

# THIRD STREET LAW

HANSEN McCONNELL & McCONNELL PLLC

STEPHEN W. HANSEN  
PAUL S. McCONNELL  
PERRY W. McCONNELL  
HALEY M. HELMS

February 8, 2024

Allison Peryea  
Peryea Silver Taylor  
1200 Fifth Avenue, Suite 1550  
Seattle, WA 98101-3146

RE: Widing v. Lake Cushman Maintenance Co.

Dear Allison:

Please find enclosed the following:

1. Summons and Complaint For Declaratory And Other Relief,
2. Plaintiff's First Discovery Requests To Defendant and
3. Acceptance Of Service form

I confirm and appreciate your having previously agreed to accept service on behalf of your client. Please sign and promptly return to us the Acceptance Of Service form so that we can file it with the Court.

Thank you for your courtesy and anticipated cooperation regarding this matter.

Yours Very Truly,

*Stephen W. Hansen*

Stephen W. Hansen

SWH/bhs

cc: Client

Enclosure(s): Above-listed items

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF MASON**

<p><b>BETTY WIDING,</b>  Plaintiff,  vs.  <b>LAKE CUSHMAN MAINTENANCE CO., A Washington Non-Profit Corporation,</b>  Defendant.</p>	<p>NO. 24-2-00100-23  <b>SUMMONS [20 days]</b>  <b>[CR 4(b)(2)]</b></p>
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**TO THE DEFENDANTS:** A lawsuit has been started against you in the above-entitled Court by the above Plaintiff. Plaintiff's claim is stated in the written Complaint, a copy of which is served upon you with this Summons.

In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing, and serve a copy upon the undersigned attorney for the Plaintiff within twenty (20) days after the service of this Summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where Plaintiff is entitled to what he/she asks for because you have not responded. If you serve a notice of appearance on the undersigned attorney, you are entitled to notice before a default judgment may be entered.

If you are served outside the State of Washington, you must respond to the Complaint within sixty (60) days after service of this Summons, excluding the date of service.

1 You may demand that the Plaintiff file this lawsuit with the Court. If you do so, the  
2 demand must be in writing and must be served upon the Plaintiff. Within fourteen (14) days  
3 after you serve the demand, the Plaintiff must file this lawsuit with the Court, or the service  
on you of this Summons and Complaint will be void.

4 If you wish to seek the advice of an attorney in this matter, you should do so promptly  
5 so that your written response, if any, may be served on time.

6 THIS SUMMONS is issued pursuant to Rule 4 of the Superior Court Civil Rules of  
the State of Washington.

7 **NOTICE:**

8 State and federal law provide protections to defendants who are on active duty in the  
9 military service, and to their dependents. Dependents of a service member are the service  
10 member's spouse, the service member's minor child, or an individual for whom the service  
member provided more than one-half of the individual's support for one hundred eighty days  
immediately preceding an application for relief.

11 One protection provided is the protection against the entry of a default judgment in  
12 certain circumstances. This notice only pertains to a defendant who is a dependent of a  
13 member of the National Guard or a military reserve component under a call to active service  
14 for a period of more than thirty consecutive days. Other defendants in military service also  
15 have protections against default judgments not covered by this notice. If you are the  
16 dependent of a member of the National Guard or a military reserve component under a call to  
17 active service for a period of more than thirty consecutive days, you should notify the plaintiff  
18 or the plaintiff's attorneys in writing of your status as such within twenty days of the receipt  
19 of this notice. If you fail to do so, then a court or an administrative tribunal may presume that  
you are not a dependent of an active duty member of the National Guard or reserves, and  
proceed with the entry of an order of default and/or a default judgment without further proof  
of your status. Your response to the plaintiff or plaintiff's attorneys about your status does  
not constitute an appearance for jurisdictional purposes in any pending litigation nor a waiver  
of your rights.

