

CITY OF KIRKLAND, WASHINGTON

RESOLUTION NO. 2981

A RESOLUTION of the City Council of the City of Kirkland, Washington, relating to Local Improvement District No. 115, approving the terms and conditions of a Settlement Agreement and Mutual Release of Claims resolving pending litigation to which the City is a party and other controversies potentially affecting the City; approving the terms and conditions of a Stipulation for and Order of Dismissal in Court of Appeals Consolidated Cause No. 11245-7-I; authorizing and directing the execution and delivery of such agreement and authorizing and directing the making of such stipulation and entry of such order; making certain findings; and authorizing and directing the transfer of a specified sum from the Water and Sewer Construction Fund of the City to the Local Improvement District No. 115 Fund.

WHEREAS, litigation is now pending in Court of Appeals Consolidated Cause No. 11245-7-I to which the City is currently a party and other litigation potentially affecting the City is now threatened, all as more particularly described in the Settlement Agreement and Mutual Release of Claims (the "Settlement Agreement"), a copy of which is attached hereto marked Exhibit A and by this reference made a part hereof, reciting a chronology of events relating to Local Improvement District No. 115 ("LID 115" or the "District") and setting forth the terms and conditions of settlement negotiated on behalf of the City by its special counsel, Roberts & Shefelman; and

WHEREAS, it is necessary that such pending litigation challenging local improvement assessments totalling approximately \$1,378,000 previously levied and confirmed in LID 115, heretofore created by Ordinance No. 2345, be settled before the local improvement bonds of such District may be issued and sold; and

WHEREAS, the proceeds of the issuance and sale of such local improvement bonds are necessary in order to provide a part of the funds required to pay, redeem and retire in accordance with their terms, certain interim financing warrants of the District heretofore issued by the City drawn on the Local Improvement District No. 115 Fund and now outstanding and held by Seattle-First National Bank in the principal amount of approximately \$2,035,000; and

WHEREAS, the improvements constructed and installed in LID 115 included, among other things, certain water and sewer facilities, the acquisition of which was of benefit to the municipal water and sewer utility of the City; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KIRKLAND, WASHINGTON, as follows:

Section 1. The terms and conditions of the Settlement Agreement are hereby approved and accepted, and the City Manager is hereby authorized and directed to execute such document on behalf of the City in several counterparts in substantially

the form set forth in Exhibit A, or as the same may be revised with the approval of the City's special counsel and the City Attorney, and to cause such document to be delivered to the other parties upon their acceptance.

Section 2. The terms and conditions of the Stipulation for and Order of Dismissal (the "Stipulation and Order"), a copy of which is attached hereto marked Exhibit B and by this reference made a part hereof, are hereby approved and accepted and the City's special counsel are authorized to approve such document for entry and cause the same to be entered and filed in substantially the form set forth in Exhibit B upon execution of the Settlement Agreement by or on behalf of the other parties and after the satisfying of the conditions specified in such agreement.

Section 3. It is hereby found and declared that the terms and conditions of the Settlement Agreement and the Stipulation and Order are in the best interests of the City, its residents and taxpayers and in the public interest.

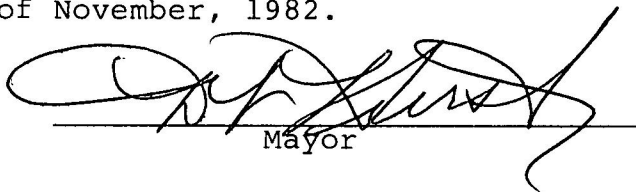
Section 4. It is hereby found and declared that an additional sum of approximately \$70,000 will be required to be deposited in the Local Improvement District No. 115 Fund in order to provide sufficient money, together with the proceeds of the anticipated issuance and sale of local improvement bonds of the District and other money expected to be available in such fund to permit the City to perform the undertakings incumbent upon it pursuant to the Settlement Agreement.

Section 5. It is hereby found and declared that the benefit to the municipal water and sewer utility of the City resulting from the acquisition of the water and sewer improvements heretofore constructed and installed in LID 115 was at least \$ 70,000

Section 6. The Director of Administration and Finance of the City is hereby authorized and directed to transfer from the Water and Sewer Construction Fund of the City to the Local Improvement District No. 115 Fund the sum of \$ 70,000 in consideration of the benefits to the municipal water and sewer utility of the City referred to in Section 5.

Section 7. The appropriate officials of the City, its City Attorney and its special counsel are hereby authorized and directed to do all things reasonable and necessary to promptly complete the negotiation of, carry out, effectuate and perform the Settlement Agreement in accordance with its terms and conditions, as the same may be revised with the approval of such counsel, for the purposes therein stated.

The foregoing resolution was ADOPTED by the City Council of the City of Kirkland, Washington, at a regular open public meeting thereof this 15th day of November, 1982.

