

<p>DISTRICT COURT, MONTROSE COUNTY,          COLORADO          1200 N. Grand Avenue          Montrose, CO 81401</p> <hr/> <p><b>Plaintiffs:</b> JAMES AND PAMELA CARLSON, Individuals; EARL MELVIN BRICKER III and BARBARA BRINKHORST BRICKER, Individuals; DAVID AND CHARLENE CARY, Individuals; TERRENCE AND VERENA FERRIS, Individuals; STEPHEN AND SHARON FISHER, Individuals; LUKE HOFFMAN, Individually; VIRGINIA McGEE, Individually; JOHN SUDMEIER, Individually; JAMES T. WASCHBUSCH AND JOANN WASCHBUSCH in their capacity as Trustees for THE WASCHBUSCH FAMILY TRUST, a Trust; and JOHN G. WITHERSPOON III and KATHI L. WITHERSPOON in their capacity as Trustees for THE WITHERSPOON LIVING TRUST, a Trust.</p> <p>v.</p> <p><b>Defendants:</b> THE BRIDGES AT BLACK CANYON OWNERS ASSOCIATION, INC.; a Colorado nonprofit corporation; BETH FEELY, Individually; and LEW THOMPSON, Individually</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Plaintiffs:</p> <p>Andrew J. Gibbs, No. 33632          Neil P. Cherubin, No. 56124          TUELLER &amp; GIBBS, LLP          1601 Blake Street, Suite 300          Denver, CO 80202          Phone: (303) 854-9121          Emails: agibbs@tgd-law.com; ncherubin@tgd-law.com</p>	<p>Case Number: 2024CV30039</p> <p>Division:      Courtroom:</p>
<p><b>COMPLAINT FOR DECLARATORY RELIEF</b></p>	

Plaintiffs James and Pamela Carlson, Earl Melvin Bricker III and Barbara Brinkhorst Bricker, David and Charlene Cary, Terrence and Verena Ferris, Stephen and Sharon Fisher, Luke Hoffman, Virginia McGee, John Sudmeier, the Waschbusch Family Trust, and The Witherspoon Living Trust (collectively, “**Plaintiffs**”), by and through their undersigned counsel, state and allege as follows:

## I. INTRODUCTION

1. This lawsuit is required to restore order and protect the ownership and economic interests of Plaintiffs, who own homes within a common interest community of single family homes commonly known as "*The Bridges at Black Canyon*" (the "**Community**") that is administered and governed by Defendant The Bridges at Black Canyon Owners Association, Inc. (the "**Association**").

2. The Board of Directors of the Association (the "**Board**") consists of five members that include Defendants Beth Feely ("**Feely**") and Lew Thompson ("**Thompson**"), both of whom repeatedly have acted for the benefit of their own interests, to the detriment of Plaintiffs and the Association, generally, and in violation of their applicable standards of care.

3. The global mismanagement of the Association by the Board, and the actions of Feely and Thompson, has detrimentally impacted Plaintiffs and owners (the "**Lot Owners**") of Lots within the Community (the "**Lots**").

4. These impacts include, without limitation (i) no legal Declarant "Control Turnover" of the Association; (ii) the improper subdivision of Lots within the Community; (iii) inadequate/inaccurate "*Allocated Interests*" and "*Voting Rights*"; (iv) violations of the Association's Conflict of Interest Policy (defined below); (v) improper allocation, payment and/or use of Association funds; (vi) an invalid amendment to the 2011 Amended and Restated Declaration to allow for short term property rentals in the Community ("**STRs**"); (vii) the failure to conduct a secret ballot of member/Lot Owner; and (viii) Feely is serving on the Board without an election or valid appointment.

## II. PARTIES

5. James and Pamela Carlson are a married couple and co-owners of the Lot located at 2935 Sleeping Bear Road in Montrose, Colorado 81401.

6. Earl Melvin Bricker III and Barbara Brinkhorst Bricker are a married couple and co-owners of the Lot located at 2100 Signature Ridge Lane in Montrose, Colorado 81401.

7. David and Charlene Cary are a married couple and co-owners of the Lot located at 2437 Shavano Circle in Montrose, Colorado 81401.

8. Terrence and Verena Ferris are a married couple and co-owners of the Lot located at 2700 Red Cliff Circle in Montrose, Colorado 81401.

9. Stephen and Sharon Fisher are a married couple and co-owners of the Lot located at 2919 Sleeping Bear Road in Montrose, Colorado 81401.

