

DISTRICT COURT, EL PASO COUNTY, COLORADO 270 S. Tejon, Colorado Springs, Colorado 80903	
SOARING EAGLES TOWNHOMES ASSOCIATION, INC., Plaintiff/Counter-Defendant, v. THE PRECISION FAMILY TRUST; JEREMY WILLIAMSON; AUSTIN KLEEFMAN; BENJAMIN COX; RICHARD MYRIE; MARIA MERCADO; KELLY ROBINSON; ENYSHIA ATENCIO; MATTHEW MCCARTNEY; SINDI BLANCHETTE; BRANDON TANNER; TYLER HARANG; AND JAMIE ESTRELLA JR. Defendants/Counter-Plaintiff.	DATE FILED November 7, 2025 5:42 PM FILING ID: EAC5E196168EE CASE NUMBER: 2025CV32121 ▲ COURT USE ONLY ▲ Case No.: 2025CV32121 Division: 14
Robinson & Henry, P.C. Todd A. Weaver, #31708 Robert S. Schifferdecker, #56193 1975 Research Parkway, Ste. 100 Colorado Springs, CO 80920 Phone: [REDACTED] Fax: [REDACTED] [REDACTED] Attorneys for Defendants	
VERIFIED ANSWER AND COUNTERCLAIMS	

COMES NOW, Defendants, The Precision Family Trust, Maria Mercado, Kelly Robinson, Annette Robinson, Enyshia Atencio, Michael Blanchette, Sindi Blanchette, Brandon Tanner, Ashleigh Tanner, Eric Calabrese, Yanelis Calabrese, Maurice Motley, Kaitlin Palmer, Chance Torres, and Romero Thornton (collectively referred to as “R&H Defendants”), by and through their Counsels at Robinson and Henry, P.C., in support of their answer states as follows:

PARTIES, JURISDICTION, AND VENUE

1. R&H Defendants admit to Paragraph 1 of the Complaint.
2. R&H Defendants admit to Paragraph 2 of the Complaint.

3. R&H Defendants admit to Paragraph 3 of the Complaint.
4. R&H Defendants admit to Paragraph 4 of the Complaint.
5. R&H Defendants admit to Paragraph 5 of the Complaint.
6. R&H Defendants admit to Paragraph 6 of the Complaint.
7. R&H Defendants admit to Paragraph 7 of the Complaint.
8. R&H Defendants admit to Paragraph 8 of the Complaint.
9. R&H Defendants are without sufficient information to answer Paragraph 9 of Plaintiff's Complaint and therefore deny Paragraph 9.
10. R&H Defendants admit to Paragraph 10 of the Complaint.
11. R&H Defendants admit to Paragraph 11 of the Complaint.
12. R&H Defendants admit to Paragraph 12 of the Complaint.
13. R&H Defendants admit to Paragraph 13 of the Complaint.
14. R&H Defendants are without sufficient information to answer Paragraph 14 of Plaintiff's Complaint and therefore deny Paragraph 14.
15. R&H Defendants are without sufficient information to answer Paragraph 15 of Plaintiff's Complaint and therefore deny Paragraph 15.
16. Paragraph 16 of the Complaint states nothing that requires a response, in as much as a response is required, R&H Defendants admit that the Defendants named in Paragraph 16 are named Defendants in this complaint.
17. Paragraph 17 of the Complaint states a legal conclusion in which no response is required, in as much as a response is required R&H Defendants deny the same.
18. Paragraph 18 of the Complaint states a legal conclusion in which no response is required, in as much as a response is required R&H Defendants deny the same.

FACTUAL BACKGROUND

19. R&H Defendants admit that the Plaintiff, Defendant, and the rest of the Community are governed by and subject to certain Declarations of Covenants, Conditions, and Restrictions of the Soaring Eagle Townhomes; R&H Defendants further state that the documents alleged in Paragraph 19 speak for themselves.

20. Paragraph 20 of the Complaint states a legal conclusion in which no response is required, in as much as a response is required R&H Defendants admit that C.R.S. § 38-33.3-101 *et seq.* governs the issues.

21. R&H Defendants state that the documents alleged in Paragraph 21 speak for themselves.

22. R&H Defendants state that the documents alleged in Paragraph 22 speak for themselves.

23. R&H Defendants state that the documents alleged in Paragraph 23 speak for themselves.

24. R&H Defendants state that the documents alleged in Paragraph 24 speak for themselves.

25. R&H Defendants state that the documents alleged in Paragraph 25 speak for themselves.

26. R&H Defendants state that the documents alleged in Paragraph 26 speak for themselves.

27. R&H Defendants deny Paragraph 27 of the Complaint. R&H Defendants further state that if Plaintiff knew that it would not be able to meet the requirements of Section 7.3 of the

Declaration for years, as plead, then Plaintiff could and should have changed the Declaration pursuant to the rules in the Declaration and C.R.S. § 38-33.3-101 *et seq.*

28. R&H Defendants admit to Paragraph 28.

29. R&H Defendants are without sufficient information to answer Paragraph 29 of Plaintiff's Complaint and therefore deny Paragraph 29.

30. R&H Defendants are without sufficient information to answer Paragraph 30 of Plaintiff's Complaint and therefore deny Paragraph 30.

31. R&H Defendants are without sufficient information to answer Paragraph 31 of Plaintiff's Complaint and therefore deny Paragraph 31.

32. R&H Defendants are without sufficient information to answer Paragraph 32 of Plaintiff's Complaint and therefore deny Paragraph 32.

33. R&H Defendants state the documents speak for themselves. R&H Defendants further state that the Plaintiff did levy a deductible for \$20,752.12. R&H Defendants deny that the special assessment was done properly or pursuant to the Declaration, other governing documents, or Colorado Law.

34. R&H Defendants admit the Association levied the special assessment against the homeowners in the Community, but deny the validity of the special assessment, and admit that certain R&H Defendants sent a letter to the board discussing the special assessment. R&H Defendants deny the remainder of Paragraph 34.

35. R&H Defendants do not dispute the Association's ability to assess special assessments in general but **DO** dispute the validity of the special assessment at issue based on the violation of the Declaration limiting the insurance deductible and the process the Plaintiff went through to levy the assessment against the homeowners within the Community.

36. R&H Defendants are without sufficient information to answer Paragraph 36 of Plaintiff's Complaint and therefore deny Paragraph 36, including all of the subparagraphs.

37. R&H Defendants are without sufficient information to answer Paragraph 37 of Plaintiff's Complaint and therefore deny Paragraph 37.

38. R&H Defendants are without sufficient information to answer Paragraph 38 of Plaintiff's Complaint and therefore deny Paragraph 38.

39. R&H Defendants are without sufficient information to answer Paragraph 39 of Plaintiff's Complaint and therefore deny Paragraph 39.

40. R&H Defendants are without sufficient information to answer Paragraph 40 of Plaintiff's Complaint and therefore deny Paragraph 40.

