

PARTIES AND JURISDICTION

1. The City is a municipal corporation organized under the laws of the State of Colorado.

2. The Authority is a public entity formed in 1981 by an Intergovernmental Agreement between the City and the Poudre Valley Fire Protection District (collectively, "Contracting Agencies") to provide fire and emergency services to the citizens and their property within the Contracting Agencies' jurisdictional boundaries. The Intergovernmental Agreement was amended and restated on November 3, 1987, and again on July 15, 2014 ("2014 IGA"). A copy of the 2014 IGA is attached as **Exhibit A** and incorporated herein by reference.

3. Defendant Keith J. Gilmartin is an individual who resides at 3316 West Vine Drive, Fort Collins, Colorado 80521 ("Gilmartin Property").

4. This Court has personal jurisdiction over all parties.

5. Venue is proper in this Court pursuant to C.R.C.P. 98(a).

GENERAL ALLEGATIONS

6. Plaintiffs incorporate the preceding paragraphs of the Amended Complaint as if set forth fully herein.

7. The Authority operates a Training Center located at 3400 West Vine Drive in Fort Collins, Colorado ("Training Center").

8. On January 15, 1991, Hubert J. Gilmartin, Florence R. Gilmartin, and Defendant, in exchange for the sum of \$4,669.00, granted, sold, and conveyed to the City, its successors, and assigns a public easement described as follows:

a perpetual easement and right-of-way to install, operate, maintain, repair, reconstruct, replace, inspect and remove, at any time and from time to

time public improvements (including without limitation, street, utilities, sidewalk and drainage), together with a right-of-way for access on, along, through and under the [Gilmartin Property].

(The "Easement"). The Deed of Easement is attached as **Exhibit B** and incorporated herein by this reference.

9. The property on which the Training Center is located is the property benefited by the Easement. Without the Easement, the Authority and its directors, officers, employees, volunteers, agents, guests and invitees cannot access the Training Center. An aerial photograph depicting the Training Center, the Gilmartin Property, and an approximation of the Easement is attached as **Exhibit C** and incorporated herein by this reference.

10. Pursuant to the 2014 IGA and the Delegation of Duties entered into by and between the City and the Authority, which is attached as **Exhibit D** and incorporated herein by this reference, the Authority has the power, duty, and responsibility to maintain, operate, manage, control, and assert all rights under and pursuant to the Easement, including the right to initiate this Complaint.

11. From when the Easement was granted in 1991 through approximately 2010, Plaintiffs enjoyed use of the Easement without interference by Defendant; however, beginning in approximately 2010, Defendant, who upon information and belief, currently resides on the Gilmartin Property, has substantially interfered with Plaintiffs' peaceful use and enjoyment of the Easement, including the following knowing and intentional wrongful conduct:

a. On or about August 21, 2010, Defendant welded a chain around a gate located within the Easement, which prevented the Authority from using the Easement ("August 21st Incident"). When a Captain at the Training Center attempted to remove the chain, he burned

his hand on the recently welded chain. Defendant told the Larimer County Sheriff's Office ("LCSO"), which had been dispatched to the August 21st Incident, that Defendant had seen the Captain approach the gate shortly after Defendant welded the chain together but he did not believe it was his responsibility to warn the Captain that the chain would be hot from its recent welding. The LCSO had the chain removed. Documents relating to the August 21st Incident are attached as **Exhibit E**;

b. On or about September 28, 2011, Defendant acted in a hostile manner when he jumped out from the side of the road within the Easement, approached vehicles that were driving toward the Training Center, screamed at the drivers, and took pictures of the vehicles and their license plates ("September 28th Incident"). The individuals informed the Authority of Defendant's behavior and the Authority contacted the LCSO. The LCSO responded and stated Defendant's actions were dangerous and could have resulted in an automobile accident within the Easement. The LCSO told Defendant he needed to act in a safer manner and if he chose to take photographs in the future he should do so from his driveway. Documents relating to the September 28th Incident are attached as **Exhibit F**;

c. On or about May 30, 2013, Defendant acted in a hostile manner when he verbally confronted landscapers hired by the Authority to maintain the grounds at the Training Center and within the Easement ("May 30th Incident"). Defendant physically blocked the landscapers from mowing the grass within the Easement by placing his bicycle and rocks in the way of the landscapers' lawnmower. The LCSO was dispatched and prohibited Defendant from engaging in such actions. Documents relating to the May 30th Incident are attached as **Exhibit G**;

d. On or about June 27, 2013, Defendant acted aggressively when he verbally confronted the mail carrier within the Easement;

e. On or about July 5, 2013, Defendant attempted to reduce the width of the Easement by moving the fence posts delineating the Easement approximately 20 to 30 feet into the Easement. The Authority's personnel were required to expend time moving the fence posts back to their correct location;

f. On or about September 27, 2013, Defendant stepped in front of, and physically blocked, a vehicle driving toward the Training Center within the Easement;

g. On or about November 1, 2013, individuals reported to the Authority that Defendant inappropriately, and without permission, entered their personal vehicles that were parked within the Easement;

