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District Court, County of Weld, State of Colorado
Court Address: 901 9th Avenue, Greeley, CO 80631
Court Mailing Address: P.O. Box 2038, Greeley, CO 80632-2038
Court Telephone: 970-351-7300

Plaintiff(s): **PRESTON BOLINGER, BLYTHE BOLINGER, DAVE MATHIESEN, BRENDA SHELTON, EDWIN COULTER, DONNA COULTER, GLENN WOLLAM, BONNIE SCHOENSTEIN and THE MILL CREEK SUBDIVISION HOMEOWNERS ASSOCIATION, a Colorado Nonprofit Corporation,**

v.

Defendant(s): **WALT DEWOLF, CAROL DEWOLF, DENNIS NEAL, PLAINS VIEW DEVELOPMENT, a Colorado Limited Liability Company, and COLORADO OPEN LANDS, a Colorado Nonprofit Corporation.**

Attorneys for Plaintiff(s):
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Case Number: **07 CV** ___

Division: _____

COMPLAINT

PLAINTIFFS Preston Bolinger, Blythe Bolinger, Dave Mathiesen, Brenda Shelton, Edwin Coulter, Donna Coulter, Glenn Wollam, Bonnie Schoenstein and The Mill Creek Subdivision Homeowners Association (the "Mill Creek Plaintiffs"), by and through their undersigned counsel, Otis Coan & Stewart, LLC, as their complaint against the above named Defendants hereby state as follows:

I.
PARTIES AND JURISDICTION

1. Plaintiffs Preston Bolinger, Blythe Bolinger, Dave Mathiesen, Brenda Shelton, Edwin Coulter, Donna Coulter, Glenn Wollam, and Bonnie Schoenstein are individuals and owners of real property in Berthoud, Colorado, in the County of Weld.

2. Plaintiffs Preston and Blythe Bolinger are husband and wife and are individual owners of real property located at 1230 Millcreek Rd., Berthoud, Colorado 80513.

3. Plaintiffs Dave Mathiesen and Brenda Shelton are husband and wife and are individual owners of real property located at 1235 Mill Creek Rd., Berthoud, Colorado 80513.

4. Plaintiffs Edwin and Donna Coulter are husband and wife and are individual owners of real property located at 1250 Millcreek Rd. Berthoud, Colorado 80513.

5. Plaintiffs Bonnie Schoenstein and Glenn Wollam are husband and wife and are individual owners of real property located at 19092 County Road 3, Berthoud Colorado 80513.

6. Plaintiff The Mill Creek Subdivision Homeowners Association is a Colorado nonprofit corporation with its principal place of business at 1235 Millcreek Rd., Berthoud, Colorado 80513.

7. Defendant Dennis Neal is a resident of Longmont Colorado and the owner and operator of Defendant Plains View Development, whose last know address is 12373 Niwot Rd., Longmont, CO 80504.

8. Defendant Plains View Development is a Colorado Limit Liability Company with its last known principal place of business at 12373 Niwot Rd., Longmont, CO 80504.

9. Defendants Walt and Carole DeWolf are husband and wife and are individual owners of real property located at 1270 Millcreek Rd., Berthoud, Colorado 80513.

10. Venue and jurisdiction are proper in this Court, as the contract and transactions at issue were entered into and performed in Weld County, Colorado, and as the properties at issue are located in Weld County, Colorado.

II.
GENERAL ALLEGATIONS

11. On or around November 30, 2001, Plaintiffs Glenn Wollam and Bonnie Schoenstein purchased a parcel of real estate from Defendant Dennis Neal located at 19092 Weld County Road 3, Berthoud, Colorado 80516.

12. On or around March 13, 2003, Defendant Dennis Neal through his limited liability company, Defendant Plains View Development, undertook to draft and file an original plat to subdivide and create the Mill Creek PUD in Berthoud, Colorado, creating 10 separate lots in the Mill Creek Subdivision which was recorded with the Weld County Clerk and Recorders office on April 8, 2003. (See attached plat at Exhibit 1).

13. Subsequently, on September 14, 2004, Defendant Dennis Neal through his limited liability company, Defendant Plains View Development, filed an amended plat with the Weld County Clerk and Recorders office reflecting a 20 foot wide horse, bicycle and hiking path. (See Exhibit 2 attached hereto.)

14. On or about January 7, 2005, Defendant Dennis Neal formed and incorporated the nonprofit Mill Creek Subdivision Homeowner's Association, Inc.

