

DISTRICT COURT, COUNTY OF BROOMFIELD,  
STATE OF COLORADO  
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Broomfield, Colorado 80020  
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RED SKY RANCH METROPOLITAN DISTRICT,

Plaintiff,

v.

VAIL ASSOCIATES, INC., a Colorado corporation;  
VAIL RESORTS, INC., a Delaware corporation; VR  
HOLDINGS, INC., a Colorado corporation; VAIL  
RESORTS DEVELOPMENT COMPANY, a Colorado  
corporation; THE VAIL CORPORATION, a Colorado  
corporation; and HOLLAND CREEK METROPOLITAN  
DISTRICT, a political subdivision,

Defendants.

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Case Number:

Div.:

**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiff Red Sky Ranch Metropolitan District, through its undersigned attorneys, Ogborn Mihm, LLP and Seter & Vander Wall, P.C., hereby brings this Complaint for Declaratory Judgment against Defendants Vail Associates, Inc.; Vail Resorts, Inc.; VR Holdings, Inc.; Vail Resorts Development Company; The Vail Corporation; and Holland Creek Metropolitan District, as follows:

### **PARTIES**

1. Plaintiff Red Sky Ranch Metropolitan District (“Red Sky Ranch Metro District”) is a quasi-municipal corporation and political subdivision of the State of Colorado.

2. Defendant Vail Associates, Inc. (“Vail Associates”) is a Colorado corporation. Vail Associates is registered with the Colorado Secretary of State to do business in Colorado, and its principal place of business is 390 Interlocken Crescent, Broomfield, Colorado 80021.

3. Defendant Vail Resorts, Inc. (“Vail Resorts”) is a Delaware corporation. Vail Resorts is registered with the Colorado Secretary of State to do business in Colorado, and its principal place of business is 390 Interlocken Crescent, Broomfield, Colorado 80021.

4. Defendant VR Holdings, Inc. (“VR Holdings”) is a Colorado corporation. VR Holdings is registered with the Colorado Secretary of State to do business in Colorado, and its principal place of business is 390 Interlocken Crescent, Broomfield, Colorado 80021.

5. Defendant Vail Resorts Development Company (“Vail Resorts Development”) is a Colorado corporation. Vail Resorts Development is registered with the Colorado Secretary of State to do business in Colorado, and its principal place of business is 390 Interlocken Crescent, Broomfield, Colorado 80021.

6. Defendant The Vail Corporation is a Colorado corporation registered with the Colorado Secretary of State to do business in Colorado, and its principal place of business is 390 Interlocken Crescent, Broomfield, Colorado 80021.

7. Defendants Vail Associates, Vail Resorts, VR Holdings, Vail Resorts Development, and The Vail Corporation are collectively referred to herein as the “Vail Defendants.”

8. Defendant Holland Creek Metropolitan District (“Holland Creek Metro District”) is a quasi-municipal corporation and political subdivision of the State of Colorado.

9. Holland Creek Metro District is 100% controlled by the Vail Defendants and is an agent of the Vail Defendants. The Vail Defendants and Holland Creek Metro District are collectively referred to herein as “Defendants.”

10. Jurisdiction and venue for this action are properly set in the District Court, Broomfield County, State of Colorado, pursuant to Rule 98 of the Colorado Rules of Civil Procedure.

### **INTRODUCTION**

11. This is a declaratory judgment action concerning a residential community development located in Eagle County, Colorado and known as “Red Sky Ranch.”

12. Red Sky Ranch Metro District is a quasi-municipal entity that is responsible for providing water services, wastewater services, roadways, storm sewer and mosquito control to Red Sky Ranch.

13. Red Sky Ranch Metro District is now controlled by the homeowners of the Red Sky Ranch residential community.

14. Prior to the homeowners gaining control, Red Sky Ranch Metro District was previously controlled by a Board of Directors who were employed by or otherwise affiliated with the Vail Defendants. During this time, without the knowledge of the homeowners, as described below, the Defendants improperly encumbered Red Sky Ranch Metro District with millions of dollars of future indebtedness that is purportedly owed to the Defendants.