  
\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Director of Administration and  
Finance, ex officio City Clerk



# EXHIBIT A

## SETTLEMENT AGREEMENT

AND

## MUTUAL RELEASE OF CLAIMS

THIS AGREEMENT is entered into to be effective as of the last day of November, 1982, by the CITY OF KIRKLAND ("Kirkland"), WALLACE H. LITCHFIELD ("Litchfield"), TIMBERLAND INDUSTRIES, INC. ("Timberland"), ROGER B. WAHLMAN ("Wahlman"), EWING STRINGFELLOW ("Stringfellow"), BUTLER BUILDING CORPORATION ("Butler"), JAMES E. NELSON ("Nelson"), DUNN LUMBER, INC. ("Dunn"), NORTHWEST CONSTRUCTION COMPANY, INC. ("Northwest"), ROBERT and LEROY WELCOME ("Welcome"), JOHN and BETTY BEHEYT ("Beheytt"), JOHN COLEMAN ("Coleman"), N.A.N. PARTNERS ("N.A.N."), PARRY B. WELLS ("Wells"), HILLCREST CORPORATION ("Hillcrest"), PAR MAC INVESTORS ("Par Mac"), TRANSAMERICA TITLE INSURANCE COMPANY ("Transamerica"), LINCOLN FOTUPS ASSOCIATES ("Lincoln Fotups"), LINCOLN PROPERTY COMPANY NO. 169 ("LPC NO. 169"), LINCOLN PROPERTY COMPANY NO. 164 ("LPC No. 264"), EDGAR M. THRIFT ("Thrift"), <sup>MAX</sup> POGUE ("Pogue"), PRESTON BUTCHER ("Butcher"), SEATTLE-FIRST NATIONAL BANK ("Seattle-First"), and SEAFIRST MORTGAGE CORPORATION ("Seafirst Mortgage"):

### I. RECITALS

The parties to this Agreement agree and stipulate to the following facts:

1.1 In 1977, certain owners of property located within the Kirkland city limits submitted to Kirkland petitions to form

a local improvement district in that section of Kirkland known as the Par Mac or Kirkland Industrial Park area. The local improvements for which the property owners petitioned included sewer, water, bridge, road, and drainage improvements.

1.2 On March 7, 1977, the Kirkland City Council, in response to the petitions submitted by property owners, declared its intention to form Local Improvement District ("LID") No. 115 by adopting Resolution No. 2422.

1.3 After notice of the resolution of intention to form LID No. 115 had been published and mailed to property owners within proposed LID No. 115, a hearing was held regarding the formation of the district and objections to formation were heard. On April 4, 1977, the Kirkland City Council formed and created LID No. 115 by the adoption of Ordinance No. 2345.

1.4 Ordinance No. 2345 provided that local improvement district warrants were to be issued in payment of the cost and expense of the improvements ordered as part of LID No. 115, and that such warrants were to be payable out of the "Local Improvement Fund, District No. 115," were to bear interest from the date of issue, and were to be redeemed in cash and/or by the authorized issuance of local improvement district bonds.

1.5 On May 1, 1978, the Kirkland City Council adopted Ordinance No. 2391, accepting the offer of Seattle-First to purchase the interim revenue warrants authorized by Ordinance No. 2345 and fixing the interest rate of such revenue warrants at 5.2 percent per annum in accordance with such offer.

1.6 After formation of LID No. 115, contracts were let for the construction of the improvements which had been ordered in Ordinance No. 2345 and the costs and expenses of those improvements began to accrue.

1.7 Following the adoption of Ordinance No. 2391, Kirkland, to pay the cost and expense of the improvements ordered as part of LID No. 115, authorized and issued to Seattle-First certain revenue warrants at fixed rates of interest to be payable and drawn out of Local Improvement Fund, District No. 115, to wit:

<u>Warrant Number</u>	<u>Issue Date</u>	<u>Amount</u>	<u>Interest Rate</u>
001	05/08/78	\$318,335.72	5.2%
002	06/07/78	208,890.84	5.2%
003	09/07/78	147,598.09	5.2%
004	09/29/78	148,583.85	5.2%
005	12/11/78	161,764.87	5.2%
006	12/28/78	190,148.38	5.2%
007	01/30/79	344,123.26	5.2%
008	04/23/79	136,463.57	5.2%
009	07/03/79	250,537.24	5.2%
010	09/21/79	117,691.38	5.2%

1.8 At the time of the creation of LID No. 115, it was anticipated that the improvement project would be completed, the assessment roll approved and confirmed, and the local improvement district bonds for LID No. 115 sold by late summer or early fall of 1979. The construction of the sewer, water, bridge, road, and drainage improvements in LID No. 115 was not completed until early 1980 because of unexpected and unanticipated construction delays.

1.9 Due to the unexpected and unanticipated delays in the construction of the improvements in LID No. 115, Seattle-First sought an increase in the rate of interest on the interim revenue warrants issued and authorized by Kirkland to finance the construction in LID No. 115.

1.10 On May 27, 1980, the Kirkland City Council adopted Ordinance No. 2529, accepting the offer of Seattle-First to purchase additional interim revenue warrants and fixing the interest rate of such revenue warrants at 9.0 percent per annum in accordance with such offer. By adopting Ordinance No. 2529, the Kirkland City Council also purported to authorize the issuance of interim revenue warrants to bear the interest rate of 9.0 percent per annum for redemption and payment of such interim revenue warrants issued pursuant to Ordinance No. 2391 and not called for payment before May 17, 1980.

