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**STATE COURT OF WASHINGTON  
MASON COUNTY SUPERIOR COURT**

MATTHEW and AMY JOHNSON, and  
MARK and KATHERINE SCHOMAKER,

Plaintiffs,

v.

LAKE CUSHMAN MAINTENANCE CO., a  
Washington non-profit corporation;

Defendant,

No. 23-2-00169-23

FIRST AMENDED COMPLAINT FOR  
ARBITRATION

Plaintiffs, by and through their counsel of record, hereby allege as follows:

**I. PARTIES**

1.1 Plaintiffs Matthew and Amy Johnson (Johnson) are a married couple living in Pierce County, Washington. They have leasehold interests in the property in Mason County, Washington that is the subject of this action as identified herein.

1.2 Plaintiffs Mark and Katherine Schomaker (Schomaker) are a married couple living in Pierce County, Washington. They have leasehold interests in the

1 property in Mason County, Washington that is the subject of this action as identified  
2 herein.

3 1.3 Defendant Lake Cushman Maintenance Company (LCMC) is a  
4 Washington non-profit corporation that does business in Mason County, Washington.  
5 The association encompasses and governs property that is the subject of the contract  
6 at issue herein.

## 7 **II. JURISDICTION AND VENUE**

8 2.1 This action concerns a contract entered into in Mason County,  
9 Washington, which in turn impacts use of certain property located in Mason County,  
10 Washington.

11 2.2 Defendants are legal entities formed in and doing business in Mason  
12 County, Washington.

13 2.3 Pursuant to the contract at issue herein, venue and jurisdiction for any  
14 dispute or claim relating to the agreement lies in Mason County, Washington.

15 2.4 Based upon the above factual allegations, jurisdiction and venue are  
16 proper in this Court.

## 17 **III. FACTUAL SUMMARY**

18 3.1 This dispute arises out of the interpretation and execution of a CR 2A  
19 agreement entered into between the Johnsons and Schomakers and LCMC.  
20

21 3.2 The Johnsons and Schomakers lease certain property (further described  
22 below) in the Lake Cushman Development (Development).

23 3.3 The City of Tacoma (City) owns the property underlying the  
24 Development.  
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1           3.4     The City leased the Development to Lake Cushman Company (LCC) for  
2 development under a 99-year lease (Primary Lease) executed in 1966, which content  
3 speaks for itself subject to interpretation under Washington law.

4           3.5     This includes Lot 62, which Lake Cushman Company short-platted into  
5 four lots in 1983 (Short Plat), recorded under Mason County Auditor No. 415052,  
6 defined as follows:

7                     Short Plat of Lot 62 in the Plat of Lake Cushman No. 14 recorded in Volume 9  
8 of Plats, Pages 17 through 19 in the records of Mason County, Washington.

9           3.6     Johnson and Schomaker sublease Lot 1 of the Short Plat (Property) from  
10 LCC. The Property is commonly known as 191 N Deer Lane W, Hoodspport, WA  
11 98548, and is legally described as follows:

12                     Lake Cushman #14 TR 62 EX-TR 1 of SP #1260

13                     Mason County 42205-50-00062 and 50-00893

14           3.7     Plaintiffs assumed the prior lease on the Property in 2014. Plaintiffs are  
15 the Grantees of an Assignment of Lease assigned by Federal National Mortgage  
16 Association and recorded under Mason County Auditor's No. 2022096 on May 17,  
17 2014 ("Lease Assignment"), which content speaks for itself subject to interpretation  
18 under Washington law.

19           3.8     The Property, together with the rest of the Development, is governed by  
20 the Lake Cushman Protective Covenants from 1971 (Covenants), together with other  
21 properly adopted governing documents such as rules and regulations. For purposes  
22 herein, reference to governing documents collectively includes the Covenants and any  
23 other documents governing operation, rights and obligations of the association and its  
24 members.  
25

1           3.9     In 1966 Lake Cushman Company created Lake Cushman Maintenance  
2 Company (Defendant or LCMC), which was later converted to a non-profit  
3 homeowners' association, to manage and care for the property within the  
4 Development, including common areas. Since 1991, all lessees of the lots are  
5 members of LCMC.

