

## ***SETTLEMENT AGREEMENT***

For good and sufficient consideration, the receipt of which is hereby acknowledged, the undersigned parties agree to the following terms as full settlement of all claims, counterclaims, defenses, and causes of action between Matthew Johnson, Amy Johnson, Mark Schomaker and Katherine Schomaker (all collectively "Plaintiffs"), and Lake Cushman Maintenance Company ("LCMC"), pertaining to pending litigation identified as Mason County Superior Court Cause No. 15-2-00335-0 (hereinafter "litigation").

### **Recitals:**

- A. Defendant Lake Cushman Company and City of Tacoma, while agreeing to participate entry of the attached Stipulation and Decree, they are not parties to this agreement.
- B. Plaintiffs and LCMC, in consideration of mutual benefits to be achieved through cooperative resolution of the litigation, agree to the following:

### **Settlement Agreement:**

- A. SETTLEMENT: Plaintiffs and LCMC shall enter into the attached Stipulation and Decree.
- B. EXCLUSIVE NATURE OF EASEMENT: The parties agree that the easement is exclusive to LCMC, meaning only LCMC members are authorized to use it, except that the LCMC irrevocably agrees to grant the Plaintiffs the following rights:
  - a. The right to retain and maintain at their cost the existing wooden fence and gate in its current location ("fence and gate"), as shown on the survey by Holman and Associates dated March, 2016.
  - b. The right to exclude other members of the association from using the area between the fence and gate and the northern boundary of the Easement, except that the LCMC shall be allowed shared access to the same area to the extent required under utility easements and LCMC's governing documents. Plaintiffs shall provide LCMC a key if a lock is installed.
  - c. The right to retain and maintain at their cost the existing boathouse which encroaches upon the easement. The boathouse may not be expanded onto the Easement. It may be maintained or rebuilt only in its present location and its current dimensions. Plaintiffs can construct a new boathouse onto their own property outside the easement upon removal of the existing boathouse. Any modification or

new construction shall be subject to all state, local regulations and LCMC governing documents and rules.

- d. The right for Plaintiffs and their guests to reasonably, necessarily access the area north of the fence and gate through the park and road easement area, including vehicle access. No parking, staging or standing is allowed on the easement south of the fence and gate.

This area shall be as defined as in the proposed easement by Derek Losey, attached, and the attendant legal description, attached except that the easement shall be six (6) feet on either side of the centerline. Plaintiffs' counsel will draft a formal version of this easement and the parties will cooperate in executing and recording that easement. LCMC will post the area as no parking, security use only.

- e. The right for Plaintiffs to use their current driveway, using the ingress/egress easement recorded under Mason County Recorders No. 528940. LCMC shall not interfere in any way with this use.
- f. Nothing in this agreement shall be construed as denying Plaintiffs, their successors, or their guests the right to use the park as members of the LCMC.
- g. Nothing in this agreement shall be construed as denying the Plaintiffs, their successors, or their guests the right to use of the roadway known as Deer Lane.
- h. Nothing in the agreement shall be construed as affecting any easements overlaying any portion of the park and road easement.
- i. LCMC shall keep caution tape in the area around the knoll until such time as LCMC replaces the existing failing fence.

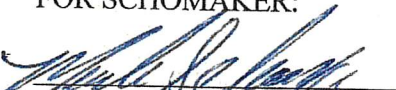
- C. INDEMNIFICATION HOLD HARMLESS: LCMC shall defend, indemnify and hold harmless Plaintiffs, their successors and assigns from any third-party claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the LCMC in maintaining the park or its negligence. LCMC shall have no obligation for injuries and damages caused by the negligence of the Plaintiff.
- D. CITY OF TACOMA: Nothing in this agreement shall be construed as affecting the interest of the City of Tacoma as owner of subject premises or the interests of the Lake Cushman Company as the master lease holder.
- E. FUTURE PARK PROBLEMS: Plaintiffs understand and agree that LCMC has no jurisdiction to enforce covenants, by-laws or rules against non-members of LCMC. Plaintiffs shall rely on the Mason County Sheriff's Office to respond to complaints against individuals using the Division 14 Park and Park 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.

- F. COSTS AND FEES: All parties to this agreement will pay their own attorney fees and costs.
- G. BINDING EFFECT; RUNNING COVENANTS: This Agreement shall be fully binding on any successors in interest to the LCMC and to the Plaintiffs. The parties intend that the covenants in this Agreement shall run with the land.
- H. WAIVER: No waiver of any terms, provisions or conditions of this Agreement whether by conduct or otherwise in any one or more instances shall be deemed to be or construed to be as a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Agreement.
- I. SEVERABILITY: If any term or provision of this Agreement or any application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such terms or provisions to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of the Agreement shall be valid and enforceable to the fullest extent permitted by law.
- J. DISPUTE RESOLUTION: In the event a dispute shall arise between the parties to this Agreement, the parties agree to participate in at least four hours of mediation in accordance with the mediation procedures of the Washington Arbitration & Mediation Service (WAMS). The parties agree to share equally in the costs of the mediation. The mediation shall be held in WAMS Tacoma offices. Any controversy or claim arising out of or relating to this Agreement, or its breach, not settled by mediation, shall be settled by binding arbitration in accordance with Chapter 7.06 RCW and the Rules of Mandatory Arbitration for the Superior Court of the State of Washington. The Parties specifically agree that the arbitrator shall have equitable powers and that the arbitrator's decision shall be final. The Parties hereby waive the right to request trial de novo. Each party shall bear their own cost and attorney's fees in any arbitration.
- K. VENUE AND JURISDICTION: Venue and jurisdiction for any dispute or claim relating to this Agreement lies in Mason County.
- L. COUNTERPARTS: The Parties intend that this Agreement may be executed in counterparts which when taken together shall constitute one Agreement.

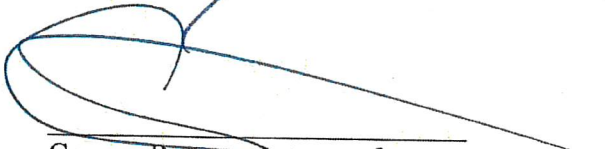
Dated this 31<sup>st</sup> day of March, 2021

FOR SCHOMAKER:

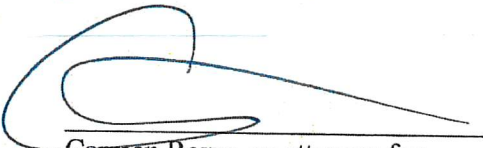
  
Print Name: Mark Schomaker

FOR LCMC:

  
Print Name: KEITH HILLSTROM.  
Title/Authorization: BOARD PRESIDENT

  
Carmen Rowe, as attorney for  
Kathrine Schomaker

  
Print Name: Matthew Johnson

  
Carmen Rowe, as attorney for  
Amy Johnson