

"Plaintiffs") were represented by Kelley B. Duke and Benjamin J. Larson of the law firm of Ireland Stapleton Pryor & Pascoe, PC. Defendant Keith Gilmartin represented himself *pro se*. The Court, having considered the briefing submitted and the relevant legal authorities, the evidence presented at trial, and the proposed findings of fact and conclusions of law submitted by the parties, makes the following findings of fact and conclusions of law and enters the following order:

INTRODUCTION AND PROCEDURAL HISTORY

1. The Authority filed its Complaint against Mr. Gilmartin on November 18, 2016, asserting claims for trespass and private nuisance and asking the Court to enjoin Mr. Gilmartin from interfering with the Authority's rights under a January 15, 1991, Deed of Easement conveyed by Mr. Gilmartin and his parents to the City (the "Deed of Easement"). On March 27, 2017, the Authority amended its Complaint, joining the City as a party and asking the Court for a declaration of Plaintiffs' rights under the easement that is the subject of the Deed of Easement (the "Easement").

2. On May 15, 2017, Plaintiffs filed a Motion for Partial Summary Judgment concerning the scope of the Easement.

3. While the Motion for Partial Summary Judgment was still pending, Judge Howard entered a Temporary Restraining Order against Mr. Gilmartin on June 8, 2017, enjoining him from, among other things, engaging in threatening, intimidating, or harassing behavior directed at people using the Easement. On June 28, 2017, by stipulation of the parties, the Court entered a Preliminary Injunction against Mr. Gilmartin, enjoining him in the same manner as in the Temporary Restraining Order.

4. On August 3, 2017, the Court granted, in part, Plaintiffs' Motion for Partial Summary Judgment, ordering that: (1) the Easement is a public easement for establishing a right-of-way for access to the Poudre Fire Authority Training Facility; (2) Plaintiffs and their respective directors, officers, employees, volunteers, agents, guests, and invitees may use the Easement for ingress and egress to the Poudre Fire Authority Training Facility; and (3) any further interference by Mr. Gilmartin with Plaintiffs' right of access under the Deed of Easement will constitute trespass and private nuisance. The Court reserved for trial whether the scope of the Easement extended beyond merely ingress and egress to the Training Center as claimed by Mr. Gilmartin, and, more specifically, whether the Deed of Easement established a public roadway "for all uses that a public roadway may be used as authorized by the City."

5. At trial, the Court heard evidence concerning the scope of the Easement and whether Mr. Gilmartin should be permanently enjoined from interfering with persons using the Easement. Because Mr. Gilmartin did not provide Plaintiffs' counsel with a witness or exhibit list prior to trial, the Court did not permit him to present evidence other than his own direct testimony.

6. The Court now enters judgment in favor of Plaintiffs, ordering that: (1) the Easement is a public roadway for use by the public as authorized by the City, including, but not limited to, ingress and egress, parking, and turning around; (2) Plaintiffs and their respective directors, officers, employees, volunteers, agents, guests, and invitees, including members of the general public, may use the Easement for such purposes; and (3) Mr. Gilmartin is permanently enjoined from interfering with the Easement as set forth below.

FINDINGS OF FACT

The Court finds as follows:

Background of the Parties and the Easement

7. The City is a municipal corporation organized under the laws of the State of Colorado. Fort Collins Charter Art. I, § 1.

8. The Authority is a public entity formed in 1981 by an Intergovernmental Agreement between the City and the Poudre Valley Fire Protection District to provide fire and emergency services to the citizens and their property within Plaintiffs' jurisdictional boundaries. Ex. 25, July 15, 2014 Amended and Restated Intergovernmental Agreement Establishing Poudre Fire Authority, § 1.2 ("2014 IGA").

9. Mr. Gilmartin is an individual who resides at 3316 West Vine Drive, Fort Collins, Colorado 80521 ("Gilmartin Property").

10. The Authority operates a Training Center located at 3400 West Vine Drive in Fort Collins, Colorado ("Training Center"), west of the Gilmartin Property.

