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KEVIN STOCK COUNTY CLERK NO: 16-2-12121-2

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF PIERCE

LINCOLN and CYNTHIA GLENISTER; AN HUYNH; HEATHER HANSTAD; MIKE and WENDY REYNOLDS; TREVOR and ROCHELLE PETTINGILL; JONATHAN and DENISE SOKOLOWSKI; BRAD and SUE COLBO: DAVID and TERRI ASPLUND: TINH V. NGUYEN; STEVE and JEANINE BARNDT; RON BEESLEY and KIM NORRIS; DAVID and CLAIRE GORENSTEIN: BILL NIX and VICTORIA JIMANO; DAN and JANET WOJTALA; RUSS and PEGGY BARSTOW; BRENT and DANA EGGLESTON; RUSS and JENNIFER CRUTCHER; ALAN and NORMA OREJANA; SEAN and SHANNON BROWN; COE and EILEEN LINDNER; SCOTT and SUZANNE BERGESON; BOB and RUBY CHARNESS; MARK and IZZY BOYD; GRAHAM and ERIKA STAINES; ERNEST and PAMELA PETERSON; JEFF ROCKOFF and CHARLENE HUTCHINS; LUTHER and LORELLI AGUILAR; TINH NGUYEN and PHUNG LE, Plaintiffs, VS.

NO.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

BOARD OF DIRECTORS OF SILVER CREEK ASSOCIATION, a Washington nonprofit corporation, dba SILVER CREEK HOME OWNER'S ASSOCIATION.

Defendant.

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF - 1

LEDGER SQUARE LAW, P.S. 710 Market Street Tacoma, WA 98402 Telephone: (253) 327-1900 Facsimile: (253) 327-1700

COME NOW the Plaintiffs, LINCOLN and CYNTHIA GLENISTER; AN HUYNH; HEATHER HANSTAD; MIKE and WENDY REYNOLDS; TREVOR and ROCHELLE PETTINGILL; JONATHAN and DENISE SOKOLOWSKI; BRAD and SUE COLBO; DAVID and TERRI ASPLUND; TINH V. NGUYEN; STEVE and JEANINE BARNDT; RON BEESLEY and KIM NORRIS; DAVID and CLAIRE GORENSTEIN; BILL NIX and VICTORIA JIMANO; DAN and JANET WOJTALA; RUSS and PEGGY BARSTOW; BRENT and DANA EGGLESTON; RUSS and JENNIFER CRUTCHER; ALAN and NORMA OREJANA; SEAN and SHANNON BROWN; COE and EILEEN LINDNER; SCOTT and SUZANNE BERGESON; BOB and RUBY CHARNESS; MARK and IZZY BOYD; GRAHAM and ERIKA STAINES; ERNEST and PAMELA PETERSON; JEFF ROCKOFF and CHARLENE HUTCHINS; LUTHER and LORELLI AGUILAR; TINH NGUYEN and PHUNG LE, by and through their attorneys, Ledger Square Law, P.S., Jason M. Whalen, and Shasta L. Kelley and state and allege as follows:

I. PARTIES

1.1 Plaintiffs Lincoln and Cynthia Glenister; An Huynh; Heather Hanstad; Mike and Wendy Reynolds; Trevor and Rochelle Pettingill; Jonathan and Denise Sokolowski; Brad and Sue Colbo; David and Terri Asplund; Tinh V. Nguyen; Steve and Jeanine Barndt; Ron Beesley and Kim Norris; David and Claire Gorenstein; Bill Nix and Victoria Jimano; Dan and Janet Wojtala; Russ and Peggy Barstow; Brent and Dana Eggleston; Russ and Jennifer Crutcher; Alan and Norman Orejana; Sean and Shannon Brown; Coe and Eileen Lindner; Scott and Suzanne Bergeson; Bob and Ruby Charness; Mark and Izzy Boyd; Graham and Erika Staines; Ernest and Pamela Peterson; Jeff Rockoff and Charlene Hutchins; Luther and Lorelli Aguilar; Tinh Nguyen and Phung Le. The Plaintiffs named herein (collectively, "Grayhawk Owners"), are residents of

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Pierce County and are homeowners within a subdivision of Silver Creek, known as Grayhawk at Silver Creek.