15. Lot 10 is and was subject to a conservation easement that requires that it be maintained to allow parks, open space and other public rights of way.

16. On or about January 23, 2004, Plaintiffs Blythe Bolinger and Preston Bolinger purchased a parcel of real estate from Defendant Dennis Neal located at 1230 Millcreek Rd. Berthoud, CO 80513.

17. In January, 2004, prior to purchasing the property at 1230 Mill Creek Rd., Defendant Dennis Neal represented to Plaintiffs Blythe Bolinger and Preston Bolinger that there was to be a walking trail through what was then designated as Lot 10 and that they would be granted access to the platted walking trail and the Lot 10 open land/conservancy easement as owners in the Mill Creek Subdivision.

18. At that time Defendant Neal further provided to Plaintiffs Blythe and Preston Bolinger a copy of the Amended Plat reflecting the trail as having loops around the various ponds on the 100 acre Lot 10.

19. On or about June 6, 2003, Plaintiffs Edwin Coulter and Donna Coulter purchased a parcel of real estate from Defendant Neal located at 1250 Millcreek Rd. Berthoud, Colorado 80513.

20. As with Plaintiffs Blythe Bolinger and Preston Bolinger, Plaintiffs Edwin Coulter and Donna Coulter were advised by Defendant Neal that they would be granted access to the platted walking trail and the Lot 10 open land/conservancy easement as owners in the Mill Creek Subdivision.

21. On or about February 23, 2005, David Mathiesen and Brenda Shelton purchased a parcel of real estate from Defendant Neal located at 1235 Millcreek, Berthoud, CO 80513.

22. As with Plaintiffs Blythe Bolinger and Preston Bolinger and Edwin Coulter and Donna Coulter, Dave Mathiesen and Brenda Shelton were advised by Defendant Neal that they would be granted access to the platted walking trail on Lot 10 of the subdivision that would wrap around the various ponds on that Lot as owners in the Mill Creek Subdivision.

23. In February 2005, Defendant Dennis Neal asked Plaintiff Dave Mathiesen to be the President of the Mill Creek Subdivision Homeowners Association, to which Plaintiff Mathiesen agreed.

24. On or about February 23, 2005, Defendant Plains View Development granted a recreational license/easement to the Mill Creek Subdivision Homeowner's Association and its members and owners for a 20 foot wide hiking trail running across Lot 10 as "described on the Amended Plat of Mill Creek." (See attached Grant of Recreational License at Exhibit 3).

25. At the same time, on or about February 23, 2005, Defendant Plains View Development granted a recreational license/easement to Plaintiffs Glenn Wollam and Bonnie Schoenstein for a 20 foot wide hiking trail running across Lot 10 as "described on the Amended Plat of Mill Creek." (See attached Grant of Recreational License at Exhibit 4).

26. On August 26, 2005, Defendants Walt DeWolf and Carol DeWolf purchased Lots 7 and 10 in the Millcreek Subdivision. Lot 10 was taken subject to the easement for the subdivision trail.

27. At the first meeting of the Mill Creek Subdivision Homeowners Association on January 10, 2006, Mr. Neal advised for the first time that the trail would not include the loops around the ponds as reflected on the Amended Plat and that instead the trail would simply be a trail around the exterior of Lot 10.

28. In April 2006, while reviewing and negotiating the design of the Lot 10 trail with Defendant Neal, Plaintiffs Dave Mathiesen and Brenda Shelton discovered that a portion of the trail ran across the northern most portion of their lot, thereby reducing the actual amount of property they could use.

29. Despite demand, Defendants Walt DeWolf and Carol DeWolf have refused to allow any work on the Lot 10 trail to proceed, and Defendant Neal has refused to complete construction of the trail as represented on the Amended Plat.

30. As a part of the purchase of the property by Plaintiffs Blythe and Preston Bolinger, Defendants Neal and Plains View Development were to deliver an irrigation system to the subdivision. The current irrigation system has never been completed. Despite demand, Defendants Neal and Plains View Development have failed to complete the irrigation system.

31. As part of the purchase of the property by Edwin Coulter and Donna Coulter, Defendants Neal and Plains View Development were to deliver an irrigation system to the subdivision. The current irrigation system has never been completed. Despite demand, Defendants Neal and Plains View Development have failed to complete the irrigation system.

32. As part of the purchase of the property by Dave Mathiesen and Brenda Shelton, Defendants Neal and Plains View Development were to deliver an irrigation system to the subdivision. The current irrigation system has never been completed. Despite demand, Defendants Neal and Plains View Development have failed to complete the irrigation system.