11. On January 15, 1991, Mr. Gilmartin and his parents, in exchange for the sum of \$4,669.00, granted, sold, and conveyed to the City the Easement, which is described, in pertinent part in the Deed of Easement, 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 all of the hereinafter described real property

Ex. 4, Deed of Easement.¹

12. Mr. Gilmartin testified that, at the time the Easement was conveyed, he was living in California. Other than signing the Deed of Easement, Mr. Gilmartin played no direct role in negotiating the Easement with the City.

13. West Vine Drive is a public street where it dead ends on the Gilmartin Property. The Easement extends West Vine Drive through the Gilmartin Property to the property on which the Training Center sits. Ex. 47. Architectural drawings attached to the Deed of Easement recorded in 1991 label the Easement as "W. Vine Extension." Ex. 4 at 8.

14. The property on which the Training Center sits is the property benefited by the Easement. Pursuant to the 2014 IGA and an October 12, 2016 Intergovernmental Agreement entered into by and between the City and the Authority, the Authority has the power, duty, and responsibility to maintain, operate, manage, control, and assert all rights under and pursuant to the Easement. Exs. 25 and 43.

15. The City's Deputy City Manager, Jeff Mihelich, testified that, because the Deed of Easement conveyed a public easement and also a public right-of-way to install public improvements, including a public street, the Easement is a public street, and the City has always treated the Easement as such.

16. In or about 1995, pursuant to the express language in the Deed of Easement, Plaintiffs extended West Vine Drive by installing a paved roadway on the Easement from West

¹ The Deed of Easement was re-recorded on March 15, 2011 with the Larimer County Clerk and Recorder at Reception No. 20110016645 in order to correct a scrivener's error in the legal description. Ex. 8. The legal description in the re-recorded Deed of Easement is the operative legal description.

Vine Drive to the Training Center. The public has been able to, and has accessed, the Easement from West Vine Drive since the paved roadway was installed.

17. Mr. Mihelich testified that the City commonly obtains public rights-of way such as the Easement through a deed of conveyance, rather than by a statutory dedication in a plat. Mr. Mihelich testified that these public rights-of-way are public streets regulated by the City. For instance, the City regulates speed, parking, turning around, and other uses of these public streets.

18. Like other public rights-of-way in the City, the City regulates and permits parking and turning around on the Easement. These uses are also consistent with the physical characteristics of the Easement. At the point where West Vine Drive connects to the Easement, the paved portion of West Vine Drive is approximately 25 feet wide whereas the Easement is 70 feet wide. Ex. 4 at 7.

19. Mr. Mihelich testified that the purpose of obtaining an easement of such width is to ensure space on the shoulders for uses like parking and turning around. Such uses are particularly important in this context because members of the general public often find themselves at the dead end of West Vine Drive, and the Easement provides a safe place for them to turn around. Mr. Mihelich testified that the City would not have obtained an easement and right-of-way that was so much wider than the existing public street if the intent was for the Easement to be limited to merely ingress and egress.

20. Because the City has access to the entire 70-foot portion of property described in the Deed of Easement, Mr. Mihelich testified that the City can construct public improvements on either side of the existing paved portion of the Easement, such as a sidewalk or lined parking spaces. On several occasions over the last 15 years, the City, through the Authority, has improved

the shoulders of the Easement, including laying materials such as gravel for people to park and turn around.

21. Like other public rights-of-way in the City, the City, through the Authority, maintains the Easement, including both the paved roadway and the shoulders of the Easement. Plaintiffs also collect trash and mow the grassy area of the Easement to either side of the paved roadway. Speed limit signs have been posted, indicating that drivers should not exceed 25 miles per hour within the Easement.

22. Mr. Gilmartin admits that the Deed of Easement permits the City to construct public improvements on the entire portion of the Easement, and that the City could even construct a building on the Easement.