1.11 Following the adoption of Ordinance No. 2529, Kirkland authorized and issued to Seattle-First one additional interim revenue warrant to be payable and drawn out of Local Improvement Fund, District No. 115, namely:

<u>Warrant Number</u>	<u>Issue Date</u>	<u>Amount</u>	<u>Interest Rate</u>
011	06/05/80	\$159,753.92	9.0%

1.12 Seattle-First did not present any of the interim revenue warrants issued pursuant to Ordinance No. 2391 for redemption until October 31, 1980. All of the interim revenue

warrants issued pursuant to Ordinance No. 2391 are still outstanding and unpaid, except Interim Revenue Warrant 004, which has been redeemed with the payment to Seattle-First by Kirkland of principal and interest. The interim revenue warrant issued pursuant to Ordinance No. 2529 is still outstanding and unpaid.

1.13 After the completion of the construction of the improvements for LID No. 115, the Kirkland City Council caused the final assessment roll for LID No. 115 to be prepared and set June 16, 1980, for the hearing to confirm the final assessment roll.

1.14 Assessments against individual parcels were established by spreading the total cost of the improvements of \$3,552,435.05, less approximately \$1,221,000.00 in general funds and grants contributed by Kirkland, over the parcels which Kirkland determined were specially benefited by the improvements. The parcels of property within LID No. 115 were assigned specific numbers for the purpose of listing them on the final assessment roll.

1.15 Notice of the hearing to confirm the final assessment roll for LID No. 115 was published and mailed to some owners or reputed owners of real property within the boundaries of the improvement district in May of 1980.

1.16 The hearing to confirm the final assessment roll for LID No. 115 was opened on June 16, 1980, and was continued to July 21, July 22, July 24, July 28, and July 29, 1980. The

Kirkland City Council, after having considered the final assessment roll, together with the written protests and objections filed in connection therewith by certain property owners and together with the evidence presented in support of such roll and protests and objections, passed Ordinance No. 2543 on August 18, 1980, modifying, approving, and confirming the assessments and assessment roll of Local Improvement District No. 115.

1.17 After the confirmation of the final assessment roll for LID No. 115, certain property owners appealed the decision of the Kirkland City Council to confirm the assessments levied against their respective properties. In addition, three other lawsuits for declaratory and injunctive relief were filed by property owners claiming that they had been denied proper notice of the hearing to confirm the final assessment roll. These appeals and lawsuits were consolidated in the Superior Court of the State of Washington for King County under Cause No. 80-2-12395-5, after which time an additional property owner was permitted to intervene in such consolidated action.

1.18 Following motions by several parties, it was ruled by the Court that certain property owners had not been given proper notice of the hearing to confirm the final assessment roll or had not been given proper notice of Kirkland's findings of fact and conclusions of law with respect to their assessments before they were signed by the members of the Kirkland City Council. The appeals and lawsuits brought by those property owners were remanded to the Kirkland City Council for additional assessment

proceedings respecting the confirmation of the final assessment roll for LID No. 115.

1.19 After notice had been mailed and published as required by law, the hearing for the additional assessment proceedings respecting the confirmation of the final assessment roll for LID No. 115 was opened on March 23, 1981, and continued to March 24, 1981 and March 25, 1981.

1.20 The Kirkland City Council considered the objections to assessments submitted at the additional assessment proceedings respecting the confirmation of the final assessment roll for LID No. 115, together with any evidence presented. The objections were overruled. On May 4, 1981, the Kirkland City Council adopted Ordinance No. 2595, ratifying and confirming Ordinance No. 2543, and approving and confirming the assessments and the final assessment roll for LID No. 115.

1.21 After the confirmation of the final assessment roll for LID No. 115 by the adoption of Ordinance No. 2595, certain property owners appealed the decision of the Kirkland City Council to confirm the assessments levied against their respective properties. These appeals were consolidated in the Superior Court of the State of Washington for King County under Cause No. 81-2-07173-2.

1.22 The consolidated assessment appeals came on for review under RCW 35.44.250 on July 1, 1981, July 6, 1981, September 24, 1981, and October 2, 1981 before the Honorable Judge Frank D. Howard. On January 5, 1982, a document entitled

Findings of Fact, Conclusions of Law, Order and Judgment was entered, modifying, approving and confirming the assessments of the appealing property owners.

1.23 Following the entry of the judgment on January 5, 1982, the following property owners filed notices of appeal to the Court of Appeals of the State of Washington, Division I:

<u>Property Owner</u>	<u>LID No. 115 Parcel No.</u>
Litchfield and N.A.N.	5, 6
Timberland	50
Wahlman and Stringfellow	38
Butler	30, 41
Nelson	39
Dunn	31B
Northwest	31A, 45, 47, 76, 76A
Welcome	32, 33
Beheytt	42
Coleman	56
N.A.N.	1, 2, 3, 25, 26, 27, 29
Wells	24, 71
Hillcrest	7
Par Mac	8, 10

These appeals were consolidated under Cause No. 11245-7-I.

1.24 On March 1, 1982, Kirkland filed a Motion to Increase Bonds. On April 21, 1982, an order was entered denying Kirkland's Motion to Increase Bonds. Kirkland filed a notice of appeal from this order on May 3, 1982, which appeal was consolidated with the pending assessment appeals under Cause No. 11245-7-I.