15. Red Sky Ranch Metro District requests the Court’s interpretation of: (i) the Red Sky Ranch Metro District’s purported future indebtedness to the Defendants for infrastructure and services for Red Sky Ranch; and (ii) the rights of the Red Sky Ranch Metro District to own, and the obligations of the Defendants to provide, basic water rights essential to the support and operation of the Red Sky Ranch Metro District and service to Red Sky Ranch.

16. A present and justiciable controversy exists between Plaintiff Red Sky Ranch Metro District and the Defendants regarding Red Sky Ranch Metro District’s purported payment obligations and when such purported payment obligations are extinguished. A declaratory judgment would terminate this controversy.

17. Additionally, a present and justiciable controversy exists between plaintiff Red Sky Ranch Metro District and the Defendants regarding the Vail Defendants’ obligations to convey water rights to Holland Creek Metro District for the benefit of the Red Sky Ranch Metro District and the Red Sky Ranch homeowners. A declaratory judgment would terminate this controversy.

18. On behalf of the families that live in Red Sky Ranch, Plaintiff Red Sky Ranch Metro District has repeatedly attempted to sit down and meet with the Defendants to discuss a reasonable resolution of these disputes, but the Defendants refuse to meet with the Plaintiff and refuse to address the disputes.

19. Plaintiff Red Sky Ranch Metro District seeks a declaratory judgment: (i) that certain purported obligations for payments to defendant Holland Creek Metro District are invalid; and (ii) that the Vail Defendants are obligated to convey to Red Sky Ranch Metro District basic water rights essential for the support and operation of the Red Sky Ranch community and homeowners.

## **FACTUAL ALLEGATIONS**

### **The Consolidated Service Plan and Master IGA**

20. The documents referenced below are incorporated herein as if each was set forth in their entirety.

21. In the late 1990s, one or more of the Vail Defendants or their affiliates began the planning and development of “Red Sky Ranch,” a residential community located near Wolcott, Eagle County, Colorado.

22. Red Sky Ranch consists of approximately 780 acres and 87 single-family home-sites and cluster homes and two golf courses.

23. The Vail Corporation was the developer of Red Sky Ranch and the declarant under the Covenants, Conditions and Restrictions for Red Sky Ranch dated July 31, 2001 (“CCRs”). Construction occurred over several years.

24. On September 12, 2000, at the request of the Vail Defendants, the Eagle County Board of Commissioners approved the formation of two metropolitan districts, the Red Sky Ranch Metro District and the Holland Creek Metro District (collectively, the “Districts”), in conjunction with the approval of the Districts’ Consolidated Service Plan for the Red Sky Ranch area (the “Service Plan”).

25. At the time of formation, and for many years thereafter, the Vail Defendants maintained control over both the Red Sky Ranch Metro District and the Holland Creek Metro District by having the Boards of Directors of the two Districts consist solely of individuals who were employed by or otherwise affiliated with the Vail Defendants.

26. The Holland Creek Metro District was, and still is, an uninhabitable drainage way in which no development is planned and no lots can be sold. Since there will be no lots created and sold in Holland Creek Metro District, the original developer (the Vail Defendants) will control the appointment of the Board of Directors of Holland Creek Metro District in perpetuity.

27. By contrast, the Vail Defendants were eventually required by law to cede control of Plaintiff Red Sky Ranch Metro District to the homeowners of Red Sky Ranch.

28. The Vail Defendants still maintain 100% control over the Holland Creek Metro District, but the Red Sky Ranch Metro District eventually came to be controlled by the homeowners of Red Sky Ranch in or around 2017.

29. In 2001, during the time that both Metro Districts' governing Boards of Directors consisted of solely of employees of the Vail Defendants, the Districts entered into an intergovernmental agreement with each other providing that (i) Holland Creek Metro District (known as the "Service District") will own, operate, maintain, and construct the infrastructure facilities benefitting the Districts, and (ii) Red Sky Ranch Metro District (known as the "Financing District") will pay all costs related to the construction, operation, and maintenance of such facilities. This intergovernmental agreement is entitled the "District Facilities Master IGA" ("Master IGA") dated June 8, 2001.