41. R&H Defendants are without sufficient information to answer Paragraph 41 of Plaintiff's Complaint and therefore deny Paragraph 41.

**FIRST CAUSE OF ACTION
(Declaratory Judgment – All Defendants)**

42. No response is required for Paragraph 42, in as much as a response is required, R&H Defendants deny the same.

43. R&H Defendants admit that there are real and justiciable controversies between the Association and R&H Defendants regarding the Plaintiff's obligations under the Declaration.

a. R&H Defendants state that insurance is available to conform to the Declaration; that Plaintiff did not due its due diligence in looking for or finding insurance coverage; or in the alternative made a conscious decision to ignore the Declarations simply due to costs of proper insurance; and that Plaintiff chose the most expensive contractor to repair the damage, ignoring two other bids that were approximately half the price.

b. R&H Defendants state the issue is not that R&H Defendants believe the Association can ignore the damage and fail to repair, but state that Plaintiff and Plaintiff's Board have breached their fiduciary duty by (1) having a deductible that is beyond what is contractually allowed under the Declaration, (2) by choosing the most expensive contractor when other bids were doing the same work with the same quality for less, and (3) failing to act in a manner that is in the best interest of the community.

c. R&H Defendants admit the Declaration allows for special assessments, but deny that the Plaintiff is allowed to issue the special assessment at issue in this case because (1) the insurance policy did not conform to the Declarations and was in violation of the Declarations, (2) the Plaintiff did not follow the Declarations and other governing documents, and (3) failed to meet Plaintiff's requirements when levying a special assessment.

44. Paragraph 44 of the Complaint states a legal conclusion in which no response is required, in as much as a response is required R&H Defendants deny the same.

45. Paragraph 45 of the Complaint states a legal conclusion in which no response is required, in as much as a response is required R&H Defendants deny the same.

**SECOND CAUSE OF ACTION
(Defamation – Defendant Dommer)**

46. Paragraph 46 through Paragraph 53 of the Plaintiff's Complaint state a cause of action against a different Defendant for defamation and make no claims against any individual included in R&H Defendants. R&H Defendants are without sufficient information to answer Paragraph 46 through Paragraph 53 of Plaintiff's Complaint and therefore deny the same.

47. R&H Defendants state that the Wherefore clause of Plaintiff's complaint states relief requested from the Court and no response is required. In as much as a response is required,

R&H Defendants request that the Court deny any relief requested in the Plaintiff's Wherefore Clause, including subparagraphs 1 (including 1(a) through 1(f)) through 5.

GENERAL DENIAL

48. Any statement not specifically admitted to herein is denied.

AFFIRMATIVE DEFENSES

49. Plaintiff's Complaint fails to state a claim against R&H Defendants upon which relief may be granted.

50. Plaintiff's Claims are barred by the Doctrine of Equitable Estoppel.

51. Plaintiff's Claims are barred by the Doctrine of Unclean Hands.

52. Plaintiff's Claims are barred by the Doctrine of Unjust Enrichment.

53. Plaintiff's Claims are barred by the Doctrine of Laches.

54. Plaintiff's Claims are barred by Fraud.

55. Plaintiff breached the contract first.

56. Plaintiff's Claims are barred because Plaintiff's actions were unconscionable.

57. The Contract is void as Against Public Policy.

58. Plaintiff's Complaint fails to include all indispensable parties.

WHEREFORE, having fully responded to Plaintiff's Complaint, Defendants pray for dismissal of the claims against them, or in the alternative, for judgment in their favor, plus costs, attorneys' fees, and such other relief as the Court deems proper and just.

COUNTERCLAIMS

COMES NOW, R&H Defendants, by and through their attorneys Robinson and Henry, P.C., and for their Derivative Counterclaims against Plaintiff-Counter Defendant Soaring Eagles Townhomes Association, Inc., Third Party Counter Defendant RowCal Property Management

Company, and Third Party Counter Defendant RowCal Construction and Maintenance Company; and their Counterclaims against Plaintiff-Counter Defendant Soaring Eagles Townhomes Association, Inc., Third Party Counter Defendant RowCal Property Management Company, and Third Party Counter Defendant RowCal Construction and Maintenance Company; and state and allege as follows:

PARTIES, VENUE, AND JURISDICTION

1. Plaintiff/Counter-defendant, Soaring Eagles Townhomes Association, Inc. (hereinafter “Plaintiff” or the “Association”), is a Colorado nonprofit corporation organized and established to operate a 150-unit residential townhome community located in El Paso County, Colorado known as “The Soaring Eagles Townhomes” (hereinafter the “Community”).

2. Defendants/Counter-Plaintiffs, The Precision Family Trust, Maria Mercado, Kelly Robinson, Annette Robinson, Enyshia Atencio, Michael Blanchette, Sindi Blanchette, Brandon Tanner, Ashleigh Tanner, Eric Calabrese, Yanelis Calabrese, Maurice Motley, Kaitlin Palmer, and Romero Thornton (hereinafter “R&H Defendants”) consist of a collection of individual homeowners with the Community; all residing within the El Paso County, Colorado.

3. Counterclaim Defendant RowCal Management CO (hereinafter “RCPM”) is a Delaware Corporation registered in the state of Colorado as a Foreign Limited Liability Company, created as a property management company, doing business within El Paso County, Colorado.

4. Counterclaim Defendant RowCal Construction and Maintenance CO LLC (hereinafter “RCCC”) is a Delaware Corporation registered in the state of Colorado as a Foreign Limited Liability Company, created as a construction company, doing business within El Paso County, Colorado.

5. This Court has jurisdiction over the subject matter of this action and the parties hereto.

6. Venue is proper in this Court pursuant to C.R.C.P. 98(c)(1).

BACKGROUND

7. R&H Defendants incorporate by reference all the Paragraphs set forth above as though fully set forth herein.

8. The Association, R&H Defendants, and the Community are all governed by and subject to a certain Declaration of Covenants, Conditions, and Restrictions of The Soaring Eagles Townhomes recorded with El Paso County on May 12, 2005, as Document No. 205069031 (the “Declaration”) along with certain bylaws and other rules and regulations adopted by the Association (collectively the “Governing Documents”). A true and correct copy of the Declaration is attached hereto as Exhibit 1.

9. The Association, R&H Defendants, and the Community are further governed by and subject to the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.* (“CCIOA”).

10. Section 7.1(a) of the Declaration requires the Association to purchase and maintain certain insurance policies for the benefit of the Community and its homeowners, including but not limited to, a property insurance policy. In relevant part, the Declaration states:

“The Association shall maintain policy of property insurance covering all insurable improvements located within the Community (including the Common Elements and the Lots, but excluding finished interior surfaces of the walls, floors, and ceilings in the Townhomes, any other equipment, furniture, wall trimmings, improvements, and personal property furnished or installed by an Owner) except for land, foundation, excavation, and other matters normally excluded from coverage, in an amount not less than the full insurable replacement cost of the insured property minus applicable deductibles at the time the insurance is purchased and at each renewal date.”