III.
FIRST CLAIM FOR RELIEF

(*Fraudulent misrepresentation - Defendants Dennis Neal and Plains View Development as to Plaintiffs Coulter, Bolinger, Mathiesen and Shelton*)

33. Plaintiffs hereby incorporate the allegations set forth in Paragraphs 1 through 32, inclusive, as if set forth fully herein.

34. During the sale of each lot to each of the individual Plaintiffs, Defendants Neal and Plains View Development made representations to each of the purchasers that they would have access to a trail across Lot 10 that had a specific design allowing access to the ponds on Lot 10, as set forth in the Amended Plat.

35. During the November 30, 2001 sale of 19092 Weld County Road 3, Berthoud, Colorado 80516 to Plaintiffs Glenn Wollam and Bonnie Schoenstein Defendants Neal and Plains View Development made representations to the Plaintiffs that they would have access to a trail across Lot 10 that had a specific design allowing access to the ponds on Lot 10 as exhibited in the Amended Plat.

36. During the June 6, 2003 sale of 1250 Millcreek Rd., Berthoud, Colorado 80513 to Plaintiffs Edwin Coulter and Donna Coulter, Defendants Neal and Plains View Development made representations to the Plaintiffs that they would have access to a trail across Lot 10 that had a specific design allowing access to the ponds on Lot 10 as exhibited in the Amended Plat.

37. During the January 23, 2004 sale of 1230 Millcreek Rd., Berthoud, CO 80513 to Plaintiffs Blythe Bolinger and Preston Bolinger, Defendants Neal and Plains View Development made representations to the Plaintiffs that they would have access to a trail across Lot 10 that had a specific design allowing access to the ponds on Lot 10 as exhibited in the Amended Plat.

38. During the February 23, 2005 sale of 1235 Millcreek, Berthoud, CO 80513 to Plaintiffs David Mathiesen and Brenda Shelton, Defendants Neal and Plains View Development made representations to the Plaintiffs that they would have access to a trail across Lot 10 that had a specific design allowing access to the ponds on Lot 10 as exhibited in the Amended Plat.

39. During the November 30, 2001 sale of 19092 Weld County Road 3, Berthoud, Colorado 80516 to Plaintiffs Glenn Wollam and Bonnie Schoenstein, Defendants Neal and Plains View Development made representations to the Plaintiffs that they would have open access to Lot 10.

40. During the June 6, 2003 sale of 1250 Millcreek Rd., Berthoud, Colorado 80513 to Plaintiffs Edwin Coulter and Donna Coulter, Defendants Neal and Plains View Development made representations to the Plaintiffs that they would have open access to Lot 10.

41. During the January 23, 2004 sale of 1230 Millcreek Rd., Berthoud, CO 80513 to Plaintiffs Blythe Bolinger and Preston Bolinger Defendants Neal and Plains View Development made representations to the Plaintiffs that they would have open access to Lot 10.

42. During the February 23, 2005 sale of 1235 Millcreek, Berthoud, CO 80513 to Plaintiffs David Mathiesen and Brenda Shelton Defendants Neal and Plains View Development made representations to the Plaintiffs that they would have open access to Lot 10.

43. These representations were material to each purchase of property by the Plaintiffs.

44. These representations were made to induce each of the Plaintiffs to purchase property in the Mill Creek Subdivision.

45. In reliance upon these representations, the Mill Creek Plaintiffs did in fact purchase property in the Mill Creek Subdivision.

46. Defendants Neal and Plains View Development knew or should have known that Plaintiffs would rely upon these representations in deciding whether to purchase property in Mill Creek.

47. These representations set forth herein were false and/or made with reckless disregard for their truth and accuracy.

48. The Mill Creek Plaintiffs were unaware that the representations were false. In fact, it was not until January 2006 that Plaintiffs first became aware or could have become aware that these representations were false.

49. As a direct and proximate result of Defendants' misrepresentations, Plaintiffs have suffered damages and losses including, without limitation, lost property value, attorney fees, and costs.

50. Plaintiffs are therefore entitled to judgment against Defendants Neal and Plains View Development, jointly and severally, for all damages and losses sustained as a result of their fraudulent misrepresentations, the amount of which will be proven at trial, plus pre and post judgment interest, attorney fees and costs.

IV.
SECOND CLAIM FOR RELIEF

(*Fraudulent concealment - Defendants Dennis Neal and Plains View Development as to Plaintiffs Mathiesen and Shelton*)

51. Plaintiffs hereby incorporate the allegations set forth in Paragraphs 1 through 50, inclusive, as if set forth fully herein.

