

JUDGE: DOUGLASS A. NORTH
COURTROOM: ROOM C-203
HEARING TIME: 10:00 AM
HEARING DATE: DECEMBER 14, 2018

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING**

S 212th ST LLC, a Washington limited liability
company,

Plaintiff,

v.

FORTERRA NW, a Washington public benefit
nonprofit corporation, and FORTERRA
ENTERPRISES, INC., a Washington corporation,

Defendants.

NO. 18-2-55191-9 SEA

**MOTION FOR PRELIMINARY
INJUNCTION**

I. INTRODUCTION & RELIEF REQUESTED

Plaintiff would like to purchase vacant land owned by Defendants Forterra NW and Forterra Enterprises, Inc. (“Forterra”). However, because Forterra has failed to provide documents related to the Property, Plaintiff has been unable to complete its due diligence during the Feasibility Period, which expires December 14, 2018. Failure to provide the documents, many of which Forterra admits are in its possession, is a breach of Forterra’s obligations under the purchase and sale agreement. Therefore, Plaintiff requests that the Court enter a preliminary injunction, requiring Forterra to immediately (1) produce all documents related to the Property that are in its possession; (2) identify all other documents or sources of documents that it has knowledge of and that relate to the Property;

1 and (3) extend the Feasibility Period by ninety (90) days to March 14, 2019 to allow Plaintiff to
2 complete its due diligence. Because a preliminary injunction will have minimal impact on Forterra,
3 Plaintiff further requests that the Court require it to post a bond in the amount of \$1,000.

4 **II. STATEMENT OF FACTS**

5 **A. Forterra's Obligations and Communications about Documents**

6 On May 2, Plaintiff and Defendants entered into a written Vacant Land Purchase and Sale
7 Agreement ("Agreement") for the purchase, sale and deed to Plaintiff of fee title to that vacant real
8 property commonly known as King County Assessor Parcel No. 0722059004 and legally described
9 as:

10 THE NORTHWEST QUARTER OF THE NORTHEAST
11 QUARTER OF SECTION 7, TOWNSHIP 22 NORTH, RANGE 5
12 EAST, W.M., IN KING COUNTY, WASHINGTON, LYING
13 WEST OF SOUTH 212TH WAY AS CONDEMNED IN KING
14 COUNTY SUPERIOR COURT CAUSE NUMBER 752919;
EXCEPT THAT PORTION CONVEYED TO KING COUNTY
FOR SOUTH 208TH STREET BY DEED RECORDED UNDER
RECORDING NUMBER 4596832.

15 ("Property") (*Exhibit A¹*): The Agreement provided Plaintiff with a 45-business day Feasibility
16 Period (67 calendar days) commencing on May 3.

17 Over the course of the next several months, Plaintiff and Defendants entered into several
18 written extensions of the feasibility contingency of the Agreement: on July 6, Plaintiff and
19 Defendants agreed to extend the Agreement by 30 business days; on August 31, Plaintiff and
20 Defendants agreed to extend the Agreement until October 11; on October 11, Plaintiff and
21 Defendants agreed to extend the Agreement until November 21, on November 19, Plaintiff and
22 Defendants agreed to extend the Agreement until December 5, and on November 30, Plaintiff and
23 Defendants agreed to extend the Agreement until December 14. *Exhibits B-C and W.*

24 Under Form 34 of the Agreement, Defendants have an obligation to cooperate with Plaintiff
25 by providing all documents relating to the Property:

26 _____
¹ All exhibits are attached to the Declaration of Siddharth Jha.

1 **4. SELLER'S COVENANT TO COOPERATE BY**
2 **PROVIDING DOCUMENTS:** Within 5 days following Mutual
3 Acceptance, Seller shall provide Buyer with copies of all contracts,
4 documents, reports, and studies relating to the Property and its
5 development, for Buyer's information and review ("Property
6 Documents"). If Seller has any engineering drawings and
7 documents, environmental diagrams and studies, surveys, and other
8 Property Documents for some or all of the Property in its possession,
9 Seller shall deliver copies of such contracts, documents, reports, and
10 studies to Buyer no later than 5 days following Mutual Acceptance.