11. Section 7.3 of the Declaration specifies that the Association's insurance policies shall not have applicable deductibles that exceed the lesser of either: (a) \$10,000; or (b) one percent (1.00%) of the face amount of the policy. In relevant part, the Declaration states:

“Section 7.3 Deductibles. No policy of insurance of which the Association or its designee is the beneficiary shall include a deductible clause in an amount that is greater than the lesser of \$10,000 or one percent of the face amount of the policy.”

12. Section 11.3(c) of the Declaration creates a duty by the Association to repair damage to property covered by its property insurance policy. In this regard, the Declaration states:

“(c) Any portion of the Community for which insurance is required to be maintained by the Association under this Declaration must be Repaired and Reconstructed promptly by the Association unless (i) the Community is terminated in accordance with Section 11.2, in which case the provisions of that section apply; (ii) Repair and Reconstruction would be illegal under any state or local statute or ordinance governing health or safety; or (iii) the Owners who hold 80% of the votes in the Association vote not to rebuild, and every Owner of an assigned Limited Common Element that will not be rebuilt concurs.”

13. Section 11.3(d) of the Declaration specifies that if insurance proceeds are insufficient to pay for necessary repairs caused by an insured loss, then the Association shall levy a Special Assessment to finance the remainder of the repairs. In relevant part, the Declaration states:

“(d) If the insurance proceeds are insufficient to Repair and Reconstruct the improvements, such damage or destruction shall be promptly Repaired and Reconstructed by the Association as attorney-in-fact, using the proceeds of insurance and the proceeds of a Special Assessment. Such Special Assessment shall be assessed against all Lots in accordance with Section 6.7 hereof, but without the requirement of complying with the budget approval process set forth in Section 6.3 above.”

14. Section 6.7 of the Declaration gives the Association's Board of Directors (the “Board”) broad authority to levy Special Assessments to pay for necessary maintenance and repairs. In relevant part, the Declaration states:

“Section 6.7 Special Assessments. In addition to the Monthly Assessments authorized above, the Executive Board may at any time, from time to time, determine, levy and assess a special Assessment ("Special Assessment") for the purpose of defraying, in whole or in part, payments for any operating deficit, loss, or unbudgeted expense, and/or unbudgeted costs, fees, and expenses of any construction, reconstruction, repair, demolition, replacement, management, administration, or maintenance of the Common Elements including, without limitation, any fixtures and personal property related thereto. * * * Such Special Assessment(s) shall be due and payable as determined by the Executive Board, with at least 30 days' prior written notice provided to the Owners.”

15. Section 15.4 of the Declaration specifies that the prevailing party in any action to enforce its terms is entitled to recover its costs and reasonable attorney fees. Specifically, it states:

“Section 15.4 Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges, and other provisions contained in this Declaration, as amended, may be by any proceeding at law or in equity ("Judicial Proceeding") against any person(s) or the Association violating or attempting to violate any such provision. The Association, Declarant, or any aggrieved Owner shall have the right to institute, maintain, and/or prosecute any Judicial Proceeding in any court of competent jurisdiction, or if all parties to a dispute agree, by binding arbitration. In any Judicial Proceeding, the prevailing party shall recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the court or arbitrator.”

16. The Association and RCPM entered into a contract agreement for property management services for the Community (the “Property Management Contract”).

17. On or around August 3rd, RCPM contact the Association President to inform him that a hail storm had occurred in the area that produced quarter size hail.

18. The Association held a board meeting on September 25, 2024, to discuss concerns over potential ramifications of filing a claim, having an experienced roofing company do an inspection to determine the total damage, and requesting RCPM do a broadcast email to the homeowners regarding HO-6 policy coverages.

19. Upon information and belief, no notice to the Community was sent.

20. Upon information and belief, RCPM and RCCC were pressuring the Association to file an insurance claim and contract with RCCC to assist in the process.

21. Upon information and belief, RCPM and RCCC are sister companies both owned and operated by RowCal.

22. The vendor RCPM allowed for construction within the Community was RCCC.

23. The prior President of the Association Board publicly admitted to being asked to sign documents with RCCC to work with an adjuster to determine the damage but did not read the document he was asked to sign and was not aware he was signing a document that required the Association to use RCCC on the project.

24. After signing the contract RCCC hired an engineer to validate the hail damage occurred on or around, August 1, 2024, and hired an independent claims adjusting group who inspected the damage and provided an estimate in the amount of 3,605,485.88 for hail storm related damages.

25. As a part of the Property Management Contract, the Association agreed to only use the vendors that RCPM allowed.

26. Upon information and belief, the insurance adjuster and the engineer are preferred vendors of RCCC and RCPM who receive benefit from using those specific professionals.

27. The Association Board questioned the damage that was identified on the estimate for two reasons: 1) they were not sure the damage to the garage doors identified were actually hail damage 2) they were not in agreement that the fences and ac units were the responsibility of the Association, but rather the responsibility of the individual unit owners.

28. The Association was informed by RCCC that they could not dispute the damage identified by the claims adjuster.

29. Upon information and belief, the Association was simultaneously soliciting bids from other roofing companies to repair the hail damage to the roof.

30. Upon information and belief, the Association received two other bids for the repair of the hail damage. Both bids were roughly half of the amount of the Bid from RCCC; the bid from Cheyenne Mountain Roofing was \$1,405,973.66.

31. Upon information and belief when RCPM realized the Association was considering obtaining multiple bids to repair the damage, they notified RCCC who had an attorney draft a letter advising the Association that there were already under contract, signed February 24, 2025, authorizing RCCC to complete the work and if they decided to choose another contractor they would be sued.

32. In February 2025, the Association Board voted via email to file an insurance claim.

33. Upon information and belief, a few days after the February 2025 vote to file an insurance claim, the President at the time withdrew his vote and requested that a meeting with the homeowners be called to discuss it first.

34. No meeting of the homeowners was held.

35. Upon information and belief, the Association had an insurance policy that did not comply with the Declarations for many years. Yet, no attempt to update the Declarations was ever made.

36. The renewal for the 2025/2025 insurance policy came with a summary page that showed that the homeowners should carry \$30,000 in loss assessment coverage on their HO6 policies.

37. Upon information and belief, the former President of the Association emailed the summary page to RCPM and asked the property manager to do a notice to the homeowners about the amount of the loss assessment coverage they should carry on their HO6 policies.

38. Upon information and belief, no notice to the Community was sent.

39. Since no disclosure of meeting minutes or voting mentioning hail damage and hail claims were ever put in the member portal, the sellers did not have access to, and therefore could not disclose, the claim or potential of a special assessment to the buyers.

40. Upon information and belief, a third party vendor, Association Online, was paid to request missing meeting minutes, claims information, special assessment information, or potential liabilities.

41. Upon information and belief, RCPM responded to the inquiry denying any meeting minutes existed past January 2024 and that if any potential liabilities or assessments were to be disclosed they would be disclosed in the status letter.-

42. Upon information and belief, RCPM knew of the hail damage and potential for the special assessment and did not disclose anything in the status letter they provided.