30. This dual metro district structure, in which one metro district owns and operates a development's infrastructure facilities, but the other metro district is required to pay for all of the costs relating to the infrastructure facilities, is commonly referred to as a "Master and Servant" district structure. Here, the "Master" district (Holland Creek Metro District) owns all of the infrastructure but pays for nothing, while the "Servant" district (Red Sky Ranch Metro District) owns nothing but pays for all of the infrastructure through taxes on the homeowners.

31. By arranging the structure in this way, the Vail Defendants have continued to make profits from this residential developments decades after the original homes were sold, by requiring on-going payments from Red Sky Ranch Metro District to the Vail Defendants' agent Holland Creek Metro District.

32. On June 8, 2001, the Vail Defendants caused two separate entities that it simultaneously controlled (Holland Creek Metro District and Red Sky Ranch Metro District) to enter an intergovernmental agreement with each other: the Master IGA.

33. The same individuals (who were employed by or affiliated with the Vail Defendants) served simultaneously as the Boards of Directors of both Defendant Holland Creek Metro District and Red Sky Ranch Metro District at the time that the Master IGA was entered into.

34. The individuals that served simultaneously on the Boards of the two Metro Districts had prohibited conflicts of interest at the time that the Master IGA was entered into.

35. The terms in the Master IGA were not negotiated as an arms-length transaction. Rather, the intent was to create a "Master" district (Holland Creek Metro District) and a "Servant" district (Red Sky Ranch Metro District).

36. Under the terms of the Master IGA, Red Sky Ranch Metro District was obligated to pay for the construction and initial financing of the infrastructure for Red Sky Ranch.

37. Further, under the terms of the Master IGA, Red Sky Ranch Metro District is purportedly required to pay on-going “capital obligations” to Holland Creek Metro District as well as on-going “service obligations” for the costs of operating and maintaining the facilities of Red Sky Ranch.

38. Under the terms of the Master IGA, the Vail Defendants improperly arranged for Red Sky Ranch Metro District to contract away Red Sky Ranch Metro District’s own legislative powers that were delegated from the Colorado state legislature.

39. In other words, in order to ensure that they would continue to profit from this residential development decades after the homes were sold, the Vail Defendants improperly saddled Red Sky Metro District with unreasonable and onerous contractual terms and millions of dollars of debt obligations that require Red Sky Metro District to make on-going future payments to Holland Creek Metro District, which in turn forwards these payments to the Vail Defendants.

40. As stated in Holland Creek Metro District’s recent 2020 audited financial statements:

The [Holland Creek Metro] District is the service district in a dual district structure whereby the [Holland Creek Metro] District has and will continue to construct and operate the infrastructure for the Red Sky Ranch subdivision. The [Holland Creek Metro] District has entered into a District Facilities Construction and Service Agreement with Red Sky Ranch Metropolitan District and pursuant to this agreement, the [Holland Creek Metro] District is obligated to construct and provide the initial financing for the primary infrastructure for the Red Sky Ranch area. Red Sky Ranch Metropolitan District is the financing district and as such, Red Sky Ranch Metropolitan District will ultimately pay a “capital obligation” to the [Holland Creek Metro] District to pay the costs of public infrastructure as well as a “service obligation” for the excess costs of operating and maintaining the facilities. The [Holland Creek Metro] District will then use the funds received from Red Sky Ranch Metropolitan District to pay off the [Holland Creek Metro] District’s debt.

41. As part of this arrangement, on November 7, 2000, ten electors of Red Sky Ranch Metro District (who were qualified solely by the Vail Defendants) voted in a duly called and conducted an “election” to approve Red Sky Ranch Metro District’s incurrence of debt in an amount not to exceed \$36,382,378. “Ballot Issue L” approved by the Red Sky Ranch Metro District electors authorized the incurrence of the debt:

SUCH DEBT TO CONSIST OF A CONTRACT WITH ONE OR MORE OTHER POLITICAL SUBDIVISIONS OF THE STATE AND WHICH WILL OBLIGATE THE FINANCING DISTRICT [Red Sky Ranch Metro District] TO PAY THE COSTS OF ACQUIRING, CONSTRUCTING, OR OTHERWISE PROVIDING, AND THE COSTS OF OPERATING AND MAINTAINING CERTAIN WATER, STREET, TRAFFIC