10. Luke Hoffman is an individual and owner of the Lot located at 2940 Sleeping Bear Road in Montrose, Colorado 81401.

11. Virginia McGee is an individual and owner of the Lot located at 2446 Shavano Circle in Montrose, CO 81401.

12. John Sudmeier is an individual and owner of the Lot located at 2724 Sleeping Bear Road in Montrose, Colorado 81401.

13. James T. Waschbusch and Joann Waschbusch are the co-Trustees of The Waschbusch Family Trust, which is the owner of the Lot located at 2847 Sleeping Bear Road in Montrose, Colorado 81401.

14. John G. Witherspoon III and Kathi L. Witherspoon are the co-Trustees of The Witherspoon Living Trust, which is the owner of the Lot located at 2419 Torrence Drive in Montrose, Colorado 81401.

15. The Association is a Colorado non-profit corporation with an office address at 607 S 7<sup>th</sup> Street, Grand Junction, Colorado 81501.

16. Feely is both a Director on the Board and the vice-president of the Association.

17. Thompson is a member at large of the Board, an officer of the Association and is a controlling member of Bridges of Montrose, LLC, the Declarant/Developer of the Community and the Association (the “**Declarant**”).

### III. GENERAL ALLEGATIONS

#### A. Association Formation and Governing Documents.

18. The Community was developed and situated upon and/or around the real property subjected to the following declarations, plats and maps, as amended, all recorded in the official real property records of the Montrose County Clerk and Recorder (the “**Official Records**”):

#### A-1. The Community Declarations.

19. The following together constitute the “**Community Declarations**” for the Association and Community:

- a. Master Declaration of Covenants, Conditions and Restrictions for The Bridges at Black Canyon recorded in the Official Records on October 3, 2003 at Reception No. 710229 (the “**Initial Master Declaration**”);
- b. Amendment to Master Declaration of Covenants, Conditions and Restriction for The Bridges at Black Canyon recorded in the Official Records on November 20, 2003 at Reception No. 712530;
- c. Second Amendment to Master Declaration of Covenants, Conditions and Restrictions for The Bridges at Black Canyon recorded in the Official Records on March 2, 2004 at Reception No. 716572;

- d. Amended and Restated Master Declaration of Covenants, Conditions and Restrictions for The Bridges at Black Canyon recorded in the Official Records on June 14, 2011 at Reception No. 825617 (the “**2011 Amended and Restated Declaration**”); and
- e. First Amendment to the Amended and Restated Master Declaration for The Bridges at Black Canyon recorded in the Official Records on June 20, 2018 at Reception No. 898155 (the “**STR Amendment**”).

**A-2. The Community Plats and Maps.**

- 20. The following together constitute the “**Community Plats and Maps**”:
  - a. Eagle Landing Planned Development Filing No. 2 recorded in the Official Records on May 28, 1998 at Reception No. 639960;
  - b. Eagle Landing Planned Development Revised P.D. Plat recorded in the Official Records on August 28, 2001 at Reception No. 678029;
  - c. Black Canyon Ranch Golf Community Filing No. 4, A Final Plat of a part of the Revised Eagle Landing Planned Development Revised P.D. Plat recorded in the Official Records on January 29, 2003 at Reception No. 697954;
  - d. Final Plat Melody Rose Subdivision, A Replat of Lots 101, 102, 103, 104, 107, 108, 109, 111 and 112 of the Revised Eagle Landing Planned Development, Revised P.D. Plat recorded in the Official Records on August 26, 2003 at Reception No. 708318;
  - e. The Bridges at Black Canyon Planned Development, An Amended P.D. Plat of Part of the Revised Eagle Landing Planned Development Revised P.D. Plat, A Part of Montrose Leisure Village Addition and Black Canyon Golf Community Addition recorded in the Official Records on August 28, 2003 at Reception No. 708467;
  - f. Annexation Map of The Bridges at Black Canyon recorded in the Official Records on July 6, 2004 at Reception No. 722342 (the “**2004 Annexation Plat**”);
  - g. The Bridges at Black Canyon Planned Development Final Plat Filing No. 5, A Part of Montrose Leisure Village Addition and Southeast Addition to the City of Montrose, Colorado recorded in the Official Records on July 22, 2004 at Reception No. 723232;
  - h. The Bridges at Black Canyon Planned Development Final Plat Filing No. 6, A Part of Montrose Leisure Village Addition recorded in the Official Records on July 22, 2004 at Reception No. 723234;