20 This notice is issued pursuant to RCW 38.42.050 (3) (a), effective June 7, 2006 as revised 2012.

21 DATED this 6<sup>th</sup> day of February, 2024.

22 HANSEN McCONNELL & McCONNELL, PLLC

23 By Perry McConnell  
24 Perry W. McConnell, WSBA #40688 and  
25 Stephen W. Hansen, WSBA #7256  
Attorneys for Plaintiff

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7 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**  
8 **IN AND FOR THE COUNTY OF MASON**

<p>9 <b>BETTY WIDING,</b> 10 11 <b>Plaintiff,</b> 12 <b>vs.</b> 13 <b>LAKE CUSHMAN MAINTENANCE</b> 14 <b>CO., A Washington Non-Profit</b> 15 <b>Corporation,</b> 16 <b>Defendant.</b></p>	<p>NO. 24-2-00100-23 <b>COMPLAINT FOR DECLARATORY AND OTHER RELIEF</b></p>
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17 COMES NOW the Plaintiff BETTY WIDING by and through her undersigned  
18 attorney of record, Perry W. McConnell, and for cause of action against the Defendant,  
19 hereby alleges as follows:

20 **I. PARTIES**

21 **1.1 Defendant LAKE CUSHMAN MAINTENANCE CO. ("HOA"):**

22 Defendant LAKE CUSHMAN MAINTENANCE CO. (hereafter "HOA"), upon information  
23 and belief, was and is a Non-Profit Corporation duly registered and licensed to conduct  
24 business for the purposes set forth in its Articles of Incorporation ("Articles"). Defendant  
25 HOA is invested with the authority and charged with the responsibility to manage and  
perform the various actions and undertakings under its Articles, Bylaws, and applicable  
Complaint For Declaratory And Other Relief - 1

**THIRD STREET LAW**  
**HANSEN McCONNELL & McCONNELL PLLC**

1636 THIRD STREET  
MARYSVILLE, WASHINGTON 98270  
(360) 658-6580 • FACSIMILE (360) 651-6762

1 Protective Covenants relating to management of use of the properties described therein,  
2 including Plaintiff Widing's above-referenced home situated in Mason County, State of  
3 Washington.

4 **1.2 Plaintiff BETTY WIDING:** Plaintiff WIDING is a single person and owner  
5 of a home located at North 120 Mt. Christie Drive, Hoodspport, WA 98548 within the Lake  
6 Cushman community in Hoodspport, Washington, on leased land, which home is included in  
7 the properties managed by Defendant HOA as referenced above. Plaintiff is a current  
8 member of Defendant HOA.

9 **II. JURISDICTION AND VENUE**

10 **2.1** Jurisdiction and venue are properly laid with this court as each of the parties  
11 reside or do business within Mason County, Washington.

12 **2.2** Jurisdiction and venue are properly laid with this court as this action involves  
13 and concerns the rights, duties, and liabilities of the parties in certain real property located  
14 within Mason County, Washington.

15 **III. DEFENDANT HOA'S BYLAWS AND ARTICLES OF INCORPORATION**  
16 **IMPOSE ANNUAL CAP ON ASSESSMENT INCREASES**

17 **3.1** The Bylaws to which Defendant HOA is subject provide in §VIII (2) as  
18 follows:

19 Regular annual maintenance fee charges shall be limited to an increase equal to not  
20 more than 5% without a vote of the members. [*emphasis supplied*]

21 **3.2** Defendant HOA's Articles of Incorporation to which it is subject and under  
22 which it was legally established and registered as a nonprofit corporation by the State of  
23 Washington provide in Article II as follows:

24 The purposes for which this corporation is formed are:

25 .....

14. To fix, establish, levy, and collect annually such charges and/or assessments as  
may be necessary, in the judgment of the board of trustees to carry out any or all of the

1 purposes for which this corporation is formed, but not in excess of the maximum from  
2 time to time established by the Bylaws. [*emphasis supplied*]

3 **3.3** The aforesaid provisions of Defendant HOA's Bylaws and Articles of  
4 Incorporation have not been amended or otherwise validly revised and remain in full force  
5 and effect currently.