SAFETY, TELEVISION RELAY AND TRANSLATION, TRANSPORTATION, PARK AND RECREATION, MOSQUITO AND PEST CONTROL AND SANITATION FACILITIES AND IMPROVEMENTS, ALL AS MAY BE PROVIDED IN SUCH CONTRACT; SUCH CONTRACT TO BE PAYABLE IN NOT MORE THAN 30 YEARS AFTER INCURRENCE . . . .

*Ballot Issue L, November 7, 2000 Election of electors of Red Sky Ranch Metro District.*

42. As part of this arrangement, on June 27, 2001, Holland Creek Metro District issued \$12 million of Variable Rate Revenue Bonds (the “Series 2001 Bonds”) to finance initial construction, operation, and maintenance of municipal infrastructure. The Series 2001 Bonds mature on June 1, 2041. According to Holland Creek Metro District’s 2019 audited financial statements, Holland Creek Metro District’s “financial plan is for these bonds to be refunded through proceeds from general obligation bonds to be issued in the future” by Red Sky Ranch Metro District and conveyed to Holland Creek Metro District through capital improvement fees.

43. As part of this arrangement, on August 21, 2002, Holland Creek Metro District and Red Sky Ranch Metro District entered into a loan agreement whereby Red Sky Ranch Metro District “borrowed” \$5,228,291 from Holland Creek Metro District. This amount was then used to create a promissory note between Holland Creek Metro District and Defendant VR Holdings, Inc., the proceeds of which were to be used to fund construction costs over and above the proceeds from the Series 2001 Bonds.

44. The loan agreement and the promissory note were both entered into after lots within the development were sold to Red Sky Ranch homeowners. However, the loan agreement and the promissory note were both entered into without the knowledge and consent of, and without consideration for, the Red Sky Ranch homeowners.

45. According to Holland Creek Metro District’s 2019 audited financial statements, on December 31, 2019, Holland Creek Metro District had drawn \$3,961,554 on the promissory note, the full amount of which remained outstanding. Further, interest in the amount of \$3,860,296 had accrued on the promissory note.

46. By their own terms, the loan and the promissory note are “junior and subordinate” to the other purported debts owed by Red Sky Ranch Metro District to Holland Creek Metro District, including the debt purportedly owed pursuant to *Ballot Issue L, November 7, 2000 Election of electors of Red Sky Ranch Metro District* described above.

47. Special districts, like Red Sky Ranch Metro District, are created by and have powers delegated from the Colorado state legislature. The powers of the district board of directors delegated by the general assembly are found in Title 32, C.R.S. Specific powers are enumerated in § 32-1-1001, C.R.S. Colorado courts have consistently ruled that the waiver by contract or otherwise of a special district’s “legislative powers” is void.

48. Under Colorado law, a quasi-governmental entity, like Red Sky Ranch Metro District, which imposes taxes, is not permitted to contract away its own legislative powers, as was engineered here by the Vail Defendants in the Master IGA dated June 8, 2001.

49. Thus, this Court can find that the Master IGA dated June 8, 2001 is void *ab initio*, or otherwise invalid and unenforceable.

**Holland Creek Metro District’s Recognition of the 2030 Time Limit  
for Red Sky Ranch Metro District’s Payment Obligation**

50. Red Sky Ranch Metro District has, over time, issued bonds and imposed and collected taxes as sources of paying Holland Creek Metro District for construction of the infrastructure and facilities benefitting Red Sky Ranch Metro District.

