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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

REDMOND-FALL CITY LLC, a Washington  
limited liability company; and ELAINE COLES,  
a single individual,

Plaintiffs,

vs.

MARIA DANIELI, INC., a Washington  
corporation; MARIA DANIELI, individually,  
and the marital community composed of  
MARIA DANIELI and JEFF KRUEGER;  
WINDERMERE REAL ESTATE/EAST, Inc.,  
aka WINDERMERE BELLEVUE WEST, a  
Washington corporation; MICHAEL S. and  
JILL M. PHILPOTT, husband and wife, and the  
marital community composed thereof; and  
ROBERT J. and SHARMA L. BOSTWICK,  
husband and wife, and the marital community  
composed thereof,

Defendants.

NO. 10-2-19549-1 SEA

**ANSWER, AFFIRMATIVE DEFENSES  
AND COUNTERCLAIM OF PHILPOTT  
AND BOSTWICK**

Michael S. Philpott and Jill M. Philpott (collectively herein, "Philpott") and Robert J.  
Bostwick and Sharma L. Bostwick (collectively herein, "Bostwick") answer plaintiffs'  
complaint as follows:

1.1 Philpott and Bostwick (collectively herein, "Answering Defendants") admit  
paragraph 1.1 of plaintiffs' complaint.

1 1.2. Answering Defendants admit paragraph 1.2 of plaintiffs' complaint.

2 1.3. Answering Defendants are without knowledge or information sufficient to form  
3 a belief as to the truth of paragraph 1.3 of plaintiffs' complaint and therefore deny the same.

4 1.4 Answering Defendants are without knowledge or information sufficient to form  
5 a belief as to the truth of paragraph 1.4 of plaintiffs' complaint and therefore deny the same.

6 1.5 Answering Defendants are without knowledge or information sufficient to form  
7 a belief as to the truth of paragraph 1.5 of plaintiffs' complaint and therefore deny the same.

8 1.6 Answering Defendants admit paragraph 1.6 of plaintiffs' complaint.

9 1.7 Answering Defendants admit paragraph 1.7 of plaintiffs' complaint.

10 1.8 Answering Defendants admit paragraph 1.8 of plaintiffs' complaint.

11 2.1 Answering Defendants incorporate their answers to paragraph 1.1 through 1.8 of  
12 plaintiffs' complaint.

13 2.2 Answering Defendants admit paragraph 2.2 of plaintiffs' complaint.

14 3.1 Answering Defendants incorporate their answers to paragraph 1.1 through 2.2 of  
15 plaintiffs' complaint.

16 3.2 Answering Defendants admit paragraph 3.2 of plaintiffs' complaint.

17 3.3 Answering Defendants admit that at the time of the acquisition by Philpott of  
18 Parcel 4, there was an underground water line originating at SE 40<sup>th</sup> Street which traversed  
19 across Parcel 4 onto Parcel 3 and otherwise deny paragraph 3.3 of plaintiffs' complaint.

20 3.4 Answering Defendants are without knowledge or information sufficient to form  
21 a belief as to the truth of paragraph 3.4 of plaintiffs' complaint and therefore deny the same.

22 3.5 Answering Defendants admit that Philpott submitted to plaintiffs an offer for the  
23 purchase of Parcel 3 at a purchase price of \$850,000 and an offer for the purchase of Parcel 4  
24 for a purchase price of \$350,000 and otherwise deny paragraph 3.5 of plaintiffs' complaint.

25 3.6 Answering Defendants admit that Ms. Coles on June 5, 2007 executed Purchase  
26 and Sale Agreements with Philpott for the sale of Parcels 3 and 4 for the respective purchase

1 prices of \$850,000 and \$350,000 and otherwise deny paragraph 3.6 of plaintiffs' complaint.

2 3.7 Answering Defendants admit paragraph 3.7 of plaintiffs' complaint.

3 3.8 Answering Defendants are without knowledge or information sufficient to form  
4 a belief as to the truth of paragraph 3.8 of plaintiffs' complaint and therefore deny the same.

5 3.9 Answering Defendants admit that Philpott in October 2007 complained to Ms.  
6 Coles that an underground water line ran through his property and otherwise deny paragraph  
7 3.9 of plaintiffs' complaint.

8 3.10 Answering Defendants admit that Ms. Coles agreed to the terms of a certain  
9 Waiver of Claims and Indemnity Agreement, dated December 24, 2007, executed by Philpott  
10 and a certain Addendum to Purchase and Sale Agreement executed as of January 4, 2008 by  
11 Bostwick and Redmond-Fall City LLC and that the terms of such agreements speak for  
12 themselves. Answering Defendants otherwise deny paragraph 3.10 of plaintiffs' complaint.

