

DISTRICT COURT, SUMMIT COUNTY, COLORADO

501 North Park Avenue
P.O. Box 269
Breckenridge, CO 80424

DATE FILED: February 16, 2023 2:57 PM
FILING ID: B807AC11F028F
CASE NUMBER: 2023CV30029

Plaintiff: OUR LADY OF THE RANCH, LLC, a Colorado limited liability company

Defendant: KEYSTONE RANCH HOMEOWNERS ASSOCIATION, INC., a Colorado nonprofit corporation

Attorneys for Plaintiff

Michael H. Harrison (No. 51800)
West Huntley Gregory PC
P.O. Box 588
Breckenridge, CO 80424
Phone: (970) 453-2901
Email: mike@brecklaw.com

▲ COURT USE ONLY ▲

Case No.: 2023CV

Div.:

SUMMONS

THE PEOPLE OF THE STATE OF COLORADO TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned and required to file with the clerk of this court an answer or other response to the attached complaint. If service of the summons and complaint was made upon you within the State of Colorado, you are required to file your answer or other response within 21 days after such service upon you. If service of the summons and complaint was made upon you outside of the State of Colorado, you are required to file your answer or other response within 35 days after such service upon you.

If you fail to file your answer or other response to the complaint in writing within the applicable time period, judgment by default may be entered against you by the court for the relief demanded in the complaint without further notice.

Respectfully submitted this 16th day of February 2023.

WEST HUNTLEY GREGORY PC

By: s/ Michael Harrison

Michael H. Harrison

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<hr/> <p style="text-align: center;">COMPLAINT</p>	

Plaintiff Our Lady of the Ranch, LLC, a Colorado limited liability company (“OLOTR”) by and through its attorneys, West Huntley Gregory PC, hereby states as follows for its Complaint against Defendant Keystone Ranch Homeowners Association, Inc. (the “Association”).

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Our Lady of the Ranch, LLC is a Colorado limited liability company with a principal office address of 22869 Hwy 6, Ste 204, Keystone, CO 80435 and is the owner of real property identified as Lot 6 Tract D Keystone Ranch Sub # 1, with a street address of 203 Gentian Road, Keystone, CO 80435 (the “Property”).

2. Defendant Keystone Ranch Homeowners Association, Inc. is a Colorado nonprofit corporation with its principal office street address of 0175 Argentine Court, Keystone, CO 80435.

3. This Court has subject matter jurisdiction over this action pursuant to Colo. Const. Art. VI, § 9(1) because it is a civil action for damages.

4. This Court has personal jurisdiction over the Association pursuant to Colo. Rev. Stat. §§ 13-1-124(1)(a) & (b).

5. Venue in this Court is proper pursuant to Colo. R. Civ. P. 98(c)(1).

GENERAL ALLEGATIONS

6. OLOTR, by way of its ownership of the Property is a member in good standing of the Association.

7. The Association is governed by portions of the Colorado Common Interest Ownership Act (“CCIOA”) Colo. Rev. Stat. § 38-33.3-101, *et seq.*

8. The Association is operated by a five-member Board of Managers (the “Board”).

9. Pursuant to the Declaration of Covenants, Conditions, and Restrictions for Keystone Ranch (the “Declaration”), attached hereto as Exhibit 1, the Board is tasked with promulgating rules and regulations for the Association; suspending voting rights of owners in default; maintenance and repair of general common areas; and exercising all power, duties, and authority not reserved to the membership. Ex. 1 (Declaration), § 4.1.

10. Pursuant to the Keystone Ranch Owners Association Responsible Governance Policies and Procedures (the “Responsible Governance Policies”), attached hereto as Exhibit 2, which were enacted by the Board, “the Board Members serve for the benefit of the entire community, and shall, at all times, strive to do what is best for the Association as a whole.” Ex. 2 (Responsible Governance Policies) § IV., B.

11. The Responsible Governance Policies go on to require that “[n]o Board Member shall willingly misrepresent facts to advance a personal cause or influence the community to advance a personal cause.” *Id.*

12. The Board must “use their best efforts at all times to make reasonable decisions that are consistent with the Declaration, Bylaws, and other governing documents of the Association, and to be familiar with all such documents.” *Id.* § IV., C.

13. Finally, the Board “shall hold themselves to the highest standards as Members of the Association and shall in all ways comply with the provisions of the Association’s governing documents.” *Id.* § IV., D.

14. With respect to treatment of the owners, the Board, *inter alia*, “shall not engage in defamation by any means, of any other Board Member, Association member, resident, or management staff member.” *Id.* § IV., H.

15. Pursuant to section 317 of CCIOA, the Association is obligated to maintain certain complete and accurate records, including the Association’s governing documents (the “Governing Documents”). *See* Colo. Rev. Stat. § 38-33.3-317(1)(f) (requiring the Association to maintain its “current declaration, covenants, bylaws, articles of incorporation, . . . rules and regulations,

responsible governance policies adopted pursuant to section 38-33.3-209.5, and other policies adopted by the executive board”).

I. A Majority of the Board Members Have Exceeded Their Term Limits and Refuse to Step Down

16. Pursuant to the Amended Bylaws of Keystone Ranch Homeowners Association, Inc. (the “Bylaws”), attached hereto as Exhibit 3,

[e]ach Director shall be elected for a term of three years unless selected by the Board to fill a vacancy. In such case his term shall be the term remaining set. By the vacancy. No Director or existing Director shall serve more than two consecutive full terms.