Boundaries of the Easement

23. In 2013, the boundaries of the Easement were surveyed and then later re-confirmed by representatives of King Surveyors, Inc. Mr. Steven Parks, a Senior Project Coordinator with King Surveyors, Inc., was qualified as an expert witness in the subject of reading, interpreting, and surveying legal descriptions.

24. Mr. Parks testified that three of the four corners of the Easement are currently marked by pins set in the ground on the Gilmartin Property, each of which has a green cap and an identifying number of 34995. The southeast corner of the Easement, which sits in an asphalt driveway to a Colorado State University training facility, is marked by a "PK" nail in the asphalt. Mr. Parks testified that a PK nail is an industry-accepted method of marking a boundary in asphalt.

Mr. Gilmartin's Interference with the Easement

25. When the Easement was conveyed to the City in 1991, Mr. Gilmartin's parents were living on the Gilmartin Property. Mike Gress, a representative of the authority, testified that during this time, both the Authority and the general public used the Easement without objection from Mr. Gilmartin's parents, including for such uses as parking and turning around. Throughout that time, the Authority maintained a good relationship with Mr. Gilmartin's parents.

26. Representatives of the City and the Authority testified that these uses did not, and do not, interfere with Mr. Gilmartin's use of the Gilmartin Property. Mr. Gilmartin did not present evidence to the contrary.

27. Almost 20 years after the Easement was conveyed, and after Mr. Gilmartin's parents had passed away and Mr. Gilmartin had moved back to the Gilmartin Property, Plaintiffs began experiencing problems with Mr. Gilmartin. Those problems centered around Mr. Gilmartin harassing and interfering with people using the Easement, including the Authority's staff, the Authority's invitees, and the general public.

28. The testimony and the documents show several reported incidents of Mr. Gilmartin harassing and intimidating people driving on the Easement by, among other things, shouting and cursing at them, taking pictures of them, blocking their path, and striking their vehicles with his hands. Mr. Gilmartin admitted to shouting and cursing at people and to taking approximately 1,000 videos or photographs of people using the Easement. There was testimony concerning an incident reported in June 2013, when Mr. Gilmartin confronted and shouted profanities at an elderly volunteer who delivered intra-office mail for the Authority.

29. More recently, in May 2017, Mr. Gilmartin stepped in the path of a firefighter driving to the Training Center, resulting in the firefighter nearly striking Mr. Gilmartin. Mr. Gilmartin repeatedly struck the firefighter's vehicle with his hands. The firefighter testified that he was scared of Mr. Gilmartin. Ex. 49.

30. On more than one occasion, Mr. Gilmartin has interfered with contracted landscapers who maintain the Easement. For example, in May 2015, Mr. Gilmartin confronted two teenaged employees of the landscaping company while they were parked in the Easement. Mr. Gilmartin shouted obscenities and blocked their path with his own vehicle so that they could not leave. Ex. 27. In the police report, Mr. Gilmartin admitted to the responding officer that "he could understand that the young teenage boys may have been alarmed and scared at the situation that had taken place." *Id.* Mr. Gilmartin also admitted this in his testimony.

31. Mr. Gilmartin has also obstructed or interfered with Plaintiffs and the public's use of the Easement by placing heavy obstructions within the Easement, by using his vehicle to prevent people from turning around in the Easement, and by installing unauthorized signs with the Authority's logo that incorrectly represent the Easement as being for Authority use only. Exs. 29, 37, 38, and 44.

32. In another incident in July 2015 involving the Larimer County Sherriff's office, Mr. Gilmartin took the position that the Easement was a public street in an effort to justify why he intentionally moved his vehicle into the path of fire trucks turning around on the Easement. Ex. 29 at 4. At this time, it appears that Mr. Gilmartin believed the Easement was a public street, but he was upset that the City was permitting the Authority—of which the City is a partner—to use the Easement for turning apparatus around. Representatives of the Authority testified that the

Authority commonly uses City property, including streets, parks, and parking lots for training maneuvers as authorized by the City.

