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7 **SUPERIOR COURT OF WASHINGTON, COUNTY OF SAN JUAN**

8 CLARE LINN WELKER and ABIGAIL
9 METZGER WELKER, Trustees of the Big
10 Sky Trust UDT 11-14-2002,
Plaintiffs,

11 v.

12 MOUNT DALLAS ASSOCIATION, a
13 Washington non-profit corporation; et al.,
14 Defendants.

NO. 15-2-05069-0

**FIRST AMENDED
ANSWER TO COMPLAINT
AND CROSS-CLAIMS
WITH CORRECTIONS**

15
16 COMES NOW the Defendant MOUNT DALLAS ASSOCIATION, by and through its
17 counsel of record, MARY L. STONE, INC., P.S., and by way of answer to the Plaintiffs'
18 Complaint for Declaratory Judgment hereby admit, deny and allege as follows:

19 **I. ANSWER**

20 1.1 Defendant Mount Dallas Association (hereinafter "MDA") admits the allegations
21 in Paragraph 1.1 of Plaintiffs' Complaint.

22 1.2 Defendant MDA admits the allegations in Paragraph 1.2 of Plaintiffs' Complaint.

23 1.3 Defendant MDA lacks sufficient information and knowledge to admit or deny the
24 allegations in Paragraph 1.3 of Plaintiffs' Complaint and therefore denies them.

25 2. Defendant MDA admits the allegations in Paragraph 2 of Plaintiffs' Complaint.

26 3.1 Defendant MDA denies the allegations in Paragraph 3.1 of Plaintiffs' Complaint
27 First Amended Answer to Complaint & Cross-Claims
28 With Corrections - 1

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1 and states that some owners have access to their properties via West Side Road and Aerie Drive.

2 3.2 Defendant MDA lacks sufficient information and knowledge to admit or deny the
3 allegations in Paragraph 3.2 of Plaintiffs' Complaint and therefore denies them.
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5 3.3 Defendant MDA lacks sufficient information and knowledge to admit or deny the
6 allegations in Paragraph 3.3 of Plaintiffs' Complaint and therefore denies them.

7 3.4 Defendant MDA admits the allegations in Paragraph 3.4 of Plaintiffs' Complaint.

8 3.5 Defendant MDA admits the allegations in Paragraph 3.5 of Plaintiffs' Complaint.

9 3.6 Defendant MDA admits the allegations in Paragraph 3.6 of Plaintiffs' Complaint.

10 3.7 Defendant MDA denies the allegations in Paragraph 3.7 of Plaintiffs' Complaint.

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12 Also included are Lower No Name Road, Sunridge Road, Windridge Road, Brookshaw Road
13 and Upper No Name Road. There is no Sunridge Lane or Brockshaw Road.

14 3.8 Defendant MDA lacks sufficient information and knowledge to admit or deny the
15 allegations in Paragraph 3.8 of Plaintiffs' Complaint and therefore denies them.
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17 3.9 Defendant MDA lacks sufficient information and knowledge to admit or deny the
18 allegations in Paragraph 3.9 of Plaintiffs' Complaint and therefore denies them.

19 3.10 Defendant MDA denies the allegations in Paragraph 3.10 of Plaintiffs' Complaint
20 as it believes that its authority to assess costs for the side roads is based on the fact that it has
21 been doing so for 27 years and equity requires that some entity be in charge of collecting what is
22 ultimately determined to be a reasonable, fair and equitable method of allocation of expenses for
23 the maintenance of the side roads. Additionally, the MDA has been delegated the necessary
24 authority for selected side roads by owners benefiting from easements over those side roads per
25 binding, enforceable side-road RMAs, and, for at least five side roads, the side road RMA has
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1 been signed by owners of a majority of parcels accessed via the side road.

2 4. Defendant MDA realleges and incorporates the preceding paragraphs.

3 5.1 Defendant MDA denies the allegations in Paragraph 5.1 of Plaintiffs' Complaint.

4 The first paragraph of Article III of the Article of Incorporations states: "[t]he corporation
5 is organized exclusively for civic improvement, road maintenance, and neighborhood
6 beautification purposes, in accordance with the Washington Non-Profit Corp. Act."

7 When the Articles of Incorporation were filed in 1989, all roads on Mount Dallas were
8 named Mount Dallas Road. The only reason the roads were given a name other than Mount
9 Dallas Road was due to the implementation of the 911 national emergency services system in
10 1998. The use of the word neighborhood in the first paragraph of Article III clearly indicates the
11 intention to include all roads on Mount Dallas.