1.2 Defendant Silver Creek Association. Defendant Silver Creek Association is a Washington nonprofit corporation, having its principal place of business in Puyallup, Pierce County, Washington, and doing business as Silver Creek Home Owner's Association ("Silver Creek" or "Association"). The Association is charged with the duties and vested with the powers prescribed by law and as set forth in the governing documents for the Association. Silver Creek consists of nine neighborhoods with over 1700 single-family residences. Silver Creek is a Planned Unit Development, subject to the provisions of that certain Declaration of Covenants, Conditions, Restrictions and Easements for Silver Creek, recorded on December 12, 1996, under Pierce County Auditor's No. 9612120005 and re-recorded under Auditor's No. 9612240018 ("Master CCRs"). Each neighborhood, like Grayhawk, is also subject to a "supplementary" Declaration of Covenants, Conditions, and Restrictions. The Supplementary Declaration of Covenants, Conditions, and Restrictions for Grayhawk at Silver Creek was recorded under Pierce County Auditor's No. 9903310233, and was amended by First Amendment dated March 31, 1999 and recorded under Auditor's No. 9904010364. The Silver Creek Home Owner's Association is also governed by its Bylaws, as amended and restated as of August 2, 2012.

II. JURISDICTION

2.1 <u>Jurisdiction</u>. Jurisdiction is appropriate with the Superior Court as this action seeks declaratory and injunctive relief regarding the interpretation of rights and responsibilities by and between the parties with regard to the Association Board's exercise of its duties under the Master CCRs for the benefit of all owners in Silver Creek, including Plaintiffs herein.

2.2 <u>Venue</u>. Venue is proper in Pierce County since the real property that is the subject matter of this action is located in Pierce County and the Defendant Association conducts business on behalf of the owners at Silver Creek in Pierce County.

III. FACTS

- 3.1 Plaintiffs restate and reallege Paragraphs 1.1 through 2.2.
- 3.2 Homes in Grayhawk were marketed as view homes, priced at a premium. Grayhawk Owners purchased their homes as view homes with the understanding they would have the right to maintain these views, over time, consistent with the original developer's intent and the applicable provisions of the Master CCRs.
- 3.3 Pursuant to Section 1.7 of the Master CCRs, the "Common Areas" refer to all real property that is owned or leased by the Association, or that is designated by Declarant for future ownership by the Association on a final plat, binding site plan or other recorded document creating a Phase, including without limitation open space areas and improvements thereon. The Common Area at issue in this matter is that area described as the "Community Park" of Silver Creek, east of and adjacent to the Grayhawk subdivision homes. As a Common Area, the Community Park is subject to the Association's management duties and obligations, consistent with the Master CCRs and the past pattern and practice of the Association.
- 3.3.1 As described in the Master CCRs, the Declarant desired to "create permanent open space areas and other common facilities for the benefit of the Silver Creek community, to provide for the preservation of Silver Creek's natural amenities in Silver Creek <u>and</u> to provide for the maintenance of open spaces and other common facilities."
- 3.3.2 The Master CCRs provide for the delegation and assignment to the Silver Creek Association those duties and powers to maintain and administer the Common Areas and facilities subject to the terms of the Declaration.

3.3.3 Under Section 3.9 of the Master CCRs, the Architectural Control Committee, designated by the Association, is responsible for reviewing and approving certain activities, including the "planting, pruning, cutting and trimming of trees and other vegetation within Silver Creek."

