

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between THE LOG FOUNDATION, a Mutual Corporation, FLOATING HOMES ASSOCIATION, a Washington non-profit corporation, and EASTLAKE COMMUNITY COUNCIL, a Washington non-profit corporation, (collectively, “Appellants”), and LAKE UNION INVESTMENTS, LLC (“Lake Union Investments”), a Washington limited liability company, (collectively, the “Parties”), as of the latest date of execution, by all signatories to this Agreement.

### RECITALS

WHEREAS, Lake Union Investments is the applicant for a boat launching ramp for Ride the Ducks (“RTD”) operations at 1949 Fairview Avenue East (“Property”) (Project No. 3013612) (“Project”) in Seattle, Washington (“City”);

WHEREAS, the City Department of Planning and Development (“DPD”) issued a Master Use Permit (the “MUP”), including a Shoreline Substantial Development Permit and Determination of Nonsignificance (“DNS”) for the Project on January 29, 2015, which Appellants appealed to the Shorelines Hearings Board (SHB File No. 15-003c). A copy of the MUP decision is attached as Exhibit A.

WHEREAS, the Parties now wish to resolve their dispute about the Project;

NOW, THEREFORE, in consideration of the following mutual promises and covenants, the Parties agree as follows:

### TERMS

1. Dismissal of Appeal. The Log Foundation will voluntarily dismiss, with prejudice, SHB File No. 15-003c. The Log Foundation shall file its request for voluntary dismissal, with prejudice and without costs, by Friday, June 12, 2015. This settlement is contingent upon the entry by the Shorelines Hearings Board of a final order of dismissal, with prejudice and without costs. Another appeal to the MUP remains pending before the Shorelines Hearings Board. In the event the resolution of such appeal imposes new conditions on the MUP or remands the MUP to DPD, then this Agreement shall remain in effect. Notwithstanding the foregoing, this Agreement shall automatically terminate upon notice by Lake Union Investments to Appellants if Lake Union Investments has terminated the MUP and withdrawn the MUP application.

2. Confirmation of Compliance with Conditions. Lake Union Investments confirms it will comply with all conditions imposed in the MUP.

3. Land Travel Route. RTD will ensure that the amphibious vehicles it operates (the “Ducks”) will abide by the on-land travel route described in the MUP application and decision, specifically, the travel route depicted in Figure 3 of the February 16, 2013, Heffron

Transportation Technical Memorandum, attached hereto as Exhibit B, except in the event of matters outside its control, such as temporary closure of streets by the City of Seattle or other traffic blockages. RTD will not queue the Ducks so as to block traffic on Fairview Avenue East or E. Blaine Street.

**4. Water Travel Route.** RTD will ensure that the Ducks will abide by the route identified in the MUP decision, a copy of which route is attached hereto as Exhibit C, except in the event of matters outside its control, such as obstructions to navigation. The same route will be used both for entering and leaving the water.

**5. Queuing.** In the unlikely event RTD is required to queue the Ducks on the water as they approach the ramp, RTD will ensure that the Ducks do not queue within the “No Queue Zone” depicted on Exhibit D attached hereto, except in the event of matters outside its control, such as safety or navigational issues, or obstructions to navigation. The Parties believe this requirement is consistent with the Voluntary Noise Mitigation Plan but, to the extent of conflict, the Voluntary Noise Mitigation Plan controls. For the purposes of this Agreement, a Duck shall be considered to be “queued” if it is not under forward propulsion.

**6. Park, Trail, and Right of Way.** RTD will maintain the vegetation, trail, and parking surfaces in the street right-of-way fronting the Property, subject to the approval of the City of Seattle Department of Transportation. RTD is not required to repair or incur capital costs to improve the subject right-of-way, including the vegetation, trail, or parking surfaces thereon.

