

DISTRICT COURT
CITY & COUNTY OF DENVER, COLORADO

City and County Building, Rm. 230
1437 Bannock Street
Denver, CO 80202

Plaintiff: EBERT METROPOLITAN DISTRICT,
a Colorado Special District,

v.

Defendant: TOWN CENTER METROPOLITAN
DISTRICT, a Colorado Special District.

*Attorneys for Defendant Town Center
Metropolitan District*

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Case Number: 2023CV32212

Division: 280

ANSWER AND AFFIRMATIVE DEFENSES

Defendant Town Center Metropolitan District (“Town Center”), through its undersigned counsel, for its Answer and Affirmative Defenses to the Complaint filed by plaintiff Ebert Metropolitan District (“Ebert” or “Plaintiff”), states as follows:

ANSWER¹

1. The allegations contained in this paragraph do not assert matters of fact but instead set forth Ebert’s contentions concerning the nature of this case, and accordingly no response to those allegations is required.

2. Town Center admits the allegations in this paragraph.

¹ The paragraph numbers in Town Center’s Answer correspond to the similarly numbered paragraphs in Ebert’s Complaint, and capitalized terms used in Town Center’s Answer shall have the same meaning given to such terms in Ebert’s Complaint.

3. Town Center admits the allegations in this paragraph.

4. The allegations contained in this paragraph do not assert matters of fact and therefore no response to the allegations of this paragraph is required.

5. Town Center agrees that venue in this Court is proper.

6. Town Center denies that this Court has subject matter jurisdiction over Ebert's First Claim For Relief, agrees that the Court has subject matter jurisdiction over Ebert's Third Claim For Relief, denies that Ebert's Third Claim For Relief seeks relief available pursuant to C.R.Civ.P. 106(a)(2) and affirmatively asserts that Ebert's Third Claim For Relief is moot and/or non-justiciable, and does not respond with respect to subject matter jurisdiction over Ebert's Second Claim For Relief because that claim has been dismissed.

7. Town Center admits the allegations of this paragraph.

8. Town Center admits the allegations of this paragraph.

9. Town Center admits that its boundaries and Ebert's boundaries both include property located in the area identified in the Complaint as Green Valley Ranch North.

10. Town Center admits the allegations contained in the first sentence of this paragraph. The remaining allegations of this paragraph contain simplistic attempted legal characterizations of special district arrangements, duties, and responsibilities not allegations of fact, and therefore no response to such remaining allegations is required.

11. Town Center denies the allegations of this paragraph because both Town Center and Ebert are duly formed political subdivisions of the State of Colorado and therefore, at all times following their creation, were governed and controlled by their respective Boards of Directors.

12. Town Center agrees that the Master Declaration attached to the Complaint as Exhibit A is a true and accurate copy of the Master Declaration as recorded on or about August 10, 2001, and further avers that the Master Declaration is legal document whose terms, considered in context, in their entirety, and in accordance with their intended meaning, establish its legal effect and accordingly Town Center denies all allegations of this paragraph characterizing the terms and/or legal effect of the Master Declaration to the extent inconsistent with the intended meaning and legal effect of that document considered in context, in their entirety, and in accordance with their intended meaning.

13. The allegations of this paragraph set forth Ebert's information and belief. Town Center has no knowledge of the basis for that information and belief, is accordingly lacks information sufficient to admit or deny the allegations of this paragraph, and therefore denies the same.

14. The allegations of this paragraph purport to characterize certain terms of the Master Declaration, which is a legal document whose terms, considered in context, in their entirety, and in accordance with their intended meaning, establish its legal effect and accordingly Town Center denies all allegations of this paragraph characterizing the terms and/or legal effect of the Master Declaration to the extent inconsistent with the intended meaning and legal effect of that document considered in context, in its entirety, and in accordance with its intended meaning.

15. Town Center admits that it owns the Golf Course but denies that it is responsible for the maintenance thereof because responsibility for the maintenance of the Golf Course is allocated between Town Center and the concessionaire responsible for operating the Golf Course pursuant to the terms of that certain Golf Course Concession Agreement dated as of April 14, 2000 as amended from time to time. Additionally, the City and County of Denver is

responsible for maintaining certain property adjacent to the Golf Course where such property is part of the Highline Canal regional trail system.