Ex. 3 (Bylaws), § 4.2 (Term of Office).¹

17. The current Association Board is comprised of the following members: John Pringle, Chris Ornes, Jayn Karl, Vince Donahue, and Kris Ciccilo.²

18. Mr. Pringle has served continuously since 2007 (approximately 15+ years).

19. Mr. Ornes has served continuously since 2013 (approximately 9+ years).

20. Ms. Karl has served continuously since 2015 (approximately 7+ years).

21. Mr. Donahue has served continuously since 2015 (approximately 7+ years).

22. Ms. Ciccilo has served continuously since 2017 (approximately 5+ years).

¹ This provision was amended in 2008, but the six-year term limit remained. *See* 2008 Bylaws Amendment, attached hereto as Exhibit 4. As will be discussed below, counsel for the Association challenges the validity of the 2008 amendment and, therefore, OLOTR will rely on the 1995 version of the Bylaws, which was operative prior to the 2008 amendment. OLOTR agrees that the 2008 amendment is likely ineffective. Because both the pre- and post-2008 amendment version of the Bylaws contain six-year term limits, the Board’s challenge to the 2008 amendment has no bearing on this Complaint.

² Section IV of the Bylaws gives the Board the authority by resolution to set the number of Board members, with there being three to start. *See* Ex. 3 (Bylaws) § IV. OLOTR is unaware of any resolution by the Board to increase the number of Board members from three to five. No such resolution appears in the digital set of Bylaws offered by the Association on its website nor was one produced to OLOTR in response to its request to the Association’s property manager for all Governing Documents.

23. Understanding that section 4.2 of the Bylaws restricts Board member terms to six consecutive years, four out of the five current Board members are holding office in violation of the Bylaws.

24. OLOTR raised the issue of illegally seated Board members to counsel for the Association.

25. In response, counsel for the Association stated:

The following action was taken by the members at meeting of the members that occurred in June, 2016:

‘VIII. Vote on Proposed Amendment to Bylaws Section 13.1 Mr. Pringle explained that an amendment was being proposed to grant the Board the authority to make Bylaws changes with notice to the membership and to eliminate term limits for Board members. This amendment would not change the owners’ ability to propose Bylaws changes. The Board is proposing eliminating the term limits for continuity and because it has been difficult to find owners willing to serve. The owners voted on the amendment and it passed unanimously.’

Additionally, there are legal questions concerning the effectiveness of the adoption of the 2008 amendment to the Bylaws that imposed term limits. However, given the members’ unanimous vote to remove term limits in 2016, such concerns are moot.

S. Murphy Jan. 18, 2023 email, attached hereto as Exhibit 5.³

26. Mr. Pringle, in his role as President, has likewise stated to OLOTR and others within the Association that the Board has no term limits based on the 2016 Bylaws Amendment.

27. Despite OLOTR and its attorney raising in writing the issue of illegally seated Board members (based on the apparent violation of section 4.2) on several occasions after Mr. Murphy’s January 18th email, including a cease-and-desist letter, neither the Association nor its attorney ever provided any further explanation as to what the supposed “legal questions concerning the effectiveness of the . . . 2008 amendment to the Bylaws” are.

28. Thereafter, when OLOTR pressed the issue of Board members clearly violating the Bylaws, counsel for the Association took the position that the Board acknowledged that the operative Bylaws, including amendments, contain the six-year term limit. *See* Feb. 9, 2023 S. Murphy Email, attached as hereto Exhibit 6.

³ Mr. Murphy is the attorney representing the Association and, as such, his representations to counsel for OLOTR bind the Association.

29. Despite conceding that the plain language of the Bylaws prevents the current Board from acting on behalf of the Association, the Board took the position that a 2016 amendment to the Bylaws (the “2016 Bylaws Amendment”), while not explicitly stating as much, was intended to remove term limits from the Bylaws. *See id.*

30. As part of the Board’s response, counsel for the Association provided a series of documents he represented as evidencing the meeting packet and notice for the 2016 meeting at which the 2016 Bylaws Amendment was addressed.

31. In actuality, the documents provided by the Association as being the documents from 2016 were several different documents that had been cobbled together shortly before they were sent to OLOTR in 2023.

32. The 2016 Bylaws Amendment, attached as hereto Exhibit 7, is limited to amending section 13.1 of the Bylaws, which section provides the process through which future amendments to the Bylaws are to made. *See Ex. 7 (2016 Bylaws Amendment) at 1; see also Ex. 3 (Bylaws) § 13.1.*

33. The 2016 Bylaws Amendment, along with several other amendments to the Governing Documents, was not available on the Association’s website until a few days ago, and many other portions of the Governing Documents are still missing.

34. The 2016 Bylaws Amendment errantly refers to a “special meeting of the KNC members” as authority for the amendment.

35. OLOTR, on December 22, 2022, raised the issue of incomplete Governing Documents on the Association website to the property manager for the Association and asked that a complete set of Governing Documents be provided.

36. From all that appears, as of the date of this Complaint, the Board has made minimal efforts to correct the defects in the published Governing Documents.

37. Additionally, the Board, in response to OLOTR’s request for all of the Governing Documents, failed to provide all Governing Documents to OLOTR.

38. Relatedly, certain Association documents that purport to amend the Bylaws, such as the 2006 Supplemental Bylaws Amendments, are unsigned.

39. Other documents claiming to be amendments are simply typed documents with no physical signatures.

40. Because these documents do not evidence that they were signed or otherwise authorized by the Association, it is unclear what, if any, legal effect they have.

41. The purpose of posting the Governing Documents on the Association website is to allow owners to access those documents to understand whether the Board is operating in compliance with same.

42. In similar fashion, when an owner requests from the Association all Governing Documents, the owner has a right to rely on the documents being produced as complete and accurate.

43. By failing to keep accurate and complete records, the Association is in violation of CCIOA and the Governing Documents.

44. OLOTR has requested repeatedly in writing that the illicitly seated Board members step down or otherwise resign. *See, e.g.*, Jan. 27, 2023 Cease and Desist Letter, attached as hereto Exhibit 8.

45. All such requests have been denied or ignored.

46. Because a majority of the Board members are operating without authority and in violation of the Bylaws, any action by the Board, including amendment to any of the Governing Documents, is invalid.