11 Pursuant to Form 34 and Section K of the Agreement, the due date for Defendants to provide
12 Plaintiff with all documents set forth in Form 34 was May 9 ("Document Due Date"). As of May 9,
13 Plaintiff only had limited documents that had been provided with the listing because Forterra failed
14 to comply with this provision. By way of on email on May 27, Plaintiff requested several missing
15 and incomplete documents from Forterra. *Exhibit F.* Defendants' corporate counsel, Adam Draper,
16 acknowledged the request on June 18. *Exhibit G.* On June 21, Forterra provided various material
17 documents. In her June 21 email, Darcey Hughes, Senior Project Manager for Forterra, stated she
18 provided "documents [she] could find" and that "[she] could not find anything else." *Exhibit G.*

19 After determining that (1) Forterra's June 21 written response to Plaintiff's May 27 email
20 contained material misstatements and that (2) the documents Forterra provided on June 21 still
21 remained incomplete, Plaintiff wrote another letter to Forterra on August 17. *Exhibit H.* Plaintiff
22 described in detail the documents Plaintiff believed were incomplete, missing, or otherwise
23 inadequate, and reiterated to Forterra that it had a contractual obligation to provide all documents
24 relating to the Property.

25 By way of emails from Adam Draper, Forterra's corporate counsel, on August 21 and
26 August 22, Forterra provided Plaintiff with additional, material documents that it had failed to provide
27 by the Document Due Date. *Exhibit I.* With this production, Forterra claimed it had conducted a
28 diligent search, provided all documents in its possession, and had no additional documents it could
29 provide Plaintiff. In its August 22 email, Forterra went as far as to assure Plaintiff that Forterra has
30 not "willingly or intentionally" withheld documents from Plaintiff and that it has done an "additional
31 scrub of electronic and hard copy documents" to "find and provide [Plaintiff] with any additional

1 documents”. In no ambiguous terms, Forterra stated: “You have what we have.”

2 On November 16, Dan Grausz, Senior Director of Strategic Projects for Forterra, again
3 represented to Plaintiff and Plaintiff’s counsel that Forterra conducted a thorough search, provided
4 all documents in its possession, and had no additional documents it could further provide Plaintiff
5 (*Exhibit J*), stating in part:

6 Forterra has searched multiple times for documents that your client
7 appears to believe that we have. We do not have them nor am I
8 aware of any other Property Documents (as that term is defined in
9 the PSA) that are in our possession. As your client is aware, Forterra
10 was not the owner of the property at the time certain documents that
11 your client has previously expressed an interest in were created.
12 Whether the former owner had those documents and/or what they
13 did with them is something that we have no knowledge of.

14 The documents Forterra provided Plaintiff on June 21, were provided on the 50th day of the
15 67-day Feasibility Period, and 43 days after the contractual Document Due Date. The documents
16 provided on August 21 and August 22 were 104 to 105 days past the Document Due Date. The failure
17 to timely provide the documents that were undeniably in Forterra’s possession on the Document Due
18 Date, both (1) raises concerns that Forterra has still not produced all documents in its possession
19 related to the Property, much less performed any investigation to acquired other Property Documents
20 that it knows of and could obtain and produce, and (2) prejudiced Plaintiff’s ability to conduct its own
21 feasibility.

22 More importantly, on November 28, Plaintiff met with Forterra in its offices where Forterra
23 admitted, despite its numerous prior representations that it had given Plaintiff “what we have,” that it
24 currently has in its possession, numerous documents directly related to the Property that it refuses to
25 produce. *Jha Decl.* Those withheld documents are described in detail below.

