

## SETTLEMENT AGREEMENT AND GENERAL RELEASE OF CLAIMS

### **(City of Seattle – Harrelson)**

This Settlement Agreement and General Release of Claims (this “**Agreement**”) is entered into by and among Stanley J. Harrelson and Mary E. Harrelson, husband and wife, both in their individual capacities and in their capacities as co-trustees of the Stanley J. Harrelson Qualified Personal Residence Trust (collectively, “**Harrelson**”) and the City of Seattle, a Washington municipal corporation, for itself and each of its divisions, agencies, and departments (collectively, the “**City**”). This settlement agreement is not effective until the settlement agreement between the City and the Riemers, attached as exhibit A, is also signed.

### RECITALS

**A.** Harrelson and the City (also referred to herein collectively as the “**Parties**” and each individually as a “**Party**”), among other parties, are engaged in litigation in the matter of *The City of Seattle v. Stanley J. Harrelson et al.*, King County Superior Court Cause No. 16-2-22566-7 SEA (the “**Litigation**”), with regard to a series of actions generally described in the Complaint and other pleadings in the Litigation that impacted City-owned trees and real property (collectively, the “**City Property**”) near the 3200 block of 35<sup>th</sup> Ave SW in Seattle (referred to herein collectively, and together with all other actions impacting the subject trees and City Property at any time prior to the date hereof, the “**Cutting**”).

**B.** The undersigned have resolved all issues relating to the Litigation with respect to the Parties to this Agreement, and therefore desire to enter into a settlement and general release of claims on the terms and conditions set forth in this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the promises, covenants and provisions set forth in this Agreement, the parties agree as follows:

**1. Dismissal of Litigation Against Harrelson Defendants.** Within five (5) business days of payment to the City by Harrelson and Riemer, the Parties shall execute and file with the King County Superior Court, a stipulation and proposed order seeking the Court’s dismissal of each of the City’s claims against Harrelson and the Riemers in the Litigation with prejudice (the “**Dismissal Order**”). The City will dismiss the claims against Jane and John Does and the Forrest Bishop and John Russo defendants without prejudice. The claims dismissed without prejudice are hereby assigned jointly to the Harrelsons and Riemers.

**2. Payment.** Harrelson and Riemer shall remit a settlement payment to the City in the amount of Four Hundred Forty Thousand and 00/100s Dollars (\$440,000) (the “**Settlement Payment**”). The Settlement Payment shall be made within fifteen (15) business days of the execution of this agreement and Exhibit A hereto. The City acknowledges and agrees that the Settlement Payment, once remitted as provided in this Section 2, shall constitute a full and final payment for its settlement with Harrelson, and no additional funds will be available or sought from Harrelson’s homeowners’ or other insurers with respect to the Cutting. Further, Harrelson shall not be required to take part in any repairs or restoration efforts for any property that may have been affected by the Cutting. Harrelson agrees to allow pedestrian access to the Northern and Eastern portions of the Harrelson Property outside the fence line for purposes of access for the restoration work to be completed in 2017; provided, however, the City shall provide Harrelson with at least seventy two (72) hours advance written notice of any such access and the

City agrees to indemnify and hold the Harrelsons harmless for any personal injuries that occur on the Harrelson property as part of a person's authorized access for purposes of site restoration under this agreement. Harrelson and Riemer's obligation to remit the Settlement Payment to the City as required in this Section 2 shall be a condition precedent to the effectiveness of this Agreement. In the event the City is not paid the full amount of the Settlement Payment within the required time frame, this Agreement and all terms herein shall be null, void, and of no further force or effect.

**3. Harrelson's Acknowledgement of Responsibility for Portion of "Site A"; No Further Admissions.** As part of this settlement, Harrelson agrees that the following statement is properly attributed to them and may be used by the City in press releases and other public statements regarding this matter and attributed to Harrelson: "We accept responsibility for a portion of the cutting that took place in the area described as 'Site A' in the City's Complaint for damages, as disclosed to the City in early 2016." The Parties acknowledge that they have entered into this Agreement to avoid the expense, inconvenience and uncertainty of continuing with the Litigation. Except as expressly set forth above in this Section 3, this Agreement shall not be deemed to be, nor construed as, or treated as an admission of liability or responsibility by either Party to the other, nor an admission regarding what proportion or quantity of the Cutting Harrelson was involved in.