- 3.3.4 Section 6.17 of the Master CCRs ("Nuisances Prohibited") proscribes activity on or in any portion of Silver Creek which unreasonably interferes with the rights of the other Owners to the use and enjoyment of their respective Lots and Living Units or of the Common Areas.
- 3.3.5 Section 7.3 of the Master CCRs requires the Association to maintain, repair, replace, improve and otherwise manage all of the Common Areas so as to keep them in good repair and condition and "shall conduct such additional maintenance, repair, replacement, construction or reconstruction as may be determined . . . to promote the recreation, health, safety and welfare of the Owners. Any action necessary or appropriate to the maintenance and upkeep of the Common Areas "shall be taken by the Association only."
- 3.4 In 1999, when the Grayhawk subdivision was established, home builder Benum Enterprises made a first request to Silver Creek Development, the predecessor to the Defendant Association, for tree trimming/pruning in order to facilitate the establishment of view homes in the Grayhawk subdivision. In January 2000, Silver Creek Development approved the request with conditions as issued by Pierce County (via November 9, 1999 letter) and as set forth in the Master CCRs, Section 7. Subsequently, the trees were trimmed consistent with the conditions and views were maintained.
- 3.5 In 2006, Grayhawk Owners submitted a second request to the Association, at that time via its Architectural Control Committee, for similar tree maintenance work that had been done in 1999. The Grayhawk Owners were asked to provide an arborist report for the proposed scope of work. The report, completed in early 2007 by Bryce Landrud, Thundering Oak

Enterprises, Inc. (certified arborist), was submitted and the request was thereafter approved in July 2007. The tree maintenance proceeded as approved.

- 3.6 In 2013, after 7 years of growth and tree maturation, the Grayhawk Owners made a third request to the Association through its Architectural Control Committee ("ACC") for tree and view maintenance. As part of its review process, the Association Board requested the Grayhawk Owners provide a geotechnical report to ensure that the proposed tree maintenance would not endanger the stability of the hillside. The completed report by AGES, LLC (geotechnical engineering company), obtained in August 2014 at Grayhawk Owners' expense, confirmed that there was no issue with slope stability; rather, that the long-term stability of the slope would be increased with continued forest canopy management. The report was furnished to the Association Board, and described the scope of work, ensuring that the health of the wooded area and slope would not be negatively impacted by the maintenance work.
- 3.7 The Association Board also requested the Grayhawk Owners fund an additional arborist report. On June 20, 2015, certified arborist Bryce Landrud with Thundering Oak Enterprises provided his report and survey of the dense, overcrowded evergreen trees in the Community Park area. As part of his report, Mr. Landrud reminded the Board that "On this site, most of the trees have been trimmed or topped over the years to maintain view corridors for residents. This process has kept many more trees viable over the years as it prevents any trees from becoming dominant and shading out smaller or weaker neighbors." Mr. Landrud provided a comprehensive renovation plan that started with a simple thinning of the forest canopy, necessary to create and maintain a healthy forest parcel.
- 3.8 Around the time the surveys were completed, in addition to overgrowth, the Plaintiffs made the Board aware of large amounts of garbage, rubbish and debris, including drug paraphernalia, littered throughout the Community Park area, giving rise to safety concerns including the possibility of a fire hazard. Notwithstanding repeated complaints made to the Board to control the overgrowth and clean up the Community Park, no reserve funds have been

appropriated towards the cleanup effort in fourteen years and what efforts have been expended have been grossly inadequate. At the same time, a number of makeshift homeless encampments and bunkers were identified within the Community Park. Photographs depicting these conditions were provided to the Board. Despite requests from multiple homeowners, the Association has failed to take any action to obtain a "no trespass" order with the Pierce County Sheriff to address the issue.

- 3.9 The Association, acting by and through its duly elected Board, has failed to properly manage the overgrowth and otherwise maintain the Community Park area in accordance with its duties under the CCRs, resulting in damage to the forest lying within the Community Park Area.
- 3.10 Notwithstanding the receipt of the requested forestry and geotechnical reports, the Association Board denied the Grayhawk Owners' request without basis or explanation. A subsequent reconsideration request was also ignored and/or denied on or around August 17, 2015, asserting rationale for the Board's decision that had nothing to do with the Board's review of the updated geotechnical and arborist reports which clearly supported the proposition that proper forest canopy maintenance would not only maintain views but also would enhance the health of the forested Community Park, which is part of the Common Areas.
- 3.11 The Association, acting by and through its duly elected Board, without contrary expert opinion or other information to help form its review of the Grayhawk Owners' request, exercised its discretion in an arbitrary and capricious manner, contrary to the rights of the Grayhawk Owners and contrary to the duties of the Association.