26 **B. Documents Wrongfully Withheld**

1. Forterra’s Land Use Permit Application

Through a public records request, Plaintiff learned that on or about May 28, 2014, Forterra
had filed a land use permit application with the City of Kent (“City”) for a Pre-Application

1 Conference under the City’s file number PA-2014-31 and project name Garrison Creek Side Hill
2 Development (“Forterra’s Application”). **Exhibit K.** The applicant on Forterra’s Application was
3 “Forterra Enterprises, Inc.” and the entity listed under Property Owner 1 was “Forterra (formerly
4 Cascade Land Conservancy)”.

5 Not surprisingly, the signature on Forterra’s Application was that of Michelle Connor,
6 Forterra’s President and CEO. Despite clearly effectuating the creation and submittal of Forterra’s
7 Application, Defendants have failed to provide this document, even though it must be in its possession
8 and over 200 days have lapsed since the Document Due Date.

9 In connection with Forterra’s Application, a pre-application meeting was held at the City on
10 July 8, 2014. That meeting had a “Meeting Attendance Sheet”. **Exhibit L.** The Meeting Attendance
11 Sheet unequivocally shows that Forterra representatives, Nick Cilluffo and Michelle Connor,
12 attended the meeting with City officials.

13 Subsequent to the July 8, 2014 pre-application meeting attended by Nick Cilluffo and
14 Michelle Connor from Forterra, the City sent Nick Cilluffo a letter dated July 22, 2014 by postal mail
15 and e-mail outlining detailed comments from the City’s Fire Prevention and Development
16 Engineering divisions, as well as a copy of the Meeting Attendance Sheet. **Exhibit M.** Page 6 of the
17 City’s July 22, 2014 letter states that an additional copy with enclosures was sent to “Michelle
18 Connor, mconnor@forterra.org”. Not surprisingly, “mconnor@forterra.org” is the same email
19 address Michelle Connor identified under “Seller’s Email Address” on the Agreement. **Exhibit A.**
20 Defendants failed to provide Plaintiff with the entirety of the City’s July 22, 2014 letter, comments
21 from the City’s Fire Prevention and Development Engineering divisions, Meeting Attendance Sheet
22 and the other documents generated in connection with Forterra’s Application.

23 Despite several representatives of Forterra repeatedly stating that Forterra has provided all
24 documents in its possession or that it knows of, Forterra failed to turn over documents its
25 representatives had (1) personally signed and therefore, undeniably had personal knowledge of,
26 (2) personally attended meetings regarding, and (3) that had been emailed to it using email addresses

1 that are still used today. In spite of Forterra’s counsel’s claim that it had conducted an “additional
2 scrub of electronic and hard copy documents”, Forterra failed to turn over electronic documents sent
3 to “mconnor@forterra.org”.

4 Forterra categorically and without legal excuse, failed to provide documents relating to
5 Forterra’s Application. Those documents should have been provided, and unquestionably were
6 material to understanding facts and circumstances relevant to the Property. The City’s July 22, 2014
7 letter itself stated: “Please reference these comments as you develop plans for this site.” The
8 considerable time lapse from the Document Due Date, and the fact that Plaintiff was forced to procure
9 these material documents from elsewhere—nearly 200 days after the Document Due Date—
10 precluded Plaintiff from completing its due diligence within the Feasibility Period.

11 **2. North Fork Garrison Creek Erosion Projects**

12 Through a public records request, Plaintiff learned that on or about March 28, 2016, the City
13 filed an application under the City’s permit number ENV-2016-10 for slope restoration, stabilization,
14 and rerouting of Garrison Creek in and around the Property (“First Erosion Project”). *Exhibit N*.
15 According to the City’s NOA/DNS dated April 8, 2016, the First Erosion Project was for work on
16 adjoining right-of-ways and “adjacent property, parcel number 0722059004”. Not only was work
17 being done on the Property, the City’s documents show Forterra had knowledge of the First Erosion
18 Project but failed to share it.