6           3.10    LCMC is governed, together with any other applicable governing  
7 documents or law, by Articles of Incorporation (AOI) executed and recorded in 1966.

8           3.11    Under Paragraph 10 of the AOI, LCMC is directed to pay “any taxes and  
9 assessments which may be levied by any public authority upon any of the said  
10 property now or hereafter used or set apart for parks, parkways ... open areas ... or  
11 such other recreation spaces wherever situate, as may be maintained for the general  
12 benefit and use of the lessees of lots in said property ...”.

13           3.12    There is an easement (Easement) covering approximately half of the  
14 Property for “park and road purposes”, granted by LCC and benefitting LCMC in 1983.  
15 The Easement is recorded under Mason County Auditor’s No. 414987, as legally  
16 defined therein (which legal description is expressly incorporated herein).  
17

18           3.13    LCMC, together with LCC, emphatically and repeatedly argued in the  
19 Underlying Lawsuit (defined below) that the Easement is an “open space”, designated  
20 for recreational use by LCMC members/leaseholders in the Development. LCMC and  
21 LCC repeatedly referenced the Easement as a “park”.

22           3.14    Adjoining the Property is the Division 14 Park (Park), which is a private  
23 park open to members of LCMC. The Property and the Park are on the shoreline of  
24 Lake Cushman. The Easement covers the southern portion of the Property adjoining  
25

1 the Park.

2 3.15 There is a road (Deer Lane) that traverses the Easement from the main  
3 access road, and provides access to the Park.

4 3.16 Johnson and Schomaker and another sublessee are the holders of an  
5 access easement to their respective homes that traverses the Easement. Johnson and  
6 Schomaker also hold another access easement further described below.

7 3.17 There are several other easements overlapping the Easement and  
8 Property that benefit LCMC, the City, and other entities for purposes of access and  
9 utilities and other uses as designated in those easements, which speak for themselves  
10 subject to interpretation under Washington law.

11 3.18 Johnson and Schomaker previously filed claims against LCMC regarding  
12 the use of the Easement, under Mason County Superior Court Cause No. 15-2-00335-  
13 0 (Underlying Lawsuit). LCMC counterclaimed that it had “exclusive” rights to the  
14 Easement, meaning that it could exclude the Johnsons and Schomakers from any use  
15 of the property underlying the Easement other than as LCMC members.

16 3.19 LCC and the City were later added to the Underlying Lawsuit as the  
17 lessor and owner (respectively) of the Property at issue.

18 3.20 The genesis of the Underlying Lawsuit was certain use of the Easement  
19 by non-members, which was extremely disruptive and damaging to the Johnsons and  
20 Schomakers and their Property outside the Easement, as set forth in the original  
21 Complaint and later Counterclaims filed by the Johnsons and Schomakers in the  
22 Underlying Lawsuit.

23 3.21 The focus of all settlement attempts before and during the Underlying  
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1 Lawsuit was to enable the Johnsons and Schomakers to protect their Property and  
2 families. The mechanisms to achieve these goals were a combination of allowing the  
3 Johnsons and Schomakers to fence their Property at the boundary, and controlling or  
4 stopping the use of the Easement by non-members.

5 3.22 The Underlying Lawsuit was contentious and went on for several years.  
6 The Johnsons and Schomakers filed their original complaint in June of 2015, after  
7 initial attempts to resolve the issues cooperatively fell through. The action went  
8 through an appeal and a petition for discretionary review, and was ultimately settled  
9 shortly before trial pursuant to two CR 2As entered in late March/early April of 2021  
10 (further described below).

11 3.23 In March of 2021, the parties to the Underlying Lawsuit participated in a  
12 mediation. The resulting agreements resolving the claims were two-fold.

13 3.24 All parties entered into a CR 2A Settlement Agreement (Global CR 2A),  
14 which speaks for itself. In brief, the parties agreed to release all claims, known or  
15 unknown, against each other, and waived and released any further rights to sue, in  
16 exchange for dismissal of the Underlying Lawsuit with prejudice pursuant to an agreed  
17 stipulation and decree, and the execution of a separate CR 2A agreement as between  
18 the Johnsons/Schomakers and LCMC.  
19

20 3.25 The parties thus executed a Stipulation and Decree that was signed by  
21 the Mason County Court on May 21, 2021, and recorded under Mason County  
22 Auditor's No. 2158998.