16. Town Center admits that certain portions of the Golf Course are separated from residential lots by black iron fencing, that other portions of the Golf Course are separated from residential lots by portions of the Highline Canal regional trail system owned by the City and County of Denver, and denies the remaining allegations of this paragraph because they contain legal conclusions to which no response is required, other than to admit that Exhibit B to the Complaint is a map prepared by Timberline District Consulting showing Town Center Metropolitan District fencing types.

17. The allegations of this paragraph set forth Ebert's information and belief. Town Center has no knowledge of the basis for that information and belief, accordingly lacks information sufficient to admit or deny the allegations of this paragraph, and therefore denies the same.

18. Town Center admits that the allegations of this paragraph accurately quote from a portion of the Master Declaration, but denies that the legal meaning, significance, or operation of the quoted portion of the Master Declaration can be determined in isolation or by giving the quoted portion of the Master Declaration a meaning that is determined out of context, and without considering that document taken in its entirety and given its intended meaning.

19. The allegations of this paragraph contain legal characterizations to which no response is required. To the extent the allegations of this paragraph are determined to assert matters of fact, Town Center denies those allegations.

20. Town Center admits that the allegations of this paragraph accurately quote from a portion of the Master Declaration, but denies that the legal meaning, significance, or

operation of the quoted portion of the Master Declaration can be determined in isolation or by giving the quoted portion of the Master Declaration a meaning that is determined out of context, and without considering that document taken in its entirety and given its intended meaning.

21. The allegations of this paragraph contain legal characterizations to which no response is required.

22. Town Center admits that the allegations of this paragraph accurately quote from a portion of the Master Declaration, but denies that the legal meaning, significance, or operation of the quoted portion of the Master Declaration can be determined in isolation or by giving the quoted portion of the Master Declaration a meaning that is determined out of context, and without considering that document taken in its entirety and given its intended meaning.

23. Town Center admits that the allegations of this paragraph accurately quote from a portion of the Master Declaration, but denies that the legal meaning, significance, or operation of the quoted portion of the Master Declaration can be determined in isolation or by giving the quoted portion of the Master Declaration a meaning that is determined out of context, and without considering that document taken in its entirety and given its intended meaning.

24. Town Center admits that the allegations of this paragraph accurately quote from a portion of the Master Declaration, but denies that the legal meaning, significance, or operation of the quoted portion of the Master Declaration can be determined in isolation or by giving the quoted portion of the Master Declaration a meaning that is determined out of context, and without considering that documents taken in its entirety and given its intended meaning.

25. Town Center agrees that the copy of the Second Amended And Restated District Facilities Construction, Funding, and Service Agreement attached to the Complaint as Exhibit B (the “Service Agreement”) is a true and accurate copy of that agreement, and further

avers that the Service Agreement is legal document whose terms, considered in context, in their entirety, and in accordance with their intended meaning, establish its legal effect and accordingly Town Center denies all allegations of this paragraph characterizing the terms and/or legal effect of the Service Agreement to the extent inconsistent with the intended meaning and legal effect of that document considered in context, in its entirety, and in accordance with its intended meaning.

26. Town Center admits that the allegations of this paragraph accurately quote from a portion of the Service Agreement, but denies that the legal meaning, significance, or operation of the quoted portion of the Service Agreement can be determined in isolation or by giving the quoted portion of the Service Agreement a meaning that is determined out of context, and without considering that document taken in its entirety and given its intended meaning.

27. Town Center admits that the allegations of this paragraph accurately quote from a portion of the Service Agreement, but denies that the legal meaning, significance, or operation of the quoted portion of the Service Agreement can be determined in isolation or by giving the quoted portion of the Service Agreement a meaning that is determined out of context, and without considering that document taken in its entirety and given its intended meaning.