51. According to the audited financial statements of Holland Creek Metro District, under the Master IGA, Red Sky Ranch Metro District has a Net Capital and Service Obligation of \$12,107,298 to Holland Creek Metro District as of December 31, 2019. As noted in the 2020 audited financial statement, Holland Creek Metro District and its auditors recognized that this amount is likely uncollectable from Red Sky Ranch Metro District given Ballot Issue L’s 30-year limitation:

Under the [Construction and Service] Agreement, [Red Sky Ranch Metro District] owes [Holland Creek Metro District] \$12,107,298 at December 31, 2019. However, due to a time limitation imposed by the Financing District’s November 7, 2000 Ballot Issue L to repay the obligation by 2030, the Financing District may not be able to fully fund the obligation through the issuance of bonds or property taxes. The Service District has therefore estimated an allowance for doubtful accounts in the amount of \$5,230,496, resulting in a net capital and service obligation receivable of \$6,876,802.

The estimated allowance for doubtful accounts is based on projections of bonds to be issued by the Financing District in 2024, 2026, 2028, and 2030, which are based on the Financing District’s projections of annual assessed valuation amounts through 2030.

*2020 Audited Financial Statements of Holland Creek Metro District.*

52. In its 2018 and 2019 audited financial statements, Holland Creek Metro District also reported that Red Sky Ranch Metro District owed Holland Creek Metro District \$12,289,596 as of December 31, 2018 but also noted a “allowance for doubtful accounts” in the amount of \$5,230,496 for the same reason as stated in the 2020 audited financials – the limitations contained in the Red Sky Ranch Metro District electorate’s approval of the terms of the district’s debt.

53. In other words, Defendants Holland Creek Metro District and the Vail Defendants have admitted in the above referenced audited financial statements that a great portion of the purported debt owed by Red Sky Ranch Metro District is not collectable because it will not be paid prior to the 2030 cut-off date.

54. This allowance for doubtful accounts represents a significant projected reduction in Red Sky Ranch Metro District's indebtedness to Holland Creek Metro District. Based upon the projections contained in the 2019 audited financials, the allowance represents 43 percent of the outstanding Net Capital and Service Obligation Receivable from Red Sky Ranch Metro District.

55. Based upon the projections of Holland Creek Metro District and its auditors, the likelihood that Red Sky Ranch Metro District will have completely paid Holland Creek Metro District amounts owing under the Master IGA by 2030 is extremely remote. Whether any obligations unpaid by 2030 are uncollectable in light of the time limitation contained in Ballot Issue L – or whether such obligations remain collectable – is a matter of disagreement and actual controversy between Holland Creek Metro District and Red Sky Ranch Metro District. The Vail Defendants have failed to acknowledge Ballot Issue L's time limitation despite Red Sky Ranch Metro District's repeated requests for confirmation.

56. As the purported debt described above will not be paid prior to the 2030 cut off date, and the loan agreement and promissory note referred to in paragraphs 43 through 46 above are by their own terms "junior and subordinate" to the purported debt described above, the loan agreement and promissory note are not enforceable.

57. Whether any unpaid debts of Red Sky Ranch Metro District to Holland Creek Metro District for Capital and Service Obligation – or other items – would be extinguished or remain collectable after 2030 (or are collectable at all under any circumstances) is a matter of current and great significance to Red Sky Ranch Metro District.

58. The extinguishment of any unpaid obligations of Red Sky Ranch Metro District under the Master IGA as of 2030 will permit the use of Red Sky Ranch Metro District tax revenues for the payment of other metro district obligations. Ultimately, the extinguishment will also ultimately permit the lowering of ad valorem taxes on residents.

### **The Water Rights**

59. In October 2002, Vail Associates and Holland Creek Metro District entered into a Water Lease with Option to Purchase effective January 1, 2002. Under this agreement, Vail Associates agreed to lease water rights to Holland Creek Metro District, for the benefit of Red Sky Ranch Metro District and the Red Sky Ranch area, through June 30, 2017.

60. The Water Lease with Option to Purchase contemplated that the Red Sky Ranch residential community would be completely "built out" by June 30, 2017, and that the water

designated for purchase under the purchase option would suffice to satisfy the requirements of the Red Sky Ranch area.

61. The Water Lease with Option to Purchase reflects the parties' intent that the Vail Defendants would sell and convey to Holland Creek Metro District, for the benefit of Red Sky Ranch Metro District and the Red Sky Ranch area, sufficient water rights to support Red Sky Ranch at full build-out.