23 3.26 The Johnsons and Schomakers entered into a separate CR 2A  
24 agreement with LCMC (CR 2A) as referenced in the Global CR 2A, which speaks for  
25

1 itself subject to interpretation under Washington Law. A copy of the CR 2A was filed  
2 and recorded with the Stipulation and Decree described above.

3 3.27 The City and LCC approved of, but expressly stayed out of, the CR 2A  
4 agreement between the Johnsons/Schomakers and LCMC. By way of the releases in  
5 the Global CR 2A and the express decision not to be a party to the CR 2A between the  
6 Johnsons/Schomakers and LCMC, the City and LCC waived any further involvement  
7 they had with execution or implementation of the CR 2A.

8 3.28 Counsel for LCMC drafted the CR 2A.

9 3.29 LCMC's usage rights to the Easement is, by the express terms of the CR  
10 2A, for LCMC and its members.

11 3.30 The Johnsons' and Schomakers' usage rights to the Easement includes,  
12 by the express terms of the CR 2A, use by both them *and their guests*.

13 3.31 The CR 2A provided, among other things, the following:

- 14
- 15 a. "The parties agree that the easement is exclusive to LCMC, meaning only  
16 LCMC members are authorized to use it, except [grant to Plaintiffs of certain  
rights]" CR 2A Settlement Agreement ¶ (B).
  - 17 b. The right for Johnsons and Schomakers to retain and maintain the existing  
18 wooden fence and gate, and their boathouse (the latter subject to certain  
conditions). CR 2A Settlement Agreement ¶ (B)(a) and (c).
  - 19 c. The right for Johnsons and Schomakers to exclude other members from a  
20 specified area behind the fence and gate. CR 2A Settlement Agreement ¶  
(B)(c).
  - 21 d. The right for "Plaintiffs *and their guests*" to access a certain area north of the  
22 gate and fence, pursuant to the formal easement later agreed to between  
the parties and recorded (emphasis added in quotation). CR 2A Settlement  
23 Agreement ¶ (B)(d)
  - 24 e. "No parking, staging or standing is allowed on the easement south of the  
25 fence and gate." CR 2A Settlement Agreement ¶ (B)(d).

- 1 f. "LCMC will post the area as no parking, security use only". CR 2A  
Settlement Agreement ¶ (B)(d).
- 2 g. "Nothing in this agreement shall be construed as denying the Plaintiffs, their  
3 successor, or their guests the right to use of the roadway known as Deer  
Lane." CR 2A Settlement Agreement ¶ (B)(g).
- 4 h. LCMC shall keep caution tape in the area around the knoll until such time as  
5 LCMC replaces the existing failing fence. CR 2A Settlement Agreement ¶  
(B)(i).
- 6 i. The Johnsons and Schomakers had the right to maintain their current  
7 driveway pursuant to the recorded easement. CR 2A Settlement Agreement  
8 ¶ (B)(e).

9 3.32 The CR 2A further provides as follows:

10 "FUTURE PARK PROBLEMS: Plaintiffs understand and agree that LCMC  
11 has no jurisdiction to enforce covenants, by-laws or rules against non-  
12 members of LCMC. Plaintiffs shall rely on the Mason County Sheriff's Office  
13 to respond to complaints against individuals using the Division 14 Park and  
14 Park [sic] Easement who are not members of LCMC. This does not prevent  
Plaintiffs from reporting problems to LCMC security. LCMC shall cooperate  
with the Sheriff's Office in enforcing no trespassing on LCMC parks  
including the park easement, or illegal activities. Nothing in this agreement  
shall relieve LCMC from its responsibilities under the covenants."