52. Defendants Dennis Neal and Plains View Development acted jointly and by and through each other to carry out fraudulent schemes and/or designs as described herein.

53. At the time of the February 23, 2005 sale of 1235 Millcreek, Berthoud, CO 80513 to Plaintiffs David Mathiesen and Brenda Shelton, Neal in particular failed to disclose to or intentionally concealed from Plaintiffs David Mathiesen and Brenda Shelton that 1235 Millcreek, Berthoud, CO 80513 contained a 20 foot easement across the northern most portion of their property reducing the amount of acreage they could use.

54. These facts were material to the purchase of the property by Plaintiffs David Mathiesen and Brenda Shelton.

55. These facts should have been disclosed in equity and good conscience before any purchase was complete.

56. Plaintiffs David Mathiesen and Brenda Shelton were unaware of the facts not disclosed or intentionally concealed. In fact, Plaintiffs David Mathiesen and Brenda Shelton did not learn of the encumbrance upon their property until approximately January 2006.

57. As of the time of purchase, Plaintiffs David Mathiesen and Brenda Shelton reasonably believed that the property was not encumbered by any such easement.

58. Defendants knew or should have known that Plaintiffs David Mathiesen and Brenda Shelton believed that the property was free of any such easement.

59. Defendants failed to disclose or intentionally concealed the true facts in order to induce Plaintiffs David Mathiesen and Brenda Shelton to purchase 1235 Millcreek, Berthoud, CO 80513.

60. As a direct and proximate result of the fraudulent concealment of certain material facts by Defendants, Plaintiffs have suffered damages and losses including without limitation, lost property value, lost interest, attorney fees, and costs.

61. Plaintiffs are therefore entitled to judgment against Defendants, jointly and severally, for all damages and losses sustained as a result of their fraudulent concealment, the amount of which will be proven at trial, plus pre and post judgment interest, attorney fees and costs.

V.
THIRD CLAIM FOR RELIEF
(Quiet Title – All Defendants)

62. Plaintiffs hereby incorporate the allegations set forth in Paragraphs 1 through 61, inclusive, as if set forth fully herein.

63. On or about February 23, 2005, Plaintiffs Glenn Wollam and Bonnie Schoenstein were granted access to a trail across Lot 10 as identified and described in the September 14, 2004 Amended Plat. (Exhibit 4).

64. Also, on or about February 23, 2005, The Mill Creek Subdivision Homeowners Association, Inc., and its members were granted access to a trail across Lot 10 as identified and described in the September 14, 2004 Amended Plat. (Exhibit 3).

65. These recreational licenses/easements granted each of the Plaintiffs the right to use and enjoy a trail accessing and looping around the ponds on Lot 10 as indicated on the September 14, 2004 Amended Plat.

66. Defendants Walt DeWolf and Carol DeWolf have refused to allow use and/or construction of the trail as indicated on the September 14, 2004 Amended Plat.

67. Furthermore, Defendants Walt DeWolf and Carol DeWolf have refused access to Lot 10 by the members and owners of the Mill Creek Subdivision Homeowners Association, such as and including Plaintiffs Coulter, Bolinger, Mathiesen and Shelton.

68. Despite demand, Defendants Dennis Neal and Plains View Development have failed to construct the trail as indicated on the September 14, 2004 Amended Plat.

69. Plaintiffs are therefore entitled to an order and decree declaring their rights in Lot 10 and specifically declaring Plaintiffs' right to use, maintain and/or construct the trail on Lot 10 as described on the Amended Plat.

70. Plaintiffs are further entitled to a decree and/or injunction against Defendants, jointly and severally, precluding them from interfering with Plaintiffs' use and enjoyment of Lot 10 and directing Defendant Neal and Plains View Development to complete construction of the trial as set forth on the Amended Plat.

VI.
FOURTH CLAIM FOR RELIEF

(Breach of Contract - Defendants Dennis Neal and Plains View Development as to Plaintiffs Wollam, Schoenstein, Coulter, Bolinger, Mathiesen, Shelton and Mill Creek Subdivision HOA)

71. Plaintiffs hereby incorporate the allegations set forth in Paragraphs 1 through 70, inclusive, as if set forth fully herein

72. Pursuant to the Mill Creek Estates Covenants, the plats recorded by Defendants Dennis Neal and Plains View Development, and the subdivision agreement between Defendants Neal and Plains View Development and the County of Weld, Defendants Dennis Neal and Plains View Development were to have installed a water conveyance system for the purpose of delivering irrigation water to the Common Facilities and to private lots, installed street lights, installed entrance signage and landscaping at the entrance to the subdivision, and completed the construction of the trail as shown on the Amended Plat, among other things.