**7. Site Maintenance.** RTD will conduct a quarterly street sweeping of the paved areas of the Property.

**8. Noise Control Plan.** RTD will comply with all requirements of the Noise Control Operation Plan described on page 23 of the January 29, 2015, Director’s Decision. This includes compliance with all terms in the Voluntary Noise Mitigation Plan, SMC 25.08.515 and SMC 25.08.485. RTD has prepared a to-scale plan for the quiet zone that also depicts the in water route with the quiet zone no smaller than depicted on Map A attached to the Voluntary Noise Mitigation Plan. The Voluntary Noise Mitigation Plan is attached hereto as Exhibit C.

**9. Diesel Engines.** RTD will ensure that all Duck diesel engines meet current emission standards.

**10. Compromise of Claims.** The Parties understand and agree that this Agreement is the compromise of disputed claims and the execution and performance of this Agreement does not constitute and shall not be construed as an admission of liability, fault, or responsibility of any Party.

**11. Waiver of Present and Future Claims.** By execution of this Agreement, Appellants agree not to file further appeals of permits or other approvals for the Project, and except with respect to Appellants’ right to enforce the terms and obligations of this Agreement, Appellants will not otherwise oppose, or assist in opposition of, permits or other approvals for

the Project as defined within MUP Application No. 3013612, as it may be modified to be consistent with this agreement.

**12. Release.** Upon entry of the orders dismissing the pending Shorelines Hearings Board appeals pursuant to Paragraph 1, except with respect to the Parties' right to enforce the terms and obligations of this Agreement, the Parties shall, and hereby do, mutually release, acquit, and forever discharge one another from any and all claims, demands, damages, controversies, or suits of any kind or nature whatsoever, whether known or unknown, asserted or not asserted, foreseen or unforeseen, whether past, present or future, pertaining to or arising out of the incidents and occurrences upon which the Shorelines Hearings Board actions are based and occurring prior to the date of this Agreement.

**13. Breach and Damages.** Any failure by a Party to perform any action required to be performed under this Agreement shall constitute a breach of this Agreement, unless such failure is compelled by order of a court. In the event of such breach, the non-defaulting Party shall be entitled to pursue any and all remedies, both legal and equitable, including, without limitation, specific performance.

**14. Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or relating to this Agreement shall lie in King County Superior Court.

**15. Agreement Not Enforceable by Third Parties.** This Agreement is neither expressly nor impliedly intended for the benefit of any third party and is neither expressly nor impliedly enforceable by any third party.

**16. Successors and Assigns.** This Agreement shall inure to the benefit of, and be binding upon the Parties, their respective successors, transferees and assigns.

**17. Authority to Execute.** Each person executing this Agreement on behalf of another person, corporation, partnership, company, or other organization or entity, represents and warrants that he or she is fully authorized to execute and deliver this Agreement on behalf of the entity or Party for which he or she is signing. The Parties hereby warrant to each other that each has full power and authority to enter into this Agreement and to undertake the actions contemplated herein, and that this Agreement is enforceable in accordance with its terms.

**18. Interpretation.** This Agreement was drafted by counsel for the Parties and there shall not be a presumption or construction against any of the Parties.

**19. Entire Agreement.** This Agreement contains the entire understanding between the Parties with respect to the subject matter hereof. No amendment or modification to this Agreement shall be valid or effective unless made in writing and executed by the Parties after the effective date of this Agreement.

**20. Counterpart Originals.** This Agreement may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all

of which shall constitute one agreement. The execution of one counterpart by a Party shall have the same force and effect as if that Party had signed all other counterparts.

Dated this \_\_\_\_\_ day of June, 2015.

**THE LOG FOUNDATION**

By: \_\_\_\_\_  
Its \_\_\_\_\_

Dated this \_\_\_\_\_ day of June, 2015.

**EASTLAKE COMMUNITY COUNCIL**

By: \_\_\_\_\_  
Its \_\_\_\_\_

Dated this \_\_\_\_\_ day of June, 2015.

**FLOATING HOMES ASSOCIATION**

By: \_\_\_\_\_  
Its \_\_\_\_\_

Dated this \_\_\_\_\_ day of June, 2015.

**LAKE UNION INVESTMENTS, LLC**

By: \_\_\_\_\_  
Its \_\_\_\_\_

Dated this \_\_\_\_\_ day of June, 2015.