43. Because of RCPM's failure to disclose the hail damage and potential for the special assessment, Precision and Mr. Torres purchased their homes without knowledge of the upcoming special assessment that are now at the center of this matter.

44. Both Precision and Mr. Torres's insurance carriers have declined to pay the special assessment since the policies were not in effect at the time the damage happened AND the time the special assessment was imposed on them, leaving them no insurance recovery.

45. On August 11, 2025, homeowners of the Community received notice of a town hall meeting scheduled August 13, 2025, for all owners to go over the process of completing the hail

damage repairs and to go over the next steps for owners to file a claim with their HO6 policy to claim the loss assessment.

46. The town hall meeting called by the Association to discuss the Special Assessment was one year after the damage occurred and six months after the Association had filed the insurance claim for the hail damage and signed the construction contract.

47. This was not an opportunity to vote on anything since insurance claim had already been filed, the property had already been inspected by an independent adjuster hired by RMC, and the insurance estimate provided by the independent adjuster had already been approved by the insurance company for repairs.

48. Very few of the homeowners knew that the Association was even discussing calling in an insurance claim and many were not aware of the damage to their units even at this time.

49. In August 2025, homeowners of the Community received notice of a town hall meeting to discuss a hail claim assessment that was being imposed on the homeowners.

50. This was not an opportunity to vote on anything, but rather a meeting to tell the homeowners of the Community what the Association had already done.

51. The hail damage happened in August 2024, and the amount of the damage was \$3,605,485.88, according to the Association's insurance adjuster.

52. The claim included damage to roofs, gutters, fences, some garages, and some AC units.

53. The insurance deductible for wind/hail was so high that \$3,112,817.26 was not covered, and a loss assessment was split between the 150 homeowners, causing a special assessment of \$20,751.12 per homeowner.

54. None of the homeowners knew that the Association was even discussing calling in an insurance claim and many were not aware of the damage to their units.

55. Upon information and belief, in the contract signed by the Plaintiff with RCPM, it states that the Association is obligated to use RCPM's preferred vendors, including RCCC.

56. Upon information and belief, RCPM sent a letter to the Association's board stating that RCPM would sue the Association if the Association did not use RCCC.

57. The Association, in another board meeting, discussed waiting to call in the claim until after a new insurance policy was in force.

58. Upon information and belief, the Association had an insurance policy that did not comply with the Declarations for many years. Yet, no attempt to update the Declarations was ever made.

59. The renewal for the 2024 insurance policy came with a summary page that showed that the homeowners should cover \$30,000 in loss assessment coverage on their HO6 policies.

60. Upon information and belief, the former president of the Association emailed this summary page to the RCPM and asked the property manager to do a notice to the homeowners about the amount of loss assessment coverage they should carry in their HO6 policies.

61. Upon information and belief, no notice to the Community was sent.

62. Members of R&H Defendants sent a demand letter to the Board asking the Association to temporarily stop work, not because they disputed the damage, but because the Association decided to move forward with work that the Association had not collected any money on and the Association did not have the authority because of the Association's breach of the Declaration.

63. Putting the Association in a position to have to take out a loan or default on the construction bill would cause significant harm to the Association.

64. Additionally, work not related to the claim was completed by the RCCC with excess insurance funds according to the Association; however, these funds did not actually exist because insurance only paid \$492,668.62 of the \$3,605,485.88 claim.

65. The Board failed in its duty to remain transparent and keep its homeowners updated during this entire situation as no meeting minutes were ever posted to the portal for homeowners to view.

66. No meeting minutes for the September 25, 2024, Board meeting were ever posted.

67. No annual owner meeting minutes from the October 29, 2024, meeting were ever posted.

68. No disclosure of an email vote made by the Board to file an insurance claim around February 11, 2026 was ever posted.

69. No copy of the resolution to file an insurance claim was provided to homeowners on February 26, 2025.

70. No meeting minutes from the Board meeting on July 16, 2025 were ever posted.

71. No meeting minutes from the Board meeting on August 25, 2025 were ever posted.

72. Defendants The Precision Family Trust and Chance Torres purchased their homes within the Community after the Hail Damage event but before the Special Assessment was sent to the homeowners.

73. Both Defendant The Precision Family Trust (hereinafter "Precision") and Defendant Chance Torres (hereinafter "Mr. Torres") asked about any damage to the property or any planned special assessments.

74. Upon information and belief, the Association or the Association's Agent, RCPM, told Precision, Mr. Torres, and the individual sellers that there were no upcoming special assessment or potential liabilities.

75. Precision and Mr. Torres both relied on the Association's statements when purchasing their individual homes.

76. The Association knew of the hail damage and special assessment when the Association told Precision and Mr. Torres that there was nothing to disclose.

77. Because of the Association's failure to disclose the hail damage and the special assessments, Precision and Mr. Torres purchased their homes without knowledge of the upcoming special assessments that are now at the center of this matter.

78. The town hall meeting called by the Association to discuss the Special Assessment was one year after the Association had already filed the insurance claim for the hail damage and signed the construction contract.

79. Upon information and belief, the Board did not consult with any other insurance company to find coverage, excluding companies like State Farm and other captive agencies that could have provided a policy that conformed to the Declarations.

80. Upon information and belief, the Board never asked, and the insurance agent never discussed any Deductible Buyback Policy, which could have limited the deductible to \$10,000.00.

81. The prior president of the Board publicly admitted to not reading the documents he was asked to sign by RowCal, including the contract to use RCCC on the project.

82. Using a general contractor adds additional costs to the overall project and was not a good fiduciary decision made by the Association.

83. Upon information and belief, when the President of the Board tried to use another contractor, he was threatened with legal action against the Association by RCCC.

84. While the Association was being secretive about the hail damage and special assessment, six homeowners purchased their new homes within the Community and no disclosure was made available to them, even after the Association and RCPM were directly asked about any issues.

85. Additionally, due to the time frame of the damage versus when the claim was made, two homeowners changed insurance carriers with no idea what was happening.

86. These eight homeowners had their insurance carriers decline their claim as the policy had to be in effect at the time of the damage and at the time of the claim, according to the insurance carriers.

87. The Declarations state that no policy can be purchased that would impose more than \$10,000 in loss assessment to any one homeowner. *See* Section 7.3 of the Declaration of Covenants.

88. When securing their insurance, homeowners gave the governing documents to their agents who correctly offered them \$10,000.00 in loss assessment coverage.

89. R&H Defendants are now incurring attorney fees as a result of the Association's decisions.

90. Upon information and belief, the Association received a bid from Cheyenne Mountain Roofing to fix the roofs for \$1,405,973.66.

91. Upon information and belief, the Association received a third bid for around \$1,500,000.00.

92. Cheyenne Mountain Roofing does as good if not better work than RCCC.

93. Cheyenne Mountain Roofing is just as qualified to repair the hail damage as RCCC.

94. The only reason the Association chose RCCC over Cheyenne Mountain Roofing was the threat of litigation for not using RCCC.