15 CR 2A Settlement Agreement ¶ (E).

16 3.33 Pursuant to the CR 2A, the Johnsons and Schomakers had the  
17 easement prepared that related to access to/through their existing fence and gate  
18 (Lower Access / Lower Access Easement). LCMC and the Johnsons and Schomakers  
19 executed the easement and recorded it under Mason County Auditor's No. 2171532.

20 3.34 The CR 2A provides that the parties shall mediate any dispute, sharing  
21 the costs of such mediation.

22 3.35 The CR 2A further provides that "[a]ny controversy or claim arising out of  
23 or relating to this Agreement, or its breach, not settled by mediation, shall be settled by  
24 binding arbitration in accordance with Chapter 7.06 RCW and the Rules of Mandatory  
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1 Arbitration for the Superior Court of the State of Washington.” CR 2A Settlement  
2 Agreement ¶ (J). The arbitrator’s decision shall be final, the parties waive any right to  
3 request trial de novo, and each party bears their own cost and attorney’s fees. *Id.*

4 3.36 Since execution of the CR 2A, LCMC has breached several provisions of  
5 the CR 2A.

6 3.37 LCMC’s signage has not been compliant.

7 3.38 LCMC’s signage expressly allows for guest access to the Easement,  
8 which is contrary to the CR 2A.

9 3.39 LCMC’s signage expressly allows for parking that is not compliant with  
10 the CR 2A.

11 3.40 LCMC has refused to honor the plain language of the CR 2A, and  
12 asserts that security is an exception to the prohibition on any “parking, staging or  
13 standing” on the south side of the fence and gate in the Lower Access Easement area.

14 3.41 There is no such exception in the CR 2A.

15 3.42 There is no historical use or actual need supporting or warranting  
16 “parking, staging or standing” of security in the Lower Access Easement area in  
17 contravention of the plain terms of the CR 2A.

18 3.43 LCMC has refused to honor the plain language of the CR 2A that use of  
19 the Easement is limited to LCMC members only, claiming that guests should be  
20 allowed.

21 3.44 LCMC has claimed that the “LCMC Policies on Park and Boat Dock Use  
22 Policy”, which references “permitted guests”, precludes it from limiting guests from the  
23 Easement. Per the property manager, the Board took the stance that LCMC “do[es]  
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1 not have the ability to limit guests or differentiate between your [Johnson/Schomaker]  
2 guests and other member guests.”

3 3.45 Contrary to this stance, LCMC has repeatedly – including recently –  
4 limited guest use of the adjoining Park and other areas within the Development.

5 3.46 Within the development, there are other private areas open to members  
6 where LCMC requires members to have a key and/or code to the gate.

7 3.47 The Easement is not part of the Park, or any other park, and thus not  
8 governed by policies governing the parks in the Development.

9 3.48 LCMC has the ability to construct a separate entrance into the Park that  
10 does not require use of the Easement, if LCMC wished to allow access to the Park to  
11 people beyond those narrowly authorized to use the Easement under the CR 2A.

12 3.49 LCMC, as the legal representative of the homeowners, also has the legal  
13 authority to enter into settlement agreements that, in resolution of a legal dispute, may  
14 restrict or eliminate certain rights of LCMC – including LCMC members.

15 3.50 The CR 2A was duly executed with the approval of the LCMC board.

16 3.51 The plain language of the CR 2A provides that LCMC members – and  
17 only LCMC members – can use the Easement.

18 3.52 This interpretation is supported by the plain language of the overall CR  
19 2A (such as inclusion of “guests” language when it comes to the use rights of the  
20 Johnsons and Schomakers; and the language of the “Future Park Problems” provision  
21 about reporting use of the easement by individuals who are not members of LCMC).  
22

23 3.53 The LCMC president has acknowledged in an open board meeting that  
24 the language of the CR 2A does not allow for use by LCMC member guests.  
25

1           3.54 This interpretation is also supported by the genesis of the Underlying  
2 Lawsuit, which was to curb or stop use of the Easement by non-members. Without  
3 such restriction, there is no resolution of the problems that started the whole dispute.