6 **IV. DEFENDANT HOA'S 2024 BUDGET VIOLATES ITS**  
7 **BYLAWS AND ARTICLES**

8 **4.1** Defendant HOA's Board of Directors in December, 2023, proposed and  
9 adopted an annual budget for calendar year 2024 in which the assessments and maintenance  
10 fees charged to members, including Plaintiff Widing, were increased, without an affirmative  
11 vote of the members, by an amount greatly in excess of 5% as compared to the previous  
12 year's (2023) annual assessments and maintenance fees thereby violating the above-  
13 referenced provisions of both the Bylaws and the Articles.

14 **4.2** By way of comparison of the 2023 and 2024 budgets adopted by Defendant  
15 HOA:

- 16
- 17 a. The annual "Maintenance And Operations Fee" (1 component of the  
18 assessment charges to owners in the budget) was increased in the 2024 budget  
19 from \$529.00 to \$876.00 (a 65.6% increase) and
  - 20 b. The "Total Maintenance Assessment" charged to owners was increased in the  
21 2024 budget from \$745.00 to \$1,512.00 (a 103% increase)

22 **4.3** Prior to the adoption of the 2024 annual HOA budget Defendant HOA had  
23 consistently proposed and adopted annual budgets that complied with the above-referenced  
24 provisions of both the Bylaws and the Articles that capped year-over-year increases at 5%.

25 **V. THE 2024 BUDGET ADOPTED BY DEFENDANT HOA IS INVALID**  
**AND UNENFORCEABLE**

1           **5.1**     The 2024 budget adopted by Defendant HOA in violation of its Bylaws and  
2 Articles is invalid and unenforceable.

3           **5.2**     RCW 64.90.525 and 64.90.080 of the 2018 “Washington Uniform Common  
4 Interest Ownership Act” do not nullify, alter or invalidate the cap imposed on annual budget  
5 increases by Defendant HOA’s Bylaws and Articles.

6           **5.3**     RCW 64.90.525 provides in pertinent part:

7                   **Budgets—Assessments—Special assessments.**

8  
9                   (1)(a) Within thirty days after adoption of any proposed budget for the  
10 common interest community, the board must provide a copy of the budget to  
11 all the unit owners and set a date for a meeting of the unit owners to consider  
12 ratification of the budget not less than fourteen nor more than fifty days after  
13 providing the budget. Unless at that meeting the unit owners of units to which  
14 a majority of the votes in the association are allocated or any larger percentage  
15 specified in the declaration reject the budget, the budget and the assessments  
16 against the units included in the budget are ratified, whether or not a quorum is  
17 present.

18                   ....

19                   (3) The board, at any time, may propose a special assessment. The assessment  
20 is effective only if the board follows the procedures for ratification of a budget  
21 described in subsection (1) of this section and the unit owners do not reject the  
22 proposed assessment. The board may provide that the special assessment may  
23 be due and payable in installments over any period it determines and may  
24 provide a discount for early payment. [*emphasis supplied*]

25           **5.4**     RCW 64.90.080 provides:

**Common interest communities, preexisting.**

(1) Except for a nonresidential common interest community described in RCW  
64.90.100, RCW 64.90.095, 64.90.405(1) (b) and (c), **64.90.525** and 64.90.545  
apply, and any inconsistent provisions of chapter 58.19, 64.32, 64.34, or 64.38  
RCW do not apply, to a common interest community created in this state  
before July 1, 2018.

1 (2) Except to the extent provided in this subsection, the sections listed in  
2 subsection (1) of this section apply only to events and circumstances occurring  
3 on or after July 1, 2018, and do not invalidate existing provisions of the  
4 governing documents of those common interest communities. To protect the  
5 public interest, RCW 64.90.095 and 64.90.525 supersede existing provisions of  
6 the governing documents of all plat communities and miscellaneous  
7 communities previously subject to chapter 64.38 RCW. [emphasis supplied]

8 **5.5** RCW 64.90.525 establishes a revised procedure for the adoption of a planned  
9 community's annual budget, and RCW 64.90.080 serves to invalidate any different procedure  
10 for such budget adoption specified in a community's governing documents.

11 **5.6** The imposition of a 5% cap on annual assessment increases does not establish  
12 a different procedure than that specified in RCW 64.90.525 for the adoption of annual budgets  
13 and thus does not violate the provisions of that statute.