95. Upon information and belief, RCCC is a general contractor, and RCCC subcontracted out all of the work.

96. The Association decided they could get the work done and still have \$200,000.00 “left over” to use on the trim that eventually would need to be fixed due to the bad installation of a previous contractor.

97. The \$200,000.00 was not leftover but was the individual homeowner’s money and the Board should have returned the amounts.

98. Currently, the Association is working alongside RCCC to complete the work so quickly that by the time a decision in this matter is made, it will be too late and RCCC will have already incurred the costs associated with the construction contract.

99. Upon receiving the demand letter, RCCC significantly increased the workforce working to repair the hail damages, in bad faith to ensure that their received a payment for the entire amount and hold the costs against the Association.

100. Upon information and belief, the construction will be completed by the end of the year.

101. The Association is making improper and unreasonable decisions by not being transparent in their decision-making process with the Community, not being transparent in their decision with the Community, not being good stewards of the Community’s operating funds, and entering into contracts that have detrimental effects on the Community.

102. Upon information and belief, RCPM receives a benefit from RCCC when one of RCPM's homeowner associations uses RCCC.

FIRST CLAIM OF RELIEF

Derivative Complaint for Declaratory Judgment

103. R&H Defendants incorporate by reference all of the Paragraphs set forth above as though fully set forth herein.

104. R&H Defendants were and are members of the Community at the time of the Special Assessment.

105. Members of the R&H Defendants sent a demand letter to the Association requesting to resolve the issues alleged in these Counterclaims, including the limits in the declaration on insurance deductibles and the legality of the special assessments.

106. In response to the demand letter, the Association filed this lawsuit against the members of R&H Defendants and denied the relief sought in the demand letter.

107. R&H Defendant adequately and fairly represents the interest of the other members of the Community as all are required to pay the special assessment for the insurance deductible and no one in the Community should be required to pay the special assessment when it blatantly flies in violation of the Declaration.

108. R&H Defendants sent a demand letter requesting that the Association stop the special assessment, cease violating the Declaration , and use bids that are market rate, rather than the bid from RCCC.

109. This claim for declaratory judgment arises out of the provisions of the Uniform Declaratory Judgments Law, C.R.S. § 13-51-101 *et seq.*, and C.R.C.P. 57.

110. The Members of the Community constitute interested persons whose rights, status, and legal relations are affected by the Colorado Common Interest Ownership Act (CCIOA), C.R.S. § 38-33.3-101, *et seq.*, as well as the Governing Documents.

111. An actual controversy exists between the Members of the Community and the Association concerning the interpretation of Section 7.3 Enforcement of the Covenants, which, in relevant part, states as follows:

“Section 7.3 Deductibles. No policy of insurance of which the Association or its designee is the beneficiary shall include a deductible clause in an amount that is greater than the lesser of \$10,000 or one percent of the face amount of the policy.”

112. A declaration on the construction of these statutes and provisions of the Governing Documents by this Court may terminate the controversy between the Parties.

113. Members of the Community and R&H Defendants interpret Section 7.3 to limit the insurance deductible to \$10,000.00, that any deductible above \$10,000.00 is a violation of the Declaration and a breach of the Association’s fiduciary duty to its Members.

114. The Members of the Community are entitled to a declaratory judgment that the Declarations clearly state that insurance deductibles are limited to the lesser of one percent of the total insurable value or \$10,000.00, and the insurance policy received by the Association with a deductible of more than \$10,000.00 is a violation of the Declaration and any attempts to collect the insurance deductible through a special assessment is void as a result of the violation of the Declaration.

115. The Members of the Community constitute interested persons whose rights, status, and legal relations are affected by the Colorado Common Interest Ownership Act (CCIOA), C.R.S.

§ 38-33.3-101, *et seq.*, the Governing Documents, and the Property Management Contract between the Association and RCPM.

116. An actual controversy exists between the Members of the Community, the Association and RCPM concerning the interpretation of the Property Management Contract.

117. In Colorado, a contract is void against public policy if it contravenes established legal principles or societal interests designed to protect the public good. Public policy is defined as the rule of law that prohibits actions or agreements that are injurious to the public or detrimental to the public good. Contracts that violate public policy are unenforceable, and courts will leave the parties in the position they placed themselves. *See Russell v. Courier Printing & Publishing Co.*, 43 Colo. 321 (1908), *Martin Marietta Corp. v. Lorenz*, 823 P.2d 100 (1992).

118. Here, the Property Management Contract is void on its face as a result of the inclusion of the Association's obligation not to use third-party contractors not approved by RCPM.

119. The Property Management Contract provisions create an improper no solicitation clause, an improper non-complete clause, and put the Association in a position where it is forced to breach its fiduciary duties and obligations to the Community. As a result, the Property Management Contract is void because it violates public policy.

120. If not for the Property Management Contract, the Association would have been able to use a construction company to repair the hail damage at a market rate, \$2,199,512.22 less than the RCCC bid.

121. As a result, the Association is in breach of its fiduciary duty by being forced to use RCCC at a rate of \$2,199,512.22 above market rate for the repair.

122. Accordingly, the Members of the Community are entitled to a declaratory judgment that all or part of the Property Management Contract between the Association and RMPC is void and unenforceable because it is against public policy.

SECOND CLAIM OF RELIEF

Derivative Complaint for Breach of Fiduciary Duty

123. R&H Defendants incorporate by reference all of the Paragraphs set forth above as though fully set forth herein.

124. R&H Defendants were and are members of the Community at the time of the Special Assessment.

125. Members of the R&H Defendants sent a demand letter to the Association requesting to resolve the issues alleged in these Counterclaims, including the limits in the declaration on insurance deductibles and the legality of the special assessments.

126. In response to the demand letter, the Association filed this lawsuit against the members of R&H Defendants and denied the relief sought in the demand letter.

127. R&H Defendant adequately and fairly represents the interest of the other members of the Community, as all are required to pay the special assessment for the insurance deductible, and no one in the Community should be required to pay the special assessment when it blatantly flies in violation of the Declaration.

128. R&H Defendants sent a demand letter requesting that the Association stop the special assessment, cease violating the Declaration of Covenants, and use bids that are market rate, rather than the Bid from RCCC.

129. The Association, as a homeowner's association, has fiduciary duties to R&H Defendants as homeowners in the affected Community.

130. Specifically, a homeowners' association has a fiduciary duty to homeowners in the community. *Colorado Homes Ltd., v. Loech-Wilson, et. al.*, 43 P.3d 718, 721-22 (Colo. App. 2001).