62. The amount of water provided by the Vail Defendants under the lease is less than the amount of water that a water study commissioned by Eagle County found would be necessary for the Red Sky Ranch Community.

63. In May 2017, Holland Creek Metro District exercised the purchase option under the Water Lease with Option to Purchase. Vail Associates executed a Special Warranty Deed and Agreement on May 5, 2017 by which it conveyed to Holland Creek Metro District certain water rights identified therein.

64. Additionally, in conjunction with Holland Creek Metro District's exercise of the purchase option, Vail Associates entered into a Permanent Water Supply Contract dated May 5, 2017 by which Vail Associates agreed to deliver the water rights identified therein to Holland Creek Metro District "in perpetuity" in exchange for Holland Creek Metro District's annual payment for such water rights. The annual payment is calculated as 110% of the assessment levied on 50 shares of Vail Associates' Class A Series 1 stock in the Eagle Park Reservoir Co. in such year.

65. The 2002 projections of the water requirements of to serve Red Sky Ranch Metro District and Red Sky Ranch understated what was actually required in 2017 when Holland Creek Metro District exercised the purchase option and entered into the Permanent Water Supply Contract. Holland Creek Metro District therefore entered into a series of water leases with Vail Associates to obtain additional water to support the Red Sky Ranch Metro District and the Red Sky Ranch area. Under these continuing leases, which commenced in 2017, Holland Creek Metro District leases additional water at a cost of \$14.50 for each 1000 gallons of raw water used plus costs of diversion, pumping and transportation to the Holland Creek Metro District water treatment plant.

66. Since at least 2017, Red Sky Ranch Metro District has expressed to Holland Creek Metro District and one or more of the Vail Defendants' agents the concerns of Red Sky Ranch Metro District about its water needs and the uncertainties arising from the Vail Defendants' refusal to commit to provide to Holland Creek Metro District water rights for Holland Creek Metro District's ownership. As reflected in the 2017 Audited Financial Statements of Holland Creek Metro District,

**It has been brought to the District's attention that additional water rights will be required to meet the developments future needs. The District is presently in the process of negotiating with Vail Associates the terms of such a water rights lease or acquisition.**

67. In an August 2017 meeting of the Board of Directors of Red Sky Ranch Metro District, a homeowner expressed concern about Red Sky Ranch Metro District's water needs and the uncertainties surrounding the Vail Defendants' protracted negotiations with Holland Creek Metro District and Red Sky Ranch Metro District regarding conveyance of permanent water rights for the Red Sky Ranch area. According to the minutes of that Board Meeting, a representative of Vail Resorts "assured the Board that these matters are being actively discussed at VR."

68. As of the date of this Complaint, however, the Vail Defendants have made no proposal for the conveyance of permanent water rights to satisfy the water requirements of the Red Sky Ranch area.

69. The Defendants' refusal to commit to providing sufficient water to the Red Sky Ranch area is a matter of current and great significance to Red Sky Ranch Metro District.

**FIRST CLAIM FOR RELIEF:**

**REQUEST FOR DECLARATORY JUDGMENT CONCERNING  
THE EXTINGUISHMENT OF RED SKY RANCH METRO DISTRICT'S  
PURPORTED DEBT OBLIGATIONS AND THE STATUS OF THE MASTER IGA**

70. Plaintiff Red Sky Ranch Metro District incorporates by reference the paragraphs set forth above as if set forth fully herein.

71. Red Sky Ranch Metro District seeks declaratory relief, pursuant to the Colorado Declaratory Judgments Law, Section 13-51-101 et seq., C.R.S. (2003) and C.R.C.P. 57, on the following points:

- a. In the event that Red Sky Ranch Metro District's debt obligations to Holland Creek Metro District pursuant to the District Facilities Construction and Service Agreement are not paid in full within the 30-year time limit required by the voters in *Ballot Issue L, November 7, 2000*, then such debts are extinguished as of that date and are no longer collectable.
- b. Red Sky Ranch Metro District's debt obligations to Holland Creek Metro District pursuant to the loan agreement and promissory note referred to in paragraphs 43 through 46 above are not enforceable.
- c. Alternatively and/or additionally, the rights and obligations set forth in the Service Plan and Master IGA, including but not limited to the terms and conditions regarding the "Service District" and "Financing District" structure, and including but not limited to the purported debts described herein, are void *ab initio* and otherwise not enforceable against the Red Sky Ranch Metro District because they purport to restrict and/or eliminate

the District's rights, powers and duty to exercise its legislative power as a government entity.