**4. No Further Contest; General Release.** The Parties acknowledge and agree that this Agreement is intended to fully and finally resolve all claims, controversies, and disputes between them, and that neither Party may later pursue a claim or legal theory that would involve altering the terms of this Agreement or further litigation of the claims asserted, or that could have been asserted, in the Litigation or otherwise with respect to Harrelson's involvement in the Cutting. For and in consideration of the Settlement Payment, the City hereby agrees to not pursue any criminal charge whatsoever, nor pursue any further claim, charge, or enforcement action, civil or criminal, in any court, administrative or enforcement proceeding based on Harrelson's role in the Cutting or any damages resulting therefrom, directly or indirectly, at any time. The City, for itself and for its successors and assigns, does hereby release, acquit and forever discharge Harrelson and Harrelson's successors, assigns, heirs, executors, administrators, and homeowners' and other insurers, from any and all claims, actions, expenses and compensation rights whatsoever, which the City now has or which may hereafter accrue to the City on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen property damages including specifically damage associated with the Cutting and the consequences thereof, regardless of whether such claim has or could be asserted in the Litigation. The above release includes but is not limited to economic loss of any kind, including attorneys' fees and costs, diminution of the value or utility of the City's trees or property and any claim arising out of a contract, statute, tort or claims for damages or treble damages for timber trespass under Washington state statutes and common law. The foregoing release shall not prevent the City from pursuing any legal remedy against any other party to the Litigation, nor shall it prevent the City from asserting the defense of contributory negligence in a subsequent suit by the Harrelsons or asserting that the Harrelsons are at fault for any damage caused by the cutting in suit brought by a third-party against the City.

**5. Harrelson Waiver of Claims; Nonretaliation.** Harrelson hereby waives any claim that they might have against the City regarding any landslide-related damage occurring at the Harrelson's residential property at 3242 35th Ave SW (the "**Harrelson Property**") within

eight (8) years of the effective date of this Agreement; provided, however, this waiver shall not apply to the extent that any such landslide-related damage is caused by the negligence of the City of Seattle, in which case damages shall be apportioned among the parties to the extent of their contributory and comparative negligence in causing said damage. Should Harrelson sell the Harrelson Property prior to the expiration of the eight-year period; Harrelson agrees to indemnify and defend the City against any claim for landslide damage to the Harrelson Property that the new owner(s) of the real property brings against the City during the remainder of the eight-year period; subject, however, to the above apportionment provisions in the event that the City of Seattle contributes to the damages to the Harrelson Property through its own negligence. Notwithstanding the foregoing, the City agrees that will replant the area identified in the underlying Complaint as "Area A" in 2017, and that it will manage "Area A" as it does other like properties within the City, and shall process any future land use or permit applications from Harrelson or their successors in interest in good faith without regard to the Litigation between the Parties. This clause shall not be construed as an agreement on the part of the City to approve any land use or permit applications.

## **6. General Provisions.**

**6.1 Scope of Agreement.** This Agreement, including the attached exhibits, contains all covenants, promises, agreements, and conditions, either oral or written, between the Parties regarding the settlement of the claims asserted in the Litigation.

**6.2 Amendment.** This Agreement may not be altered or amended except by a written document executed by all of the parties.

**6.3 No Attorneys' Fees or Costs.** The Parties each acknowledge and agree that each Party is responsible for its own attorneys' fees, court fees, consultant, and other costs in connection with the investigation of the Cutting, the initiation, prosecution, and defense of the Litigation, and the negotiation and execution of this Agreement, and no Party shall be required to pay any such costs incurred by another party in connection with the Cutting, the Litigation, or this Agreement.

**6.4 Authority.** Each Party hereby represents and warrants to the other Party that it has the respective power and authority, and is duly authorized to execute, deliver and perform their obligations under this Agreement.

**6.5 Headings.** The headings in the Agreement are inserted for reference only and shall not be construed to expand, limit or otherwise modify the terms and conditions of this Agreement.