73. These agreements were intended to directly benefit the owners of the individual lots of the Mill Creek Subdivision, the homeowners' association, and adjacent owners.

74. Plaintiffs Glenn Wollam, Bonnie Schoenstein, Edwin Coulter, Donna Coulter, Dave Mathiesen and Brenda Shelton, as purchasers of homes in the Mill Creek Subdivision, and the Mill Creek Homeowners' Association are therefore third-party beneficiaries of these agreements.

75. Dennis Neal and Plains View Development have failed to completely construct and/or complete a water conveyance system for irrigation of common facilities and private lots.

76. Dennis Neal and Plains View Development have failed to install street lights as required by the County of Weld.

77. Dennis Neal and Plains View Development have failed to completely construct and/or install entrance signage and landscaping at the entrance to the subdivision.

78. Dennis Neal and Plains View Development have failed to completely construct a walking trail in and around Lot 10 pursuant to the Amended Plat.

79. As a direct and proximate result of Dennis Neal's and Plains View Development's breach of its contractual obligations, the Mill Creek Plaintiffs have incurred damages and loses, including without limitation, lost property values, the cost to complete the items these Defendants have failed to complete, interest, attorney fees, and costs.

80. The Mill Creek Plaintiffs are therefore entitled to judgment against Dennis Neal and Plains View Development in an amount sufficient to compensate them for all damages and losses occasioned by the breach of contract by said Plaintiffs, the amount of which will be proven at trial, plus pre and post judgment interest, attorney fees and costs.

VII.
FIFTH CLAIM FOR RELIEF

(*Fraud - Defendants Dennis Neal and Plains View Development as to Plaintiffs Glenn Wollam and Bonnie Schoenstein*)

81. Plaintiffs hereby incorporate the allegations set forth in Paragraphs 1 through 80, inclusive, as if set forth fully herein.

82. Defendants Dennis Neal and Plains View Development acted jointly and by and through each other to carry out fraudulent schemes and/or designs as described herein.

83. At the time of the November 30, 2001 sale of 19092 Weld County Road 3, Berthoud, Colorado 80516 to Plaintiffs Glenn Wollam and Bonnie Schoenstein, Defendant Neal in particular failed to disclose to or intentionally concealed from Glenn Wollam and Bonnie Schoenstein that 19092 Weld County Road 3, Berthoud, Colorado 80516 contained a 20 foot easement around the property reducing the amount of acreage they could use.

84. These facts were material to the purchase of the property by Plaintiffs Glenn Wollam and Bonnie Schoenstein.

85. These facts should have been disclosed in equity and good conscience before any purchase was complete.

86. Plaintiffs Glenn Wollam and Bonnie Schoenstein were unaware of the facts not disclosed or intentionally concealed. In fact, Plaintiffs Glenn Wollam and Bonnie Schoenstein did not learn of the encumbrance upon their property until approximately January 2006.

87. At the time of purchase, Plaintiffs Glenn Wollam and Bonnie Schoenstein reasonably believed that the property was not encumbered by any such easement.

88. Defendants Dennis Neal and Plains View Development knew or should have known that Plaintiffs Glenn Wollam and Bonnie Schoenstein believed that the property was free of any such easement.

89. Defendants Dennis Neal and Plains View Development failed to disclose or intentionally concealed the true facts in order to induce Plaintiffs Glenn Wollam and Bonnie Schoenstein to purchase 19092 Weld County Road 3, Berthoud, Colorado 80516.

90. As a direct and proximate result of the fraudulent concealment of certain material facts by Defendants Dennis Neal and Plains View Development, Plaintiffs have suffered damages and losses including without limitation, lost property value, lost interest, attorney fees, and costs.

91. Plaintiffs are therefore entitled to judgment against Defendants Dennis Neal and Plains View Development, jointly and severally, for all damages and losses sustained as a result of their fraudulent concealment, the amount of which will be proven at trial, plus pre and post judgment interest, attorney fees, and costs.

WHEREFORE Plaintiffs pray for judgment as requested herein and for such other and further relief as the Court deems proper.

Dated this 18th day of December, 2007.

OTIS COAN & STEWART, LLC
Attorneys for Plaintiffs

s/ Brett Payton

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By: Jennifer Lynn Peters, #31699
Brett Payton, #37127