h. On or about December 27, 2013, Defendant made threatening gestures to individuals driving their vehicles toward the Training Center within the Easement by using a shovel to mimic pointing and shooting a gun at the individuals, and drawing his hand across his throat to indicate that Defendant was going to cut the individuals' throats;

i. On or about September 30, 2014, Defendant drove his vehicle erratically within the Easement, engaging in rapid breaking and swerving, which nearly caused an automobile accident with a firefighter who was leaving a training class that he had attended at the Training Center ("September 30th Incident"). When the firefighter attempted to turn off of the Easement to avoid Defendant's erratic driving, Defendant swerved his vehicle without warning in front of the firefighter, cutting him off. The Colorado State University Police Department was

dispatched to the Training Center. Documents relating to the September 30th Incident are attached as **Exhibit H**;

j. On or about May 2, 2015, Defendant acted in a hostile manner when he verbally confronted landscapers hired by the Authority to maintain the grounds at the Training Center and within the Easement ("May 2nd Incident"). Defendant yelled at the landscapers and physically blocked them from leaving by parking his vehicle in front of the landscapers' vehicles for approximately 20 minutes. During the May 2nd Incident, the landscapers became concerned that Defendant was going to harm them, so they entered their vehicles, locked the doors, and called the LCSO. The LCSO responded to the May 2nd Incident to investigate Defendant's disorderly behavior. Documents relating to the May 2nd Incident are attached as **Exhibit I**;

k. On or about May 31, 2015, Defendant acted in a hostile manner when he verbally confronted an Authority member who was driving his vehicle within the Easement;

l. On or about June 4, 2015, Defendant once again verbally confronted a landscaper hired by the Authority to maintain the Easement;

m. On or about July 1, 2015, Defendant physically blocked Authority trainees with his vehicle and a trailer, preventing the trainees from performing training maneuvers with their apparatus within the Easement ("July 1st Incident"). Defendant also yelled at the trainees, approached their vehicles while they were driving, and shined a bright light in their eyes while they were driving. Despite the Authority's request, Defendant refused to move his vehicle and trailer out of the Easement. The Authority contacted a towing company to remove Defendant's vehicle and trailer, at which time Defendant moved his vehicle and trailer. As a result of the July

1st Incident, Defendant was summonsed for harassment by the LCSO. Documents relating to the July 1st Incident are attached as **Exhibit J**;

n. On or about May 13, 2016, Defendant installed tree stumps within the Easement in order to prevent the Authority from using the Easement for its intended purpose. The tree stumps created a physical barrier that prevented the Authority from using the full width of the Easement and from turning apparatus around within the Easement. The Authority was then forced to pay for removal of the tree stumps; and

o. On or about October 18, 2016, Defendant erected two adjoining metal signs on his property within or very near the entrance to the Easement (the "Signs"). A picture of the signs is attached as **Exhibit K**. The top sign, containing the official logo of the Authority, reads "PFA Personnel Only." The bottom sign, containing a no U-turns symbol, reads "Private Drive." The Authority has never given Defendant permission to use its official logo. By erecting the Signs, Defendant has unlawfully placed restrictions on the Easement that do not otherwise exist. Upon information and belief, Defendant's actions are calculated to prevent the Authority and its authorized agents or invitees from using the Easement as permitted by the Deed of Easement.

12. In addition to Defendant's actions memorialized in written documentation by the Authority and the LCSO, Defendant has on multiple additional occasions acted in a hostile and aggressive manner toward the Authority while the Authority used the Easement. These behaviors include, but are not limited to, standing within the Easement and timing individuals to calculate the speed at which they are driving; photographing individuals, their vehicles, and their license plates while they are driving through or parked within the Easement; and physically

preventing the Authority from using the Easement to the full extent provided for under the Deed of Easement.

13. Notwithstanding Defendant's ongoing actions that are intended to prevent or discourage the Authority from using the Easement, the Authority has taken measures to minimize the impact the Authority's use of the Easement may have on Defendant's use and enjoyment of the Gilmartin Property, including the following:

a. The Authority installed speed limit signs indicating that drivers should not exceed 25 miles per hour within the Easement;

b. The Authority maintains the Easement by collecting trash and keeping the grassy area mowed;

c. The Authority educates Authority employees, volunteers, and guests on appropriate use of the Easement, including where individuals may park their vehicles within the Easement and the maximum speed limit while driving within the Easement;

d. The Authority has taken steps to reduce the number of vehicles parked within the Easement as a courtesy to Defendant; and,

e. In an effort to ensure it is not entering the Gilmartin Property beyond the boundaries of the Easement, the Authority paid to have boundaries of the Easement surveyed and marked with survey stakes.

**FIRST CLAIM FOR RELIEF
(Trespass)**

14. Plaintiffs incorporate the preceding paragraphs of the Complaint as if set forth fully herein.

15. The City, through the Deed of Easement, and the Authority, through the 2014 IGA and the Delegation of Duties, have a possessory interest into and to the entire area within the Easement.

16. Since approximately 2010, Defendant has, without the Plaintiffs' permission, knowingly and intentionally entered the Easement for the purpose of engaging in the misconduct specified in paragraphs 11 and 12 of this Complaint.