- i. Amendment No. 1 of The Bridges at Black Canyon Planned Development, An Amended P.D. Plat of Part of the Revised Eagle Landing Planned Development Revised P.D. Plat, A part of Montrose Leisure Village Addition and Black Canyon Golf Community Additions recorded in the Official Records on November 15, 2004 at Reception No. 728737;
- j. Final Plat of The Bridges at Black Canyon Planned Development Filing No. 7, A Part of Montrose Leisure Village Addition and Southeast Addition 1 recorded in the Official Records on November 23, 2004 at Reception No. 729164;
- k. The Bridges at Black Canyon Planned Development Filing No. 5 Amended Plat of Lots 1100, 1100A and 1300 recorded in the Official Records on September 19, 2005 at Reception No. 743962;
- l. The Bridges at Black Canyon Planned Development Replat of Lot 1238 and 1239 Eagle Landing Planned Development Filing No. 2 recorded in the Official Records on May 15, 2006 at Reception No. 755128;
- m. The Bridges at Black Canyon Subdivision Filing No. 8 Final Plat recorded in the Official Records on December 8, 2014 at Reception No. 860937;
- n. Signature Ridge at the Bridges Amended Plat of Lots 2701, 2710, 2711, 2712 and 2715 Black Canyon Subdivision Filing No. 8 recorded in the Official Records on March 9, 2017 at Reception No. 883958;
- o. The Bridges at Black Canyon Subdivision, Filing No. 9 Final Plat recorded in the Official Records on November 26, 2018 at Reception No. 903252;
- p. The Bridges at Black Canyon Subdivision, Filing No. 9 Boundary Line Adjustments to US Government Lots 6 and 7 recorded in the Official Records on July 20, 2020 at Reception No. 923030; and
- q. Improvement Survey Plat, Lot 2315, Block 2300 The Bridges at Black Canyon Planned Development Filing No. 7 recorded in the Official Records on September 22, 2022 at Reception No. 955325.

**A-3. The Association Documents.**

- 21. The following together constitute the “**Association Documents**”:

  - a. The Association entity was formed by filing of the Articles of Incorporation of the Black Canyon Ranch and Golf Club Homeowners Association, Inc. with the Colorado Secretary of State on August 29, 2002.

- b. The name of the entity was changed to its current name, "*The Bridges at Black Canyon Owners Association, Inc.*," by filing a Name Change form with the Colorado Secretary of State on August 29, 2003.
- c. The Board adopted The Bridges at Black Canyon Owners Association, Inc. Bylaws for the Association on May 6, 2011 (the "**Bylaws**").
- d. Nine updated Responsible Governance Policies were adopted on or around December 4, 2022 by the Board that included, but were not limited to, a policy regarding Board Member Conflicts of Interest (the "**Conflict of Interest Policy**").

**A-4. The Community Governing Documents.**

22. The Community Declarations, the Community Plats and Maps and the Association Documents all together constitute the "**Community Governing Documents**".

**B. Improper Allocation of Funds to Repair and Maintain the Golf Club Property.**

23. The Bridges Golf & Country Club (the "**Golf Club**") is situated within the Community, is subject to the Community Governing Documents and is included as a part of the Association.

24. Section 1.3(B) of the 2011 Amended and Restated Declaration forbids any costs or expenses relating to the Golf Club from being included as part of Community Association Common Expenses; and Section 2.27 confirms that the Golf Club shall not be included in the Common Area of the Community Association.

25. Thompson is a member/owner and the Declarant entity and, in that capacity, participated in and facilitated drafting of the 2011 Amended and Restated Declaration, including Sections 1.3(B) and 2.27.

26. Thompson and Feely own interests in the Golf Club's operating entity Remington of Montrose Country Club, LLC (the "**Golf Club Operator**").

27. Thompson and Feely facilitated and/or participated in Board votes in favor of allocating Association funds toward the repair and maintenance of Golf Club property that borders the Community and is not included in the Community Association's Common Elements (the "**Improperly Maintained Golf Course Property**").

28. The Association allocated nearly \$400,000 of its operating funds over the course of roughly a decade to repair and maintain the Improperly Maintained Golf Club Property (the "**Improper Golf Club Maintenance Payments**").

29. Neither Thompson nor Feely disclosed their conflicts of interest or abstained from voting on the Improper Golf Club Maintenance Payments.

30. Due to their ownership interests in the Golf Club Operator, Feely and Thompson have enjoyed, and continue to enjoy, a direct benefit as a result of the Improper Golf Club Maintenance Payments, by using such payments to reduce Golf Club operating expenses by nearly \$400,000 over the past decade.

**C. Failure to Calculate Voting Rights or Allocated Percentages Attributable to Lots.**

31. Commencing with the 2011 Amended and Restated Declaration and 2004 Annexation Plat, the Community Declarations and Plats and Maps have failed to identify and allocate to Lots and/or Lot Owners (including Plaintiffs) either Voting Rights or Allocated Interest to Community Common Expenses.