33. Several police reports were introduced, without objection, that detail Mr. Gilmartin's actions related to the Easement. Mr. Gilmartin attempted to dispute certain details of the incidents testified to by Plaintiffs' witnesses, but Mr. Gilmartin did not dispute that the incidents occurred. To the extent Mr. Gilmartin's version of the incidents varied to some degree from Plaintiffs' version, the Court does not find Mr. Gilmartin's testimony credible because of discrepancies in his own version of events, mischaracterizations by Mr. Gilmartin of evidence in the record, and the number of incidents that occurred.

Impact of Mr. Gilmartin's Actions

34. Testimony from representatives of the City, Authority and the CSU Police Department indicates that Mr. Gilmartin's actions have had a significant impact on the public. Lieutenant Adam Smith of the CSU Police Department testified that over the last ten years, the CSU Police Department has had several documented incidents with Mr. Gilmartin and several more undocumented incidents of which Lt. Smith was personally aware, all relating to issues with the Easement. As part of these interactions, Mr. Gilmartin has repeatedly been instructed to contact the police and to not engage in self-help concerning the Easement, but he has ignored these requests. Lt. Smith testified that Mr. Gilmartin's behavior poses a threat to public safety. Lt. Smith is also concerned that Mr. Gilmartin's behavior could escalate into something more dangerous.

35. Lt. Smith testified that CSU spends an inordinate amount of public resources responding to incidents involving Mr. Gilmartin and the Easement. Not only are the incidents

frequent, officers responding to calls involving Mr. Gilmartin must go in teams of two because of the threat Mr. Gilmartin poses.

36. Battalion Chief Randy Callahan of the Authority has overseen issues with Mr. Gilmartin for several years. Chief Callahan testified that addressing Mr. Gilmartin's actions takes significant time and resources away from the Authority's emergency response duties. The Authority's staff are also affected because they work in a state of fear of Mr. Gilmartin. The testimony has shown that, because of Mr. Gilmartin, the Authority has had to hire police protection for public events, give forewarning to police authorities when contractors are maintaining the Easement, order staff to have no contact with Mr. Gilmartin, and place the Training Center on temporary lockdown. Exs. 31, 42, 46.

CONCLUSIONS OF LAW

37. In order to resolve the parties' dispute, the Court first determines the scope of the parties' rights under the Deed of Easement. Next, the Court addresses whether Mr. Gilmartin's actions constitute trespass and private nuisance. Finally, the Court addresses whether Mr. Gilmartin should be permanently enjoined from interfering with the Easement.

The Easement Is a Public Roadway

38. Pursuant to C.R.C.P. 57 and C.R.S. § 13-51-106, this Court has the authority to declare the parties' rights under the Deed of Easement.

39. To ascertain the extent of an expressly created easement, courts examine the instrument conveying that right to determine the parties' intent. *Allen v. Nickerson*, 155 P.3d 595, 600 (Colo. App. 2006) (citing *Lazy Dog Ranch v. Telluray Ranch Corp.*, 965 P.2d 1229 (Colo. 1998)). Extrinsic evidence may not be used "to contradict the language of the written instrument;

rather, extrinsic evidence is used to explain and give context to the language." *Id.* (quoting *Lazy Dog Ranch*, 965 P.2d at 1237).

40. Plaintiffs argue that the Deed of Easement established a public roadway to be used by the public as authorized by the City within its general police powers. As raised by the Court in its Order Granting Partial Summary Judgment, the issue is whether the Easement has been dedicated to the City as a public roadway.

41. "Dedication is the appropriation of an interest in land by the owner of such interest to public use." *Turnbaugh v. Chapman*, 68 P.3d 570, 572 (Colo. App. 2003). Under Colorado law, "a dedication of land to public use may be made either according to the common law or pursuant to statute." *Denver v. Publix Cab Co.*, 308 P.2d 1016, 1019 (1957). The statutory dedication of a street grants fee title to the property, whereas common law dedication grants an easement, not fee ownership. *Near v. Calkins*, 946 P.2d 537, 541 (Colo. App. 1997).

