

**PARKS AS SHOWN ON SAID PLAT ARE HEREBY DEDICATED
TO THE USE OF THE LOT OWNERS**

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF LAPEER

KELLY THOMPSON and

JAMIE THOMPSON

Plaintiffs/Counter-Defendants,

Case No. 198-052558-CH(H)

Hon. Nick O. Holowka

v

BARNES LAKE CLUB,

Defendant/Counter-Plaintiff,

and

PATRICK BETCHER,

Third-Party Plaintiff,

v

KELLY THOMPSON and

JAMIE THOMPSON,

Third-Party Defendants.

SMIEN, FIGURA & PARTKER, P.L.C

By: Michael J. Gildner (P49732)

Attorneys for Thompsons

5206 Gateway Centre, Ste 200

Flint, Michigan 48507

(810) 235-9000

mghildner@sfpjlaw.com

KOHL, HARRIS, NOLAN & McCARTHY, PC

By: Michael J. Nolan (P42240)

Attorneys for Barnes Lake Club

4000 S. Oak Street, Ste. 200

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Metamora, Michigan 48455

(810) 678-3645

michaelnolan@kohlharris.com

CONSENT JUDGMENT

At a session of said Circuit Court
held in the County of Lapeer, State of Michigan,
On the _____ day of _____, 2022

PRESENT: Hon. Nick O. Holowka
Circuit Court Judge

Upon stipulation and consent of the Parties, this Court FINDS AS FOLLOWS:

Preliminary Recitals

- A. Plaintiff/Counter-Defendant, Kelly Thompson owns Property located at 1362 Lakeshore Drive, Columbiaville, Michigan ("the Property") and resides at said Property with her husband, Plaintiff/Counter-Defendant, Jamie Thompson;
- B. The Property is a lot located within Deerfield Park which is a platted subdivision located in Deerfield Township, County of Lapeer, State of Michigan;
- C. Barnes Lake Club, the Defendant/Counter-Plaintiff is a Michigan nonprofit association of lot owners within the platted subdivision that speaks for and represents all such lot owners within the Deerfield Park platted subdivisions;
- D. Third-Party Plaintiff, Patrick Betcher is an owner of property within the Deerfield Park Subdivision where the Property and Park Lot D are located;
- E. Pursuant to the agreement of the parties and their intent to be bound thereby, all parties participated in court-ordered facilitation on October 14, 2022, and as a result of their participation in such facilitation, executed by and among themselves a "Settlement and Release Agreement" which established the terms of the agreement between the parties, including the entry of a consent judgment consistent therewith;
- F. For purposes of this Consent Judgment, as stipulated by the parties in the Settlement and Release Agreement, Thompson acknowledges and accepts the representation that the Club has the authority to act and represent the individual lot owners and its authority for the enforcement the provisions of this Consent Judgment;
- G. The Property abuts a parcel of property that is commonly referred to as Park Lot D;

H. The recorded plat map says that parks within the subdivision, including Park Lot D, are "dedicated to the use of the lot owners;"

I. A "park," by definition is a piece of ground or an area maintained in its natural state as a public property, or in this case, for the benefit of all "lot owners;"

J. The parties acknowledge that an approximate ten-foot wide pathway exists and has been used by Thompson to cut across Park Lot D for ingress and egress to their Property and upon which to park their automobiles;

K. Disputes have arisen between the parties concerning use of Park Lot D, the cutting and removal of trees from Park Lot D, the enforcement of rules and restrictions concerning Park Lot D pathway and those disputes ripened into this lawsuit that consists of claims by Plaintiffs/Counter-Defendants Thompson and counterclaims by the Defendant/Counter-Plaintiff and Third-Party Plaintiff Betcher ("the Lawsuit");

With the above Preliminary Recitals having been stated, **IT IS HEREBY ORDERED:**

1. **Acknowledgment of and Consent to Authority.** Defendant/Counter-Plaintiff Barnes Lake Club has the authority to act and represent the Deerfield Park subdivision individual lot owners and for an on behalf of those individual lot owners, and Plaintiffs/Counter-Defendants Thompson waive any claim or defense to the contrary, in all future matters for purposes of this Consent Judgment, and the enforcement thereof;

2. **Payment to Barnes Lake Club.** Thompson shall pay to the Barnes Lake Club an amount of \$11,250.00 within 6 months of the entry of this Consent Judgment;

3. **Grant of Easement.** Thompson shall be granted by entry of this Consent Judgment, an easement appurtenant to the land of Thompson, over and across Park Lot D for the purpose of ingress and egress, only, to land owned by Thompson, to wit:

the legal description of the easement conveyed (the "Easement"):