47. By refusing to step down, the Board members are misleading the Association into believing that they are rightfully holding office.

48. Additionally, OLOTR has been forced to retain legal counsel to address the Board's malfeasance because OLOTR's requests for discussion related to its claims of impropriety were largely ignored.

49. This trend of ignoring OLOTR's complaints continued after it retained the undersigned.

50. For example, on December 26, 2022, counsel for OLOTR wrote to the Association a demand letter highlighting what OLOTR believed to be some of the Board's bad acts and expressing a concern for the Board's refusal to discuss the issues with OLOTR in good faith or otherwise provide explanations justifying the Board's actions and inaction. *See* M. Harrison Dec. 26, 2022 Demand Letter (the "December Demand Letter"), attached hereto as Exhibit 9.

51. In response to the December Demand Letter, counsel for the Association took the position that the Board would not "respond item-by-item to the extensive list of issues" set forth in the letter and argued that OLOTR

is badly misinformed concerning the history of the Keystone Ranch Homeowner Association's discussions and actions concerning the possibility of regulating short term rentals ("STR"). The fact your client has only owned its residence in the Ranch

since May could be a factor in that misunderstanding, but the breadth and scope of false allegations in your letter is regardless concerning.

S. Murphy Jan. 9, 2023 Email, attached hereto as Exhibit 10.

52. The next day, counsel for OLOTR asked the Board to explain how OLOTR was misinformed, how any of its grievances were unfounded, and how the period of time OLOTR owned the Property affected its ability to comprehend the operations of the Association. *See* M. Harrison Jan. 10, 2023 Email Response to S. Murphy, attached hereto as Exhibit 11.

53. The Board never responded to OLOTR's request for explanation of the Board's broad-brush denial of any wrongdoing.

54. The Board's refusal even to discuss meaningfully OLOTR's legitimate complaints left OLOTR with no choice but to file this lawsuit.

II. The Board Refuses to Acknowledge Competing Views with Respect to the STR Issue

a. The Board is Misleading the Association by Claiming the Proposed STR Amendment is an Owner Initiative

55. In their current form, the Governing Documents do not restrict an owner's right to short-term rent ("STR") his/her/its property.

56. There are currently less than a dozen owners within the Association who have STR licenses from Summit County.

57. In a January 30, 2023 letter to all owners advocating for the restriction of STRs within the Association, the Board represented to the owners that "[t]he issue of rentals and short-term rentals was raised at the July 1, 2021, HOA meeting by homeowners." Jan. 30, 2023 Association Letter, attached hereto as Exhibit 12.

58. The meeting minutes from the July 1, 2021 annual meeting for the Association, which were prepared and approved by the Board, state that "rental activity" was first addressed by John Pringle, Board President, as part of his President's Report. *See* July 1, 2021 Annual Meeting Minutes, attached hereto as Exhibit 13, at 3.

59. The relevant portion of the meeting minutes states as follows:

Mr. Pringle discussed rental activity. The Declarations are silent regarding rentals. There are County restrictions and a requirement for owners who short term rent to obtain a permit. The primary concerns are quality of life, noise, parking, trash and pool use. At some point, an increased number of rentals could change the character of the neighborhood. There are concerns about the impact an infrastructure,

especially the water system, which was designed and built for a residential neighborhood. Possible options are to do nothing, to prohibit all rental activity (short and long term), to prohibit short term rentals only, to limit the minimum stay duration, to limit the maximum days a property can be rented per year, to limit the times of year when properties can be rented or to impose water impact fees.

Id. at 3.

60. Section 308 of CCIOA, which was in effect in the summer of 2021 and applies to the Association, requires that notice of any meeting of the unit owners “shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws” *See also* Ex. 2 (Responsible Governance Policies) § V., A., 1.,i. (requiring the same notice).

61. The June 2, 2021 notice for the July 2021 annual meeting made no mention of discussion of restricting STR rights of the owners (or rental activity at all), which action would require amendment of the Declaration. *See* June 2, 2021 Annual Meeting Notice, attached hereto as Exhibit 14.

62. Because the July 1, 2021 annual meeting was improperly noticed, it was invalid.

63. As a result of the Board’s failure to comply with its notice obligations, owners against the Board’s initiative to restrict STRs were not given an equal opportunity to challenge Mr. Pringle’s false statements.

64. The Board would have been within its authority to table the STR discussion until such time as a meeting could be properly noticed and all interested owners could participate.

65. The Board chose not to do so.

66. By sanitizing the annual meeting minutes, the Board is able to control the narrative for owners who were not at that meeting and, instead, rely on a review of the meeting minutes to understand what was discussed.

67. The Board’s inaccurate meeting minutes coupled with its current claim (as set forth in its January 30, 2023 Letter) that STR regulation was first raised by the homeowners at the 2021 annual meeting are false and misleading.

b. The Board is Ignoring Relevant Information and Misrepresenting Facts Related to the STR Issue

68. The Board owes a duty to the owners to ensure that the information it provides to the Association is factually and legally accurate.

69. Additionally, while the Board may take a position on a contested issue, it is required to present all sides of an issue when competing arguments that conflict with the Board's desired outcome are raised by owners within the Association.

70. The July 2021 Annual Meeting Minutes incorrectly claim that "[a]bout 30 Ranch properties are currently being rented short term." Ex. 13 (July 1, 2021 Annual Meeting Minutes) at 3.

71. In actuality, there are less than a dozen STR properties within the Association.

72. In similar fashion, the July 2021 Annual Meeting Minutes errantly claim that "[p]roperty tax is 40% higher for rental properties in Breckenridge." *Id.* at 3.

73. The Board's failure to reflect accurately the number of STR properties in the Association in the July 1, 2021 Annual Meeting Minutes gives the false impression that STRs make up more than half of the Association.