32. For instance, the Community Plats cannot consistently be reconciled with either the 2011 Amended and Restated Declaration, or Plat Filing Nos. 5, 6, 7, 8 and/or 9.

33. The Plats recorded after the 2011 Amended and Restated Declaration do not specify whether those purportedly were approved, adopted and recorded by or on behalf of the Declarant or by the Board pursuant to required Lot Owner approvals, or that eligible mortgagees/beneficiaries approved the same, as required by Articles 12, 13 and 14 of the 2011 Amended and Restated Declaration, and C.R.S. § 38-33.3-210.

34. Following the Initial Master Declaration, none of the recorded Community Declarations or Plats and Maps, or any of the Community Governing Documents reflect the requisite Eligible Mortgage Holders/First Beneficiaries approvals, as required by provisions of Article 12 and Sections 14.5.B. and C. of the 2011 Amended Restated Declaration.

35. Following recording of the Initial Master Declaration, the Community Governing Documents still do not accurately set forth the identifiable Voting Rights or Allocated Interests for any of the Lots or Lot Owners as required by C.R.S. § 38-33.3-205(1)(k) and C.R.S. § 38-33.3-207.

36. The Common Assessment and Voting Allocation set forth in Section 6.2 and Exhibit D of the Initial Master Declaration was amended and replaced by the 2011 Amended and Restated Declaration. However, there was no exhibit attached to the 2011 Amended and Restated Declaration, or any other Governing Documents showing the new allocation of Lot/Lot Owner Voting Rights and/or Allocated Interests.

37. The failure to attach an exhibit to the 2011 Amended and Restated Declaration that allocates Voting Rights or Allocated Interest to Community Common Expenses is a violation of C.R.S. § 38-33.3-205(1)(k) and C.R.S. § 38-33.3-207, which require identification of allocated interests.

38. Consequently, it remains impossible to accurately determine the amount of Lot/Lot Owner Voting Rights and Allocated Interests.

**D. Improper Subdivision/Combination of Stansberry/Forsyth Lots.**

39. At a December 4, 2022 Board meeting, a discussion and vote took place to approve the subdivision and combination of two Lots owned by Stansberry/Forsyth into a new configuration (the “**Combined Stansberry/Forsyth Lots**”).

40. Feely was the listing agent seeking to effect the Combined Stansberry/Forsyth Lots and contracted to receive a sales commission from an impending sale of these Lots, predicated on their subdivision/combination.

41. The Combined Stansberry/Forsyth Lots were approved solely by a Board vote (the “**Stansberry/Forsyth Combination Vote**”).

42. Feely participated in Stansberry/Forsyth Combination Vote without disclosing her financial interest or abstaining from discussion or voting.

43. The Stansberry/Forsyth Combination Vote was not accompanied by recordation of any amendments to either the Community Plats or Declarations.

44. The Combined Stansberry/Forsyth Lots amount to a revision of Lot boundaries and/or removal of a Lot that requires both: (i) Montrose County Subdivision approvals; and (ii) amendments to both the Community Declarations and Plats, pursuant to applicable Montrose County Land Use Codes provisions and Section 14.5(B) of the 2011 Amended and Restated Declaration and C.R.S. § 38-33.3-217 and C.R.S. §38-33.3-212, which dictate specific procedures for lot adjustments.

45. Following the Stansberry/Forsyth Reallocation Vote, a sale of the Combined Stansberry/Forsyth Lots occurred where Feely received a brokerage sales commission.

**E. Failure to Turnover Control of the Association to the Lot Owners.**

46. Pursuant to Section 2.19 of the 2011 Amended and Restated Declaration, the period of Declarant control (the “**Declarant Control Period**”) was to continue until no later than ten years after the filing of the Amended and Restated Declaration (i.e., June 14, 2021).

47. C.R.S. § 38-33.3-303(5)(a) requires the Declarant to turn over control of the Board to the Lot Owners (the “**Required Turnover**”) upon the earliest to occur of the following events: (i) 60 days after conveyance of 75% of all Lots that may be created to owners other than the Declarant; (ii) two years after the last conveyance of a Lot in the ordinary course of business; or (iii) two years after the right to add new Lots was last exercised.

48. Within 60 days of the termination of the Declarant Control Period, C.R.S. § 38-33.3-303(9) required (i) Declarant to deliver all Community Governing Documents to the Association; (ii) provide the Lot Owners and Association with a full audit of the Association and Community finances; and (iii) replace Declarant-appointed Directors of the Board with Lot Owner elected Directors.

49. Despite being warned by legal counsel and a former property manager, neither the Declarant nor the Board took any steps to effectuate the Required Turnover.