4           3.55 Exacerbating things, LCMC has since determined to stop night security  
5 in the area around the Easement, which would otherwise provide some measure of  
6 protection against illicit use of the Easement. LCMC gave no indication at mediation  
7 that it intended to reduce the already limited security in the area. The Johnsons and  
8 Schomakers reasonably relied on such security continuing when agreeing to the terms  
9 of the CR 2A. LCMC security presence, and reliance on same, is evidenced in part by  
10 express reservation of the ability of the Johnsons and Schomakers to report problems  
11 to security. That benefit of the bargain is rendered pointless if there is no security to  
12 report to. There is thus a reasonable inference of an obligation of LCMC to provide  
13 some security to fulfill this condition.

14           3.56 LCMC has also breached implicit terms of the CR 2A.

15           3.57 The CR 2A affirmed that the Easement was an open/park area. Under  
16 LCMC's AOI, LCMC is obligated to pay taxes on this area.

17           3.58 LCMC has not paid any taxes on the Property underlying the Easement  
18 despite repeated demand. LCMC has not offered any rational or basis for this refusal.

19           3.59 LCMC has not taking reasonable steps to maintain the trees in the  
20 Easement area that per the CR 2A and covenants they undertook and maintained the  
21 obligation to maintain – but expressly barred the Plaintiffs from maintaining – including  
22 addressing diseased and dangerous trees.

23           3.60 The CR 2A did not expressly require LCMC to repair/replace the fence or  
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1 provide a specified time-frame or standard of fencing. However, implicit was the intent,  
2 and thus obligation, that LCMC would repair the fence in a reasonable time, and to  
3 repair the fence such that it would reasonably protect users from the danger posed by  
4 the severe and steep adjoining cliff. This is also consistent with LCMC's general duties  
5 under the covenants, which were expressly maintained pursuant to the terms of the  
6 CR 2A. Liability for persons using the area was an express consideration of the issues  
7 to be resolved in the CR 2A.

8           3.61 Interpreting the CR 2A to include these conditions as an inherent part of  
9 the express terms is also reasonable and proper given that the agreement expressly  
10 barred all parties from bringing any future stand-alone claims, thus mandating that the  
11 CR 2A be exercised in reasonable good faith to give effect to the terms therein.

12           3.62 LCMC did not repair/replace the fence for a year and a half.

13           3.63 LCMC failed to maintain caution tape during the intermediate time-frame  
14 in any way that mitigated the danger of persons falling down the cliff along the  
15 trail/edge of the Easement.  
16

17           3.64 The fence as constructed does nothing meaningful to actually protect the  
18 safety of users.

19           3.65 The CR 2A did not restrict the Johnsons' and Schomakers' ability to  
20 fence their Property boundary, or to reasonably limit access to the Easement to the full  
21 extent allowed to servient property holders by Washington law.

22           3.66 This was a purposeful and knowing omission, evidenced in part by the  
23 fact that LCMC previously objected to such fencing during the course of the Underlying  
24 Lawsuit.  
25

1           3.67 Pursuant to the CR 2A, the Johnsons and Schomakers have attempted  
2 to work with the local police authorities to address persons misusing the Easement.  
3 The sheriff indicated, however, that without something like a fence delineating the  
4 boundary, and signage making it clear that guests were not allowed, that the sheriff  
5 could not take any action to stop the problematic use.

6           3.68 Given the ongoing silence on the fence issue, and LCMC's elimination of  
7 security, the Johnsons and Schomakers filed for approval of a fence and gate along  
8 the boundary, which would allow reasonable member access to the Easement area  
9 (including Deer Lane accessing the Park).

10           3.69 LCMC has other parks within the development that utilize locked gates to  
11 ensure access is limited to members.

12           3.70 LCMC refused to approve the project, citing that it would unreasonably  
13 restrict access to the Easement.

14           3.71 LCMC's position that a fence and gate would "unreasonably" interfere  
15 with use of the Park is itself unreasonable and unfounded, and an improper restriction  
16 on Plaintiffs' exercise of their property rights preserved under the CR 2A.

17           3.72 LCMC has told the Johnsons and Schomakers to turn to their lawyers for  
18 any further discussion.

19           3.73 The Johnsons and Schomakers initiated a mediation, which eventually  
20 occurred in August of 2022, to attempt to resolve their disputes. At meditation itself,  
21 however, LCMC declined to address anything but the "guests" issue in mediation,  
22 leaving the other issues undiscussed and unresolved.

