTER WOODS DIVISIONS 2, 3, 4, AND 4A: \$762,309**

990301140

King County Superior Court
Judicial Electronic Signature Page

Case Number: 19-2-11157-7
Case Title: FORSTER WOODS HOMEOWNERS ASSOCIATION vs NORTH
BEND CITY OF
Document Title: Order

Signed By: Brad Moore
Date: December 11, 2019

A rectangular box containing a handwritten signature in black ink that reads "Bradford G. Moore".

Judge/Commissioner: Brad Moore

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: FC8744E49A72FF0F850BE061D5A0A1A293B475BB
Certificate effective date: 5/22/2017 2:57:35 PM
Certificate expiry date: 5/22/2022 2:57:35 PM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=kcdja, O=kcdja,
CN="Brad Moore: kHmbWor95BGfWFJmH11GsA=="