131. The Association has breached that fiduciary duty by, without limitation:

- a. violating the Declaration of Covenants when it secured property insurance coverage with a deductible in excess of \$3,112,817.26 when the Declaration of Covenants state that the insurance deductibles are limited to the lesser of 1% of the total coverage or \$10,000.00;
- b. failing to disclose the special assessment to homeowners within the Community;
- c. choosing the most expensive contractor to repair the damage to the hail damage;
- d. failing to disclose the hail damage and the special assessment in a timely manner to the homeowners;
- e. signing a contract with RowCal Property Management that does not represent the best interest of the Community; and
- f. signing a contract with RowCal Construction Company that does not represent the best interest of the Community.

132. The Association has acted arbitrarily and/or capriciously by failing to perform the functions of a board and violating the Declaration of Covenants and Bylaws.

133. The Association's breach of fiduciary duty has caused damage to the Community including, without limitation, reduced property values and being assessed a special assessment of \$20,752.03 for the payment of the insurance deductible.

134. Members of the Community now accumulate attorneys' fees based upon the Association's actions and breach of fiduciary duty, which the Members of the Community are entitled to recover pursuant to Colorado law and/or the Governing Documents.

135. The Community has been damaged by the Association's breach of fiduciary duty in an amount to be determined at trial.

THIRD CLAIM OF RELIEF
Derivative Complaint for Breach of Contract

136. R&H Defendants incorporate by reference all of the Paragraphs set forth above as though fully set forth herein.

137. R&H Defendants were and are members of the Community at the time of the Special Assessment.

138. Members of the R&H Defendants sent a demand letter to the Association requesting to resolve the issues alleged in these Counterclaims complaint, including the limits in the declaration on insurance deductibles and the legality of the special assessments.

139. In response to the demand letter, the Association filed this lawsuit against the members of R&H Defendants and denied the relief sought in the demand letter.

140. R&H Defendants adequately and fairly represent the interests of the other members of the Community, as all are required to pay the special assessment for the insurance deductible, and no one in the Community should be required to pay the special assessment when it blatantly flies in violation of the Declaration.

141. R&H Defendants sent a demand letter requesting that the Association stop the special assessment, cease violating the Declaration, and use bids that are market rate, rather than the bid from RCCC.

142. RCPM breached its contract with the Community when it forced the Association to use its preferred vendor, RCCC, resulting in the Community having to use a bid that far exceeded the market rate for the job.

143. R&H Defendants and the Association agreed to the terms within the governing documents of the Community, including, but not limited to the Declaration.

144. The Community and RCPM entered into a Property Management Contract in which RCPM agreed to manage the property in the best interest of the Community in exchange for a monthly payment.

145. The Community performed all of their obligations in accordance with the Contract including paying all costs associated with the Property Management Contract.

146. The RCPM breached the Property Management Contract by failing to comply with the terms therein.

147. Specifically, but without means of limitation, the RCPM violated, and continues to violate, the Property Management Contract with the Community when:

- a. it told the Association to obtain property insurance coverage with a deductible in excess of \$3,112,817.26 when the Declaration of Covenants states that the insurance deductibles are limited to the lesser of 1% of the coverage or \$10,000.00;
- b. by failing to disclose the special assessment to homeowners within the Community;
- c. by forcing the Association to get the most expensive contract to repair the hail damage (a contract that upon belief, gives RCPM a benefit);
- d. by failing to disclose the hail damage and the special assessment in a timely manner to the homeowners, and;
- e. by signing a contract with RowCal Construction Company that does not represent the best interest of the Community.

148. The RCPM's breach of the Property Management Contract with the Community is material.

149. Members of the Community now accumulate attorneys' fees based upon the RCPM's actions and breach of the Property Management Contract, which they are entitled to recover pursuant to Colorado law, the Property Management Contract and/or the Governing Documents.

150. The Community has been damaged by the RCPM's breach of the Property Management Contract in an amount to be determined at trial.

FOURTH CLAIM OF RELIEF
Derivative Complaint for Negligence

151. R&H Defendants incorporate by reference all of the Paragraphs set forth above as though fully set forth herein.

152. R&H Defendants were and are members of the Community at the time of the Special Assessment.

153. Members of the R&H Defendants sent a demand letter to the Association requesting that it resolve the issues alleged in these Counterclaims, including the limits in the declaration on insurance deductibles and the legality of the special assessments.

154. In response to the demand letter, the Association filed this lawsuit against the members of R&H Defendants and denied the relief sought in the demand letter.

155. R&H Defendant adequately and fairly represents the interest of the other members of the Community, as all are required to pay the special assessment for the insurance deductible, and no one in the Community should be required to pay the special assessment when it blatantly flies in violation of the Declaration.

156. R&H Defendants sent a demand letter requesting that the Association stop the special assessment, cease violating the Declaration, and use bids that are market rate, rather than the Bid from RCCC.

157. To prevail on a claim of negligence, the plaintiff must show: (1) that the defendant owed him or her a legal duty of care; (2) that the defendant breached that duty; (3) that the plaintiff suffered injury; and (4) the cause of that injury was the defendant's conduct. *Laughman v. Girtakovskis*, 2015 COA 143, ¶ 9, 374 P.3d 504, 506.

158. The Association has a duty to disclose financial information to the homeowners of the Community, including special assessments. C.R.S. § 38-33.3-209.4.

159. The Association has a duty to disclose when certain types of insurance are unavailable or cancelled. C.R.S. § 38-33.3-313.

160. The Association breached those duties when it failed to disclose the issues with the insurance deductible and the issue of the special assessment to the homeowners of the Community.

161. As a result of the Association's failure to disclose, the Community has suffered injury as a result of having to pay \$20,752,12 either fully or partially out of their own pocket.

162. The Community's homeowners as a whole have been damaged by the breach of the Association's duties as well.

163. The Association's actions caused the injury to the Community.

164. The Community has been damaged in an amount to be determined at trial.

FIFTH CLAIM OF RELIEF

*Derivative Complaint for Unjust Enrichment against
RowCal Property Management and RowCal Construction Company*

165. R&H Defendants incorporate by reference all of the Paragraphs set forth above as though fully set forth herein.

166. R&H Defendants were and are members of the Community at the time of the Special Assessment.

167. Members of the R&H Defendants sent a demand letter to the Association requesting that it resolve the issues alleged in these Counterclaims, including the limits in the declaration on insurance deductibles and the legality of the special assessments.

168. In response to the demand letter, the Association filed this lawsuit against the members of R&H Defendants and denied the relief sought in the demand letter.

169. R&H Defendant adequately and fairly represents the interest of the other members of the Community, as all are required to pay the special assessment for the insurance deductible, and no one in the Community should be required to pay the special assessment when blatantly flies in violation of the Declaration.

170. R&H Defendants sent a demand letter requesting that the Association stop the special assessment, cease violating the Declaration, and use bids that are market rate, rather than the Bid from RCCC.

171. RowCal Property Management and RowCal Construction Company both entered into contracts with the Community.

172. Both RowCal Property Management and RowCal Construction Company received benefits from the contracts with the Community.

173. The benefits received by RowCal Property Management and RowCal Construction Company both were at the expense of the Community when the Community overpaid for the roof repairs in the amount of \$2,199,512.22.