42. Plaintiffs do not contend that there has been a statutory dedication pursuant to C.R.S. § 31-23-107. Rather, Plaintiffs contend that there has been a common law dedication of a public roadway. "Common law dedication requires that (1) the property owner unequivocally intended to dedicate the property and (2) the governmental authority accepted the dedication." *Turnbaugh*, 68 P.3d at 572. "Both the dedication and the acceptance may be shown by an instrument in writing, or by acts and declarations." *Mitchell v. Denver*, 78 P. 686, 687 (Colo. 1904).

43. Here, a common law dedication has been established by both an instrument in writing and by the acts of the parties. First, pursuant to the Deed of Easement, the Gilmartins conveyed to the City—a public entity—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." Ex. 8 (emphasis added).

44. By the plain language of the Deed of Easement, the Gilmartins conveyed to the City a right to install a public street across the Gilmartin property. Mr. Gilmartin admitted on cross-examination that the City is authorized to use the Easement to install public improvements, including street and sidewalks.

45. The fact that the Deed of Easement was intended as a dedication is further evidenced by the City's formal acceptance of the conveyance. Contrary to a typical deed of conveyance that is only signed by the grantor, the Deed of Easement states that the conveyance is "Accepted by the City of Fort Collins, Colorado this 17 day of January 1991," and is signed by the City Manager. Ex. 8 at 4.

46. Second, Plaintiffs presented un rebutted testimony that: (i) the Easement has been accessible to the public since it was granted; (ii) Plaintiffs installed a paved street on the Easement in or about 1995; (iii) Plaintiffs improved the shoulders of the Easement on several occasions; (iv) Plaintiffs and the general public have used the Easement as any other public street, i.e., for transport, parking, and turning around; (v) Plaintiffs have installed speed limit signs on the Easement as with any other public street; (vi) Plaintiffs have maintained the Easement, including the paved roadway and the shoulders; and (vii) the City has repeatedly maintained in documents and correspondence that the Easement is a public street for public use.

47. Moreover, the Easement was used as a public street without objection from Mr. Gilmartin's parents for several years after they conveyed the Easement to the City. Mr. Gilmartin's

parents were the grantors that negotiated the Easement with the City. Only about a decade later, after Mr. Gilmartin was living on the Property and his parents had passed away, did Mr. Gilmartin begin objecting to how the Easement was being used.

48. Under these facts, the Court finds that, by way of common law dedication, the Gilmartins dedicated the Easement to the City as a public right-of-way for, among other things, a public street.

49. While Mr. Gilmartin concedes that Deed of Easement permits the City to install a public street and other public improvements, he contends that such public improvements can only be used for ingress and egress to and from the Training Center. However, neither the Training Center nor any other specific destination is mentioned in the Deed of Easement. As a public street, the Easement can be used by the general public, and access to the benefited property is one of the authorized uses.

50. Mr. Gilmartin contends that the Easement is strictly limited to ingress and egress because, after conveying a perpetual easement and right of way to install a public street, the Deed of Easement includes the following clause: "together with a right-of-way for access on, along, through and under all of the hereinafter described real property." Ex. 8. The Court rejects this argument.

51. The dedication of a "right-of-way for access" creates a public road, the use of which is regulated by the governing municipality within its police powers. For example, in *Turnbaugh*, the dedication was for a "future *access* easement." 68 P.3d at 571 (emphasis added). Even with the word "access" as a modifier, the court held that the grantee county received "an easement for the development of a future road." *Id.* The court reasoned that that "[o]nce a roadway is accepted

by a local government and used by the public, its status as a roadway continues until vacation or abandonment." *Id.* at 573 (characterizing public "access easement" as a "public highway"); *see also* C.R.S. § 43-2-201 (stating that "public highways" include "[a]ll roads over private or other lands dedicated to public uses by due process of law").