74. Mr. Pringle's claim, in his role as a representative of the Board at the July 1, 2021 annual meeting, that STRs are utilizing significantly more water than an average home within the Association was not based on any evidence or other support. *See supra* ¶ 59.

75. There is no evidence that the STR properties in the Association utilize water at a higher rate than any other property within the Association.

76. Noticeably absent from the July 2021 Annual Meeting Minutes is any reference to the perspective that competes with Mr. Pringle's claim that STRs affect the "quality of life" within and "could change the character of the neighborhood." *See* Ex. 13 (July 1, 2021 Annual Meeting Minutes) at 3.

77. On June 29, 2021, prior to the July 1, 2021 annual meeting, the Board received from the Summit Association of Realtors ("SAR") a letter in which SAR offered to work with the Board to collect information related to STRs within the Association in an effort to determine what, if any, effect STRs had on property values. *See* June 29, 2021 SAR Letter, attached hereto as Exhibit 15.

78. The June 29, 2021 SAR Letter explained that restricting STRs within a community can negatively impact property values and identified analogous associations as examples. *See id.*

79. Despite possessing the SAR letter, the Board continues to impress upon owners that restricting STRs will not have any negative effect on property values and could actually increase property values.

80. The Board has provided no basis for its claims related to property values.

81. The Board has never acknowledged publicly to the owners that it received the SAR letter.

82. The Board has provided no explanation as to why it does not find the SAR letter to be credible.

83. The Board is misleading owners within the Association into believing that STRs are negatively impacting the wellbeing of the Association by, among other means, utilizing a disproportionate amount of water; STRs are a significant portion of the Association; there is a large majority of the owners who asked the Board to propose the STR amendment and who support restricting STRs within the community; and that this initiative is largely unopposed.

84. Despite OLOTR raising these misrepresentation issues to the Board, the Board has made no effort to correct the message it is sending to its owners or explain to OLOTR why the Board is taking these positions.

85. Instead, the Board re-sent the January 30, 2023 letter to all owners in a February 13, 2023 reminder email asking owners to vote on the STR amendment.

86. The January 30, 2023 letter also incorrectly suggests that all owners are in favor of some sort of restriction or tax on STRs. *See* Ex. 12 (Jan. 30, 2023 Association Letter) at 2 (claiming that owners in favor of STRs have proposed implementing user impact fees or restricting the number of rental homes allowed in the HOA).

87. OLOTR and a number of other owners do not believe that any restriction is needed on the Association STRs given that Summit County has very strict protocols in place for the regulation of STR properties.

88. As such, the Association is intentionally ignoring a large group of owners who oppose the STR amendment.

89. At least a dozen written mailings have been sent to owners within the Association by owners who oppose the STR amendment and water metering initiatives, but the Board has not even acknowledged these repeated challenges to its one-sided presentation.

90. In similar fashion, the Board, in the January 30, 2023 letter, claimed that 71% of the owners who responded to a question about restrictions on the maximum number of tenants who can occupy a residence support restricting occupancy. *Id.*

91. This statement gives the impression that a majority of the owners support restricting occupancy of tenants.

92. Noticeably absent from the January 30, 2023 letter is the number of owners who responded to this question about tenancy restriction.

93. More egregiously, the Board, in the January 30, 2023 letter, again insinuated without *any* evidence that STRs use more water than non-STR properties and claimed that this could result in an increased fire risk to the Association because hydrants are connected to the water system. *Id.*

94. Ironically, the Board is in possession of two separate reports that state that it is a lack of water pressure based on the current design of the Association's water system is creating a risk of fire damage due to ineffective fire hydrants.

95. There is no evidence that STRs are increasing the Association's risk of fire damage.

96. The January 30, 2023 letter is another example of the Board spreading misinformation to the Association.

97. With no basis to support its claims about the negative effect of STRs on property values and/or the Association's water system, the Board has an obligation to its owners not to misrepresent facts or rely on speculation.

98. This approach of only focusing on the perspective that favors the Board's take on the STR issue (*i.e.*, that they should be restricted) has continued unabated since the July 2021 annual meeting.

99. In December of 2021, the Board received from OLOTR's predecessor in interest with respect to ownership of the Property an eighteen-page letter in which the owner accused the Board of, *inter alia*, failing to acknowledge the other side of the argument related to STRs and the owners who supported that position. *See* Dec. 29, 2021 T. Westerberg Letter, attached hereto as Exhibit 16.

100. The Board ignored the T. Westerberg Letter and has never acknowledged to the Association that a group of owners takes issue with the Board's handling of the STR issue.

101. Mr. Pringle is the next door neighbor of the Property and, as evidenced in Board meeting minutes, has made repeated efforts to restrict the Property's ability to be rented via STR.

c. The Board is Utilizing Its Position of Power to Unreasonably Restrict Owners from Sharing Opposing Views with Regard to the STR Amendment

102. None of the Board's written correspondence with the owners related to STRs expressed the benefits of continuing to allow STRs in the Association or the downside of restricting STRs.

103. A large part of the Board's STR campaign has consisted of blast emails to the entire Association encouraging owners to vote in favor of an amendment to the Declaration that will restrict STR rights.

104. In an effort to provide the owners with a complete picture of the STR issue, OLOTR asked for access to the email list of all owners for the limited purpose of providing the owners with information about the benefits of allowing STRs in their community.

105. That request was rejected outright.

106. The request for owner email addresses was rejected despite statements in the June 30, 2016 Annual Meeting Minutes reflecting the existence of an "Owner Director[y]" that was to be sent to all owners and shared online. *See* June 30, 2016 Annual Meeting Minutes, attached hereto as Exhibit 17, at 5.

107. Assuming at least one owner agreed to share his/her/its contact information with the Association, the Owner Directory should have been provided to OLOTR in response to its request for email addresses.