## 14 **VI. RELIANCE BY PLAINTIFF AND HOA MEMBERS**

15 **6.1** Plaintiff reasonably and foreseeably relied upon the validity and protection of  
16 HOA's cap on annual assessment increases in her original purchase and continued ownership  
17 of her home in the Lake Cushman community.

18 **6.2** Many other members of Defendant HOA who own properties in the Lake  
19 Cushman community have similarly reasonably and foreseeably relied upon such cap in their  
20 own decisions to purchase and continue to live in the community. A great number of Lake  
21 Cushman HOA members are elderly and living on very tight, fixed incomes.

22 **6.3** The action by Defendant HOA and its Board of Directors in imposing an  
23 assessment for the 2024 calendar year greatly in excess of the aforesaid cap together with the  
24 likelihood that they will predictably do so in the future inasmuch as they have announced that  
25 they no longer consider themselves bound by such cap regardless of the will and wishes of the



1 membership represents a significant current and future financial hardship for the members of  
2 the HOA, including Plaintiff Widing.

3           **6.4** In the event that the HOA Board of Directors at any time desires or perceives a  
4 need for a larger increase in annual assessments than the 5% authorized by the Bylaws and  
5 Articles, it has these valid options under its governing documents to impose a larger increase:  
6

- 7           (a) secure the affirmative vote of the membership to increase any particular annual  
assessment by an amount in excess of 5% (per Bylaws §VIII (2)) or  
8           (b) amend the Bylaws to eliminate or increase the 5% cap by vote of the  
9 membership

10           **VII. DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

11           **7.1** Defendant HOA in adopting its 2024 budget without an affirmative vote of its  
12 membership has wrongfully disregarded the annual assessment increase cap in violation of its  
13 Bylaws and Articles.  
14

15           **7.2** Plaintiff Widing requests the Court, pursuant to RCW 7.24, to determine and  
16 declare:

- 17           (a) that the 5% cap imposed by the Defendant HOA's Bylaws and Articles is  
18 valid, binding and enforceable,  
19           (b) that the 2024 budget adopted by Defendant HOA is invalid and unenforceable  
and  
20           (c) that the prior 2023 annual budget that was approved in 2022 shall remain in  
21 effect in place of the invalid 2024 budget in accordance with the provisions of  
22 RCW 60.90.525(1)(b).

23           **7.3** Plaintiff Widing requests the Court enjoin Defendant HOA from now or in the  
24 future imposing year-over-year increases in annual assessments and charges to the  
25 membership in excess of 5% unless such increase is approved by the membership in





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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR MASON COUNTY**

<p><b>BETTY WIDING,</b></p> <p style="text-align: center;"><b>Plaintiff,</b></p> <p style="text-align: center;"><b>vs.</b></p> <p><b>LAKE CUSHMAN MAINTENANCE CO., A Washington Non-Profit Corporation,</b></p> <p style="text-align: center;"><b>Defendant</b></p>	<p><b>NO. 24-2-00100-23</b></p> <p><b>PLAINTIFF'S FIRST DISCOVERY REQUESTS TO DEFENDANT</b></p>
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TO: Defendant, LAKE CUSHMAN MAINTENANCE CO.

In accordance with Rules 26, 33 and 34 of the Civil Rules for Superior Court, State of Washington, please do the following:

(1) Answer each of the following interrogatories separately and fully, in writing, under oath, unless there be an objection to an interrogatory, in which case state the reason for the objection. The answers and objections, if any, to interrogatories must be served upon the undersigned attorney within thirty (30) days after the service of these interrogatories as provided in Civil Rule 33. The following interrogatories are intended to be continuing in nature, and any information which may be discovered by you subsequent to the service and filing of your answers should be brought to the attention of the inquiring party, through supplemental answers, within a reasonable time following discovery;

(2) Produce and permit inspection and copying of the requested Documents, records and materials pursuant with Civil Rule 34. The designated Documents shall include writings, drawings, graphs, charts, photographs, phone records and other data compilations

<p>Plaintiff's First Rogs &amp; Requests For Production – page 1</p>	<p>Hansen McConnell &amp; McConnell, PLLC 1636 Third Street Marysville, WA 98270 Phone: (360) 658-6580 Fax: (360) 651-6762</p>
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1 from which information can be obtained, translated if necessary or otherwise reduced  
2 through detection devises into reasonably usable form and shall be produced and made  
3 available for inspection and duplication by the undersigned or someone acting on his behalf  
4 at 1636 3<sup>rd</sup> Street, Marysville, Washington 98270, thirty (30) days from receipt hereof.