17. Defendant's numerous, consistent efforts to interfere with the Plaintiffs' peaceful and rightful use of the Easement since 2010, notwithstanding on-going efforts of the Authority, the Colorado State University Police Department, and the LSCO to convince Defendant to stop his wrongful conduct, constitutes a continuing trespass.

18. Defendant's trespass will continue indefinitely into the future unless this Court issues an order expressly prohibiting Defendant from engaging in actions that interfere with the Plaintiffs' peaceful and lawful use of the Easement.

**SECOND CLAIM FOR RELIEF
(Private Nuisance)**

19. Plaintiffs incorporate the preceding paragraphs of the Amended Complaint as if set forth fully herein.

20. As specified in paragraphs __ and __ of this Amended Complaint, Defendant has intentionally and repeatedly engaged in conduct that has resulted in the unreasonable and substantial interference with the use and enjoyment of the Easement by Plaintiffs and their respective employees, volunteers, agents, guests and invitees, and in some instances, has been unreasonably dangerous to them and the general public.

21. Defendant's on-going wrongful conduct, as specified in paragraphs __ and __ of this Amended Complaint, both while within the Easement and outside of the Easement, has been so significant that a normal person in the community would find it offensive, annoying, inconvenient and harassing.

22. Defendant's offensive, annoying, inconvenient and harassing conduct will continue indefinitely into the future unless this Court issues an order expressly prohibiting Defendant from engaging in such actions.

**THIRD CLAIM FOR RELIED
(Declaratory Judgment)**

23. Plaintiffs incorporate the preceding paragraphs of the Amended Complaint as if set forth fully herein.

24. There is an actual claim or controversy between Plaintiffs and Defendant concerning the scope and construction of the Deed of Easement.

25. Pursuant to C.R.S. § 13-51-106 and C.R.C.P. 57(b), Plaintiffs, as parties whose rights are affected thereby, have standing to ask this Court to construe the Deed of Easement and obtain a declaration of their rights under that agreement.

26. All necessary parties under C.R.S. § 13-51-115 and C.R.C.P. 57(j) are before the Court.

27. Pursuant to C.R.S. § 13-51-101 *et seq.* and C.R.C.P. 57, Plaintiffs therefore seek a declaration that (a) the Easement is a public easement for use by the public as authorized by the City; (b) that Plaintiffs and their respective directors, officers, employees, volunteers, agents, guests, and invitees may use the Easement free from interference from Defendant for all purposes set forth in the Deed of Easement, including but not limited to, ingress to and egress

from the Training Center, parking vehicles, and for the exercise of all powers afforded to the Authority under the Special District Act and applicable Colorado law, and (c) any further interference by Defendant with Plaintiffs' rights under the Deed of Easement will constitute trespass and private nuisance.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that judgment be entered as follows:

1. An order permanently enjoining Defendant and any other person acting on his behalf, from interfering with Plaintiffs' rights under the Deed of Easement, including but not limited to, prohibiting Defendant from engaging in the following acts:

a. At all times on all days, from placing anything whatsoever within the Easement;

b. At all times on all days, from placing any sign, barrier or other object outside of the Easement that interferes with the use and enjoyment of the Easement;

c. At all times on all days, from engaging in threatening, intimidating or harassing behavior, such as shouting, cursing or making threatening gestures, within 500 feet of the Easement; and,

d. At all times on all days, from encouraging, inciting, or securing other persons to commit any of the prohibited acts listed herein.

2. An order requiring Defendant to immediately remove the Signs posted at the entrance of the Easement;

3. An order declaring that (a) the Easement is a public easement for use by the public as authorized by the City; (b) that Plaintiffs and their respective directors, officers,

employees, volunteers, agents, guests, and invitees may use the Easement free from interference from Defendant for all purposes set forth in the Deed of Easement, including but not limited to, ingress to and egress from the Training Center, parking vehicles, and for the exercise of all powers afforded to the Authority under the Special District Act and applicable Colorado law, and (c) any further interference by Defendant with Plaintiffs' rights under the Deed of Easement will constitute trespass and private nuisance.

4. An award of the costs, expenses, interest and reasonable attorneys' fees Plaintiffs have incurred in this action in accordance with applicable law; and

5. Such other and further relief as this Court deems just and proper.

Respectfully submitted this 27th day of March, 2017.

IRELAND STAPLETON PRYOR & PASCOE, PC

Signed original on file at the office of
Ireland Stapleton Pryor & Pascoe, PC

/s/ Kelley B. Duke

Kelley B. Duke, #35168

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Fort Collins, CO 80521

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102 Remington Street
Fort Collins, CO 80524-2834

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of March, 2017, a true and correct copy of the foregoing **AMENDED COMPLAINT** was served via U.S. Postal Service, first class mail, postage prepaid and addressed as follows:

Keith Gilmartin
3316 W. Vine Drive
Fort Collins, CO 80521

And served via email to:
keithgi2@gmail.com

*SIGNED ORIGINAL ON FILE AT THE OFFICE OF
IRELAND STAPLETON PRYOR & PASCOE, PC*

/s/ Barbara Biondillo

Barbara Biondillo