108. In an effort to find some compromise where the Board could retain its oversight of communications with the owners, OLOTR proposed to the Board that OLOTR would submit to the Board language related to the STR issue that the Board could include in its next email blast to the owners pertaining to the upcoming STR amendment vote.

109. This request was likewise rejected outright without any substantive explanation.

110. Despite the fact that the Board is utilizing email to communicate with the Association, which is the common trend for most communication in our society today, the Board required OLOTR to mail any correspondence related to STRs to the other owners.

111. When OLOTR asked for a list of all owner mailing addresses, the Board provided an incomplete list that was missing certain owners' addresses and listed incorrect addresses for others.

112. CCIOA requires the Association to maintain a complete and accurate mailing for all owners that can be shared with a requesting owner.

113. The Board provided no explanation for its refusal to allow OLOTR to communicate with owners via email other than that CCIOA does not require the Association to allow such communication.

114. Regardless of what CCIOA provides as a baseline minimum for Board obligations, the Board has an obligation to act in good faith with and as a fiduciary of every owner within the Association.

115. In similar fashion, the Board suggested that should OLOTR wish to communicate with owners about the STR issue, it must do so at an Association meeting.

116. This proposed means of communication is unrealistic because the Board restricts owners' abilities to speak at such meetings to a few minutes, and, as is apparent from this Complaint, the Board's pattern and practice of misleading the owners is a complex topic that requires a detailed explanation.

117. The Board's ongoing refusal to give owners like OLOTR, who oppose the STR amendment, an equal voice is a breach of the Board's contractual and fiduciary duties.

III. The Board is Misleading Owners About the Health of the Water System and Need for Water Meters

a. Meters are Not the Appropriate Means of Addressing Potential Water Concerns

118. As part of the Board's initiative to restrict STRs, it represented to the Association that there are significant issues with the Association's water supply and that those problems are largely attributable to STRs.

119. The owners reasonably rely on the Board to make informed statements and to educate itself about matters affecting the Association such as its water supply.

120. The potential issues with the Association's water system have been a topic of Board discussion for many years.

121. Areas discussed previously include a desire to turn the system over to the Snake River Water District; a need for major system upgrades; a concern that lead may exist in the system; and repeated concerns that irrigation in the summertime is a leading cause of water use.

122. As recently as 2019, the Board reported to the owners at the annual meeting that "[t]he water system is in good condition." *See* July 3, 2019 Annual Meeting Minutes, attached hereto as Exhibit 18, at 4 (President's Report).

123. The Board has ignored significant amounts of expert information in its possession related to issues with the water system and possible solutions to same.

124. At a September 29, 2022 Board meeting, the Board voted to approve a \$196,845.00 expense associated with installing the water meters.

125. In addition to the installation cost, the Board approved, and the Association will incur, thousands of dollars annually to monitor the meters.

126. These expenses will result in a 25% increase in every owner's annual Association dues.

127. Because a majority of the Board was in violation of their term limits when they voted to approve the water meter installation and monitoring, this action was taken without the legal authority to do so.

128. At the September 29, 2022 meeting, the Board, relying on two reports that are twelve and nine years old, respectively, claimed that "the top priority for the [water] system is to have meters installed." Sept. 29, 2022 Meeting Minutes, attached hereto as Exhibit 19, at 1.

129. Neither report identifies metering as a top priority.

130. The reports on which the Association relied in no way support the Board's claim that water meters and their significant expense are the best means of addressing any future water issues.

131. Rather, both reports simply note that metering could allow the water system to operate more efficiently.

132. Additionally, at the time the reports were authored, the entire cost associated with metering was \$75,000.00 (of which the Association would pay a portion), not the \$335,171.00 project cost of which the Association will be paying more than half.

133. Another owner within the Association called out this misrepresentation by the Board related to the water system reports in his January 31, 2023 letter to all owners.

134. The Board has made no effort to correct this blatant misstatement regarding its reliance on the reports.

135. The Board has represented to the Association that the meters are required to address an impending water shortage.

136. In apparent attempt to rile the ownership, the Board went so far as to claim at the 2021 annual meeting that if something wasn't done about the water issue immediately, the owners would not have water on Christmas.

137. That claim was completely false.

138. The Board has provided no support for its hysteric claim that the Association is running out of water in the near future.

139. The two reports on which the Board relied at the September 29, 2022 meeting largely refute the Board's claim that the Association is quickly running out of water.

b. There is No Evidence that STRs Unreasonably Consume Water Within the Association

140. From all that appears, the Board is trying to use the water meters to substantiate its currently bald accusation that STRs use more water than an average household.

141. The July 2021 Annual Meeting Minutes demonstrate that Mr. Pringle, in his capacity as President, argued that the STR properties are somehow adversely affecting the Association's water supply at a greater rate than non-STR properties. *See* Ex. 13 (July 1, 2021 Annual Meeting Minutes).

142. There is no evidence that supports Mr. Pringle's claim that because the Association's water system was "built for a residential neighborhood," STRs somehow unreasonably strain the water system.

143. The Board's failure to verify the positions Mr. Pringle took at the July 2021 meeting, which positions the Board has continued to advance in the lead up to a March 15, 2023 vote on an amendment to the Declaration restricting STR use within the Association, is a breach of its fiduciary duties.

144. The facts that undercut the Association's position are numerous.

145. The activity that consumes the most water from the Association's allotment is irrigation.

146. Irrigation is by no means limited to STR properties.

147. There is no evidence that STRs irrigate at a higher rate than non-STR properties.

148. The Board represented to the owners that District Water Commissioner Troy Wineland testified that the Association water system is exceeding pumping capacity at times, which is a concern for downstream water rights. *See* Ex. 12 (Jan. 30, 2023 Association Letter) at 2.

149. According to a 2022 report solicited by the Board, the Association has exceeded its allotted water rights in only two years since 1985, with the last time being in 2000.

