

**STATE OF NEW YORK
SUPREME COURT COUNTY OF SARATOGA**

Fox Wander West Neighborhood Association, Inc.,

Plaintiff,

**AGREEMENT
OF
SETTLEMENT**

-against-

The Luther Forest Corporation,

Defendant.

**Index No.: 20171767
RJI No. 45-1-2018-1167
Hon. Ann C. Crowell**

AGREEMENT RELATED TO COMMON LANDS OWNED BY FOX WANDER WEST NEIGHBORHOOD ASSOCIATION, INC. SUBJECT TO THE TIMBER AND OTHER RESERVED RIGHTS OF THE LUTHER FOREST CORPORATION LOCATED IN THE TOWN OF MALTA, SARATOGA COUNTY, NEW YORK AND COMMONLY REFERED TO AS LUTHER FOREST.

RECITALS:

- A. Fox Wander West Neighborhood Association, Inc. (hereinafter "Fox Wander"), having an address of c/o Sentry Management, Inc., 790 Watervliet Shake Road, Latham, New York 12110, commenced an action against The Luther Forest Corporation, with its office at 2 Stonebreak Road, Malta, New York 12020, (hereinafter "Luther Forest") by summons and complaint dated June 23, 2017, to which Luther Forest responded by answer dated August 21, 2017.
- B. After Notice of Motion of Fox Wander dated August 24, 2018, together with supporting papers, and the defense thereof by Luther Forest, a Decision and Judgment of the Court dated August 19, 2019 was filed in the Saratoga County Clerk's Office on August 30, 2019 followed by Notice of Entry by Luther Forest dated September 5, 2019.
- C. The Decision and Order decided of most of the claims in the action but left open the issue of whether Luther Forest caused any damages to Fox Wander's trail system and, if any, the extent of those damages and, further, left open questions of fact relative to whether slash and debris left on common lands was done in accordance with good forestry practices.

D. The parties have now addressed the outstanding issues in the above captioned action and desire to bring the matter to a conclusion by mutual agreement.

NOW THEREFORE, IT IS HEREBY AGREED by and between Fox Wander and Luther Forest that the action is settled upon the following terms and conditions and is hereby discontinued, with prejudice, based on the following agreement of the parties:

AGREEMENT:

1. **TIMBER HARVEST NOTIFICATION.** Prospectively from the date of this agreement, Luther Forest will give Fox Wander thirty (30) days' notification before it undertakes timber harvesting in the common areas. No less than ten (10) days prior to commencing timber harvesting operations Luther Forest shall post notice of such planned harvesting along entrance roads and trail entrances, which notice shall be in readable form. Fox Wander shall notify Luther Forest of its business address in the event of any changes.
2. **FOX WANDER TRAILS.** In the event that Luther Forest damages any of Fox Wander's trails, fencing, signs or other improvements in existence as of this date, or any future replacements thereof during the course of its timber harvesting operations, Luther Forest agrees to restore any trails, fencing, signs or other improvements to substantially the condition they were in immediately prior to each harvest within a reasonable time but, weather permitting, not exceeding three (3) months after the completion of each future timber harvesting operation. In connection herewith and as a matter of good faith, Luther Forest agrees to pay to Fox Wander the sum of \$2,500 within thirty (30) days of this Agreement in full satisfaction of any claims that Fox Wander may have for any past damages to the Fox Wander trails, regardless of whether any such past damages were caused by events of nature or by Luther Forest.

3. **REPLACEMENTS.** With respect to past timber harvesting operations, Luther Forest shall replace the split rail fences it removed from Partridge Drum and also replace and install the sign it removed from the Wineberry trail entrance, which replacements shall be made, weather permitting, within sixty (60) days of the date of this Agreement.
4. **FOREST MANAGEMENT / SLASH PILES.** Luther Forest agrees that all resulting debris and slash ("slash") created by its past and future harvesting operations shall be brought down to ground level no more than three (3) feet in height but, if consolidated, put in piles not exceeding fifteen (15) feet long, fifteen (15) feet wide and three (3) feet high and at least twenty-five (25) feet away from the rear yards of the homes located in the Fox Wander development. In furtherance of the foregoing, Luther Forest agrees to mitigate the existing slash piles located east and west of Partridge Drum and in the Wineberry Loop previously inspected by the Parties and reduce them in height to no more than three (3) feet within ninety (90) days of the date of this Agreement.
5. **WARNINGS.** Luther Forest shall place in conspicuous areas in proximity to its harvesting operations appropriate caution and warning signs so as to give Fox Wander's resident owners, guests and invitees notice to avoid the harvesting areas. Luther Forest shall also jointly place markers such as traffic cones or yellow caution tape to discourage access to any active harvesting sites or equipment storage areas.
6. **CONTRACTOR, SUBCONTRACTORS, AND INSURANCE.** Luther Forest shall provide each timber harvesting contractor or subcontractor with a copy of this Agreement at least ten (10) days prior to any work being performed by such contractors or subcontractors. Luther Forest shall require all contractors and subcontractors to comply with the timber harvest provisions set forth herein. Moreover, Luther Forest shall require its timber harvesting contractors or subcontractors to have insurance coverage including public liability insurance and worker's compensation insurance during the course of any timber harvesting operation,


and with respect to the public liability insurance Luther Forest shall require that Fox Wander shall be named as an additional insured under the policy.

7. **RECORDING AGREEMENT.** The Parties agree to record this Agreement in the Deed Index records of the Saratoga County Clerk's Office within ninety (90) days of the last date of execution of this Agreement as set forth below. The Parties intend that the terms, conditions and covenants contained in this Agreement run with the land and are thus intended to be binding upon the Parties' successors and/or assigns.
8. **DISCONTINUANCE.** Upon the filing of this Agreement with the Court and the recording of the same with the Saratoga County Clerk, the above captioned action shall be settled and discontinued with prejudice without costs or disbursements to either party.

**[SIGNATURES, ACKNOWLEDGEMENTS AND THE "SO ORDERED" BY THE COURT ARE
ON THE FOLLOWING PAGE.]**

[SIGNATURES, ACKNOWLEDGEMENTS AND "SO ORDERED" PAGE]

Fox Wander West Neighborhood Association, Inc.

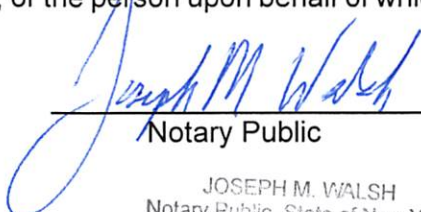
By: 
Name: James C. Parker
Title: Acting President
Date: 12/23/2019

Luther Forest Corporation

By: _____
Name: Marissa C. Mackay
Title: President
Date: _____

STATE OF NEW YORK)
) SS.
COUNTY OF SARATOGA)

On the 23rd day of December, 2019 before me, the undersigned, a notary public in and for said state, personally appeared James C. Parker, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public
JOSEPH M. WALSH
Notary Public, State of New York
Qualified in Saratoga County
No. 02W/A4735473
My Commission Expires 09/30/2021

STATE OF NEW YORK)
) SS.
COUNTY OF SARATOGA)

On the _____ day of _____, 20__ before me, the undersigned, a notary public in and for said state, personally appeared Marissa C. Mackay, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

SO ORDERED THE _____ DAY OF _____ 2020.

Hon. Ann Crowell, J.S.C.