

DISTRICT COURT, PARK COUNTY COLORADO 300 – 4 <sup>th</sup> Street Fairplay, Colorado 80440	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p><b>Plaintiffs: ELK FALLS PROPERTY OWNERS ASSOCIATION, a Colorado corporation; KATHRYN WELLS; PAUL VASTOLA; and ROBERT W. PHELPS</b></p> <p>v.</p> <p><b>Defendants: VERA B. DUNWODY and DRAYTON D. DUNWODY</b></p>	
Victor F. Boog, No. 2561 Amanda B. Crusier, No. 30601 Boog & Crusier, P.C. 3333 S. Wadsworth Blvd., Suite D201 Lakewood, CO 80227 303-986-5769 Fax 303-985-3297 <i>Attorneys for Defendants Vera B. Dunwody and Drayton D. Dunwody</i>	<hr/> Case Number: <b>2010 CV 65</b>  Div.:
<b>ANSWER AND COUNTERCLAIM</b>	

Defendants, Vera B. Dunwody and Drayton D. Dunwody (hereinafter the "Dunwodys"), answer the Complaint herein as follows:

1. Allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 1 of the Complaint, and deny each and every other allegation contained in paragraph 1 of the Complaint.

2. Allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 2, 3, 4, and 5 of the Complaint.

3. Admit the allegations contained in paragraph 6 of the Complaint with the exception of the allegation that their residence is in Park County, such residence actually being located in Jefferson County.

4. Admit the allegations contained in paragraph 7 of the Complaint.

5. Allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 8, 9, 10, 11, 12, 13, 14, 15, and 16 of the Complaint.

6. Admit the allegations contained in the first sentence of paragraph 17 of the Complaint, and deny each and every other allegation contained in paragraph 17 of the Complaint.

7. Admit that the deed to the Dunwodys excepts the right of way for Park County Road No. 1184, but deny each and every other allegation contained in paragraph 18 of the Complaint.

8. Deny the allegations contained in paragraphs 19, 20, 21, 22, 23, 24, 25, 26, and 27 of the Complaint.

9. Admit that the Dunwodys have maintained that the roads on or across the Dunwody property that lie in Park County are private roads as alleged in paragraph 28 of the Complaint, but deny each and every other allegation contained in paragraph 28 of the Complaint, and affirmatively state that the Dunwodys and their predecessors in interest to the Dunwody Property have always permitted the owners of Lots 30 through 46, Block 3 of the Elk Falls Subdivision to utilize the private road commencing at the historic west gate on South Elk Creek Road to the beginning of CR 1184.

10. Deny the allegations contained in paragraph 29 of the Complaint.

11. Allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 30, 31, and 32 of the Complaint.

12. Deny the allegations contained in paragraphs 33, 34, 35, and 36 of the Complaint.

13. Admit that they placed a sign which read "Private Road Closed" on a portion of the private road crossing the Dunwody Property, but deny each and every other allegation contained in paragraph 37 of the Complaint.

14. Deny the allegations contained in paragraphs 38, 39, 40, 41, 42, 43, 44, and 46 of the Complaint.

15. Admit the allegations contained in paragraph 47 of the Complaint.

16. Deny the allegations contained in paragraphs 48 and 50 of the Complaint.

17. Admit the allegations contained in paragraphs 51 and 52 of the Complaint, and deny that Plaintiffs are entitled to any relief as claimed in paragraph 53 of the Complaint.

### **SECOND DEFENSE**

The Plaintiff Elk Falls Property Owners Association (the "Association") has failed to state a claim against the Defendants upon which relief can be granted.

### **THIRD DEFENSE**

The Association has no property interest in any of the Disputed Roads, and has no standing to bring any claim against the Dunwodys for trespass or for quiet title pursuant to C.R.C.P. 105.

### **FOURTH DEFENSE**

Plaintiffs have failed to join persons needed for a just adjudication including the persons claiming any interest in the Disputed Roads, such persons being, but not limited to, any property owner within the Lots 1, 2, and 3 of the Elk Falls Subdivision and the Board of County Commissioners of Park County, Colorado.

### **FIFTH DEFENSE**

The Association's claims for trespass and quiet title pursuant to C.R.C.P. 105 are groundless and frivolous, entitling the Defendants to an award of their attorneys fees and costs incurred herein pursuant to section13-17-101, *et seq.*, C.R.S.

### **SIXTH DEFENSE**

Claims of the Defendants Kathryn Wells, Paul Vastola, and Robert W. Phelps for trespass and quiet title pursuant to C.R.C.P. 105 are groundless and frivolous entitling the Defendants to an award of their attorneys fees and costs incurred herein pursuant to section13-17-101, *et seq.*, C.R.S.