1.25 In their notices of appeal and in their respective briefs, the appellant property owners raised several common issues, including, but not limited to:

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a. Whether, in levying the assessments against the properties specially benefited by the improvements in LID No. 115, Kirkland was required to segregate the components of the improvement project and determine the amount of the special benefit conferred by each component upon each parcel of property;

b. Whether Kirkland acted properly in considering LID No. 115 as a single project and levying a single assessment for the cost of the project against each parcel of property specially benefited by LID No. 115;

c. Whether it was proper and lawful for Kirkland to combine the assessments for those items which were properly assessable to determine the total special benefits conferred by the combined items as to each parcel of property, and to lump the total of the combined special benefits to form the total assessment to be levied;

d. Whether the final assessment roll for LID No. 115 was founded on a fundamentally wrong basis;

e. Whether Kirkland could assess the property owners for cost overruns that were a result of the alleged negligence of Kirkland;

f. Whether Kirkland improperly assessed for items which were of general benefit rather than special benefit to the properties of the appellants;

g. Whether the appellants could challenge Kirkland's determination as to the necessity for and the character of the improvements included in LID No. 115;

h. Whether Kirkland improperly omitted certain properties from the boundaries of LID No. 115;

i. Whether the provisions of Chapter 81.53 RCW required Kirkland to pay for separated and at-grade crossings with general tax revenues rather than special assessments;

j. Whether a local improvement must abut property in order to be of special benefit to it;

k. Whether the Kirkland City Council acted in an arbitrary or capricious manner when it confirmed the final assessments to be levied against the property of each of the appellant property owners; and

l. Whether the proceedings before the Kirkland City Council were void because of a violation of the appearance of fairness doctrine resulting from dual representation of the City Council and City Staff by the same law firm.

1.26 In addition to the above common issues, Hillcrest raised the issue whether Kirkland was estopped from assessing Hillcrest's property because of Kirkland's alleged failure to comply with the provisions of RCW 35.50.005.

1.27 On about August 25, 1982, Hillcrest filed a Complaint for Damages in the Superior Court of the State of Washington for King County under Cause No. 82-2-12121-5 against Transamerica, Lincoln Fotups, LPC No. 169, LPC No. 164, Thrift, Pogue and Butcher.

1.28 In 1979, Lincoln Fotups conveyed to Hillcrest a parcel of property (LID No. 115 Parcel No. 7) located in Kirkland, Washington. Hillcrest was issued a title insurance policy by Transamerica in connection with this conveyance.

1.29 In its complaint, Hillcrest alleged that Transamerica insured Hillcrest's title against the lien assessed in LID No. 115 because such lien was not listed as a special exception in the title policy and did not fall under the categories of general exceptions.

1.30 In its complaint, Hillcrest also alleged that the existence of the LID No. 115 special assessment lien against the subject property at the time of conveyance by Lincoln Fotups to Hillcrest constituted a breach of the warranty of title given by Lincoln Fotups and that Lincoln Fotups negligently misrepresented that the subject property was free and clear of any lien at the time of sale.

1.31 In its complaint, Hillcrest also alleged that Lincoln Fotups fraudulently concealed from Hillcrest at the time of sale the fact that the property was subject to a local improvement district special assessment lien.

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1.32 In its complaint, Hillcrest also alleged that the actions of Transamerica and Lincoln Fotups constituted unfair, deceptive acts or practices in violation of the Consumer Protection Act, RCW 19.86.020. Hillcrest asked for judgment against all of the defendants named in King County Superior Court Cause No. 82-2-12121-5.

1.33 The parties in King County Superior Court Cause No. 82-2-12121-5 have threatened to join Kirkland as a party defendant because of the alleged failure of Kirkland to comply with the provisions of RCW 35.50.005.

1.34 A trial would not be held on the Complaint for Damages under King County Superior Court Cause No. 82-2-12121-5 until 1983 or 1984.

1.35 An opinion may not issue from the Court of Appeals of the State of Washington, Division I, in Cause No. 11245-7-I until 1984 or 1985. An appeal by one or more parties to the Supreme Court of the State of Washington would be probable, with an opinion issuing in 1985 or 1986.

1.36 The local improvement district bonds, the proceeds of which are needed to redeem the interim revenue warrants issued to Seattle-First under Ordinance Nos. 2391 and 2529, may not be marketed until the appeals challenging the confirmation of the final assessment roll for LID No. 115 have been resolved and all litigation with respect to any assessment, assessment lien, or the final assessment roll has been resolved.

1.37 There are insufficient funds in Kirkland's Local Improvement Fund, District No. 115, to redeem any of the outstanding interim revenue warrants issued to Seattle-First under Ordinances Nos. 2391 and 2529.

1.38 Kirkland has informed Seattle-First that Ordinance No. 2529, insofar as it purported to authorize the issuance of interim revenue warrants to bear the interest rate of 9.0 percent per annum for redemption and payment of such interim revenue warrants issued pursuant to Ordinance No. 2391 and not called for payment before May 19, 1980, is invalid.

1.39 Litigation has been threatened by Seattle-First against Kirkland with respect to possible claims for additional interest on the interim revenue warrants issued by Kirkland to Seattle-First under Ordinance No. 2391 and 2529.