**F. Invalid STR Amendment.**

50. On June 20, 2018, the Association recorded the STR Amendment to permit short term rentals within portions of the Community.

51. The recorded STR Amendment identified a “vote tally” that took place on June 19, 2018 of: 116 Yea Votes, 5 Nay Votes and 75 Unvoted Ballots.

52. However, neither the STR Amendment nor the 2011 Amended and Restated Declaration provide any indication or confirmation as to how many Lots or Blocks were eligible to vote at that time.

53. Despite that identified “vote tally” the Community Declaration and Plats reflect total Lots having “Voting Rights” at the time of the STR Amendment as the 2011 Amended and Restated Declaration between 671 and 680 total “Voting Rights,” when calculating Lots apparently included in Filings 1, 2 and 4, and the various Single Family Blocks, Multifamily Blocks and Golf Course Blocks then-existing.

54. As a result, based on the recorded Community Declarations and Plats as of June 18, 2018, between 342 to 346 votes were necessary to achieve the requisite majority “Voting Rights” approval needed to amend the 2011 Amended and Restated Declaration pursuant to Section 14.5(B) thereof.

55. Given that only 196 eligible ballots (of which only 121 were cast) were accounted for at the June 19, 2018 Owners meeting, there were not enough votes to pass the STR Amendment.

**G. Failure to Conduct Secret Ballot for Board Seat Election.**

56. At the November 8, 2023 Annual Member Meeting, there was a vote for a seat on the Board, for which two Association Members/Lot Owners were nominated and vying for the position. The Association’s property manager, Mark Shoberg of HOA Services, Inc. (the “**Manager**”) facilitated what the Board referred to as a “secret vote” that was not actually secret.

57. The Manager distributed to each Member/Lot Owners qualified to cast a vote a single sheet of paper that commingled the Member/Lot Owners name, address and signature

which then was included with all votes cast. The proxy votes were similarly gathered and cast with the same personal information.

58. The Manager invited members of the Board along with the candidates to join in counting the votes for the contested seat. The Manager subsequently circulated copies of all the single-page voting sheets to the Board, as well as the incumbent Board member, who lost the election.

59. The failure to conduct a true secret ballot and disclosure of identities and voting preferences of Members/Lot Owners unequivocally violated both (i) C.R.S. § 38-33-310(1)(b)(I)(A), which states “[v]otes for contested positions on the executive board shall be taken by secret ballot”; and (ii) C.R.S. § 38-33-310(1)(b)(I)(D), which states “[t]he vote taken by secret ballot shall be reported without reference to names, addresses, or other identifying information of the unit owners participating in such vote.”

60. The Board and Manager further violated C.R.S. § 38-33-310(1)(b)(I)(C), which states:

[b]allots shall be counted by a neutral third party or by committee of volunteer. Such volunteers shall be unit owners who are selected or appointed at an open meeting, in a fair manner, by the chair of the board or another person presiding during that portion of the meeting. The volunteers shall not be board members, and in the case of a contested election for a board position, shall not be candidates.

61. This improper action compromised the voting Members’/Lot Owners’ privacy and, potentially, personal safety.

62. Plaintiffs brought this issue to the attention of the Board and Association legal counsel, and demanded that the Manager immediately destroy all identifying information in the ballots that included voting preferences and/or personal information of voting Members/Lot Owners, and that these parties then provide notice to all Lot Owners that this action has taken place.

63. The Board and Association legal counsel acknowledged the impropriety of the vote conducted by the Manager and Board and committed to honoring Plaintiffs’ request to destroy the information and confirm that to the Lot Owners. However, as of the filing of the Complaint, this has not happened.

**H. Feely is Not a Validly Elected Board Member.**

64. Feely was elected to the Board at the Annual Meeting in 2019 for a two-year term.

65. Two-years is the maximum term for Board members pursuant to Section 5.4 of the Bylaws.

66. Feely's term as a Board member expired as of the Annual Meeting in 2021.

67. Feely was not nominated to serve another term, did not participate as a candidate in any Board election since her 2019 election, nor was she properly appointed by the Board to serve another term.