13 3.11 Answering Defendants admit that in connection with the execution and delivery  
14 of the Waiver of Claims and Indemnity Agreement, Ms. Coles agreed to the terms of a certain  
15 Addendum to Purchase and Sale Agreement executed as of January 4, 2008 by Bostwick and  
16 Redmond-Fall City LLC and that the terms of such addendum speak for itself. Answering  
17 Defendants otherwise deny paragraph 3.11 of plaintiffs' complaint.

18 3.12 Answering Defendants admit paragraph 3.12 of plaintiffs' complaint.

19 3.13 Answering Defendants admit that they have not granted plaintiffs an easement  
20 for a water line across their respective properties and otherwise deny paragraph 3.13 of  
21 plaintiffs' complaint.

22 4.1 Answering Defendants incorporate their answers to paragraph 1.1 through 3.13  
23 of plaintiffs' complaint.

24 4.2 Answering Defendants are without knowledge or information sufficient to form  
25 a belief as to the truth of paragraph 4.2 of plaintiffs' complaint and therefore deny the same.

26 4.3 Answering Defendants are without knowledge or information sufficient to form

1 a belief as to the truth of paragraph 4.3 of plaintiffs' complaint and therefore deny the same.

2 5.1 Answering Defendants incorporate their answers to paragraph 1.1 through 4.3 of  
3 plaintiffs' complaint.

4 5.2 Answering Defendants are without knowledge or information sufficient to form  
5 a belief as to the truth of paragraph 5.2 of plaintiffs' complaint and therefore deny the same.

6 5.3 Answering Defendants are without knowledge or information sufficient to form  
7 a belief as to the truth of paragraph 5.3 of plaintiffs' complaint and therefore deny the same.

8 6.1 Answering Defendants incorporate their answers to paragraph 1.1 through 5.3 of  
9 plaintiffs' complaint.

10 6.2 Answering Defendants deny paragraph 6.2 of plaintiffs' complaint.

11 6.3 Answering Defendants deny paragraph 6.3 of plaintiffs' complaint.

12 7.1 Answering Defendants incorporate their answers to paragraph 1.1 through 6.3 of  
13 plaintiffs' complaint.

14 7.2 Answering Defendants deny paragraph 7.2 of plaintiffs' complaint.

15 7.3 Answering Defendants deny paragraph 7.3 of plaintiffs' complaint.

16 8.1 Answering Defendants incorporate their answers to paragraph 1.1 through 7.3 of  
17 plaintiffs' complaint.

18 8.2 Answering Defendants deny paragraph 8.2 of plaintiffs' complaint.

19 **AFFIRMATIVE DEFENSES**

20 9.1 Plaintiffs' complaint is barred by estoppel and waiver.

21 9.2. Plaintiffs' Fifth Cause of Action is barred by the lack of necessity and the  
22 existence of alternative water sources and alternative routes for a water line.

23 **COUNTERCLAIM FOR ATTORNEYS FEES AND COSTS**

24 10.1 Plaintiffs have asserted a breach of that certain Residential Real Estate Purchase  
25 and Sale Agreement, dated May 31, 2007, executed by Redmond Fall City LLC, as seller, and  
26 Philpott, as buyer, as assigned to Bostwick and thereafter amended by an Addendum to

1 Purchase and Sale Agreement executed as of January 4, 2008 (collectively, the "Purchase  
2 Agreement")

3 10.2 Paragraph (q) of the Purchaser Agreement provides that if the seller institutes  
4 suit against the buyer, the prevailing party is entitled to reasonable attorneys' fees and  
5 expenses.

6 10.3 RCW 8.24.030 provides for an award of attorneys fees and costs to be awarded  
7 to reimburse the condemnee.

8 10.4 Answering Defendants are entitled to recover their attorneys' fees and costs in  
9 connection with this litigation..

10 WHEREFORE, Answering Defendants pray as follows:


11 A. For the dismissal with prejudice of plaintiffs' claims against Answering  
12 Defendants.

13 B. For judgment against plaintiffs for Answering Defendants' attorneys' fees and  
14 costs.

15 C. For such other relief as is just and equitable.

16 DATED this 9th of August, 2010.

17 GARVEY SCHUBERT BARER

18  
19 By   
20 Mark A. Rowley, WSBA #7555  
21 Garvey Schubert Barer  
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25 Attorneys for Defendants, Michael S. and  
26 Jill M. Philpott and Robert J. and Sharma L.  
Bostwick