150. The Board continues to fail to provide relevant context to statements it makes to the Association regarding water concerns.

151. According to the reports on which the Board is relying to push the water metering initiative, the Association historically uses approximately 60% to 70% of its annual water allotment.

152. This fact was never shared with the Association as part of any water metering discussion.

153. This intentional withholding of information is misleading owners into believing the Association is in dire need of finding a way to limit water use and that meters will do so.

154. In the event the Board was actually concerned about water usage, it could easily implement (or enforce the existing) regulations related to irrigation of properties within the Association.

155. The Association has made no effort to do so and is focused solely on installing water meters.

c. The Board Does Not Have the Authority to Assess Owners Based on Water Consumption

156. In addition to misrepresenting the evidence related to the water system issues, the Board is ignoring the fact that the Declaration specifically sets out the process for apportioning water expenses, which is on a *pro rata* basis. *See* Ex. 1 (Declaration) § 9.2.

157. Because the owners currently pay a fixed price for access to an unlimited amount of water and the Board has not indicated any change in this payment structure, it appears that the Association intends to charge certain owners additional amounts for what the Board deems to be excessive water use despite the fact that the Association is not incurring any additional charge for such use.

158. As such, the Board encumbered the Association with hundreds of thousands of dollars in costs with no established way to utilize the water meters for cost allocations.

159. It was irresponsible and a breach of the Board's fiduciary duty for the Board to take on this financial obligation without first obtaining owner approval to amend the Declaration to allow for the meters to be used in cost allocation for the Association.

160. The Board has an obligation to the owners to provide them with a complete picture of the effects of the actions they are being asked to take.

161. The Board has not addressed the need for an amendment to the Declaration to utilize the water meters.

IV. The Board is Not Complying with Its Obligation to Know and Understand the Substance of the Governing Documents

a. Improperly Noticing Association Meetings

162. As evidenced throughout this Complaint, the Board is either unaware of the obligations set forth in the Governing Documents or is actively choosing to ignore them.

163. As recently as January 12, 2023, the Board, through its authorized property manager, acknowledged that it was unaware of a 2006 amendment to the Bylaws (apparently the same 2006 amendment referenced above that is unsigned and not on the Association website) that contains certain notice provisions for the budget ratification process, including mailing the proposed budget to all owners and providing notice a certain amount of time before the meeting at which the owners are to ratify the budget. *See* 2006 Bylaws Amendment, attached hereto as Exhibit 20.

164. This failure in compliance was first raised by OLOTR to the Board, including by an authorized agent of OLOTR at a December 28, 2022 Board meeting at which the Board claimed to ratify the budget.

165. Thereafter, the Board again noticed a meeting for early January 2023, but that meeting notice again failed to comply with the Governing Documents and was challenged by OLOTR.

166. The Association held the second meeting and afterwards, apparently, realized OLOTR was right about its challenge because the Board scheduled a third meeting on this same topic.

167. The third meeting still failed to comply with the Governing Documents and was challenged by OLOTR.

168. The Board ignored OLOTR's third set of challenges and proceeded with the meeting.

169. The Board, which is aided by both a professional property management company and legal counsel, cannot simply plead ignorance with respect to its own obligations.

170. In similar fashion, despite conceding that its original attempt to ratify the budget was ineffective, the Board nonetheless attempted to assess owners based on the proposed budget that had not, at that time, been approved by the ownership.

171. The Board has no legal right to assess owners based on a budget that has yet to be approved by the ownership.

172. This same failure was called out by OLOTR.

173. By failing to comply with the Governing Documents, the Board is breaching its contractual and fiduciary duties to the owners.

b. Failure to Comply with Voting Requirements

174. Section 11.3 of the Declaration requires that any amendment to that document requires an “instrument signed by the Owners.” *See* Ex. 1 (Declaration) § 11.3.

175. The Board, by way of its January 30, 2023 letter to the owners, has instructed the owners that one of the means by which they may cast their votes for or against the proposed STR amendment to the Declaration is via email.

176. There is nothing in any of the Governing Documents that allows for vote by email.

177. Additionally, because the Declaration requires signatures of each approving owner *on the instrument*, email votes do not comply with the procedural requirements of a valid amendment vote.

178. The Board’s proposed email vote violates the Governing Documents and will be invalid.

179. This is yet another example of the Board failing to confirm that its proposed course of action is legal.

180. Relatedly, the Board, by way of a February 13, 2023 email, reached out to the owners reminding them to vote and providing a letter of endorsement in support of the STR amendment.

181. Nowhere in the Governing Documents is the Board authorized to contact owners who have not voted for or against a proposed action.

182. Upon information and belief, not only did Board members contact owners needing to vote, the Board contacted owners and encouraged them to vote *in favor* of the amendment.

183. An owner who does not respond should be left alone, and his/her/its silence viewed as vote against the proposed action.

184. While the Board attempts to frame its efforts to collect votes as serving the ownership as a whole, this only holds true if it is believed that amending the Declaration is in the best interest of the Association.

185. If the Board were taking a neutral approach to the STR amendment issue, it would allow owners to act as they wish and count the votes that are received without any further action.

186. Section 3.9 of the Bylaws, as evidenced in the 2006 Amendment, allows an owner to request a secret ballot for “any . . . matter affecting the Association on which all Owners are entitled to vote” *See* Ex. 20 (2006 Bylaws Amendment) at 3.

187. OLOTR and another owner have requested in writing to the Association that the STR amendment vote, in the event it is held, be done by secret ballot.

188. OLOTR requested a secret ballot vote on February 8, 2023.

189. Another owner within the Association requested a secret ballot on January 30, 2023, within hours of receiving notice from the Association’s property manager via email that the Board intended to hold the STR amendment vote via email.