68. Feely continues to serve on the Board without any election or valid appointment.

**FIRST CLAIM FOR RELIEF**  
**(Declaratory Relief)**

69. Plaintiffs incorporate the General Allegations as if fully set forth herein.

70. Plaintiffs seek a declaration from the Court of the following:

- a. The modification of the Combined Stansberry/Forsyth Lots amounts to a revision of unit boundaries and/or removal of a unit that required an amendment of the 2011 Amended and Restated Declaration pursuant to Section 14.5(B) of the same and C.R.S. § 38-33.3-217;
- b. The Association violated the Section 14.5(B) of the 2011 Amended and Restated Declaration and C.R.S. § 38-33.3-217 by failing to properly amend the 2011 Amended and Restated Declaration regarding the Combined Stansberry/Forsyth Lots;
- c. The Combined Stansberry/Forsyth Lots and the subsequent sale to a third party are both invalid transactions pursuant to the Conflict of Interest Policy;
- d. Feely violated the Conflict of Interest Policy by failing to disclose her financial interest in the real estate transaction surrounding the sale of the Combined Stansberry/Forsyth Lots, and by failing to abstain from voting on the issue;
- e. The allocation of operating funds toward the repair and maintenance of Golf Club property violated Sections 1.3(B) and 2.27 of the 2011 Amended and Restated Declaration;
- f. Feely and Thompson violated the Conflict of Interest Policy by failing to disclose their financial interests in the Golf Club, and by failing to abstain from voting on the issue to allocate operating funds toward Golf Club property repair and maintenance;
- g. The Plats recorded after the 2011 Amended and Restated Declaration violate Articles 13 and 14 of the 2011 Amended and Restated Declaration and C.R.S. § 38-33.3-210

for lack of designation of adoption authority and/or failure to obtain requisite mortgagee/beneficiary approval;

- h. The Plats recorded after the 2011 Amended and Restated Declaration are invalid as a result of the violations of Articles 13 and 14 of the 2011 Amended and Restated Declaration and C.R.S. § 38-33.3-210, and/or failure to obtain requisite mortgagee/beneficiary approval;
- i. The Association and/or Declarant failed to complete the mandatory Declarant Turnover process pursuant to Sections 2.19 and 13.2 of the 2011 Amended and Restated Declaration, and C.R.S. §§ 38-33.3-303(7) and (9);
- j. The Association and/or Declarant's failure to attach an exhibit to the 2011 Amended and Restated Declaration that allocates Voting Rights or Allocated Interest to Community Common Expenses violates C.R.S. § 38-33.3-205(1)(k) and C.R.S. § 38-33.3-207;
- k. The STR Amendment is invalid and void *ab initio* as a result of failing to obtain the required 67% approval of the owners of blocks or units to whom votes are allocated;
- l. The failure to conduct a secret ballot and disclosure of identities and voting preferences of owners violated C.R.S. § 38-33-310(1)(b)(I)(A) and (D);
- m. Feely is not a valid member of the Board and cannot serve as a member of the Board without a proper election or appointment.

And for such other and further relief as this Honorable Court may deem just and proper.

**SECOND CLAIM FOR RELIEF**  
**(Breach of Contract Against the Association)**

71. Plaintiffs incorporate the General Allegations as if fully set forth herein.

72. The 2011 Amended and Restated Declaration is, among other things, a contract between the Association and Plaintiffs.

73. Plaintiffs have consistently performed their duties to pay regular assessments to the Association pursuant to the 2011 Amended and Restated Declaration, and remain in good standing with the Association.

74. Sections 2.19 and 13.2 of the 2011 Amended and Restated Declaration required that the Association, vis a vis the Board, effectuate turnover of ownership and control of Common Areas from the Declarant to the Association.

75. The Association breached Sections 2.19 and 13.2 the 2011 Amended and Restated Declaration by failing to effectuate the Declarant Turnover.

76. Section 14.5(B) of the 2011 Amended and Restated Declaration required an amendment to the 2011 Amended and Restated Declaration and relevant Plat to create the Stansberry/Forsyth Lots.

77. The Association breached Section 14.5(B) of the 2011 Amended and Restated Declaration by failing to take the requisite steps to properly create the Stansberry/Forsyth Lots.

78. Article 12 and Sections 14.5.B. and C of the 2011 Amended and Restated Declaration require that the recorded Plats and any related governing documents reflect the requisite Eligible Mortgage Holders/First Beneficiaries approvals.

79. The Association breached Article 12 and Sections 14.5.B. and C of the 2011 Amended and Restated Declaration by failing to obtain and/or reflect the requisite approvals.

80. Articles 12, 13 and 14 of the 2011 Amended and Restated Declaration require that the Association specify whether certain Plats and development rights were created and recorded by the Declarant or by the Board pursuant to owner approval.

81. The Association breached Articles 12, 13 and 14 of the 2011 Amended and Restated Declaration by failing to identify, account for and record confirmation of who exercised what rights and/or the basis for the recording of certain Plats.

82. The 2011 Amended and Restated Declaration generally requires specific delineation between ranges of lots and specifically allocated lots so as to provide an accurate allocation of assessment obligation and voting rights amongst members of the Association.