1.40 Certain of the appellant property owners under Court of Appeals Cause No. 11245-7-I failed to pay timely installments of principal and interest for the assessments levied and confirmed by Ordinance No. 2595 and approved and confirmed by the judgment of the Court in King County Superior Court Cause No. 81-2-07173-2, namely:

<u>Property Owner</u>	<u>LID No. 115 Parcel No.</u>	<u>Total Due as of June 5, 1982 (Principal Interest, Penalty)</u>
Litchfield and N.A.N.	5	\$26,378.43
Litchfield and N.A.N.	6	1,264.77
Timberland	50	9,165.62
Wahlman and Stringfellow	38	5,790.94
Nelson	39	6,571.49
Dunn	31B	11,347.18

Additional principal, interest accrued since June 5, 1982, and penalties in the event of further delinquency will become due on the next installment anniversary date.

<u>Property Owner</u>	<u>LID No. 115 Parcel No.</u>	<u>Total Due as of June 5, 1982 (Principal Interest, Penalty)</u>
Northwest	31A	9,626.00
Northwest	45	36,410.91
Northwest	47	2,473.55
Northwest	76	1,882.19
Northwest	76A	22,457.82
Welcome	32	7,070.68
Welcome	32A	2,489.95
Welcome	33	17,913.36
Beheyt	42	5,470.54
N.A.N.	1	12,867.62
N.A.N.	2	6,975.05
N.A.N.	3	11,452.29
N.A.N.	25	2,788.17
N.A.N.	26	2,585.81
N.A.N.	27	7,333.79
N.A.N.	29	5,259.64

In the event two installments of an assessment levied by Kirkland become delinquent, the assessment lien imposed by Ordinance No. 2595 is subject to foreclosure under Chapter 35.50 RCW.

1.41 N.A.N. is presently unable to bring current the installments of principal and interest for the assessments levied against its property by Ordinance No. 2595.

1.42 Seafirst Mortgage has an interest in the N.A.N. property secured by a deed of trust which is junior to the assessment lien imposed on such property by Ordinance No. 2595.

1.43 Under RCW 35.50.010, Kirkland's local improvement district assessment liens for LID No. 115 on N.A.N.'s property are superior and paramount to the interest of Seafirst Mortgage in that property.

## AGREEMENT

In consideration of the foregoing and the mutual promises contained herein, the mutual benefits to be derived, and the public interest to be served, it is agreed as follows:

2.1 Payment of Delinquent Installments. Litchfield, Timberland, Wahlman and Stringfellow, Nelson, Dunn, Northwest, Welcome and Beheynt each agree to pay to Kirkland at the office of its Director of Administration and Finance, no later than December 1, 1982, all delinquent installments (including principal, interest and penalties) as set forth in paragraph 1.40 owed by each of them for the assessments levied and confirmed by Ordinance No. 2595 as modified, approved and confirmed by that judgment entered January 5, 1982, in King County Superior Court Cause No. 80-2-07173-2. Seafirst Mortgage agrees that to protect its interests it will pay in the same manner, no later than December 1, 1982, on behalf of N.A.N., all such delinquent installments (including principal, interest, and penalties) as set forth in paragraph 1.40 owed by N.A.N. for the assessments levied and confirmed by Ordinance No. 2595 as modified, approved, and confirmed by that judgment entered January 5, 1982, in King County Superior Court Cause No. 80-2-07173-2. Timely payment of all delinquent installments as set forth in this paragraph is an express condition precedent to any obligation of Kirkland to any other party under this Agreement.

2.2 Payment to Hillcrest. Transamerica agrees to pay to Hillcrest, no later than December 1, 1982, Fifty Thousand

claims, demands and causes of action whatsoever, of every kind and nature, arising or alleged to have arisen, or which shall hereafter arise from the acts or omissions that were the subject of that lawsuit.

Dollars (\$50,000.00) to settle the lawsuit filed under King County Superior Court Cause No. 82-2-12121-5 and all other ~~claims arising out of the sale by Lincoln Fotups to Hillcrest of the property designated as Parcel 7 in Kirkland LID No. 115.~~

Lincoln Fotups agrees to pay to Hillcrest, no later than December 1, 1982, Fifteen Thousand Dollars (\$15,000.00) to settle the lawsuit filed under King County Superior Court Cause No. 82-2-12121-5 and all other claims arising out of the sale by Lincoln Fotups to Hillcrest of that property designated as Parcel 7 in Kirkland LID No. 115.

2.3 Confirmation of Assessments. It is agreed by the parties that assessments levied against the properties owned by the property owners appealing their assessments under Court of Appeals, Division I, Consolidated Cause No. 11245-7-I, are approved and confirmed in the amounts set forth in that judgment entered January 5, 1982, in King County Superior Court Cause No. 80-2-07173-2.

2.4 Payment to Property Owners. Upon payment as provided in paragraph 2.1 of this Agreement of all delinquent installments of the local improvement assessments, Kirkland agrees to pay to the appellants in the Court of Appeals, Division I, Consolidated Cause No. 11245-7-I, the following amounts in settlement:

<u>Property Owner</u>	
Litchfield	\$17,367.47
Timberland	5,758.51
Wahlman and Stringfellow	3,638.29



Property Owner

Butler	27,332.25
Nelson	4,128.69
Dunn	7,129.13
Northwest	45,769.99
Welcome	15,696.79
Beheytt	3,436.99
Coleman	4,468.15
N.A.N.	30,950.23
Wells	2,290.61
Hillcrest	29,000.00
Par Mac	12,371.69

The payments by Kirkland to the property owners shall be made on December 9, 1982, at 11:00 a.m. at the Office of the Director of Administration and Finance, Kirkland City Hall, 123 5th Avenue, Kirkland. The amount which would otherwise be paid to N.A.N. shall be paid instead to Seafirst Mortgage.