19 In an Environmental Checklist Application dated March 25, 2016 and prepared by Stephen
20 Lincoln, P.E. of the City’s Public Works Department, Mr. Lincoln states in his response to Question
21 11: “The Owner of the property, the Forterra land conservancy has expressed interest in transferring
22 the land to the City of Kent for use as a Parks facility.” *Exhibit O*. Documents relating to Forterra’s
23 interest in selling the Property to the City, including, but not limited to, correspondences between
24 Forterra, the City and other third parties, were withheld by Forterra.

25 On June 21, Forterra provided a file titled “Appraisal Forterra Property20161102” (“Forterra
26 Appraisal”). *Exhibit P*. Page 93 of the Forterra Appraisal indicates that at least some documents that

1 have not been provided to Plaintiff, were created or exchanged between the City and Forterra in
2 connection with the second phase of the North Fork Garrison Erosion Project under City permit
3 numbers 16-3004 and PW 2015-050 (“Second Erosion Project”). Pages 95 and 96 of the Forterra
4 Appraisal shows the City’s Land Survey Section created at least several survey documents in
5 connection with the First and Second Erosion Projects that Forterra must have in its possession, as
6 Forterra is clearly listed as the “Grantor” of the proposed slope easement.

7 Page 71 of the Forterra Appraisal provides further proof that at least two Forterra
8 representatives were contacted in connection with the proposed slope easement, First Erosion Project,
9 and/or the Second Erosion project. According to Page 71 of the Forterra Appraisal, Michelle Connor
10 met with representatives of IRR-Seattle on September 16, 2016 and expressed her concerns regarding
11 the proposed slope easement as documented by IRR-Seattle:

12 We met with Michelle Connor, EVPSE, a representative of the
13 property owner, Forterra N.W. on September 16, 2016. The primary
14 concern of Ms. Connor was that the proposed easement could
eliminate a potential access point to the subject and negatively
impact the property’s developability.

15 Other than providing the Forterra Appraisal 43 days after the Document Due Date, and despite
16 the evidence obtained from the City and Forterra’s own documents showing that many additional
17 documents were sent directly to Forterra, Forterra failed to provide Plaintiff with any documents
18 relating to (1) the City’s potential slope easement, (2) the City’s potential acquisition of the Property,
19 (3) Forterra’s potential conveyance of the Property to the City, (4) the First Erosion Project, or (5) the
20 Second Erosion Project.

21 **3. ESA and EAI Reports**

22 In response to Plaintiff’s May 27 request, only one page of an “Environmental Science
23 Associates (“ESA”) 2012 report was produced. That single-page document was provided under the
24 file name “Kent Sidehill Site Wetlands_ESA_October2012”. *Exhibit Q*. Plaintiff requested the entire
25 report. On June 21 Forterra responded, “Full Environmental Site Assessment document in dropbox.”
26 In reply to Forterra’s June 21 response, Plaintiff pointed out in its August 16, 2018 letter, as shown

1 on page 2 of *Exhibit H*, that the full ESA report had not been provided and that in fact, what Forterra
2 claimed was the ESA report, was likely an entirely different report produced by a different company,
3 Environmental Associates, Inc. (“EAI”).

4 Plaintiff is entitled to the full ESA and EAI reports. Despite Defendant’s averments that they
5 do not have more than the one page provided under file “Kent Sidehill Site Wetlands
6 _ESA_October2012” (*Exhibit Q*), Defendants have produced another version of the one page
7 (*Exhibit R*), which varies from the one page the produced earlier (*Exhibit Q*).

8 **4. Property Documents Forterra Admits it is Withholding**

9 On November 28, Plaintiff and Forterra met to discuss Forterra’s collection efforts. During
10 that meeting, Forterra admitted to having a significant quantity of additional documents related to the
11 Property, many of which it steadfastly refuses to produce. *Exhibits X and Y*. Forterra claims that the
12 withheld documents are not “Property Documents,” because in its mind, the documents are not
13 “material.” However, through paragraph 4, Forterra agreed to produce all documents related to the
14 Property. *See Exhibit A* (. . . Seller **shall provide** Buyer with copies of **all** contracts, **documents**,
15 reports, and studies **relating to the Property** and its development, for Buyer’s information and
16 review (“Property Documents”). . .) (emphasis added). There is no mention of materiality, nor does
17 the provision give Forterra any discretion in deciding what to produce. The only criteria to consider
18 is whether the document relates to the Property.