### **SEVENTH DEFENSE**

The Association's claim against the Defendants for damages and attorneys' fees pursuant to section 38-33.3-123, C.R.S., are groundless and frivolous, entitling the Defendants to an award of their attorneys fees and costs incurred herein pursuant to section 13-17-101, *et seq.*, C.R.S.

### **EIGHTH DEFENSE**

The claims of the Defendants Kathryn Wells, Paul Vastola, and Robert W. Phelps for damages and attorneys' fees are groundless and frivolous, entitling the Defendants to an award of their attorneys fees and costs incurred herein pursuant to section 13-17-101, *et seq.*, C.R.S.

WHEREFORE, Defendants pray that the Plaintiffs' Complaint against them be dismissed and that they be awarded their reasonable attorneys fees incurred herein, together with their taxable costs and such other and further relief as to the Court seems proper.

### **COUNTERCLAIM**

Vera B. Dunwody and Drayton D. Dunwody (hereinafter the "Dunwody"), as their counterclaim against the Elk Falls Property Owners Association (hereinafter the "Association") allege as follows:

1. The Dunwody are the owners of record of real property located in Park County and Jefferson County, Colorado, more particularly described on attached Exhibit A (hereinafter the "Dunwody Property").

2. The Dunwody Property includes the Disputed Roads referred to in Plaintiffs' Complaint, including the "50-Foot Right of Way" adjacent to the property included in Block 1 of the Map, Dedication, and Protective Covenants for Elk Falls – Block 1, recorded on December 22, 1959 at Book 1243, Pages 400-403 in the records of the clerk and recorder of Jefferson County, Colorado.

### **FIRST CLAIM FOR RELIEF (Civil Conspiracy)**

3. The Dunwody incorporate herein by reference the allegations contained in paragraphs 1 and 2 above.

4. Upon information and belief, the Association, through a duly authorized representative, has encouraged members of the Association to trespass upon the Dunwody Property and to destroy or remove personal property located on the Dunwody Property.

5. Members of the Association have in fact trespassed upon the Dunwody Property and engaged in one or more unlawful acts upon such property, including the removal and destruction of personal property located thereon.

6. As a result of the actions of the Association and its members, as set forth above, the Dunwodys have sustained damages as a proximate result thereof, the full amount of such damages to be proven at trial.

**SECOND CLAIM FOR RELIEF  
(Preliminary and Permanent Injunction)**

7. The Dunwodys incorporate herein by reference the allegations contained in paragraphs 1 through 6 above.

8. At the instigation of the Association, members of the Association are continuing to trespass upon the Dunwody Property.

9. The Dunwodys have no plain, speedy and adequate remedy at law to prevent the continuing trespasses upon their property by members of the Association, and are entitled to injunctive relief preventing such continuing trespasses.

WHEREFORE, the Dunwodys pray for judgment in their favor and against the Association for the following relief:

A. For damages resulting from the trespasses upon their property by members of the Association, in such amount as is proven at trial;

B. For a preliminary and permanent injunction preventing members of the Association from trespassing upon the Dunwody Property;

C. For their reasonable attorneys' fees and taxable costs incurred herein, together with such further relief as to the Court seems proper.

Dated this 2<sup>nd</sup> day of March, 2010.

BOOG & CRUSER, P.C.

*/s/ Victor F. Boog – original signature on file at the  
offices of Boog & Cruser, P.C.*

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Victor F. Boog, No. 2561

Defendants' Address:

11903 So. Elk Creek Road  
Pine, CO 80470

## CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of March, 2010, a true and correct copy of the foregoing ANSWER AND COUNTERCLAIM was sent electronically via LexisNexis File and Serve, properly addressed to:

Frederick B. Skillern  
Montgomery Little Soran & Murray PC  
5445 DTC Parkway, Suite 800  
Greenwood Village, CO 80111

*/s/ Bonnie J. Cowell – original signature on file  
At the offices of Boog & Cruser, P.C.*

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**EXHIBIT A**  
**TO SPECIAL WARRANTY DEED**  
**FROM ELK FALLS RANCH DEVELOPMENT CO. (GRANTOR)**  
**TO VERA B. DUNWODY AND DRAYTON D. DUNWODY (GRANTEE)**

Legal Description of Property

IN TOWNSHIP 6 SOUTH, RANGE 72 WEST OF THE 6<sup>TH</sup> P.M.:

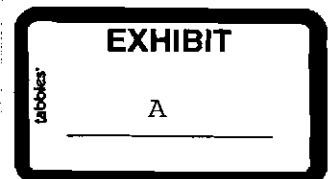
Section 25: NW $\frac{1}{4}$ , W $\frac{1}{2}$ NE $\frac{1}{4}$ ; N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ ; N $\frac{1}{2}$  S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ ,  
Section 26: NE $\frac{1}{4}$ ; N $\frac{1}{2}$ SE $\frac{1}{4}$

**EXCEPTING FROM THE FOREGOING PARCELS:**

- 1) ELK FALLS – BLOCK 2;
- 2) ELK FALLS – BLOCK 3;
- 3) ELK FALLS – BLOCK 1;
- 4) Tract conveyed to Houze by Deed recorded in Book 166 at Page 329 and re-recorded in Book 166 at Page 365;
- 5) Tract conveyed to Stebbins by Decds recorded in Book 169 at Page 208 and in Book 167 at Page 305;
- 6) Tract conveyed to Kellogg by Deed recorded in Book 184 at Page 161;
- 7) Tract conveyed to Goodin by Deed recorded in Book 227 at Page 276;
- 8) Tracts conveyed to Kolnsberg by Deed recorded in Book 327 at Page 831;
- 9) A part of the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 25 described as follows:

Beginning at the intersection of the East line of said Section 25 with the Southerly right of way line of Park County Road 1184 whence the North one-quarter corner of said Section bears North 0°38' East, 2054.3 feet;  
thence, along said right of way line, the following courses and distances:  
North 74°50' West, 19.95 feet; and  
North 66°26'30" West, 45.94 feet to the True Point of Beginning;  
thence South 5°16' West, 90.12 feet;  
thence North 82°22' West, 338.56 feet;  
thence North 0°38' East, 158.92 feet to a point on said right of way line;  
thence Easterly, along and conforming to said right of way line, 379.6 feet,  
more or less, to the True Point of Beginning,

- 10) Tract conveyed to Dunwody by Deed recorded at Reception No. 633864, Park County Clerk and Recorder's Office.
- 11) Tract conveyed to The Conservation Fund by Deed recorded December 11, 1998 at Reception No. 499660, Park County Records,
- 12) A parcel of land which lies within the West one-half of the East one-half of Section 25, Township 6 South, Range 72 West of the 6<sup>th</sup> Principal Meridian, more particularly described as follows:  
Beginning at a point which is the Northeast corner of the Northwest quarter of the Southeast quarter of said Section 25 from which the common Southerly corner of Elk Falls Block 1 and Elk Falls Block 2 bears North 0°20' East, 42.1 feet;





thence South 0°19' West along the Westerly boundary of that certain property described in Book 1368 at Page 290 of Jefferson County, Colorado records, 678.85 feet to the Southwesterly corner thereof;  
thence North 18°23' West, 241.60 feet;  
thence North 2°51' East, 535.20 feet, more or less, to a point on the Southwesterly boundary of the 60-foot wide existing County Road;  
thence Southeasterly along said boundary of said existing County Road, 72 feet, more or less, to said common Southerly corner of Elk Falls Block 1 and Elk Falls Block 2;  
thence South 0°20' West, 42.1 feet to the True Point of Beginning,

13) Tract conveyed to Dunwoody in Deed recorded November 12, 2002 at Reception No. F1606202.

14) Commencing at the North quarter corner of said Section 25;

thence South 0°38' West along the North-South centerline of said Section, 1992.3 feet to the North boundary of an existing county road;

thence continuing South 0°38' West across said county road right of way 62.0 feet;

thence North 74°50' West and leaving said North-South center line of Section 25, 19.95 feet;

thence North 66°26'30" West, 45.94 feet to the True Point Beginning of this description;

thence South 05°16' West, 90.12 feet;

thence North 82°22' West, 338.56 feet;

thence North 0°38' East, 158.92 feet to a point of curvature to the right whose radius bears South 51°29' East, 45.04 feet;

thence along the arc of said curve to the right 52.93 feet;

thence South 74°09' East, 141.32 feet to a point of curvature to the right whose radius is 63.35 feet;

thence along the arc of said curve to the right 42.35 feet to a point of curvature to the left whose radius is 80.42 feet;

thence along the arc of said curve to the left, 42.94 feet;

thence South 66°26'30" East, 100.06 feet, more or less, to the True Point of Beginning,

15) Tract conveyed to Paulson by Deed recorded May 16, 1961 in Book 1368 at Page 290, Counties of Park and Jefferson,  
State of Colorado