**6.6 Time Is of the Essence.** Time is of the essence of this Agreement and every provision hereof unless otherwise set forth in this Agreement. If any time for action occurs on a weekend or legal holiday, then the time period shall be extended automatically to the next business day.

**6.7 No Third-Party Beneficiary.** This Agreement is made and entered into for the sole protection and benefit of the Parties, their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

**6.8 Interpretation.** This Agreement has been reviewed and revised by legal counsel for all parties and no presumption or rule that ambiguity shall be construed against the party drafting the document shall apply to the interpretation or enforcement of this Agreement.

**6.9 Notice.** All communications, notices and demands of any kind which a party under this Agreement requires or desires to give to any other party shall be in writing and either (i) delivered personally, (ii) sent by facsimile transmission or email with an additional copy mailed first class, or (iii) deposited in the U.S. mail, certified mail postage prepaid, return receipt requested, and addressed as follows:

If to Harrelson: Stanley and Mary Harrelson  
3242 35th Ave SW  
Seattle, WA 98126

With a copy to: Davis Wright Tremaine LLP  
1201 Third Avenue, Suite 2200  
Seattle, WA 98101-3045  
Attn: Clayton P. Graham  
Telephone: (206) 757-8052  
Facsimile: (206) 757-7052

If to City: Joseph Groshong  
Seattle City Attorney's Office  
701 Fifth Ave, Suite 2050  
Seattle, WA 98104  
Telephone: 206-684-8200  
Facsimile: 206-684-8284


Notice by hand delivery or facsimile shall be effective upon receipt. If deposited in the mail, notice shall be deemed delivered 48 hours after deposited. Any party at any time by notice to the other party may designate a different address or person to which such notice or communication shall be given.

**6.10 Cooperation.** The Parties shall not unreasonably withhold requests for information, approvals or consents provided for in this Agreement. The Parties agree to take further actions and execute further documents, either jointly or within their respective powers and authority, to implement the intent of this Agreement.

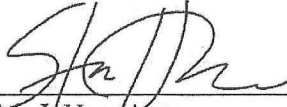
**6.11 Delays.** If either party is delayed in the performance of its obligations under this Agreement due to force majeure, then performance of those obligations shall be excused for the period of delay.

IN WITNESS WHEREOF, this Agreement has been fully executed by the Parties as of the 13<sup>th</sup> day of April, 2017.

**CITY OF SEATTLE,**  
a Washington municipal corporation

By   
Joseph Groshong  
Assit City Atty

**HARRELSON:**

  
Stanley J. Harrelson  
  
Mary E. Harrelson

**EXHIBIT A**  
**Riemer Settlement**

## MUTUAL RELEASE AND SETTLEMENT AGREEMENT

### Parties:

This Mutual Release and Settlement Agreement (“Agreement”) is executed by and between Martin and Karrie Riemer, individually and their marital community (“Riemer”); the City of Seattle (“City”); and collectively known as the “Parties” to this Agreement.

### Recitals:

Pursuant to a lawsuit filed on September 20, 2016 in the Superior Court of the State of Washington for King County, under Cause No. 16-2-22566-7 SEA, the City of Seattle alleged several causes of action against Riemer and other defendants related to tree cutting on the City of Seattle’s property adjacent to the Riemers’ home located at 3241 35<sup>th</sup> Ave. SW in Seattle, Washington. The Parties want to settle and release all claims as described below and dismiss the subject lawsuit against Riemer with prejudice. This settlement agreement is not effective until the settlement agreement between the City and the Harrelsons, attached as exhibit A, is also signed.

### Consideration:

Riemer and Harrelson will pay the total sum of Four Hundred and Forty Thousand Dollars (\$440,000.00) to the City no later than fifteen business days from mutual execution of this Agreement. Payment shall be by check and/or wire made payable to the City of Seattle. In the event the City is not paid within the required time frame, the settlement between the City and both Riemer and Harrelson will be void.

Other valuable consideration is the Parties’ mutual relinquishment of their respective legal rights with reference to the disputes and differences described in this Agreement.