19 The Property Documents that Forterra will not voluntarily produce include:

- 20 • Emails and Other Communications. Forterra refuses to produce written
21 communications regarding the Property. It admits that it did not search the emails of
22 any current or former employees except for one year of its former general counsel’s
23 emails, and its CEOs emails from 2011 to present. Further, it refuses to produce even
24 the emails that it did search for. Forterra admits that it has over 400 emails to and
25 from Michelle Connor, CEO of Forterra, that are directly related to the Property.
26 These include, but are not limited to, emails and other written communications with:

1 Forterra personnel, external consultants, the City, adjoining property owners, and
2 other potential joint venture (“JV”) partners. Forterra also admits that at least some
3 of these emails contain relevant attachments, such as “various studies, reports,
4 diagrams, and similar items” but has inexcusably failed to provide them. *Exhibit Y*.

- 5 • Hard Copy Property Folder. Forterra admits that it (1) maintains a hard copy folder
6 related to the Property, and (2) has not provided numerous documents from this
7 folder, including, but not limited to: temporary access easement(s) related to the
8 First/Second Erosion Projects; steep slope and hazardous areas maps; various studies,
9 reports, diagrams, maps, and photos of the Property produced by several engineering
10 and environmental consultants, including Barghausen Engineering; agreements and
11 contracts with consultants, including, the scope of work for work done by ESA and
12 EAI; the Property’s site plans; printed email and letter correspondences with the City
13 and with the donor who deeded the Property to Forterra; draft agreements and
14 proposals for potential joint ventures; internal correspondence and Forterra’s board
15 resolutions regarding the Property; property management agreements with neighbors
16 about the Property’s temporary use; preliminary title reports; invoices and schedule
17 of signage revenue associated with the Property; and another copy of the one page
18 ESA Report (*Exhibit Q*).
- 19 • R-Drive. Forterra maintains electronic documents on an “R Drive.” It admits it has
20 a folder in the R-Drive related to the Property under the title, “Kent Side Hill,”
21 Forterra’s internal reference name for the Property. However, it admits it only looked
22 in the R-Drive for documents specifically identified in Plaintiff’s June
23 correspondence. It admits that there are many additional Property Documents in that
24 location that it will not voluntarily produce including correspondence, memorandums
25 about the Property, draft documents, GIS/CAD files, etc.²

26 _____
² This file is particularly important given the fact that non-archived email correspondence appears to go back only

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III. STATEMENT OF ISSUE

Should the Court grant Plaintiff’s motion for preliminary injunction and require Forterra to immediately (1) produce all documents related to the Property that are in its possession; (2) identify all other documents or sources of documents that it has knowledge of or that relate to the Property; and (3) extend the Feasibility Period by ninety (90) days to March 14, to allow Plaintiff to complete its due diligence? (Yes)

IV. EVIDENCE RELIED UPON

This motion relies upon the declaration of Siddharth Jha with exhibits attached thereto, and the records on file herein.

V. AUTHORITY & ARGUMENT

The trial court has broad discretion to grant injunctive relief based on the circumstances of the case. *Fed. Way Family Physicians, Inc. v. Tacoma Stands Up for Life*, 106 Wn.2d 261, 264, 721 P.2d 946 (1986). RCW 7.40.020 sets forth the grounds for obtaining an injunction in Washington. To obtain a preliminary injunction, a party must establish: (1) it has a clear legal or equitable right; (2) it has a well-grounded fear of the immediate invasion of that right; and (3) the acts complained of are either resulting in or will result in actual and substantial injury. *Fed. Way Family Physicians*, 106 Wn.2d at 265. These three factors are satisfied in this case.