IV. DECLARATORY RELIEF

- 4.1 Plaintiffs restate and reallege Paragraphs 1.1 through 3.11 above.
- 4.2 Defendant Association has acted on Plaintiffs' maintenance request contrary to the express or implied intent, terms, and conditions of the Master CCRs and HOA published ACC procedures, and in an arbitrary and capricious manner. Plaintiffs have put Defendant on notice of Plaintiffs' assertion of their rights in this regard and said demands have been ignored and/or

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disputed by Defendant. As such, Plaintiffs seek a judicial determination and declaratory relief as to Plaintiffs' rights and Defendant's obligations under the terms and conditions of the Master CCRs.

4.3 Plaintiffs request an award of their reasonable attorney fees and costs incurred in this action pursuant to the applicable provision of the Master CCRs.

V. <u>INJUNCTIVE RELIEF</u>

- 5.1 Plaintiffs restate and re-allege Paragraphs 1.1 through 4.3 above.
- 5.2 Defendant's actions in exercising its discretion in an arbitrary and capricious manner, is contrary to the intent, terms, and conditions of the Master CCRs and have caused and are continuing to cause Plaintiffs ongoing harm.
- 5.3 Defendant's actions are causing Plaintiffs to directly and proximately experience damages, including the loss of use and enjoyment of their view homes and the impact to their property values.
- 5.4 Plaintiffs have and will continue to suffer immediate and irreparable injury if a temporary restraining order, preliminary injunction, and permanent injunction are not issued restricting Defendant from withholding approval of Plaintiffs' tree pruning and maintenance requests, as supported by geotechnical and certified arborist expert review and analysis as to the requested scope of work.

VI. BREACH OF FIDUCIARY DUTY

- 6.1 Plaintiffs restate and re-allege Paragraphs 1.1 through 5.4 above.
- 6.2 Defendant has at all times material to the facts alleged in this complaint been the homeowner's association for all homeowners in the Grayhawk subdivision;
- 6.3 Defendant Association is tasked with certain duties and obligations as more fully set forth in the Master CCRs and pursuant to the same, is solely authorized to take any necessary or appropriate action with respect to the maintenance or upkeep of the common areas.

- 6.4 Defendant Association, acting by and through its duly elected Board, has failed to carry out the Association's Master CCRs, specifically failing to maintain and upkeep the common areas "to promote the recreation, health, safety and welfare of the [Grayhawk] Owners."
- 6.5 Defendant Association's failure has unreasonably interfered with Plaintiffs' use and quiet enjoyment of their respective Lots, Living Units, and Common Areas, and have caused damage to Plaintiffs' property interests in such amounts as may be proven at the time of trial.

VII. REQUESTS FOR RELIEF

WHEREFORE, Plaintiffs, having stated their claims against Defendant, prays for the following relief:

- 1. For temporary restraining order immediately enjoining Defendant from withholding approval of Plaintiffs' reasonable tree pruning and maintenance requests, as supported by geotechnical and certified arborist expert review and analysis as to the requested scope of work;
- 2. For declaratory relief and a permanent injunction, declaring Plaintiffs' rights under the Master CCRs, including a judicial determination that the Grayhawk Owners are entitled to a reasoned review of all future maintenance requests, for the benefit of not only the Grayhawk Owners, but also of all of the owners who live and enjoy the Community Park Common Area amenities in Silver Creek, and enjoining Defendant and/or Defendant's successors and assigns from exercising Board discretion on such requests in an arbitrary and capricious manner;
- 3. For an award of monetary damages incurred by Plaintiffs as a direct and proximate result of Defendant's unlawful actions, including any additional cost to complete the maintenance over and above that originally contemplated, due to the unreasonable delay of the Defendant;
- 4. For an award of Plaintiffs' attorneys' fees and costs as authorized by the terms of the Master CCRs, court rule, statute, or equitable basis; and

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1	5. For such other and further relief as the court deems just and appropriate.	
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3	DATED this 17th day of October, 2016.	
4	LEDGER SQUARE LAW, P.S.	
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6	By: Jason M. Whalen, WSBA # 22195	_
7	Jason M. Whalen, WSBA # 22195 Shasta L. Kelley, WSBA # 47822 Attorneys for Plaintiff	
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