12 Additionally, Article III includes:

13 #2: "To foster the improvement beautification, betterment and preservation of the Mt.
14 Dallas area". Again, note that it states Mt. Dallas area, not specifically a road on Mount Dallas.

15 #3: "To identify and describe problems and general areas of community concern relating
16 to Mt. Dallas and its environs." Once again, it is Mt. Dallas that is mentioned, not just the main
17 artery that leads to the other roads.

18 The history of the Association clearly reflects all roads, regardless of their original name
19 or current name, are a part of Mount Dallas and the Mount Dallas Association. For decades now,
20 the five miles of roads that make up Mount Dallas have been spoken about at numerous meetings
21 and written about in minutes, newsletters and other documents. Further, Defendants MDA
22 believes it may be found to legally exist as a homeowners' association under RCW 64.38 *et seq.*

1 5.2 Defendant MDA admits the allegations in Paragraph 5.2 of Plaintiffs' Complaint.

2 5.3 Defendant MDA lacks sufficient information and knowledge to admit or deny the
3 allegations in Paragraph 5.3 of Plaintiffs' Complaint and therefore denies them.

4 5.4 Defendant MDA lacks sufficient information and knowledge to admit or deny the
5 allegations in Paragraph 5.4 of Plaintiffs' Complaint and therefore denies them.

6 5.5 Defendant MDA lacks sufficient information and knowledge to admit or deny the
7 allegations in Paragraph 5.5 of Plaintiffs' Complaint and therefore denies them.

8 5.6 Defendant MDA admits the allegations in Paragraph 5.6 of Plaintiffs' Complaint.

9 5.7 Defendant MDA denies the allegations in Paragraph 5.7 of Plaintiffs' Complaint.

10 Since inception in 1989, the Association has held annual meetings, sent out invoices,
11 collected monies and paid vendors. This was all made possible through the agreement of a
12 majority of property owners who voluntarily paid the assessments.

13 5.8 Defendant MDA denies the allegations in Paragraph 5.8 of Plaintiffs' Complaint.

14 Since all roads were once known as Mount Dallas Road, management has been occurring
15 since the formation in 1989.

16 6. Defendant MDA denies the allegations in Paragraph 6 of Plaintiffs' Complaint.

17 7. Defendant MDA realleges and incorporates paragraphs 1-6 herein.

18 8. Defendant lacks sufficient information and knowledge to admit or deny the
19 allegations in Paragraph 8 of Plaintiffs' Complaint and therefore denies them.

II. CROSS-CLAIM

A. Overview

1. Defendant Mount Dallas Association brings this Cross-Claim against all owners of parcels located on or accessed via each side road for which owners of a majority of parcels accessed via said side road signed a Road Maintenance Agreement for the side road. The list of such side roads currently includes: 1) Lower No Name Road; 2) Kiya Way; 3) Tumac Road, 4) Rascal Road, 5) Stormridge Road, 6) Rockledge Road; and 7) Skylark Lane.

B. Parties

2. Cross-Defendants Peter C. Albert and Kimberly N. Albert, a marital community, own real property located on Lower No Name Road, which is accessed via Mount Dallas Road.

3. Cross-Defendant SP Investments II LLC is a Washington Limited Liability company, owns real property located on Lower No Name Road, which is accessed via Mount Dallas Road.

4. Cross-Defendants Mark G. Dearfield and Cynthia S. Dearfield, Trustees of the Dearfield Living Trust dated January 22, 2013, own real property located on Lower No Name Road, which is accessed via Mount Dallas Road.

5. Cross-Defendant Silverstein-Gerston Mount Dallas, LLC, a Washington limited liability company, owns real property located on Kiya Way, which is accessed via Mount Dallas Road.

6. Cross-Defendants Robert Tauscher and Sandra J. Hawley, a marital community, own real property located on Kiya Way, which is accessed via Mount Dallas Road.

1 7. Cross-Defendant James K. Fritz, an unmarried person, owns real property located
2 on Kiya Way, which is accessed via Mount Dallas Road.

3 8. Cross-Defendants Peter A. Davis and Susan Crampton Davis, a marital
4 community, own real property located on Kiya Way, which is accessed via Mount Dallas Road.
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6 9. Cross-Defendant Gordon F. Lagerquist, an unmarried person, owns real property
7 located on Kiya Way, which is accessed via Mount Dallas Road.