A. Plaintiff Has A Clear Legal Right to the Property Documents

To determine whether a party has a clear legal or equitable right to injunctive relief, the trial court analyzes that party’s likelihood of prevailing on the merits. *Fed. Way Family Physicians*, 106 Wn.2d at 265. However, “the court does not adjudicate the ultimate rights of the parties in the lawsuit.” *Id.* Plaintiff will prevail on the merits here because it has a definite contractual right to the Property Documents. “It is black letter law of contracts that the parties to a contract shall be bound by its terms.” *Torgerson v. One Lincoln Tower, LLC*, 166 Wn.2d 510, 517, 210 P.3d 318 (2009). As discussed above, not only did Forterra fail to conduct any due diligence of its own and acquire

until 2011, but if saved to the R Drive, emails relating to the Property from 2008 – 2011 could be easily culled.

1 Property Documents that it knows exist, it has failed to provide documents that it admits are in its
2 possession, including pre-permit applications that it submitted, correspondence sent by the City to
3 multiple persons at Forterra, complete copies of environmental studies that it commissioned, and a
4 significant amount of correspondence and other documents.

5 Plaintiff specifically included a provision in the purchase and sale agreement to require
6 Forterra to produce all documents related to the Property. At a bare minimum, the plain reading of
7 paragraph 4 contractually obligates Forterra to produce the documents that are in its possession,
8 regardless of Forterra's subjective understanding. *See Hearst Communications v. Seattle Times Co.*,
9 154 Wn.2d 493, 115 P. 3d 262 (2005) ("Washington continues to follow the objective manifestation
10 theory of contracts. Under this approach, we attempt to determine the parties' intent by focusing on
11 the objective manifestations of the agreement, rather than on the unexpressed subjective intent of the
12 parties. We impute an intention corresponding to the reasonable meaning of the words used. Thus,
13 when interpreting contracts, the subjective intent of the parties is generally irrelevant if the intent can
14 be determined from the actual words used. We generally give words in a contract their ordinary,
15 usual, and popular meaning unless the entirety of the agreement clearly demonstrates a contrary
16 intent. We do not interpret what was intended to be written but what was written.") (citations omitted).

17 **Plaintiff Has a Well-Founded Fear that Forterra will Not Comply with its Obligations**
18 **Absent a Court Order**

19 Plaintiff has been in dialog with Forterra for seven months about its failure to produce required
20 Property Documents. Each time, Forterra claims, without revealing how it searched for Property
21 Documents, that it has produced everything in its possession. As demonstrated above, that is not
22 plausible. Moreover, Forterra does not even purport to have conducted any due diligence of its own
23 to either gather Property documents outside its current possession, but within its knowledge and
24 control. Most importantly, during the November 28 meeting, Forterra admitted to conducting another
25 recent search that generated a significant quantity of new Property Documents, but because Forterra
26

1 does not believe they are “material,” it has outright refused to produce them. Clearly, absent a Court
2 order, Forterra will not comply with its contractual obligations.

3 **C. Plaintiff will Suffer Irreparable Harm Absent a Court Order**

4 As the Washington Supreme Court has recognized, real property is unique. *See Crafts v. Pitts*,
5 161 Wash.2d 16, 26, 162 P.3d 382 (2007) (“Specific performance is frequently the only adequate
6 remedy for a breach of a contract regarding real property because land is unique and difficult to
7 value.”) Absent a Court order, Plaintiff would be required to decide immediately whether to risk
8 purchasing the Property with incomplete and inaccurate information, or to walk away from this
9 unique parcel after already dedicating significant time, money and effort over the last seven months
10 to performing due diligence.

11 **D. A Preliminary Injunction will not Harm Forterra: The Bond Should be Minimal**

12 Civil Rule 65(c) reads, “Security. Except as otherwise provided by statute, no restraining
13 order or preliminary injunction shall issue except upon the giving of security by the applicant, in such
14 sum as the court deems proper, for the payment of such costs and damages as may be incurred or
15 suffered by any party who is found to have been wrongfully enjoined or restrained. . .” The purpose
16 of this bond is “to provide indemnification for parties who are wrongfully restrained or enjoined.”
17 *Cedar-Al Products, Inc. v. Chamberlain*, 49 Wn. App. 763, 765, 748 P.2d 235 (1987). The trial court
18 has discretion to set the bond amount. *Hockley v. Hargitt*, 82 Wn.2d 337, 345, 510 P.2d 1123 (1973).