LEGAL DESCRIPTION OF A 10' WIDE INGRESS-EGRESS EASEMENT FOR THE BENEFIT OF LOTS 382, 383 & 384 OF DEERFIELD PARK (TAX ID # 44-006-004-385-00), AS RECORDED LIBER 1, PAGES 45-46, LAPEER CO. RECORDS. PART OF THE NORTHEAST QUARTER OF SECTION 21, T9N-R10E, DEERFIELD TOWNSHIP, LAPEER COUNTY MICHIGAN, AS SURVEYED AND MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 358 OF SAID DEERFIELD PARK(AS RECORDED IN LIBER 1, PAGES 45-46, LAPEER CO. RECORDS) SOUTH 84 DEGREES 03 MINUTES 36 SECONDS WEST 144.70 FEET(MEASURED) 144.68 FEET(RECORDED) TO THE NORTHWEST CORNER OF SAID LOT 358; THENCE SOUTH 80 DEGREES 01 MINUTE 55 SECONDS WEST 44.42 FEET; THENCE SOUTH 52 DEGREES 05 MINUTES 46 SECONDS WEST 31.98 FEET TO A POINT 2.00 FEET NORTHWESTERLY FROM THE SOUTHEAST CORNER OF LOT 382 OF SAID DEERFIELD PARK; THENCE NORTH 44 DEGREES 11 MINUTES 45 SECONDS WEST 10.00 FEET ALONG THE NORTHEASTERLY LINE OF SAID LOT 382; THENCE NORTH 52 DEGREES 05 MINUTES 46 SECONDS EAST 35.25 FEET PARALLEL WITH THE SOUTH LINE OF SAID EASEMENT; THENCE NORTH 80 DEGREES 01 MINUTE 55 SECONDS EAST 48.55 FEET PARALLEL WITH SAID SOUTH LINE TO THE SOUTHWEST CORNER OF SAID LOT 357; THENCE NORTH 83 DEGREES 59 MINUTES 26 SECONDS EAST 143.92 FEET(MEASURED) 143.72 FEET(RECORDED) ALONG THE SOUTH LINE OF SAID LOT 357 TO A POINT ON THE WEST LINE OF SAID HILL SIDE DRIVE; THENCE ALONG A CURVE TO THE LEFT, WHOSE RADIUS IS 117.29 FEET AND LENGTH IS 9.94 FEET(MEASURED) 10.0 FEET(RECORDED) AND WHOSE LONG CHORD BEARING AND DISTANCE IS SOUTH 06 DEGREES 23 MINUTES 14 SECONDS EAST 9.94 FEET TO THE NORTHEAST CORNER OF SAID LOT 358 AND THE POINT OF BEGINNING.

Thompson Property legal description:

PREMISES SITUATED IN THE TOWNSHIP OF DEERFIELD, COUNTY OF LAPEER, STATE OF MICHIGAN, TO WIT:

LOTS 382, 383, AND 384, DEERFIELD PARK, DEERFIELD TOWNSHIP, LAPEER COUNTY, MICHIGAN, ACCORDING TO THE PLAT THEREOF

AS RECORDED IN LIBER 1 OF PLATS, PAGES 45 AND 46, LAPEER COUNTY RECORDS.

The Easement conveyed shall be over and across Park Lot D following the route and course of a certain "two track" access drive currently in existence and utilized by Thompson for ingress and egress, and said "two track" access drive shall be surveyed and staked by Barnes Lake Club at its sole cost and expense;

4. **No Material Changes to Easement – Maintenance of "Two-Track."**

Thompson shall not be entitled to make such improvements to the Easement as to materially change its character from a "two track drive" but shall be entitled to make such repairs as may, from time to time, be necessary, at the sole expense of Thompson, to maintain said drive and to permit same to be reasonably used for ingress and egress to the property of Thompson;

5. **No Parking on Easement.** Neither Thompson nor any other person may park motor vehicles on the Easement over an across Park Lot D as described herein above;

6. **No Barriers; No Interference.** The Club shall not erect, place or construct any barriers on the Easement on Park Lot D or otherwise interfere with the free and uninterrupted use of that Easement by pedestrian or vehicles by Thompson or other lot owners according to the recorded plat;

7. **No Parking, No Storage on Park Lot D.** Thompson and other lot owners may use the Easement across Park Lot D for pedestrian or vehicular traffic provided that Thompson does not park or store vehicles or other items of property on Park Lot D;

8. **Timing of Barrier Removal.** At such time as Thompson pays the sum of \$11,250.00 to Barnes Lake Club, Barnes Lake Club shall have seven (7) days to remove

all barriers that would in any way impede Thompson's usage of the Easement for ingress or egress in accordance with this Consent Judgment;

9. **Passable Easement**. Barnes Lake Club shall take such action as may be necessary to assure that within 7 days of the payment of the sum provided for herein the Easement granted to Thompson is passable and in the same or similar condition as it was prior to the date of the commencement of the dispute between the parties hereto.