190. The amended section 3.9 of the Bylaws requires that in the event of a secret ballot request, “[b]allots shall be counted by a neutral third party or by a Owner . . . who attends the meeting at which the vote is held, and who is selected at random from a pool of two or more such Owners. *Id.*

191. The Board’s proposed voting by email does not comply with the requirements of the amended section 3.9 of the Bylaws.

192. In an attempt to justify the Board’s illicit conduct, counsel for the Association has taken the position that Colo. Rev. Stat. § 7-127-109 provides the process for this vote and that OLOTR’s request, which was made eight days after notice of the vote was provided, was untimely.

193. Colo. Rev. Stat. § 7-127-109 defers to the process set out in the Bylaws and, as such, has no application to the STR amendment vote.

194. Even if the Association was correct in its claim that OLOTR’s request was untimely, which it is not because section 3.9 of the Bylaws does not have a time limit, the Association received a request for a secret ballot from an owner the day it opened voting.

c. Failure to Complete Reserve Studies

195. Pursuant to section I. of the Responsible Governance Policies, the Association shall periodically conduct a reserve study with respect to the Association’s assets. *See* Ex. 2 (Responsible Governance Policies) at 2.

196. The Responsible Governance Policies require that in any year where a reserve study is not conducted, the existing study must be updated to reflect changes and variations from the most recent reserve study. *See id.*

197. Upon information and belief, the Board has not undertaken a reserve study at any point in the recent past.

198. From all that appears, a reserve study has never been undertaken.

199. There is no record that in years where a reserve study was not undertaken the Board updated the existing study.

200. As fiduciaries of the owners, the Board has an obligation to act in a responsible manner with respect to the Association's assets.

201. Failure to complete and/or update the Association's reserve study equates to a breach of that fiduciary duty.

d. Failure to Produce all Records Requested by OLOTR

202. Pursuant to section 317 of CCIOA, the Association is obligated to maintain and produce upon request to an owner certain categories of Association records.

203. The Responsible Governance Policies place additional requirements on the Association to retain various categories of Association records permanently. *See* Ex. 2 (Responsible Governance Policies) at 4.

204. As part of OLOTR's investigation of the STR and water metering issues, it issued several formal records requests to the Association.

205. In response to the records requests, the Board failed to turn over all of the relevant (and statutorily required) information and records and, instead, initially limited its production to a handful of emails.

206. The Board, both individually and through counsel, stated repeatedly that it had turned over all relevant information related to certain categories requested.

207. Based on documents OLOTR obtained from other sources, the Board failed to comply with its duty to OLOTR and lied to OLOTR when it told agents of OLOTR that all such information in the Board's possession had been turned over.

208. After much prodding by OLOTR and its attorney, the Board slowly began to produce additional records, albeit not within the thirty-day timeframe allotted by CCIOA.

209. It remains unclear as of the date of this filing whether the Board has provided all responsive information requested by OLOTR.

210. As a result of the Board's refusal to comply with its obligations as set forth in CCIOA and the Governing Documents, OLOTR was forced to reassert its records requests on several occasions and collect information from other owners within the Association.

211. The documents OLOTR received from other sources were either in the Board's possession or legally should have been.

212. The Board is either intentionally withholding documents or failed to comply with its recordkeeping obligations and does not possess said documents.

e. The Board Refuses to Engage in Any Good Faith Discussion with OLOTR Regarding OLOTR's Concerns About the Propriety of the Board's Conduct

213. In September of 2022, several months after OLOTR took ownership of the Property, it began to receive email communications from the Board about the STR amendment initiative, the Board's support for restricting STRs within the Association, and the Board's proposal to install water meters on every home.

214. Thereafter, OLOTR reached out to the Board in an effort to understand the situation and, hopefully, open a dialogue with the Board about its views of the STR and water metering issues.

215. At no point until OLOTR threatened to file the instant action did the Association offer to engage in any meaningful discussion with OLOTR about the Board's conduct related to the STR amendment.

216. Shortly before OLOTR filed this action, the Association demanded that OLOTR comply with the Association's alternative dispute resolution policy (the "ADR Policy") and mediate this dispute before filing suit.

217. From all that appears, the Association's last-minute demand for mediation was nothing more than an attempt to prevent OLOTR from filing this lawsuit until after the March 15, 2023 deadline to collect votes on the STR amendment.

218. The Association's demand for mediation was unfounded and based on an outdated version of the ADR Policy.

219. In its operative form, the ADR Policy makes clear that an owner is not required to undertake any specific action prior to filing suit.

220. Recently, counsel for the Association rescinded the Association's demand for mediation and acknowledged that the amendment to the ADR policy removed any such requirement.

221. As such, this Court has jurisdiction, and OLOTR's claims are ripe.

222. The Board's attempt to enforce an inoperative provision of the Governing Documents illustrates the Board's failure to understand those documents.

223. The Board, as a fiduciary of OLOTR, was obligated to respond substantively to OLOTR's complaints and engage in a discussion with OLOTR about its concerns as an owner within the community.

224. The Board failed or refused to engage in any such discussion.

FIRST CAUSE OF ACTION
(Breach of Contract)

225. OLOTR incorporates all allegations set forth herein.

226. The Declaration is a binding and enforceable contract.

227. OLOTR performed in complete compliance with the Declaration and Governing Documents.

228. The Association breached its obligations under the Declaration and Governing Documents by, among other means, maintaining incomplete and inaccurate Association documents, exceeding Board member term limits, refusing to engage in substantive discussions with OLOTR, misrepresenting the substance of Association meetings in the related meeting minutes, misrepresenting the driving force behind the STR amendment initiative, making claims to the owners with no factual or legal support for said claims, concealing facts related to STRs and the water issues, failing to complete and update reserve studies, and otherwise failing to perform its obligations consistent with the implied duty of good faith and fair dealing.

229. As a result of the Association's breaches, OLOTR has suffered damages in an amount to be determined at trial.

230. All conditions precedent to the OLOTR's right to bring and maintain this claim have occurred or have otherwise been fulfilled.