72. In requesting this declaratory relief, Red Sky Ranch Metro District is requesting an interpretation of the rights, legal status, and relationships of the parties under the Colorado Declaratory Judgments law and the facts under its election questions and the Master IGA.

73. Such interpretation is appropriate under the provisions of the Colorado Declaratory Judgments Law, Section 13-51-101 et seq., C.R.S. (2003) and C.R.C.P. 57.

**WHEREFORE**, Red Sky Ranch Metro District prays that the Court determine the rights, status or other legal relations of the parties under the law and the facts, and for such other and further relief to which Red Sky Ranch Metro District may be entitled.

**SECOND CLAIM FOR RELIEF:**

**REQUEST FOR DECLARATORY JUDGMENT CONCERNING  
WATER RIGHTS FOR THE RED SKY RANCH AREA**

74. Plaintiff Red Sky Ranch Metro District incorporates by reference the paragraphs set forth above as if set forth fully herein.

75. Red Sky Ranch Metro District seeks declaratory relief, pursuant to the Colorado Declaratory Judgments Law, Section 13-51-101 et seq., C.R.S. (2003) and C.R.C.P. 57, that the Defendants are obligated to convey to Red Sky Ranch Metro District basic water rights essential for the support and operation of the Red Sky Ranch community and homeowners.

76. Red Sky Ranch Metro District has made demand on Holland Creek Metro District, in its role as the Service District obligated to ensure that the Red Sky Ranch area has a reliable source of water necessary to support the Red Sky Ranch area, to pursue this claim for declaratory relief against the Vail Defendants. Holland Creek Metro District has refused to do so. Red Sky Ranch Metro District therefore brings this claim derivatively on behalf of Holland Creek Metro District and for the benefit of Red Sky Ranch Metro District and the Red Sky Ranch area.

77. In requesting this declaratory relief, Red Sky Ranch Metro District is requesting an interpretation of the rights, legal status, and relationships of the parties under the Colorado Declaratory Judgments law and the facts.

78. Such interpretation is appropriate under the provisions of the Colorado Declaratory Judgments Law, Section 13-51-101 et seq., C.R.S. (2003) and C.R.C.P. 57.

**WHEREFORE**, Red Sky Ranch Metro District prays that the Court determine the rights, status or other legal relations of the parties under the law and the facts, and for such other and further relief to which Red Sky Ranch Metro District may be entitled.

### **PRAYER FOR RELIEF**

Plaintiff Red Sky Ranch requests that this Court enter judgment in its favor and against the Defendants for the following declaratory points:

- a. In the event that Red Sky Ranch Metro District's debt obligations to Holland Creek Metro District pursuant to the District Facilities Construction and Service Agreement are not paid in full within the 30-year time limit required by the voters in *Ballot Issue L, November 7, 2000*, then such debts are extinguished as of that date and are no longer collectable.
- b. Red Sky Ranch Metro District's debt obligations to Holland Creek Metro District pursuant to the loan agreement and promissory note referred to in paragraphs 43 through 46 above are not enforceable.
- c. Alternatively and/or additionally, the rights and obligations set forth in the Service Plan and Master IGA, including but not limited to the terms and conditions regarding the "Service District" and "Financing District" structure, and including but not limited to the purported debts described herein, are void *ab initio* and otherwise not enforceable against the Red Sky Ranch Metro District because they purport to restrict and/or eliminate the District's rights, powers and duty to exercise its legislative power as a government entity.
- d. Attorneys' fees and costs to the extent available by law.
- e. Any other relief this Court deems just and appropriate, including the appointment of a receiver.

Respectfully submitted this 23<sup>rd</sup> day of May 2022.

OGBORN MIHM LLP

/s/ Peter A. McClenahan

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