2.5 Dismissal of Claims, Causes of Action and Appeals.

Upon the disbursement and payment of funds as provided in paragraphs 2.1, 2.2 and 2.4 of this Agreement, the parties to that lawsuit filed under King County Superior Court Cause No.

82-2-12121-5 shall stipulate to a dismissal with prejudice and without costs of the complaint and all claims in such cause.

Upon the disbursement and payment of funds as provided in paragraph 2.1, 2.2, and 2.4 of this Agreement, the parties to those assessment appeals pending under Court of Appeals, Division I, Consolidated Cause No. 11245-7-I shall stipulate to a dismissal with prejudice and without costs of the appeals and all claims in such cause. The stipulations for and orders of dismissal shall be signed, presented, and filed in King County Superior Court Cause No. 82-2-12121-5 and Court of Appeals, Division I,

Consolidated Cause No. 11245-7-I no later than December 13, 1982, time being of the essence of this Agreement.

2.6 Issuance of Bonds and Redemption of Warrants.

Kirkland agrees to take all reasonable steps necessary to accomplish the prompt and speedy issuance of local improvement district bonds for LID No. 115 and the prompt and speedy redemption of the outstanding interim revenue warrants for LID No. 115 held by Seattle-First. Such redemption shall be accomplished after the issuance of those bonds, <sup>but no later than December 31, 1982,</sup> upon presentation and surrender of the warrants and payment by Kirkland to Seattle-First of the principal amount of each such warrant together with interest at the rate stated on the face thereof from the date of its issue to the date of such redemption. <sup>insert from next page</sup>

2.7 Waiver and Release of all Claims by Seattle-First.

In consideration of the payments made by Kirkland to the appellant property owners in Court of Appeals, Division I, Consolidated Cause No. 11245-7-I, the other efforts of Kirkland to resolve all pending litigation and appeals relating to the assessments and assessment roll for LID No. 115, the efforts of Kirkland to accomplish the prompt and speedy issuance of local improvement district bonds for LID No. 115 which has been prevented by the pendency of such litigation and appeals, the efforts of Kirkland to ensure the prompt and speedy redemption of the outstanding interim revenue warrants to be paid primarily from the proceeds of such bonds, <sup>the actual redemption of those warrants as</sup> and the payment of \$10.00 and other good and valuable consideration, Seattle-First hereby

Insert for previous page:

All parties except Kirkland waive and release all claims they have or may hereafter have to challenge the payment and redemption of such warrants by Kirkland from the LID No. 115 Fund in accordance with their terms, and Kirkland agrees never to attempt to recover from Seattle-First any principal of or interest on such warrants that it may pay to Seattle-First pursuant to this paragraph 2.6.

The waiver, relinquishment and release of claims set forth in this paragraph shall be null, void and of no effect if the outstanding interim revenue warrants for LID No. 115 held by Seattle-First are not redeemed by Kirkland in the manner prescribed in paragraph 2.6, no later than December 31, 1982.

waives, relinquishes, and releases any and all claims, demands, or causes of action which it has or may have relating in any way to LID No. 115, including all claims for any additional interest on or other compensation in connection with the interim revenue warrants issued under the authority of Kirkland Ordinances Nos. 2391 and 2529 beyond that interest to which Seattle-First is entitled based upon the respective interest rates fixed and stated on the face of each of those interim revenue warrants now out-standing and unredeemed.)

2.8 Mutual General Releases. The parties to this Agreement hereby release and forever discharge each other, their officers, directors, officials, agents, and employees from every claim, demand, and cause of action whatsoever, of every kind and nature, whether presently known or unknown, suspected or unsuspected, asserted or unasserted, arising or alleged to have arisen, or which shall arise hereafter from the acts or omissions that <sup>relate to or are derived from LID No. 115 whether or not they</sup> were the subject of that <sup>case</sup> lawsuit <sup>s</sup> filed under King County Superior Court Cause No. 82-2-12121-5, King County Superior Court Consolidated Cause No. 81-2-07173-2, Court of Appeals, Division I, Consolidated Cause No. 11245-7-I, or the threatened lawsuit against Kirkland by Seattle-First, excepting only the obligations created by this Agreement. This Agreement shall not be construed as a release or waiver by Welcome of any cause of action which it may allege to have against Kirkland <sup>by reason of</sup> ~~for~~ its alleged inability to utilize its property due to zoning or other ~~inverse condemnation~~ restrictions whether asserted in an inverse condemnation action or otherwise.

2.9 Warranty of Authority to Settle. Each of the individuals signing this Agreement on behalf of a party warrants that he has the authority to sign the Agreement and thereby to bind the party on whose behalf he signs.

2.10 Warranty Against Assignment of Claims. Each of the parties warrants that it has not assigned or transferred any claim or part or portion of a claim released herein. Each party further warrants that if such assignment or transfer has occurred, it will indemnify and hold harmless the others from and against any claim based or arising out of any such assignment or transfer purported or claimed. This obligation to indemnify and hold harmless shall include the obligation to pay reasonable attorneys' fees and costs actually incurred, whether or not litigation is commenced.