SECOND CAUSE OF ACTION
(Declaratory Judgment)

231. OLOTR incorporates all allegations set forth herein.

232. There is an actual controversy and uncertainty as to the parties' rights, obligations, and legal status and relationship with respect to the Board members' continued representation to

the owners that all Board members are properly seated and acting with authority on behalf of the Association.

233. Pursuant to Colo. R. Civ. P. 57, OLOTR is entitled to a declaration that all of the Board members who have exceeded the six-year term limit are acting without authority and that any action taken by the Board after the Board members' terms limits expired, including, but not limited to, approving the installation of the water meters and advocating for the STR amendment to the Declaration, is null and void.

234. All conditions precedent to OLOTR's right to bring and maintain this claim have occurred.

THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty)

235. OLOTR incorporates all allegations set forth herein.

236. At all times relevant to this dispute the Board was acting as a fiduciary of OLOTR.

237. The Board breached that fiduciary duty by, among other means, maintaining incomplete and inaccurate Association documents, exceeding Board member term limits, refusing to engage in substantive discussions with OLOTR, misrepresenting the substance of Association meetings in the related meeting minutes, misrepresenting the driving force behind the STR amendment initiative, making claims to the owners with no factual or legal support for said claims, concealing facts related to STRs and the water issues, and failing to complete and update reserve studies.

238. OLOTR incurred damages as a result of the Board's breach of its fiduciary duty.

239. The Board's breach of its fiduciary duty was a cause of OLOTR's damages.

240. All conditions precedent to OLOTR's right to bring and maintain this claim have occurred or have otherwise been fulfilled.

FOURTH CAUSE OF ACTION
(Breach of CCIOA)

241. OLOTR incorporates all allegations set forth herein.

242. Colo. Rev. Stat. § 38-33.3-317 requires the Association to maintain accurately, among other items, its current declaration, covenants, bylaws, articles of incorporation, rules and regulations, responsible governance policies adopted pursuant to section 38-33.3-209.5, and other policies adopted by the executive board.

243. Colo. Rev. Stat. § 38-33.3-317 requires that, upon receipt of a document request from an owner, the association must provide access to the requested documents within thirty (30) calendar days.

244. The Association failed to comply with the requirements of Colo. Rev. Stat. § 38-33.3-317 because it does not have complete or accurate records of its governing documents and failed to provide all documents requested by OLOTR within thirty calendar days.

245. As a result of the Association's breach of Colo. Rev. Stat. § 38-33.3-317, OLOTR has suffered damages in an amount to be determined at trial.

246. All conditions precedent to OLOTR's right to bring and maintain this claim have occurred or have otherwise been fulfilled.

PRAYER FOR RELIEF

WHEREFORE, OLOTR prays for judgment against The Association as follows:

- A. for actual, consequential, and diminution damages caused by the acts and omissions alleged herein;
- B. injunctive relief;⁴
- C. pre- and post-judgment interest;
- D. costs, expenses, and attorneys' fees as permitted by statute and the Governing Documents; and
- E. such other and further relief as the Court may deem just and proper.

⁴ OLOTR will be filing a motion requesting a preliminary injunction asking to prevent the Board from taking further action, tabling the STR amendment vote, and staying all actions related to the water meters so that this Court can maintain the status quo while it addresses the merits of the parties' claims and defenses.

Respectfully submitted this 16th day of February 2023.

WEST HUNTLEY GREGORY PC

By: s/ Michael Harrison
Michael H. Harrison

Plaintiff's Address:
22869 Hwy 6, Ste 204
Keystone, CO 80435

DISTRICT COURT, SUMMIT COUNTY, COLORADO 501 North Park Avenue P.O. Box 269 Breckenridge, CO 80424		DATE FILED: February 16, 2023 2:57 PM FILING ID: B807AC11F028F CASE NUMBER: 2023CV30029
<hr/> Plaintiff: OUR LADY OF THE RANCH, LLC, a Colorado limited liability company		▲ COURT USE ONLY ▲ <hr/> Case No.: 2023CV Div.:
Defendant: KEYSTONE RANCH HOMEOWNERS ASSOCIATION, INC., a Colorado nonprofit corporation		
<hr/> <i>Attorneys for Plaintiff</i> Michael H. Harrison (No. 51800) West Huntley Gregory PC P.O. Box 588 Breckenridge, CO 80424 Phone: (970) 453-2901 Email: mike@brecklaw.com		
DISTRICT CIVIL CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT		

1. This cover sheet shall be filed with the initial pleading of a complaint, counterclaim, cross-claim or third party complaint in every district court civil (CV) case. It shall not be filed in Domestic Relations (DR), Probate (PR), Juvenile (JA, JR, JD, JV), or Mental Health (MH) cases or in Water (CW) proceedings subject to sections 37-92-302 to 37-92-305, C.R.S. Failure to file this cover sheet is not a jurisdictional defect in the pleading but may result in a clerk’s show cause order requiring its filing.

2. Simplified Procedure under C.R.C.P. 16.1 applies to this case unless (check one box below if this party asserts that C.R.C.P. 16.1 does not apply):

- This is a class action, forcible entry and detainer, Rule 106, Rule 120, or other similar expedited proceeding; or
- This party is seeking a monetary judgment against another party for more than \$100,000.00, exclusive of interest and costs, as supported by the following certification:

By my signature below and in compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify that the value of this party’s claims against one of the other parties is reasonably believed to exceed \$100,000; or

Another party has previously filed a cover sheet stating that C.R.C.P. 16.1 does not apply to this case.

3. This party makes a Jury Demand at this time and pays the requisite fee. See C.R.C.P. 38. (Checking this box is optional.)

Respectfully submitted this 16th day of February 2023.

WEST HUNTLEY GREGORY PC

By: s/ Michael Harrison
Michael H. Harrison