8 10. Cross-Defendant Mark Sheppard, an unmarried person, owns real property
9 located on Kiya Way, which is accessed via Mount Dallas Road.
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11 11. Cross-Defendant Jane B. Kroesche, believed to be an unmarried person, owns real
12 property located on Kiya Way, which is accessed via Mount Dallas Road.

13 12. Cross-Defendant Diana Padilla, believed to be an unmarried person, owns real
14 property located on Kiya Way, which is accessed via Mount Dallas Road.
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16 13. Cross-Defendants John W. Boyd and Sharon F. Boyd, a marital community, own
17 real property located on Kiya Way, which is accessed via Mount Dallas Road.

18 14. Cross-Defendant Constance G. Blackmer, a married person, owns real property
19 located on Kiya Way, which is accessed via Mount Dallas Road.
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21 15. Cross-Defendants William A. Severson and Laura Severson, a marital
22 community, own real property located on Kiya Way, which is accessed via Mount Dallas Road.

23 16. Cross-Defendants Karla K. Sabin and Benjamin D. Troutman, a marital
24 community, own real property located on Kiya Way, which is accessed via Mount Dallas Road.
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26 17. Cross-Defendant Valerie Boddington Navratil, believed to be an unmarried
27 person as her separate estate, owns real property located on Kiya Way, which is accessed via
28

1 Mount Dallas Road.

2 18. Cross-Defendant Rikki Kay Swin owns real property located on Kiya Way, which
3 is accessed via Mount Dallas Road.
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5 19. Cross-Defendants Maurice Liebman and Molly J. Liebman, a marital community,
6 own real property located on Tumac Road, which is accessed via Mount Dallas Road.

7 20. Cross-Defendants Florence A. McAlary, an unmarried person and Jean Elizabeth
8 McFarland, a married person as her separate estate as joint tenants with right of survivorship,
9 own real property located on Tumac Road, which is accessed via Mount Dallas Road.
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11 21. Cross-Defendants Robert J. Erskine, Jr. and Peggy R. Erskine, a marital
12 community, own real property located on Rascal Road, which is accessed via Mount Dallas
13 Road, Rockledge Road and Skylark Lane.

14 22. Cross-Defendants Gregory A. Swanson and Jane Swanson, a marital community,
15 own real property located on Rascal Road, which is accessed via Mount Dallas Road, Rockledge
16 Road and Skylark Lane.
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18 23. Cross-Defendants James Timothy Allen and Susan Dufour Allen, a marital
19 community, own real property located on Stormridge Road, which is accessed via Mount Dallas
20 Road.
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22 24. Cross-Defendants John Royce Meyerott and Lee M. Bryant, a marital community,
23 own real property located on Stormridge Road, which is accessed via Mount Dallas Road.

24 25. Cross-Defendant Patrick James Ballenger, Trustee of the Patrick James Ballenger
25 Rev. Trust dated 10/10/88, owns real property located on Stormridge Road, which is accessed
26 via Mount Dallas Road.
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1 26. Cross-Defendants Donald E. Staunton and Maria A. Sikorski, a marital
2 community, own real property located on Stormridge Road, which is accessed via Mount Dallas
3 Road.
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5 27. Cross-Defendants Thomas Edwin Sibert and Diana Lynn Sibert, a marital
6 community, own real property located on Stormridge Road, which is accessed via Mount Dallas
7 Road.
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9 28. Cross-Defendants James L. Guard and Mary B. Guard, a marital community,
10 own real property located on Rockledge Road, which is accessed via Mount Dallas Road.
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12 29. Cross-Defendants Jerome S. Moss and Ann Holbrook Moss, Trustees of the Moss
13 Trust dated December 16, 1999, own real property located on Rockledge Road, which is
14 accessed via Mount Dallas Road.
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16 30. Cross-Defendants Paul Hohenlohe and Jennifer Hohenlohe, Trustees of the Paul
17 Hohenlohe and Jennifer Hohenlohe Living Trust udt October 19, 2005, own two parcels of real
18 property located on Rockledge Road, which is accessed via Mount Dallas Road.
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20 31. Cross-Defendant Kenneth E. Smith owns two parcels of real property located on
21 Rockledge Road which is accessed via Mount Dallas Road.
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23 32. Cross-Defendants Henry J. Borys and Keesha Evers, a marital community, own
24 real property located on Skylark Lane, which is accessed via Mount Dallas Road and Rockledge
25 Road.
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27 33. Cross-Defendant Fred E. Keeler owns real property located on Skylark Lane,
28 which is accessed via Mount Dallas Road and Rockledge Road.