10. **Release**. Thompson, Barnes Lake Club and Betcher agree to release and hold harmless each other from all claims, demands, suits or causes of action related to or arising from the claims, counterclaims and defenses made, or could have been made, in this Lawsuit. This release and hold harmless provision applies not only to the claims, counterclaims and defenses made in the Lawsuit, but to all actual and potential claims, complaints, demands, causes of action, damages, costs, expenses, fees, and other liabilities of every sort and description, direct or indirect, fixed or contingent, known or unknown, suspected or unsuspected, and whether or not liquidated occurring at any time up to the date of this Agreement which Thompson, Barnes Lake Club and Betcher may have against each other for violations or alleged violations of any federal or state statutes or common law (including but not limited to the laws of the United States) or of any other law, statute, ordinance, or contract; or the failure on their part of any duty or obligation whatsoever and/or commitment by them of any tort or engagement by them in any kind of wrongful conduct towards each other. This release, and judgment entered consistent therewith shall be read as broadly as possible such that Thompson, Barnes Lake Club and Betcher must have no further obligations or liability of any sort or nature to each other, directly or indirectly, except as otherwise stated in this Consent Judgment.

This Consent Judgment does not waive, or release rights or claims that may arise from the execution and enforcement of the provisions and obligations of the Parties as set forth in this Consent Judgment, nor does it waive or bar any other claims or causes of action that may or might arise in the future between the Parties after the date this Consent Judgment is executed. The release and hold harmless provisions of this Consent Judgment apply to and obligate not only Thompson, Barnes Lake Club and Betcher but also their directors, officers, employees, shareholders, members, agents, representatives, successors and assigns and all other persons claiming by or through them.

11. **Enforcement of Consent Judgment.** This Consent Judgment may be enforced by the contempt powers of the Court and/or as a breach of contract. Upon proof of violation of the agreement, a party proving a violation of the Agreement may recover from a Party violating the Agreement, in addition to actual damages sustained, any reasonable costs and attorney fees incurred in the enforcement.

12. **Amendment.** The terms of this Consent Judgment may be amended, changed or modified but only by written agreement executed by the Parties hereto and later approved and ordered by this Court.

13. **Authority.** By their execution of this Consent Judgment, Plaintiff/Counter-Defendant, Kelly and Jamie Thompson, Defendant/Counter-Plaintiff Barnes Lake Club and Third-Party Plaintiff, Patrick Betcher warrant that they have the authority to execute this Consent Judgment and bind their respective entities, successors and assigns to its terms and conditions.

14. **Severability**. Each restriction and clause is intended to be severable and in the event that any restriction is for any reason held void, it shall not affect the validity of the remainder of this Consent Judgment.

15. **Clerical Errors**. Any clerical errors or mistakes contained in this Judgment may be corrected by the parties, and both parties agree to cooperate in making such corrections to effectuate the terms, spirit and intent of the parties in stipulating to this Consent Judgment.

16. **Continuing Jurisdiction**. This Court retains continuing jurisdiction to assure enforcement and compliance with the terms of this Consent Judgment.

This Consent Judgment resolves all pending claims and closes this case.

Dated: 1/3/23, 2022.

Hon. **MICHAEL D. HODGES** *MP for*
NICK O. HOLOWKA
Circuit Court Judge

Approved as to Form and Content:

PLAINTIFFS/COUNTER-DEFENDANTS

DEFENDANT/COUNTER-PLAINTIFF BARNES
LAKE CLUB

Kelly Thompson (by written consent)
Kelly Thompson *see attached*

By: *[Signature]*
Pamela Reid
Its: President

Dated: 12-21, 2022.

Dated: 12-7, 2022.

Jamie Thompson *(by written consent attached)*
Jamie Thompson

Dated: 12-26-, 2022.

THIRD-PARTY PLAINTIFF BETCHER

Patrick Betcher
Patrick Betcher

Dated: 12/12, 2022.

Michael J. Gildner *(by written consent attached)*
Michael J. Gildner (P49732)
Attorney for Plaintiffs/Counter-Defendants Thompson

Dated: 12-28, 2022.