2.11 Parties Bound. This Agreement shall be binding on the heirs, successors and assigns of the parties.

2.12 Purpose of Agreement. This Agreement is designed strictly for the purpose of compromising disputed claims and avoiding the expense, delay and risks of litigation. It is not, and shall not be, construed or characterized as, an admission of liability or wrongdoing on the part of any party, nor shall the Agreement be construed or characterized as a victory for one party or another.

2.13 Nondisparagement. No party shall disparage the character, conduct or abilities of any of the other parties.

2.14 Cooperation. Each of the parties agrees to execute promptly from time to time all documents that may be necessary to carry out the terms of this Agreement or to effect its purposes.

2.15 Integration. This written Agreement contains the entire understanding between the parties in connection with the subject matter, and it supersedes and replaces all prior negotiations, agreements, or representations, whether oral or written. Each party acknowledges that no other party, or any agent or attorney of any party, has made any promise, representation, or warranty whatsoever, expressed or implied, not contained herein, concerning the subject matter hereof, to induce it to execute this document, and each party acknowledges that it has not executed this document in reliance on any such promise, representation, or warranty not contained herein.

2.16 Choice of Law. The interpretation and enforcement of this Agreement shall be governed by the law of Washington.

2.17 Construction of Agreement. This Agreement has been jointly drafted by the parties following negotiations between them. It shall be construed according to the fair intent of the language as a whole and not for or against any party.

2.18 Attorneys' Fees. In the event it is necessary for any party hereto, or its authorized representative, successor or assign, to institute suit to enforce this Agreement or the breach thereof, the prevailing party in such suit or proceeding

shall be entitled to reimbursement for its reasonable costs, expenses and attorneys' fees incurred.

2.19 Execution in Counterparts and Effective Date. This Agreement, to be effective as of the day and year first above written, may be executed in counterparts, each of which when executed shall be deemed to be an original and such counterparts shall together constitute one and the same document. No parties shall be bound by the undertakings of this Agreement or the recitals herein until counterparts have been signed by or on behalf of each party.

0237k





ALICE LITCHFIELD

STATE OF WASHINGTON )  
 ) SS.  
COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1982, before me, a Notary Public in and for the State of Washington, personally appeared \_\_\_\_\_, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that \_\_\_\_\_ signed the same as \_\_\_\_\_ free and voluntary act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

Notary Public in and for the  
State of Washington, residing  
at \_\_\_\_\_

TIMBERLAND INDUSTRIES, INC.

By: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) SS.  
COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1982, before me, a Notary Public in and for the State of Washington, personally appeared \_\_\_\_\_, to me known to be the person who signed as \_\_\_\_\_ of \_\_\_\_\_ the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and on oath stated that he was authorized to execute said instrument and that he was authorized to execute said instrument and that the seal affixed thereto, if any, is the corporate seal of said corporation.

Notary Public in and for the  
State of Washington, residing  
at \_\_\_\_\_

















PAR MAC INVESTORS

By: \_\_\_\_\_

TRANSAMERICA TITLE INSURANCE COMPANY

By: \_\_\_\_\_







EXHIBIT B

No. 11245-7-I

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IN THE COURT OF APPEALS, DIVISION I  
STATE OF WASHINGTON

---

WALLACE H. LITCHFIELD and ALICE LITCHFIELD,  
husband and wife, Appellants,

vs.

CITY OF KIRKLAND and LID 115, et al., Respondents.

---

STIPULATION FOR AND ORDER OF DISMISSAL

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ROBERTS & SHEFELMAN

By Blair B. Burroughs

Attorneys for Respondents,  
City of Kirkland, et al.

4100 Seafirst Fifth Avenue Plaza  
800 Fifth Avenue, Seattle, WA 98104  
Telephone: 622-1818

No. 11245-7-I

IN THE COURT OF APPEALS, DIVISION I  
STATE OF WASHINGTON

WALLACE H. LITCHFIELD and ALICE LITCHFIELD,  
husband and wife, Appellants,

vs.

CITY OF KIRKLAND and LID 115, et al., Respondents.

STIPULATION FOR AND ORDER OF DISMISSAL

STIPULATION

A. Parties.

1. Plaintiffs/Appellants: Wallace H. Litchfield  
and Alice Litchfield  
N.A.N. Partners  
Timberland Industries, Inc.  
Butler Building Corporation  
John Behey and Betty Behey  
Dunn Lumber Company, Inc.  
Northwest Construction Company, Inc.  
James E. Nelson  
Ewing Stringfellow  
Roger B. Wahlman  
L.A. Welcome  
Robert Welcome  
Par Mac Investors  
Hillcrest Corporation  
Parry B. Wells  
John H. Coleman

2. Defendants/Respondents: City of Kirkland  
Local Improvement District No. 115  
Kirkland City Council  
Dr. D.V. Hurst  
Doris Cooper  
Joe Martineau  
Dr. David Andriesian  
Everly Cox  
Robert Neir  
John Cushing

B. Stipulation.

The parties, through their respective counsel, stipulate as follows:

1. The parties have heretofore entered into a Settlement Agreement and Mutual Release of Claims between themselves and other persons not parties to this action and appeal, a copy of which agreement is attached to this Stipulation for and Order of Dismissal and incorporated herein by this reference as if set forth in full.

2. This Stipulation for and Order of Dismissal is being agreed to and entered pursuant to Paragraph 2.5 of attached Exhibit A, the Settlement Agreement and Mutual Release of Claims.