83. The Association breached the 2011 Amended and Restated Declaration by failing to specify assessment and voting right percentage allocations resulting in confusion and uncertainty surrounding the number of eligible votes and assessment responsibility.

84. Plaintiffs are damaged by the fact that their collective ownership of Common Areas via their membership in the Association is compromised, as is the title ownership of their respective single-family properties within the Community by virtue of the incomplete state of governing documents and the Association's undocumented ownership/control of Common Areas.

85. Plaintiffs are further damaged by virtue of their collective inability to accurately account for their respective assessment responsibilities and voting allocations.

86. Plaintiffs are also damaged by the improper effectuation of the Stansberry/Forsyth Lots that reduced the total number of assessable Lots within the Community and, consequently, increased their pro rata liability for Association assessments.

87. The only viable remedy for these breaches to specific performance is to correct the various deficient and/or incorrect governing documents.

WHEREFORE, Plaintiffs seek specific performance to compel the Association to:

- a. Take all necessary steps to effectuate Declarant Turnover;
- b. Take all necessary steps to properly amend the 2011 Amended and Restated Declaration and corresponding Plat regarding the Stansberry/Forsyth Lots;
- c. Confirm or obtain requisite Eligible Mortgage Holders/First Beneficiaries approvals for all annexations, Plat amendments and governing document amendments;
- d. Specify and record proper confirmation of all exercised development rights and corresponding annexations; and
- e. Account for, confirm and record an accurate list of assessment and voting allocation for block and/or Lot Owners within the Community.

And, for such other and further relief as this Honorable Court may deem just and proper.

**THIRD CLAIM FOR RELIEF**  
**(Breach of Fiduciary Duty Against Feely)**

88. Plaintiffs incorporate the General Allegations as if fully set forth herein.

89. Feely, as a Developer-appointed member of the Board, serves as a trustee owing the highest fiduciary duties of care to Plaintiffs, as Lot Owners and Association Members, to act reasonably and in good faith in the performance of her duties as a member of the Board as the governing body of the Association.

90. Feely breached her duties of care by:

- a. Facilitating the creation of the Stansberry/Forsyth Lots for the purpose of selling the same for which she would receive a sale commission as the real estate agent listing the property for sale without first disclosing her conflict of interest and without abstaining from voting on any decisions regarding the property;
- b. Coordinating the payment of Association operating funds in breach of the 2011 Amended and Restated Declaration to pay for repairs and maintenance to non-Common Area property controlled by Golf Club, in which she has an ownership interest; and
- c. Failing to follow any procedures and obligations contained in the Conflict of Interest Policy regarding her ownership interest in the Golf Club and the financial benefit she would derive from the transaction.

91. Plaintiffs were damaged by losing portions of their assessment payments to Golf Club for the benefit of Feely and to their detriment as Lot Owners and members of the Association.

WHEREFORE, Plaintiffs seek damages from Feely in an amount to be determined at trial, and for such other and further relief as this Honorable Court may deem just and proper.

**FOURTH CLAIM FOR RELIEF**  
**(Breach of Fiduciary Duty Against Thompson)**

92. Plaintiffs incorporate the General Allegations as if fully set forth herein.

93. Thompson, as a Developer-appointed member of the Board, is a trustee owing the highest fiduciary duties to Plaintiffs, as owners, to act reasonably and in good faith in the performance of his duties as a member of the Board as the governing body of the Association.

94. Thompson breached his duties of care by:

- a. Coordinating the payment of Association operating funds in breach of the 2011 Amended and Restated Declaration to pay for repairs and maintenance to non-Common Area property controlled by Golf Club, in which he has an ownership interest; and
- b. Failing to follow any procedures and obligations contained in the Conflict of Interest Policy regarding his ownership interest in the Golf Club and the financial benefit he would derive from the transaction.

95. Plaintiffs were damaged by losing portions of their assessment payments to the Golf Club for the benefit of Thompson and to their detriment as members of the Association.

WHEREFORE, Plaintiffs seek damages from Thompson in an amount to be determined at trial, legal fees pursuant to contract and CCIOA, and for such other and further relief as this Honorable Court may deem just and proper including.

Respectfully submitted this 12<sup>th</sup> day of April, 2024.