28. Town Center admits that the allegations of this paragraph accurately quote from a portion of the Master Declaration, but denies that the legal meaning, significance, or operation of the quoted portion of the Master Declaration can be determined in isolation or by giving the quoted portion of the Master Declaration a meaning that is determined out of context, and without considering that document taken in its entirety and given its intended meaning.

29. The allegations of this paragraph set forth Ebert's information and belief. Town Center has no knowledge of the basis for that information and belief, accordingly lacks

information sufficient to admit or deny the allegations of this paragraph, and therefore denies the same.

30. The allegations of the first sentence of this paragraph set forth Ebert's information and belief. Town Center has no knowledge of the basis for that information and belief, accordingly lacks information sufficient to admit or deny the allegations of this paragraph, and therefore denies the same. With respect to the remaining allegations of this paragraph, Town Center states that the referenced documents speak for themselves, and therefore denies all such allegations to the extent contrary to the referenced documents taken in their entirety and given their intended meaning. Town Center further admits that the referenced Exhibit D is a true and accurate copy of an undated Green Valley Ranch North Metropolitan District Property Use By Homeowners Report. Town Center has no knowledge concerning the dates, locations, or authenticity of the photographs attached to the Complaint as Exhibits H, I, J, and K and therefore denies all allegations concerning those Exhibits.

31. The allegations of the first sentence of this paragraph set forth Ebert's information and belief. Town Center has no knowledge of the basis for that information and belief, accordingly lacks information sufficient to admit or deny the allegations of this paragraph, and therefore denies the same. Town Center admits that Exhibit E is a true and accurate copy of an email string discussing covenant enforcement with respect to gates in certain fencing.

32. Town Center admits that the document attached to the Complaint as Exhibit F is a true and accurate copy of a notice sent by Westwind Management Group to various residents on behalf of Town Center, further states that the referenced notice speaks for itself, and therefore denies all allegations of this paragraph concerning that notice to the extent contrary to

the terms of the notice taken in their entirety, in context, and in accordance with their intended meaning.

33. Town Center admits that the Exhibit G to the Complaint is a true and accurate copy of an undated Notice sent by District Management to Town Center Metropolitan District Community Members, further states that the referenced notice speaks for itself, and therefore denies all allegations of this paragraph concerning that notice to the extent contrary to the terms of the notice taken in their entirety, in context, and in accordance with their intended meaning, and further states that such Notice was sent by the District in the exercise of its discretion and authority under the Master Declaration and Service Agreement.

34. Town Center denies the allegations of this paragraph and, with respect to the photographs attached to the Complaint as Exhibits H, I, J, and K, Town Center has no knowledge concerning the dates, locations, or authenticity of those photographs and therefore denies all allegations concerning those Exhibits.

35. This paragraph contains general assertions and does not set forth specific allegations of fact to which Town Center is able to respond. Therefore, Town Center denies the allegations of this paragraph.

36. This paragraph contains legal assertions to which no response is required. To the extent this paragraph can be read to make specific factual allegations to which a response is required, Town Center denies it has violated the Master Declaration and therefore denies the allegations of this paragraph.

37. Town Center denies the allegations of this paragraph.

38. With respect to the first sentence of this paragraph, Town Center denies that the Master Declaration created such expectations or was intended to do so. Town Center

admits that Exhibit L contains photographs of signs within certain portions of Green Valley Ranch North stating that the particular developments in question are part of a Covenant Protected Community. Town Center denies all other allegations of this paragraph.

39. Town Center denies the allegations of this paragraph.

40. To the extent this paragraph purports to contain legal characterizations of the duties and obligations of Town Center under the Master Declaration and Service Agreement, those documents speak for themselves and Town Center denies those allegations to the extent inconsistent with the legal effect of those documents, taken in context, in their entirety, and in accordance with their intended meaning. Town Center otherwise denies all allegations of this paragraph.