5 The party upon whom these requests for production are served shall serve written  
6 response within thirty (30) days after service of this request, except that a Defendant (or  
7 Respondent) may serve a response within forty (40) days after the service of the Complaint  
8 (or Petition) upon that party. The response shall state with respect to each item or category  
9 that inspection (or related activities) will be performed as requested, or if the request is  
10 objected to, the reason for such objection. If objection is made to part of an item or category,  
11 that particular part shall be specified in the objection. The party submitting this request may  
12 move for an Order under Civil Rule 37(a) with respect to any objection to or failure to  
13 respond to the request or any part thereof, or any failure to permit inspection or related  
14 activities as requested.

#### 10 DEFINITIONS

11 As used in these interrogatories, the following words and phrases shall have the  
12 following meanings:

13 (a) Person. The term "person" is meant to include any individual and any  
14 business entity.

15 (b) Document. The term "Document " is meant to include, without limiting its  
16 generality, contracts, agreements, correspondence, telegrams, emails, reports, records,  
17 schedules, diaries, invoices, purchase orders, charts, notes, estimates, summaries,  
18 inventories, minutes of meetings and memoranda regarding conferences or telephone  
19 conversations, computer-stored or generated records, photographic or video images, and any  
20 and all other written, printed, or typed matters of whatsoever kind or description. If any  
21 Documents are not identified because of any claimed privilege, state the nature of the  
22 privilege and the number of Documents that are not identified.

23 (c) Identify. As used in these interrogatories, the term "identify" used in  
24 reference to an individual person means to state his full name, present or last known address  
25 and telephone number, his present or last known position and business affiliation, and his  
position and business affiliation at the time in question. "Identify" when used in reference to  
a Document means to state the date and authority, type of Document (e.g., letter,  
memorandum, telegram, chart, etc.) or other appropriate means of identifying it, and its  
present location or custodian. If any such Document was but is no longer in your possession  
or subject to your control, state what disposition was made of it.



1 voted on at the December, 2023 general meeting and how each member voted respecting such  
2 proposed budget.

3 ANSWER:

4  
5  
6 REQUEST FOR PRODUCTION NO. 1: Please produce the following documents:

- 7 (a) Record(s) documenting all votes cast at the general meeting whereat the 2024  
8 budget was adopted.
- 9 (b) Records documenting the vote by the Board of Directors, including how each  
10 member of the Board of Directors voted, in which it decided to propose the final  
11 version of the 2024 budget for adoption at the December, 2023 general meeting.
- 12 (c) Records setting forth and itemizing all expenses and expenditures that were  
13 included in the 2024 budget adopted by the Defendant.
- 14 (d) Records setting forth and itemizing all expenses and expenditures that included  
15 in the 2023 budget adopted by the Defendant.

16 RESPONSE:

17 INTERROGATORY NO. 5: Has the Defendant's Board of Directors or other agents of  
18 the Defendant received objections to or complaints regarding the increase in the assessments  
19 charged to its members in the 2024 budget and/or to the procedure under which that 2024  
20 budget was adopted either before, during or subsequent to the general meeting at which that  
21 budget was adopted? Yes: \_\_\_\_\_ No: \_\_\_\_\_ If "Yes", state the following:

- 22 (a) How many members have lodged such objections/complaints.

23 ANSWER:

- 24 (b) How many such objections/complaints were lodged (i) prior to the general  
25 meeting in question, (ii) how many during that meeting and (iii) how many  
subsequent to the meeting?

ANSWER:

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(c) What were the stated grounds upon which such objections/complaints were based? Please list all such grounds.