29 **C. Jurisdiction and Venue**

1 34. This court has personal and subject matter jurisdiction over the parties and is the
2 proper venue for this action.

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4 **D. Factual Background**

5 35. Plaintiffs CLARE LINN WELKER and ABIGAIL METZGER WELKER,
6 Trustees of the Big Sky Trust UDT 11/14/2002, commenced suit for Declaratory Judgment to
7 establish a reasonable, fair and equitable method of allocation of the expenses for the
8 maintenance of Mt. Dallas Road; and that the Owners of Benefitted Properties allocated a
9 majority of the expenses for the maintenance of Mt. Dallas Road under the Expense Allocation
10 Method be authorized to maintain Mount Dallas Road in accordance with the Expense
11 Allocation Method.
12

13 36. Defendant MOUNT DALLAS ASSOCIATION answered seeking approval of a
14 method of assessments for annual administrative costs, annual road maintenance and a reserve
15 fund for future repaving of **Mount Dallas Road** based upon a majority agreement of the
16 benefitted property owners on Mount Dallas Road and all current and future side roads accessed
17 via Mount Dallas Road; that the Mount Dallas Association be authorized to administer the
18 management of all aspects of Mount Dallas Road; that the Association be given lien rights for
19 past due expenses; and that each parcel be allocated one vote.
20

21 37. Defendant MOUNT DALLAS ASSOCIATION has prepared a Road Maintenance
22 Agreement for each side road where owners of a majority of parcels have requested and signed a
23 Road Maintenance Agreement for the side road. Those side roads where owners of a majority of
24 parcels have signed Road Maintenance Agreements are 1) Lower No Name Road; 2) Kiya Way;
25 3) Tumac Road; 4) Rascal Road, 5) Stormridge Road, 6) Rockledge Road; and 7) Skylark Lane.
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1 38. Defendant MOUNT DALLAS ASSOCIATION failed to request that the court
2 approve a method of assessments for annual administrative costs, annual road maintenance and a
3 reserve fund for every side road for which owners of a majority of parcels have requested and
4 signed a Road Maintenance Agreement.
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6 WHEREFORE, Defendant MOUNT DALLAS ASSOCIATION, having fully answered
7 Plaintiffs' Complaint and having brought Cross-Claims, requests that the court:

8 A. Approve a method of assessment for annual administrative costs and annual
9 expenses for maintenance of Mount Dallas Road, approve a reserve fund for
10 maintenance and re-paving expenses, and approve other rights and obligations as set
11 forth in the Road Maintenance Agreement for Mount Dallas Road signed by owners
of a majority of parcels benefiting from easements along Mount Dallas Road.

12 B. As all of the side roads currently accessed off of Mount Dallas Road were
13 originally known as Mount Dallas Road, order all side roads, current and future, to be
14 managed by the same entity that manages Mount Dallas Road.

15 C. Authorize Mount Dallas Association, incorporated in 1989, to administer the
16 management of all aspects of Mount Dallas Road. The Board of Directors will be
17 elected each year by the benefitted property owners on Mount Dallas Road and all
18 current and future roads accessed via Mount Dallas Road.

19 D. Give the managing entity of Mount Dallas Road and all current and future roads
20 accessed via Mount Dallas Road, the authority to place liens on properties for past
21 due assessments.

22 E. Provide that every owner of a parcel, whether developed or undeveloped, gets a
23 vote that is equal to every other parcel owner's vote except that when a decision
24 pertains to only one of the side roads, current or future, only those owners who
25 benefit from easements along such side road shall vote on that issue.

26 F. Order that the paved portion of Mount Dallas Road shall remain in its present
27 location even if a future survey finds that it is outside of its legal easement.

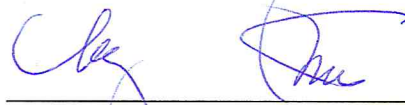
28 G. Approve a method of assessment for annual administrative costs and annual
expenses for maintenance of every side road, current or future, for which owners of a
majority of parcels benefiting from easements along said side road, or crossed and
accessed by said side road, have signed a Road Maintenance Agreement, approve a
reserve fund for maintenance and re-paving expenses for every such side road, and

1 approve other rights and obligations as set forth in the Road Maintenance Agreements
2 pertaining to every such side road.

3 H. For such other relief as the court seems just and equitable.
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5 DATED THIS 1st day of December, 2016.
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7 MARY L. STONE, INC., P.S.

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9 MARY L. STONE/WSBA #17327
10 Attorney for Defendant Mount Dallas Association
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