174. Without commensurate compensation, it is unjust for RowCal Property Management and RowCal Construction Company to retain the benefit.

175. The Community has been damaged in an amount to be determined at trial.

SIXTH CLAIM FOR RELIEF
Breach of Fiduciary Duty

176. R&H Defendants incorporate by reference all of the Paragraphs set forth above as though fully set forth herein.

177. The Association, as a homeowners' association, has fiduciary duties to the R&H Defendants as homeowners in the affected Community.

178. Specifically, a homeowners' association has a fiduciary duty to homeowners in the community. *Colorado Homes Ltd., v. Loech-Wilson, et. al.*, 43 P.3d 718, 721-22 (Colo. App. 2001).

179. The Association has breached that fiduciary duty by, without limitation by:

- a. violating the Declaration when it secured property insurance coverage with a deductible in excess of \$3,112,817.26 when the Declaration states that the insurance deductibles are limited to the lesser of 1% of the total coverage or \$10,000.00;
- b. failing to disclose the special assessment to homeowners within the Community,
- c. choosing the most expensive contract to repair the hail damage;
- d. failing to disclose the hail damage and the special assessment in a timely manner to the Community;
- e. signing a contract with RowCal Property Management that does not represent the best interest of the Community, and;
- f. signing a contract with RowCal Construction Company that does not represent the best interest of the Community.

180. The Association has acted arbitrarily and/or capriciously by failing to perform the functions of a board and violating the Governing Documents.

181. The Association's breach of fiduciary duty has caused damage to R&H Defendants, including, without limitation, reduced property values and being assessed a special assessment of \$20,752.03 for the payment of the insurance deductible.

182. R&H Defendants now accumulate attorneys' fees based upon the Association's actions and breach of fiduciary duty, which R&H Defendants are entitled to recover pursuant to Colorado law and/or the Declaration.

183. R&H Defendants have been damaged by the Association's breach of fiduciary duty in an amount to be determined at trial.

SEVENTH CLAIM FOR RELIEF

Breach of Contract/Covenant

184. R&H Defendants incorporate by reference all of the Paragraphs set forth above as though fully set forth herein.

185. R&H Defendants and the Association agreed to the terms within the governing documents of the Community, including, but not limited to the Declaration.

186. The Association agreed to manage the community pursuant to the terms within the Governing Documents.

187. The Declaration constitute a legally binding contract supported by adequate consideration.

188. R&H Defendants performed all of their obligations in accordance with the Declaration.

189. The Association breached the contract by failing to comply with the terms of the Declaration.

190. Specifically, but without means of limitation, the Association violated, and continues to violate, the Declaration when:

- a. it secured property insurance coverage with a deductible in excess of \$3,112,817.26 when the Declaration states that the insurance deductibles are limited to the lesser of 1% of the coverage or \$10,000.00;

- b. failing to disclose the special assessment to homeowners within the Community;
- c. choosing the most expensive contract to repair the hail damage;
- d. failing to disclose the hail damage and the special assessment in a timely manner to the Community;
- e. signing a contract with RowCal Property Management that does not represent the best interest of the Community, and;
- f. signing a contract with RowCal Construction Company that does not represent the best interest of the Community.

191. The Association's breach of the Declaration is material.

192. R&H Defendants now accumulate attorneys' fees based upon the Association's actions and breach of the contract, which they are entitled to recover pursuant to Colorado law and/or the Declaration.

193. R&H Defendants have been damaged by the Association's breach of the Declaration in an amount to be determined at trial.

EIGHTH CLAIM FOR RELIEF

Injunction

194. R&H Defendants incorporate by reference all of the Paragraphs set forth above as though fully set forth herein.

195. R&H Defendants have suffered harms as a direct result of the Association's failure to properly uphold the Declaration.

196. R&H Defendants have also suffered harm as a direct result of the Association's mismanagement of the Community, including without limitation by:

- a. failing to maintain insurance coverage within the obligations of the Declaration;
- b. failing to accept the best bid to repair the hail damage;

- c. failing to notify the homeowners of the pending special assessment in a timely manner;
- d. signing a contract with RowCal Property Management that does not represent the best interest of the Community;
- e. signing a contract with RowCal Construction Company that does not represent the best interest of the Community, and;
- f. failure to act within the best interests of the Community as a whole.

197. The principles of justice and equity require the Association be enjoined from engaging in the conduct, acts, and omissions stated above.

198. Failure to enjoin the Association would cause irreversible economic harm to R&H Defendants in the form of reduced home values, payment of the \$20,751.12 assessment, and cause considerable harm to the individual homeowners of the Community.

199. R&H Defendants have no plain, speedy, and adequate remedy at law.

200. A permanent injunction will not unduly harm or prejudice the Association, which should not be engaging in the action in the first place.

201. A permanent injunction will not adversely affect the public interest since all members of the Community benefit from higher home values and not having to pay the special assessment.

202. Accordingly, R&H Defendants seek a permanent injunction stopping the Association from forcing the homeowners to pay the special assessment of \$20,751.12 and stop collection efforts, fees, and interests being charged to the homeowners.

NINTH CLAIM OF RELIEF

Failure to Disclose Hail Damage, Insurance, and Special Assessment

203. R&H Defendants incorporate by reference all of the Paragraphs set forth above as though fully set forth herein.

204. The Association has a duty to disclose financial information to the homeowners of the Community, including special assessments. C.R.S. § 38-33.3-209.4.

205. The Association failed to disclose the special assessment in a timely manner and failed to disclose the hail damage, which has significant financial implications.

206. The Association has a duty to disclose when certain types of insurance are unavailable or cancelled. C.R.S. § 38-33.3-313.

207. The Association failed to disclose that it was unable to obtain insurance that complied with the Declaration.

208. As a result of the Association's failure to disclose, R&H Defendants and the homeowners of the Community were damaged by the failure to disclose.

209. All the R&H Defendants were under insured due to the large difference between the deductible limitation in the Declaration and the deductible secured by the Association.

210. Individual members of R&H Defendants were unaware of the conditions of the properties they were purchasing, and the large amount of liability they were accumulating when they purchased the properties.

211. As a result of the Association's failure to disclose the insurance and hail damage, R&H Defendants were damaged by an amount to be determined at trial.

ELEVENTH CLAIM OF RELIEF

Breach of Contract against Counterclaim Defendant RowCal Property Management

212. R&H Defendants incorporate by reference all of the Paragraphs set forth above as though fully set forth herein.

213. R&H Defendants have privity of contract with the Property Management Contract between the Association and RCPM as a result of R&H Defendants being members of the Community.

214. R&H Defendants are also beneficiaries of this contract and have standing to bring a breach of contract claim against RCPM as a result of being beneficiaries of the Property Management Contract.

215. R&H Defendants and the Association agreed to the terms within the governing documents of the Community, including, but not limited to the Declaration.