41. Town Center denies the allegations of this paragraph.

FIRST CLAIM FOR RELIEF
MANDATORY INJUNCTION BASED ON
VIOLATIONS OF THE MASTER DECLARATON

42. This paragraph contains legal assertions to which no response is required.

43. This paragraph contains legal assertions to which no response is required.

44. This paragraph contains legal assertions to which no response is required.

45. The allegations of this paragraph are denied.

46. The allegations of this paragraph are denied.

47. Town Center admits that the allegations of this paragraph accurately quote from a portion of the Master Declaration, but denies that the legal meaning, significance, or operation of the quoted portion of the Master Declaration can be determined in isolation or by giving the quoted portion of the Master Declaration a meaning that is determined out of context, and without considering that document taken in its entirety and given its intended meaning.

48. Town Center admits that the allegations of this paragraph accurately quote from a portion of the Master Declaration, but denies that the legal meaning, significance, or operation of the quoted portion of the Master Declaration can be determined in isolation or by giving the quoted portion of the Master Declaration a meaning that is determined out of context, and without considering that document taken in its entirety and given its intended meaning.

49. Town Center admits that the allegations of this paragraph accurately quote from a portion of the Master Declaration, but denies that the legal meaning, significance, or operation of the quoted portion of the Master Declaration can be determined in isolation or by giving the quoted portion of the Master Declaration a meaning that is determined out of context, and without considering that document taken in its entirety and given its intended meaning.

Town Center otherwise denies the allegations of this paragraph.

50. Town Center denies the allegations of this paragraph.

SECOND CLAIM FOR RELIEF
PERMANENT INJUNCTION AND SPECIFIC PERFORMANCE
BASED ON BREACH OF CONTRACT

51. This claim has been dismissed, and accordingly no response is required to the allegations of this paragraph.

52. This claim has been dismissed, and accordingly no response is required to the allegations of this paragraph.

53. This claim has been dismissed, and accordingly no response is required to the allegations of this paragraph.

54. This claim has been dismissed, and accordingly no response is required to the allegations of this paragraph.

55. This claim has been dismissed, and accordingly no response is required to the allegations of this paragraph.

56. This claim has been dismissed, and accordingly no response is required to the allegations of this paragraph.

THIRD CLAIM FOR RELIEF
WRIT OF MANDAMUS BASED ON BREACH OF CONTRACT

57. Town Center admits that the allegations of this paragraph accurately quote from a portion of the Service Agreement, but denies that the legal meaning, significance, or operation of the quoted portion of the Service Agreement can be determined in isolation or by giving the quoted portion of the Service Agreement a meaning that is determined out of context, and without considering that document taken in its entirety and given its intended meaning.

58. The allegations of this paragraph contain legal assertions to which no response is required.

59. The allegations of this paragraph contain legal assertions to which no response is required.

60. The allegations of this paragraph are denied.

61. Town Center denies all allegations in the Complaint not specifically admitted in its foregoing responses.

AFFIRMATIVE DEFENSES

1. This Court lacks subject matter jurisdiction over Ebert's First Claim For Relief because separation of powers principles preclude this Court from issuing a mandatory injunction directing Town Center to exercise its governmental authority in a specific manner.

2. Ebert's First and Third Claims For Relief are moot because they involve matters upon which Town Center has the right to exercise its discretion and Town Center has exercised its discretion with respect to such matters.

3. Ebert’s claims with respect to landscaping are not yet justiciable because Ebert has failed to exercise its available administrative remedies through the landscaping committee formed pursuant to that certain Joint Resolution Of The Boards Of Directors Of The Ebert Metropolitan District And The Town Center Metropolitan District Regarding Formation Of A Landscaping Committee adopted and resolved on January 29, 2020 (respectively the “Landscaping Committee” and the “Joint Resolution”).

4. Ebert is estopped from asserting its claims concerning landscaping based on its agreement to submit all disputes concerning landscaping issues to the Landscaping Committee pursuant to the Joint Resolution and its failure to honor that agreement by filing this action instead of presenting such disputes to the Landscaping Committee.

5. Ebert is estopped from asserting its claims concerning fencing and landscaping maintenance based on its failure to increase the mill levy to fund maintenance of fencing and landscaping.

Dated: November 20, 2023
Denver, Colorado

Respectfully submitted,

KAMPER & FORBES, LLC

/s/ Peter C. Forbes

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CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2023, a copy of the foregoing was served via Colorado Courts Efiling system on the following:

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