Michael J. Nolan
Michael J. Nolan (P42240)
Attorney for Defendant/Counter-Plaintiff Barnes Lake Club and Third-Party Plaintiff Betcher

Dated: 12/16, 2022.

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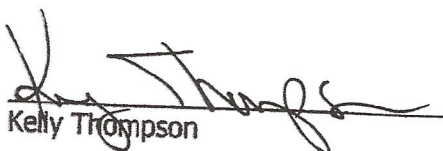
This Consent Judgment resolves all pending claims and closes this case.

Dated: _____, 2022.

Hon. _____
NICK O. HOLOWKA
Circuit Court Judge


Approved as to Form and Content:

PLAINTIFFS/COUNTER-DEFENDANTS

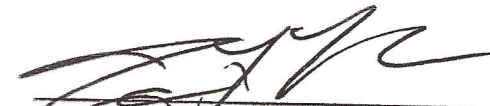

Kelly Thompson

Dated: 12-21-, 2022.

DEFENDANT/COUNTER-PLAINTIFF BARNES
LAKE CLUB

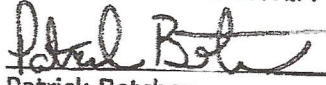
By: 
Pamela Reid
Its: President

Dated: 12-7-, 2022.



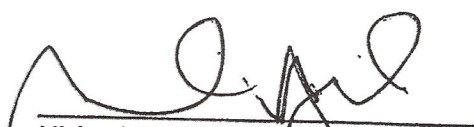
Jamie Thompson

Dated: 12-21, 2022.

THIRD-PARTY PLAINTIFF BETCHER


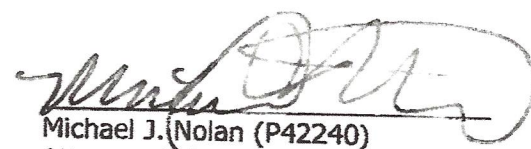
Patrick Betcher

Dated: 12/12, 2022.



Michael J. Gildner (P49732)
Attorney for Plaintiffs/Counter-
Defendants Thompson

Dated: 12-28, 2022.



Michael J. Nolan (P42240)
Attorney for Defendant/Counter-Plaintiff Barnes
Lake Club and Third-Party Plaintiff Betcher

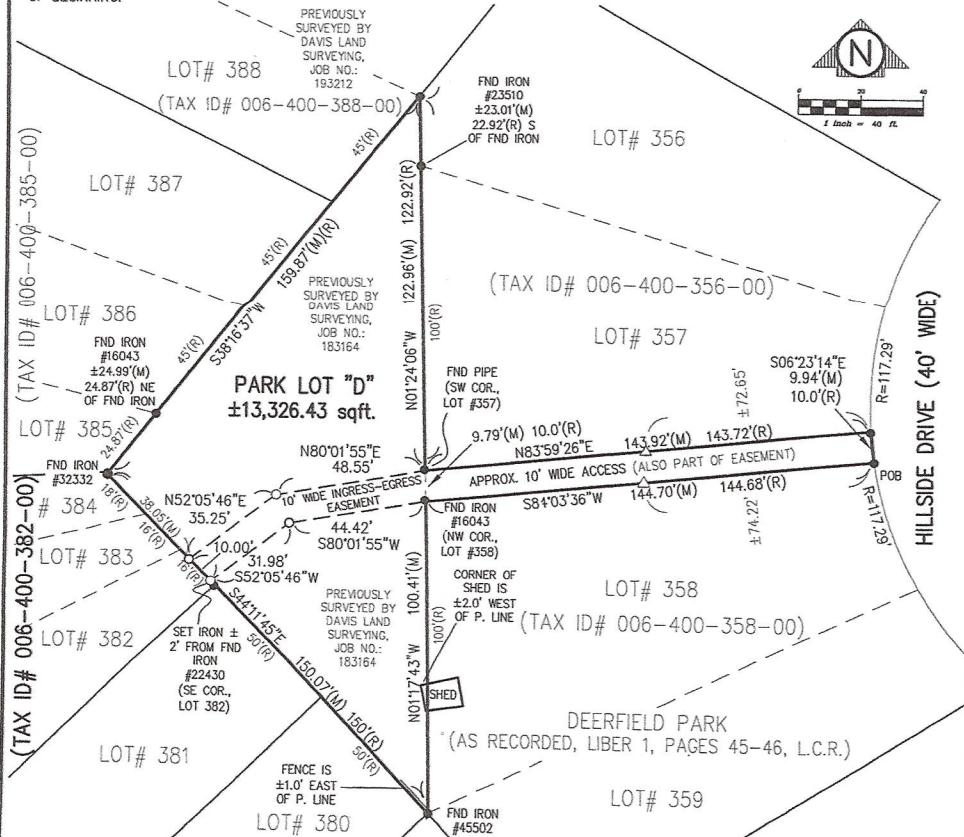
Dated: 12/16, 2022.