52. Like the court in *Turnbaugh*, the City's Municipal Code does not treat the presence of the modifier "access" as causing the grant to be of anything less than a public street. Pursuant to the City's Municipal Code, the term "street" is defined as follows:

The word street shall mean a public way (whether publicly or privately owned) used or intended to be used for carrying vehicular, bicycle and/or pedestrian traffic, *and shall include the entire area within the public right-of-way and/or public access easement.*

City of Fort Collins, Municipal Code § 1-2 (emphasis added).²

53. Consistent with the Municipal Code, the City's Deputy City Manager testified that public streets throughout the City have been acquired via grants of public rights-of-way in instruments such as the Deed of Easement. The City Manager also testified that the City exercises its police powers to permit and regulate the uses of public streets within the City, such as speed limits, parking, and turning around. *See also* Municipal Code § 23-46 (regulating and prohibiting "obstructions" on any City "street"); City Traffic Code § 102 (stating that the City's Traffic Code, which regulates parking, "shall apply to every street . . . and to every other public way"); City Traffic Code §§ 1203, 1206 (generally permitting parking on "streets" if parking does not interfere with the flow of traffic and prohibiting parking in specified places).³

² Available at <https://www.fcgov.com/cityclerk/codes.php>.

³ The City's Traffic Code is also available at <https://www.fcgov.com/cityclerk/codes.php>.

54. A local government's authority to regulate public streets pursuant to its general police powers has long been recognized under Colorado law. *Dillon v. Yacht Club Condos. Home Owners Ass'n*, 325 P.3d 1032, 1038 (Colo. 2014) (upholding town's regulation of parking within a "street", which was defined under the town's code as "the entire width of every dedicated public right-of-way", as a lawful exercise of Town's police powers); *see also Denver v. Publix Cab Co.*, 308 P.2d 1016, 1019 (1957) (holding that airport concourse roadway was dedicated by common law to public use and "is a public area and thoroughfare *subject only to the City's general police powers*" (emphasis added)).

55. If the Court were to adopt Mr. Gilmartin's interpretation as strictly limiting the use of the Easement to merely ingress and egress, the Court would be taking from the City and giving to Mr. Gilmartin the authority to regulate the use of a public street dedicated to the City.

56. Moreover, the extrinsic evidence here, which the Court can rely upon to explain and give context to the Deed of Easement, supports a finding that the Easement is a public street to be used by the public as authorized by the City. *Allen*, 155 P.3d at 600. Mr. Gilmartin's parents, the original grantors who negotiated with the City, never raised any objections to the Easement being used by the general public in the same manner as a public street, including for parking and turning around.

57. Accordingly, the Court finds that the Easement is a public roadway that can be used by the general public, including by Plaintiffs, for all uses that a public roadway may be used as authorized by the City.

Mr. Gilmartin's Actions Constitute Trespass and Private Nuisance

58. To establish a claim for trespass, a plaintiff must show that: (1) it was in lawful possession of the property; (2) the defendant intentionally entered upon the plaintiff's property; and (3) the defendant's trespass caused damage to the plaintiff's property. CJI-Civ 18:1. A "trespass" may occur even without direct entry if the defendant acts in a manner intended to injure plaintiff's property. If there are no actual damages, nominal damages may be awarded. CJI-Civ 18:2, n.7.

59. Here, the evidence establishes a trespass by Mr. Gilmartin. There is no dispute that Plaintiffs are in lawful possession of the Easement. On several occasions, Mr. Gilmartin has entered onto the Easement to interfere with Plaintiffs' rights under the Deed of Easement by, for example, placing obstructions within the Easement. He has also intended to injure Plaintiffs' rights under the Deed of Easement by placing unauthorized signs purporting to limit the use of the Easement. While Plaintiffs do not seek damages against Mr. Gilmartin, nominal damages are sufficient to establish trespass. CJI-Civ 18:4.