216. The Association and RCPM entered into an agreement for RCPM to manage the Community pursuant to the terms within the Governing Documents.

217. That signed agreement constitutes a legally binding contract between the Association and RCPM.

218. The Association performed all its obligations under the contract including but not limited to paying the monthly amounts due under the contract.

219. RCPM breached the contract with the Association.

220. Specifically, but without means of limitation, RCPM violated, and continues to violate, the Property Management Contract by not acting in the best interests of the Association when it forced the Association to use its contractor to repair the hail damage at over two million dollars more than the market rate and acted in its own benefit and to the detriment of the Community

221. RCPM's Breach of the Property Management Contract is material

222. R&H Defendants now accumulate attorneys' fees based upon the RCPM's actions and breach of the contract, which they are entitled to recover pursuant to Colorado law, the Property Management Contract and/or the Governing Documents.

223. R&H Defendants have been damaged by the RCPM's breach of Property Management Contract in an amount to be determined at trial.

TWELTH CLAIM OF RELIEF

Breach of the Duty of Good Faith and Fair Dealing by RowCal Property Management

224. R&H Defendants incorporate by reference all of the Paragraphs set forth above as though fully set forth herein.

225. R&H Defendants have privity of contract with the Property Management Contract between the Association and RCPM as a result of R&H Defendants being members of the Community.

226. R&H Defendants are also beneficiaries of this contract and have standing to bring a breach of contract claim against RCPM as a result of being beneficiaries of the Property Management Contract.

227. R&H Defendants and the Association agreed to the terms within the Governing Documents of the Community, including, but not limited to the Declaration.

228. The Association and RCPM entered into an agreement for RCPM to manage the Community pursuant to the terms within the Governing Documents.

229. That signed agreement constitutes a legally binding contract between the Association and RCPM.

230. The Association performed all its obligations under the Property Management Contract including but not limited to paying the monthly amounts due under the contract.

231. In every contract, there exists a duty of good faith and fair dealing. C.R.S. § 4-1-304.

232. RCPM breached the duty of good faith and fair dealing when it forced the Association to use its vendor at double the market rate to repair the hail damage, costing the Association, the Community, and R&H Defendants tens of thousands of dollars per homeowner.

233. The Property Management Contract has terms that are discretionary for RCPM.

234. One of those terms is RCPM's ability to choose and force the Association to use its vendors.

235. RCPM exercised this discretionary term when it forced the Association to use RCCC to repair the hail damage.

236. RCCC's bid to repair the hail damage was \$3,605,485.88, the exact amount that the claims adjuster determined was the total amount of damage to the Community. As the insurance deductible was almost all of the bid, each homeowner in the community is now required to pay \$20,752.12. The total damage to the Community is \$3,112,817.26.

237. Other bids were received for less than half the price of RCCC's bid.

238. RCPM only received one "bid" from RCCC for the exact amount the claim's adjuster determined was the cost to repair the hail damage. RCPM did not obtain any other bids from other contractors that would have been more competitive and at market rates.

239. RCPM breached its duty of good faith and fair dealing when it engaged in self-dealing and only received one bid to repair the hail damage from its sister company RCCC, and refused to obtain any other bids from other contractors that would have been more competitive and at market rates.

240. RCPM's breach of good faith and fair dealing has damaged the Association, the Community, and R&H Defendants in an amount to be determined at trial.

THIRTEENTH CLAIM OF RELIEF

Negligence

241. R&H Defendants incorporate by reference all of the Paragraphs set forth above as though fully set forth herein.

242. To prevail on a claim of negligence, the plaintiff must show: (1) that the defendant owed him or her a legal duty of care; (2) that the defendant breached that duty; (3) that the plaintiff

suffered injury; and (4) the cause of that injury was the defendant's conduct. *Laughman v. Girtakovskis*, 2015 COA 143, ¶ 9, 374 P.3d 504, 506.

243. The Association has a duty to disclose financial information to the homeowners of the Community, including special assessments. C.R.S. § 38-33.3-209.4.

244. The Association has a duty to disclose when certain types of insurance are unavailable or cancelled. C.R.S. § 38-33.3-313.

245. The Association breached those duties when it failed to disclose the issues with the insurance deductible and the issue of the special assessment to the Community, including to R&H Defendants.

246. As a result of the Association's failure to disclose, R&H Defendants suffered injury as a result of having to pay \$20,752.12 either fully or partially out of their own pocket.

247. The Community's homeowners as a whole have been damaged by the Association breaching its duties.

248. The Association's actions injured R&H Defendants.

249. R&H Defendants have been damaged by the Association's actions in an amount to be determined at trial.

JURY TRIAL

250. R&H Defendants demand a trial by Jury on all available claims.

WHEREFORE, Defendant R&H Defendants pray for judgment as follows:

A. A Declaratory Judgment that the Plaintiff, Soaring Eagles Townhomes Association, Inc., was not authorized to subject the Community to a Property Insurance coverage with a deductible greater than \$10,000.00, that the Association did not have the authority to levy a special assessment for the coverage of the \$3,112,817.26 deductible for the hail damage, the Association breached its

fiduciary duty by choosing the RowCal Construction contract instead of the other more reasonable bids, and the Association breached its fiduciary duty by choosing to contract with RowCal Property Management Company with terms that are detrimental to the Community as a whole.

B. A Declaratory Judgment that all or part of the Property Management Contract between the Association and RMPC is void and unenforceable because it is against public policy.

C. Monetary judgment for all past and future damages to Defendants, The Precision Family Trust, Maria Mercado, Kelly Robinson, Annette Robinson, Enyshia Atencio, Michael Blanchette, Sindi Blanchette, Brandon Tanner, Ashleigh Tanner, Eric Calabrese, Yanelis Calabrese, Maurice Motley, Kaitlin Palmer, and Romero Thornton, caused by Plaintiff, Soaring Eagles Townhomes Association, Inc., in an amount to be proven at trial including diminution in value and annoyance and discomfort;

D. An injunction order from the Court requiring the Association to take the following actions:

- a. Cease collection efforts for the Special Assessment;
- b. Return any collected amounts back to the Members of the Community; and
- c. Obtain a new property insurance policy with a deductible that abides by the Declaration;

E. Costs of this Suit;

F. Pre-judgment and post-judgment interest to the fullest extent permitted by law;

G. Reasonable attorneys' fees to the fullest extent permitted by law; and

H. Such other and further relief as the Court deems just and proper.

Respectfully submitted this 7th day of November 2025.

ROBINSON & HENRY, P.C.

BY: /s/ Robert Schifferdecker

Robert S. Schifferdecker, #56193

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on November 7, 2025, a true and accurate copy of this **Verified Answer and Counterclaims** was filed electronically with the Court and served upon the following parties via U.S. regular mail, postage prepaid, as indicated below:

Plaintiff:
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Anthony T. Smith, #55579
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Via Colorado Courts eFiling

ROBINSON & HENRY, P.C.
/s/ Sami L. Gysin
Sami L. Gysin, Paralegal