CERTIFICATE OF SURVEY

I HEREBY CERTIFY THAT I HAVE SURVEYED AND MAPPED THE ATTACHED DESCRIBED PARCEL(S), HEREON DESCRIBED AND THAT THE RELATIVE POSITIONAL PRECISION OF EACH CORNER IS WITHIN THE LIMITS ACCEPTED BY THE PRACTICE OF PROFESSIONAL SURVEYING AND THAT ALL THE REQUIREMENTS OF P.A. 132 OF 1970, AS AMENDED, HAVE BEEN COMPLIED WITH.

LEGAL DESCRIPTION OF A 10' WIDE INGRESS-EGRESS EASEMENT FOR THE BENEFIT OF LOTS 382, 383 & 384 OF DEERFIELD PARK (TAX ID# 44-006-004-385-00): AS SURVEYED

PART OF THE NORTHEAST QUARTER OF SECTION 21, T9N-R10E, DEERFIELD TOWNSHIP, LAPEER COUNTY MICHIGAN, MORE PARTICULARLY DESCRIBED AS: BEGINNING AT THE NORTHEAST CORNER OF LOT 358 OF SAID DEERFIELD PARK (AS RECORDED IN LIBER 1, PAGES 45-46, LAPEER CO. RECORDS) SOUTH 84 DEGREES 03 MINUTES 36 SECONDS WEST 144.70 FEET (MEASURED) 144.68 FEET (RECORDED) TO THE NORTHWEST CORNER OF SAID LOT 358; THENCE SOUTH 80 DEGREES 01 MINUTE 55 SECONDS WEST 44.42 FEET; THENCE SOUTH 52 DEGREES 05 MINUTES 46 SECONDS WEST 31.98 FEET TO A POINT 2.00 FEET NORTHWESTERLY FROM THE SOUTHEAST CORNER OF LOT 382 OF SAID DEERFIELD PARK; THENCE NORTH 44 DEGREES 11 MINUTES 45 SECONDS WEST 10.00 FEET ALONG THE NORTHEASTERLY LINE OF SAID LOT 382; THENCE NORTH 52 DEGREES 05 MINUTES 46 SECONDS EAST 35.25 FEET PARALLEL WITH THE SOUTH LINE OF SAID EASEMENT; THENCE NORTH 80 DEGREES 01 MINUTE 55 SECONDS EAST 48.55 FEET PARALLEL WITH SAID SOUTH LINE TO THE SOUTHWEST CORNER OF SAID LOT 357; THENCE NORTH 83 DEGREES 59 MINUTES 26 SECONDS EAST 143.92 FEET (MEASURED) 143.72 FEET (RECORDED) ALONG THE SOUTH LINE OF SAID LOT 357 TO A POINT ON THE WEST LINE OF SAID HILL SIDE DRIVE; THENCE ALONG A CURVE TO THE LEFT, WHOSE RADIUS IS 117.29 FEET AND LENGTH IS 9.94 FEET (MEASURED) 10.0 FEET (RECORDED) AND WHOSE LONG CHORD BEARING AND DISTANCE IS SOUTH 06 DEGREES 23 MINUTES 14 SECONDS EAST 9.94 FEET TO THE NORTHEAST CORNER OF SAID LOT 358 AND THE POINT OF BEGINNING.



SURVEY BEARINGS BASED ON GPS READINGS TAKEN ON 10/22/18, JOB NO. 183164, DAVIS LAND SURVEYING, INC..

LEGEND: ○ SET IRON, ● FOUND IRON, ■ FOUND MONUMENT, — SET LINE STAKE, —X—X— FENCE, (R) RECORDED, (M) MEASURED



DAVIS LAND SURVEYING & ENGINEERING, INC.

415 W. NEPESING STREET
LAPEER, MICHIGAN 48446
PHONE: (810) 667-6789

CLIENT:

BARNES LAKE CLUB - PARK LOT "D" EASEMENT

NE 1/4, SEC. 21, T9N-R10E, DEERFIELD TWP. LAPEER COUNTY, MI.

DATE: 12/20/2022

DRAWN: BLR

SCALE: 1" = 40'

CHECKED: GGB

FIELD: JRD/CMD

REVISED:

SHEET: 1 OF 1

JOB NO. 223859