60. To establish a claim for private nuisance, a plaintiff must show that: "(1) the defendant's conduct unreasonably interfered with the use and enjoyment of the plaintiff's property, (2) the interference was so substantial that it would have been offensive or caused inconvenience or annoyance to a reasonable person in the community, and (3) the interference was either negligent or intentional." *Saint John's Church in the Wilderness v. Scott*, 194 P.3d 475, 479 (Colo. App. 2008).

61. Here, Plaintiffs have satisfied the elements of a private nuisance claim. Mr. Gilmartin's intentional actions constitute unreasonable interference with the Easement that would

be offensive to a reasonable person in the community. Plaintiffs do not seek damages against Mr. Gilmartin for private nuisance.

Mr. Gilmartin Is Permanently Enjoined from Interfering with the Easement

62. Plaintiffs do not seek damages against Mr. Gilmartin; rather, they seek to permanently enjoin Mr. Gilmartin from interfering with the Easement. "A party seeking a permanent injunction must show that: (1) the party has achieved actual success on the merits; (2) irreparable harm will result unless the injunction is issued; (3) the threatened injury outweighs the harm that the injunction may cause to the opposing party; and (4) the injunction, if issued, will not adversely affect the public interest." *Dallman v. Ritter*, 225 P.3d 610, 621 n.11 (Colo. 2010).

63. Each element is satisfied. First, Plaintiffs have proven their claims for trespass, private nuisance, and declaratory judgment. Second, Mr. Gilmartin's actions in interfering with the Easement pose a threat to public safety, and therefore irreparable harm will result unless an injunction is issued. Third, the threat to public safety outweighs the *de minimis* harm to Mr. Gilmartin. Fourth, issuing the injunction will promote the public interest by safeguarding the public and by preserving public resources that are expended in addressing incidents related to Mr. Gilmartin and the Easement.

64. Accordingly, Mr. Gilmartin is enjoined from interfering with the Easement as set forth below.

ORDER

For the reasons set forth above,

IT IS HEREBY ORDERED:

A. The Court declares that: (1) the corner boundaries of the Easement are reflected in the ALTA/ACSM Land Title Survey at Exhibit 16 and are physically marked by the three pins set at the northeast, northwest, and southwest corners of the Easement (each with a green cap and identifying number of 34995) and by the PK nail set at the southeast corner of the Easement in the asphalt; (2) the Easement is a public roadway for use by the public as authorized by the City, including, but not limited to, for ingress and egress, parking, turning around, and any other permitted uses of a public roadway; and (3) Plaintiffs and their respective directors, officers, employees, volunteers, agents, guests, and invitees, including members of the general public, may use the Easement for such purposes.

B. The Court permanently enjoins Mr. Gilmartin, at all times on all days, from interfering with the Plaintiffs' or the public's rights under the Deed of Easement, including but not limited to, enjoining Mr. Gilmartin from: (1) interfering with any person using the Easement; (2) placing anything whatsoever within the boundaries of the Easement (Mr. Gilmartin is allowed his use his property within the Easement, including using it to access other parts of the Gilmartin Property, as long as he does not interfere with the use of the Easement); (3) placing any sign, barrier or other object that interferes with the use and enjoyment of the Easement; (4) engaging in threatening, intimidating, or harassing behavior directed at people using the Easement, including but not limited to shouting, cursing, or making threatening gestures; and (5) encouraging, inciting,

or securing other persons to interfere with Plaintiffs' or the public's rights under the Deed of Easement.

C. Within seven days of the entry of this Order, Mr. Gilmartin must remove the existing signs on the Gilmartin Property that are depicted in Exhibit 44.

D. Plaintiffs have 21 days from the entry of this Order to file their Bill of Costs.

SO ENTERED this ____ day of _____, 2017.

BY THE COURT:

District Court Judge

Respectfully submitted this 8th day of September, 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

Benjamin J. Larson, #42540

*Special Counsel for City of Fort Collins and
Attorneys for Poudre Fire Authority*

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of September, 2017, a true and correct copy of the foregoing **PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW** 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:
keithgil2@gmail.com

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

/s/ Barbara Biondolillo _____
Barbara Biondolillo