ANSWER:

REQUEST FOR PRODUCTION NO. 2: Please produce all *documents* constituting, referencing or containing the complaints and objections that are the subject of the preceding Interrogatory.

RESPONSE:

INTERROGATORY NO. 6: Is it the position of the Defendant that it can now, without member approval, adopt budgets that ignore the 5% year-over-year assessment increase cap set forth in Defendant's Bylaws?

ANSWER:

INTERROGATORY NO. 7: With respect to any Special Assessments that have been proposed and voted upon by Defendant's members during the past 7 years state the following;

(a) The date of each such Special Assessment vote.

ANSWER:

(b) The dollar amount of each such proposed Special Assessment.

ANSWER:

Plaintiff's First Rogs & Requests For Production – page 5	Hansen McConnell & McConnell, PLLC 1636 Third Street Marysville, WA 98270 Phone: (360) 658-6580 Fax: (360) 651-6762
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(c) The purpose of each such Special Assessment voted upon.

ANSWER:

(d) The outcome of the vote on each such Special Assessment including the number of member votes for and against each such Special Assessment.

ANSWER:

REQUEST FOR PRODUCTION NO. 3: Please produce *documents* setting forth the description of each proposed Special Assessment referenced in your response to the preceding Interrogatory.

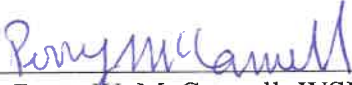
RESPONSE:

REQUEST FOR PRODUCTION NO. 4: Please produce true, complete and legible copies of the Bylaws, Articles of Incorporation and Covenants currently in effect regarding Defendant HOA and the Lake Cushman community.

RESPONSE:

DATED this 6<sup>th</sup> day of February, 2024.

HANSEN McCONNELL & McCONNELL, PLLC

By   
Perry W. McConnell, WSBA #40688 and  
Stephen W. Hansen, WSBA #7256  
Attorneys for Plaintiff

THESE ANSWERS TO INTERROGATORIES and RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS are dated and certified in compliance with CR 26(g) this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

Plaintiff's First Rogs & Requests For Production – page 6	Hansen McConnell & McConnell, PLLC 1636 Third Street Marysville, WA 98270 Phone: (360) 658-6580 Fax: (360) 651-6762
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By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
WSBA# \_\_\_\_\_  
Attorney(s) for Defendant

**DECLARATION**

\_\_\_\_\_ does hereby state and declare as follows:

That I am the \_\_\_\_\_ of *Defendant*; that I have read the within and foregoing interrogatories and requests for production and answers and responses thereto, know the contents thereof, and believe the same to be true.

I hereby declare under penalty of the laws of perjury of the State of Washington that the above is true and correct to the best of my knowledge.

DATED: \_\_\_\_\_, 2024 at \_\_\_\_\_.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

Plaintiff's First Rogs & Requests For Production – page 7	Hansen McConnell & McConnell, PLLC 1636 Third Street Marysville, WA 98270 Phone: (360) 658-6580 Fax: (360) 651-6762
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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF MASON**

<p><b>BETTY WIDING,</b></p> <p>Plaintiff,</p> <p><b>vs.</b></p> <p><b>LAKE CUSHMAN MAINTENANCE CO., A Washington Non-Profit Corporation,</b></p> <p>Defendant.</p>	<p>NO. 24-2-00100-23</p> <p><b>ACCEPTANCE OF SERVICE</b></p>
--	--

Allison Peryea of the firm of Peryea Silver Taylor, attorneys for Defendant LAKE CUSHMAN MAINTENANCE CO. herein, hereby accepts and acknowledges valid process service on behalf of Defendant of:

1. Plaintiff's Complaint For Declaratory And Other Relief and Summons thereon.
2. Plaintiff's First Discovery Requests To Defendant

Allison Peryea represents and affirms that she has full authority to accept service on behalf of said Defendant.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Allison Peryea, WSBA # \_\_\_\_\_  
Attorney for Defendant

Acceptance of Service

THIRD STREET LAW  
HANSEN McCONNELL & McCONNELL PLLC  
1636 THIRD STREET  
MARYSVILLE, WASHINGTON 98270  
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