23           3.74 LCMC has thus waived any further requirement to mediate these  
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1 disputes arising out of and relating to the CR 2A, and arbitration is appropriate.

2 **IV. FIRST CAUSE OF ACTION – DIRECT TO ARBITRATION**

3 4.1 Plaintiffs incorporate herein the factual allegations above.

4 4.2 The CR 2A provides that “[a]ny controversy or claim arising out of or  
5 relating to this Agreement, or its breach, not settled by mediation, shall be settled by  
6 binding arbitration in accordance with Chapter 7.06 RCW and the Rules of Mandatory  
7 Arbitration for the Superior Court of the State of Washington.” CR 2A Settlement  
8 Agreement ¶ (J). The arbitrator’s decision shall be final, the parties waive any right to  
9 request trial de novo, and each party bears their own cost and attorney’s fees. Id.

10 4.3 The claims herein are subject to the arbitration clause of the CR 2A.

11 4.4 The parties have met or waived the mediation prerequisite in the CR 2A  
12 for all claims asserted herein.

13 4.5 Plaintiffs ask that the Court direct this action into arbitration as provided  
14 by the CR 2A.

15 4.6 As necessary, if there are challenges to the arbitrability of any of the  
16 claims herein, Plaintiffs ask that the Court affirm that any issues not subject to the CR  
17 2A arbitration provision will proceed in the current action as claims separate from the  
18 CR 2A.  
19

20 **V. SECOND CAUSE OF ACTION – DECLARATORY RELIEF**

21 5.1 Plaintiffs incorporate herein the factual allegations above.

22 5.2 Plaintiffs seek a determination by the arbitrator that the allowance of  
23 LCMC members in the CR 2A means LCMC members *only*, and not guests of LCMC.

24 5.3 Plaintiffs seek a determination by the arbitrator that LCMC is obligated to  
25

1 provide at least the de minimis security in place at the time of the CR 2A, or something  
2 of equivalent service, as necessary in order to make available the option given to  
3 Plaintiffs to utilize LCMC security.

4 5.4 Plaintiffs seek a determination by the arbitrator that LCMC's signage is  
5 not in compliance with the CR 2A.

6 5.5 Plaintiffs seek a determination by the arbitrator that LCMC security is not  
7 allowed to park, stage or stand in the Lower Access Easement area.

8 5.6 Plaintiffs seek a determination by the arbitrator that the CR 2A does not  
9 restrict the Plaintiffs from erecting a fence along the boundary.

10 5.7 Plaintiffs seek a determination that a fence/gate system that incorporates  
11 a key or lock system available only to members is reasonable, and LCMC is precluded  
12 from withholding approval of the project per the rights preserved under the CR 2A.

13 5.8 Plaintiffs seek a determination by the arbitrator that given the overall  
14 circumstances of the CR 2A, the events leading to the Underlying Lawsuit, and the  
15 ongoing problems in the Easement, that their request for constructing a fence and gate  
16 that allows access to the Easement by LCMC members only is compliant with the CR  
17 2A, and a valid exercise of Plaintiffs' contractual obligations assumed under the CR 2A  
18 to manage the access.

19 5.9 Plaintiffs seek a determination that LCMC must reimburse Plaintiffs for  
20 taxes paid on the Easement since Plaintiffs' leasehold commenced, and must make  
21 timely payment of such taxes moving forward.  
22

23 **VI. THIRD CAUSE OF ACTION – INJUNCTION**

24 6.1 Plaintiffs incorporate herein the factual allegations above.  
25



1 2A. Should the Court or arbitrator make another finding, however, the Johnsons and  
2 Schomakers request such fees and costs to the full extent allowed by law.

3 5. For such other and further equitable or legal relief as the Court or arbitrator  
4 deems fair and appropriate.

5 DATED this 1<sup>st</sup> day of May, 2023.

7 **GRYPHON LAW GROUP PS**

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Carmen R. Rowe, WSBA #28468  
11 Attorneys for Plaintiffs