### Covenants:

- Conditioned upon timely receipt of the above-stated \$440,000 sum, the City releases and forever discharges Martin and Karrie Riemer, individually and their marital community; and PEMCO Mutual Insurance Company from all claims, expenses, attorney fees, causes of action or lawsuits of any kind or nature, the undersigned has or may later have on account of or in any way arising out of the subject lawsuit referenced above;

- The City agrees to waive its right to criminally prosecute against Riemers for the subject tree cutting and allegations in the above referenced lawsuit. The City further agrees to not recommend that any other government entity criminally prosecute the Riemers regarding this matter;
- The City agrees to assign any claims against defendants Forrest Bishop, John Russo, and Jane and John Does to Riemer and Harrelson. The City will dismiss *without* prejudice against defendants Bishop and Russo and Jane and John Does in the above referenced lawsuit;
- The Parties agree that the City may issue a press release regarding resolution of the lawsuit that contains the following agreed upon language attributed to Riemer:  
*“We have taken responsibility for our fraction of the tree cutting from the very beginning and are glad we were able to successfully resolve this with the City.”*
- The City agrees to replant the affected areas. Riemer agrees to release the City from any potential future landslide claim that results in damage to Riemer’s real property located at 3241 35<sup>th</sup> Ave. SW in Seattle, Washington, for a period of eight (8) years following the mutual execution of this Agreement (“eight-year period”). Should Riemer sell the real property located at 3241 35<sup>th</sup> Ave. SW in Seattle, Washington, prior to the expiration of the eight-year period; Riemer agrees to indemnify and defend the City against any claim for landslide damage to the real property that the new owner(s) of the real property bring against the City during the remainder of the eight-year period. The Parties agree that Riemer’s release and indemnification shall not apply to landslides caused by (1) City water main pipe failures or City drainage system failures within a paved City street or (2) the City’s gross negligence.

Counterpart Originals:

This Agreement may be executed in any number of counterparts, all of which shall, upon execution and delivery of identical counterparts by the Parties, comprise a single agreement.

Entire Agreement & Denial of Liability:

This Agreement expresses the full and complete mutual release of all claims arising from the tree cutting and the related claims in the above referenced lawsuit. Riemers expressly deny liability for such claims. Regardless of the adequacy of the above consideration, the acceptance of this Agreement shall not operate as an admission of liability on the part of the Parties released.



I HAVE COMPLETELY READ THIS MUTUAL RELEASE AND SETTLEMENT AGREEMENT AND FULLY UNDERSTAND AND VOLUNTARILY ACCEPT IT FOR THE PURPOSE OF FINAL RESOLUTION AND SETTLEMENT OF ANY AND ALL CLAIMS, DISPUTED OR OTHERWISE, FOR THE EXPRESS PURPOSE OF PRECLUDING FOREVER ANY OTHER CLAIMS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE INCIDENTS OR DAMAGES ABOVE REFERENCED.

\_\_\_\_\_  
Marty Riemer

Dated: \_\_\_\_\_, 2017

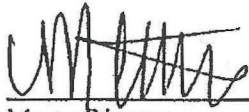
\_\_\_\_\_  
Karrie Riemer

Dated: \_\_\_\_\_, 2017

\_\_\_\_\_  
Joseph Groshong,  
on behalf of the City of Seattle

Dated: \_\_\_\_\_, 2017

I HAVE COMPLETELY READ THIS MUTUAL RELEASE AND SETTLEMENT AGREEMENT AND FULLY UNDERSTAND AND VOLUNTARILY ACCEPT IT FOR THE PURPOSE OF FINAL RESOLUTION AND SETTLEMENT OF ANY AND ALL CLAIMS, DISPUTED OR OTHERWISE, FOR THE EXPRESS PURPOSE OF PRECLUDING FOREVER ANY OTHER CLAIMS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE INCIDENTS OR DAMAGES ABOVE REFERENCED.



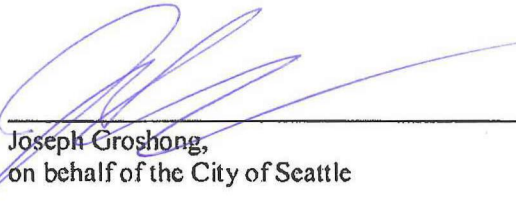
Marty Riemer

Dated: April 12, 2017



Karrie Riemer

Dated: April 12, 2017



Joseph Groshong,  
on behalf of the City of Seattle

Dated: Apr 13, 2017