TUELLER & GIBBS, LLP

By: s/ Andrew J. Gibbs  
Andrew J. Gibbs, No. 33632  
Neil P. Cherubin, No. 56124

ATTORNEYS FOR PLAINTIFFS

DISTRICT COURT, MONTROSE COUNTY, COLORADO 1200 N. Grand Avenue Montrose, CO 81401	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<p><b>Plaintiffs:</b> JAMES AND PAMELA CARLSON, Individuals;          EARL MELVIN BRICKER III and BARBARA          BRINKHORST BRICKER, Individuals; DAVID AND          CHARLENE CARY, Individuals; TERRENCE AND          VERENA FERRIS, Individuals; STEPHEN AND SHARON          FISHER, Individuals; LUKE HOFFMAN, Individually;          VIRGINIA McGEE, Individually; JOHN SUDMEIER,          Individually; JAMES T. WASCHBUSCH AND JOANN          WASCHBUSCH in their capacity as Trustees for THE          WASCHBUSCH FAMILY TRUST, a Trust; and          JOHN G. WITHERSPOON III and KATHI L.          WITHERSPOON in their capacity as Trustees for THE          WITHERSPOON LIVING TRUST, a Trust.</p> <p>v.</p> <p><b>Defendants:</b> THE BRIDGES AT BLACK CANYON          OWNERS ASSOCIATION, INC.; a Colorado nonprofit          corporation; BETH FEELY, Individually; and LEW          THOMPSON, Individually</p>	
Attorneys for Plaintiffs:  Andrew J. Gibbs, No. 33632 Neil P. Cherubin, No. 56124 TUELLER & GIBBS, LLP 1601 Blake Street, Suite 300 Denver, CO 80202 Phone: (303) 854-9121 Emails: agibbs@tgd-law.com; ncherubin@tgd-law.com	Case Number: 2024CV30039  Division:      Courtroom:
<b>DISTRICT COURT CIVIL CASE COVER SHEET</b>	

1. This cover sheet shall be filed with each pleading containing an initial claim for relief in every district court civil (CV) case, and shall be served on all parties along with the pleading. It shall not be filed in Domestic Relations (DR), Probate (PR), Water (CW), Juvenile (JA, JR, JD, JV), or Mental Health (MH) cases. 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. Check one of the following:**

This case is governed by C.R.C.P. 16.1 because:

- The case is not a class action, domestic relations case, juvenile case, mental health case, probate case, water law case, forcible entry and detainer, C.R.C.P. 106, C.R.C.P. 120, or other similar expedited proceeding; AND
- A monetary judgment over \$100,000 is not sought by any party against any other single party. This amount includes attorney fees, penalties, and punitive damages; it excludes interest and costs, as well as the value of any equitable relief sought.

This case is not governed by C.R.C.P. 16.1 because (check ALL boxes that apply):

- The case is a class action, domestic relations case, juvenile case, mental health case, probate case, water law case, forcible entry and detainer, C.R.C.P. 106, C.R.C.P. 120, or other similar expedited proceeding.
- A monetary judgment over \$100,000 is sought by any party against any other single party. This amount includes attorney fees, penalties, and punitive damages; it excludes interest and costs, as well as the value of any equitable relief sought.
- Another party has previously indicated in a Case Cover Sheet that the simplified procedure under C.R.C.P. 16.1 does not apply to the case.

*NOTE: In any case to which C.R.C.P. 16.1 does not apply, the parties may elect to use the simplified procedure by separately filing a Stipulation to be governed by the rule within 49 days of the at-issue date. See C.R.C.P. 16.1(e). In any case to which C.R.C.P. 16.1 applies, the parties may opt out of the rule by separately filing a Notice to Elect Exclusion (JDF 602) within 35 days of the at-issue date. See C.R.C.P. 16.1(d).*

A Stipulation or Notice with respect to C.R.C.P. 16.1 has been separately filed with the Court, indicating:

- C.R.C.P. 16.1 applies to this case.
- 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.)

Dated this 12<sup>th</sup> day of April, 2024.

**TUELLER & GIBBS, LLP**

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Neil P. Cherubin, No. 56124

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<p><b>SUMMONS</b></p>	

**THE PEOPLE OF THE STATE OF COLORADO**

**TO: THE BRIDGES AT BLACK CANYON OWNERS ASSOCIATION, INC.**  
**c/o Registered Agent HOAServices Inc.**  
**607 S 7<sup>th</sup> Street**  
**Grand Junction, CO 81501**

You are summoned and required to file with the clerk of this court an answer or other response to the attached Complaint within 21 days after this summons is served on you in the State of Colorado, or within 35 days after this summons is served on you outside the State of Colorado.

This summons is issued pursuant to Rule 4, C.R.C.P., as amended.  
A copy of the complaint must be served with this summons.

If you fail to file your answer or other response to the complaint and verified first amended 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 any further notice to you.

The following documents are also served with this summons: **Complaint and District Court Civil Case Cover Sheet.**

Respectfully submitted this 12<sup>th</sup> day of April, 2024.

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Neil Cherubin, No. 56124

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