3. Plaintiffs/Appellants Wallace H. Litchfield and Alice Litchfield, N.A.N. Partners, Timberland Industries, Inc., Butler Building Corporation, John Beheynt and Betty Beheynt, Dunn Lumber Company, Inc., Northwest Construction Company, Inc., James E. Nelson, Ewing Stringfellow, Roger B. Wahlman, L.A. Welcome, Robert Welcome, Par Mac

Investors, Hillcrest Corporation, Parry B. Wells, and John H. Coleman, dismiss, with prejudice and without costs, their appeals from that judgment entered in King County Superior Court Cause No. 81-2-07173-2 on January 5, 1982, and all claims therein against defendants/respondents City of Kirkland, Local Improvement District No. 115, Kirkland City Council, Dr. D.V. Hurst, Doris Cooper, Joe Martineau, Dr. David Andriesian, Everly Cox, Robert Neir, and John Cushing.

4. Defendants/respondents City of Kirkland, Local Improvement District No. 115, Kirkland City Council, Dr. D.V. Hurst, Doris Cooper, Joe Martineau, Dr. David Andriesian, Everly Cox, Robert Neir and John Cushing agree to dismiss, with prejudice and without costs, their appeal from that order entered May 3, 1982 denying their motion to increase bonds and all claims therein against plaintiffs/appellants Wallace H. Litchfield and Alice Litchfield, N.A.N. Partners, Timberland Industries, Inc., Butler Building Corporation, John Beheytt and Betty Beheytt, Dunn Lumber Company, Inc., Northwest Construction Company, Inc., James E. Nelson, Ewing Stringfellow, Roger B. Wahlman, L.A. Welcome, Robert Welcome, Par Mac Investors, Hillcrest Corporation, Parry B. Wells and John H. Coleman.

DATED this \_\_\_ day of \_\_\_\_\_, 1982.

ROBERTS & SHEFELMAN

\_\_\_\_\_  
Blair B. Burroughs  
Attorneys for Respondents



MILLS & COGAN

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Stew Cogan  
Attorneys for Hillcrest  
Corporation

WILLIAMS, NOVAK & HANSEN

---

Douglas F. Graham  
Attorneys for N.A.N. Partners

KRIDER, GOUGH & O'CALLAHAN,  
INC., P.S.

---

Mary C. Jarvis  
Attorneys for Par Mac Investors

ATWOOD, SFERRA, SHUEY & AMBUR

---

Pat J. Sferra  
Attorneys for John H. Coleman  
and Parry B. Wells

LIVENGOOD, SILVERNALE, CARTER  
& TJSSEM

---

Robert P. Tjossem  
Attorneys for Wallace H.  
Litchfield and Alice Litchfield,  
Timberland Industries, Inc.,  
James E. Nelson, Ewing  
Stringfellow and Roger B.  
Wahlman, John Beheynt and Betty  
Beheynt, Northwest Construction  
Company, Inc., Dunn Lumber  
Company, Inc., L.A. Welcome  
and Robert Welcome and Butler  
Building Corporation

ORDER

This matter came on for hearing on the foregoing Stipulation of the parties. The Court having read the Stipulation, and having reviewed the records and files herein, it is

ORDERED, that the appeals filed by plaintiffs/appellants Wallace H. Litchfield and Alice Litchfield, N.A.N. Partners, Timberland Industries, Inc., Butler Building Corporation, John Beheynt and Betty Beheynt, Dunn Lumber Company, Inc., Northwest Construction Company, Inc., James E. Nelson, Ewing Stringfellow, Roger B. Wahlman, L.A. Welcome, Robert Welcome, Par Mac Investors, Hillcrest Corporation, Parry B. Wells and John H. Coleman, from that judgment entered in King County Superior Court Cause No. 81-2-07173-2 on January 5, 1982, and consolidated under Cause No. 11245-7-1, are dismissed with prejudice and without cost to any party.

IT IS FURTHER ORDERED, that the Notice of Appeal filed by defendants/respondents City of Kirkland, Local Improvement District No. 115, Kirkland City Council, Dr. D.V. Hurst, Doris Cooper, Joe Martineau, Dr. David Andriesian, Everly Cox, Robert Neir and John Cushing, from that Order entered May 3, 1982, denying their motion to increase bonds and consolidated under Cause No. 11245-7-1 is dismissed with prejudice and without cost to any party.

SIGNED IN OPEN COURT: December \_\_, 1982.

\_\_\_\_\_  
Judge/Court Commissioner

Presented by:

ROBERTS & SHEFELMAN

\_\_\_\_\_  
Blair B. Burroughs

Copy Received, Approved as to Form,  
Notice of Presentation Waived:

MILLS & COGAN

\_\_\_\_\_  
Stew Cogan

WILLIAMS, NOVAK & HANSEN

\_\_\_\_\_  
Douglas F. Graham

KRIDER, GOUGH & O'CALLAHAN, INC., P.S.

\_\_\_\_\_  
Mary C. Jarvis

ATWOOD, SFERRA, SHUEY & AMBUR

\_\_\_\_\_  
Pat J. Sferra

LIVENGOOD, SILVERNALE, CARTER & TJSSEM

\_\_\_\_\_  
Robert P. Tjossem