19 Plaintiff is prepared to post a bond. To determine the amount, the Court should consider the
20 parties’ relative positions and the potential harm caused to each by an entry or denial of this motion.
21 Forterra has a contractual obligation to produce documents and will not suffer any harm by the Court
22 entering an order requiring it to comply with the commitments already made. Furthermore, the
23 Property is unimproved vacant land that Forterra has owned since 2008 without developing it.
24 Forterra also admits that it does not have other potential purchasers at this time. *Jha Decl., Exhibit*
25 **J.** Therefore, extending the feasibility date to allow Plaintiff to complete its due diligence after
26 Forterra produces the required documents, will not have a material adverse impact on Forterra.

1 Conversely, if this motion is not granted, Plaintiff must make a significant decision regarding whether
2 to purchase unique, real property without complete information that it bargained for. Clearly, the
3 potential harm to Plaintiff if the motion is not granted far exceeds any potential damages that Forterra
4 will incur as a result of entering the injunction now if, at trial, the Court determines an injunction is
5 not warranted. Therefore, the Court should require a bond of only \$1,000.

6 **VI. CONCLUSION**

7 Plaintiff requests that the Court grant Plaintiff's motion for preliminary injunction and require
8 Forterra to immediately (1) produce all documents related to the Property that are in its possession³;
9 (2) identify all other documents or sources of documents that it has knowledge of and that relate to
10 the Property; and (3) extend the Feasibility Period by ninety (90) days to March 14, 2019, to allow
11 Plaintiff to complete its due diligence.

12 DATED this 6th day of December, 2018.

13 FOX ROTHSCHILD LLP

14 s/ Wendy E. Lyon

15 Wendy E. Lyon, WSBA #34461

16 Fox Rothschild LLP

17 1001 Fourth Avenue, Suite 4500

18 Seattle, WA 98154

19 Telephone: 206.624.3600

20 Facsimile: 206.389.1708

21 E-mail: wlyon@foxrothschild.com

22 *Attorney for Plaintiff S 212th Street LLC*

23 I certify that this motion contains fewer than 4200
24 words, in compliance with Local Civil Rules.

25 ³ Forterra has indicated that many of the relevant electronic communications may be archived and therefore, not
26 readily accessible. For the sake of efficiency, Plaintiff only requests communications related to the Property that are
not archived (including communications to and from current Forterra personnel, Michelle Connor, Dan Grausz, and
Darcy Hughes), with the exception of former Corporate Counsel, Adam Draper's archived communications, which
Plaintiff does request given his significant involvement with the Property.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the date written below, I caused a true and correct copy of the foregoing to be delivered to the following parties in the manner indicated:

Name: Dan Grausz, Forterra Via electronic mail per agreement
Law Firm: Via U.S. Mail
Address: 901 Fifth Avenue, Suite 2200 Via Messenger Delivery
Address: Seattle, WA 98164 Via Overnight Courier
Phone: 206-669-3899 Via Facsimile
Fax: Via FedEx
Email: dangrausz@gmail.com

Name: Stephen M. Rummage Via electronic mail per agreement
Law Firm: Davis Wright Tremaine LLP Via U.S. Mail
Address: 920 Fifth Avenue, Suite 3300 Via Messenger Delivery
Address: Seattle, WA 98104-1610 Via Overnight Courier
Phone: 206-757-8136 Via Facsimile
Fax: 206-757-7136 Via FedEx
Email: steverummage@dwt.com

DATED this 6th day of December, 2018.

s/ Christine F. Zea

Christine F. Zea
Legal Administrative Assistant