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| DISTRICT COURT, CITY AND COUNTY OF<br>DENVER, STATE OF COLORADO<br>1437 Bannock Street, Room 256<br>Denver, CO 80202   | DATE FILED: January 23, 2014 5:45 PM<br>FILING ID: C091766DC9471<br>CASE NUMBER: 2014CV30306 |
| PLAINTIFF:<br><br>THE VILLAGES AT CASTLE ROCK<br>METROPOLITAN DISTRICT NO. 4, a political<br>subdivision of the State of Colorado,<br><br>v.<br><br>DEFENDANTS:<br><br>VILLAGES AT CASTLE ROCK METROPOLITAN<br>DISTRICT NO. 9, a political subdivision of the State of<br>Colorado; DEPARTMENT OF LOCAL AFFAIRS, State<br>of Colorado; DIVISION OF LOCAL GOVERNMENT,<br>State of Colorado; REEVES BROWN, in his official<br>capacity as Executive Director of the Department of<br>Local Affairs; and CHANTAL UNFUG, in her official<br>capacity as Director of the Division of Local<br>Government. | <p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>                                 |
| Brian A. Magoon, No. 9072<br>Jena R. Akin, No. 45117<br>Robinson Waters & O'Dorisio, P.C.<br>1099 18th Street, Suite 2600<br>Denver, CO 80202-1926<br>T: 303-297-2600<br>F: 303-297-2750<br>E: bmagoon@rwolaw.com; jakin@rwolaw.com<br><i>Counsel for Plaintiff</i>  | Case No. _____<br><br>Ctvm/Div _____   |
| <b>COMPLAINT FOR DECLARATORY RELIEF</b>  |  |

Plaintiff, The Villages at Castle Rock Metropolitan District No. 4 ("District 4"), by and through its undersigned counsel, for its Complaint for Declaratory Relief against Defendants above-named, states and alleges as follows:

### *NATURE OF THE ACTION*

1. This is a civil action for Declaratory Relief, brought by District 4 pursuant to C.R.C.P. 57 and C.R.S. §§ 13-51-101, et seq., for the purpose of declaring that pursuant to (a) the Intergovernmental Regional Facilities Agreement between and among District 4 and the Villages at Castle Rock Metropolitan District Nos. 1, 2, 3, 5, 7, 8, and 9, dated August 14, 1986, as amended and restated November 18, 1986, May 26, 1987, and December 13, 1988 (the "IRFA") and (b) an Intergovernmental Financing Agreement between District 4 and The Villages at Castle Rock Metropolitan District No. 9, dated November 18, 1986, as amended and restated January 13, 1987 (the "IFA"), District 9 has financial obligations owed to District 4.

2. As such, the Division of Local Government must withdraw its Decree of Dissolution improvidently issued pursuant to C.R.S. § 32-1-710(1)(b) on August 26, 2013 pursuant to C.R.S. § 32-1-710 (Dissolution by Administrative Action), insofar as no financial obligation is a condition precedent to the issuance of a Decree of Dissolution. Further, the Decree of Dissolution impairs contractual obligations between District 4 and District 9 in contravention of Colorado Constitution Article II, Section 11.

### *PARTIES*

3. District 4 is a quasi-municipal corporation and political subdivision of the State of Colorado, with an address of 5300 DTC Parkway, Suite 260, Greenwood Village, Colorado.

4. District 9 is a quasi-municipal corporation and political subdivision of the State of Colorado.

5. The Department of Local Affairs is a department of the State of Colorado, created pursuant to C.R.S. § 24-1-110(1)(o) and § 24-1-125(1). The Division of Local Government is a division of the Department of Local Affairs created pursuant to C.R.S. § 24-1-125(2)(a) and § 24-31-103. Reeves Brown is named in his official capacity as Executive Director of the Department of Local Affairs, and Chantal Unfug is named in her official capacity as Director of the Division of Local Government.

### *JURISDICTION AND VENUE*

6. This Court has jurisdiction pursuant to Colorado Constitution Article VI, § 9.

7. Further, this Court has subject matter jurisdiction because District 4 has suffered an injury in fact under Colorado Constitution Article III in that it has incurred \$2,918,291.00 in constructing (a) Water Supply/Treatment/Storage and Transmission Facilities and (b) Wastewater Treatment/Interceptors and Regional Diversions (the "Facilities") for the benefit of District 9, to wit:

(a) District 4 issued 1986 Revenue Bonds in the amount of \$32,175,000, in part, to fund the construction of the Facilities.

(b) Pursuant to the IRFA and the IFA, District 9 has a general obligation to pay for the Facilities and pledged ad valorem taxes and certain other revenues, including water, sewer, and irrigation system development fees, for the payment of its obligations.

(c) District 4 filed a Chapter 9 proceeding in the United States Bankruptcy Court for the District of Colorado, Case No. 89B16240A. Pursuant to a Plan for Adjustment of Debts, as amended, and approved by an Order Confirming Debtor's Plan for Adjustment of Debts entered December 17, 1991, District 9 remains obligated under the IFA to pay amounts necessary to service District 4 debts.

(d) The Decree of Dissolution issued by the Division of Local Government is based in part upon the determination that District 9 has no financial obligations. A determination of no financial obligations is a condition precedent to the issuance of a decree of dissolution pursuant to C.R.S. § 32-1-710(1)(b). District 9 has financial obligations to District 4 to repay District 4 for the Facilities.

8. District 4 has a legally protected interest, because, in contravention of Colorado Constitution Article II, § 11, the Decree of Dissolution impairs the obligations of contract between District 4 and District 9, by which District 9 is obligated to repay District 4 for the Facilities.

9. The general rule that a political subdivision of the State cannot sue the State does not apply to this civil action, because (a) C.R.S. § 32-1-710, pursuant to which the Division of Local Government issued the Decree of Dissolution, does not impose upon or pertain to performance of duties by District 4, and therefore, District 4 may seek declaratory judgment with respect to the term "financial obligations" contained in C.R.S. § 32-1-710(1)(b); and (b) with respect to the IRFA and IFA, District 4 has the same rights as any private party to enforce its contract and to not have its contract impaired in contravention of Colorado Constitution Article II, § 11.

10. The provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, et seq., do not apply, because this action does not lie in tort, nor could it lie in tort.

11. Venue is proper pursuant to C.R.C.P. 98(b)(2).

#### *FACTUAL ALLEGATIONS*

12. District 4 incorporates herein by reference the allegations in paragraphs 1 through 11 above.

13. District 4 was created on August 15, 1984 for the purposes of providing water, sanitary sewer and drainage, streets, safety protection, parks and recreation, and transportation facilities and services for District 4 and certain affiliated districts, including District 9. District 4 is located in the Town of Castle Rock.

14. District 4 issued four series of 1986 Revenue Bonds in the amount of \$32,175,000. Of that amount, District 4 incurred \$2,918,291 in constructing the Facilities for the benefit of District 9.

15. Pursuant to the IRFA and the IFA, District 9 has a general obligation to pay for the Facilities and pledged ad valorem taxes and certain other revenues, including water, sewer, and irrigation system development fees, for the payment of its obligations to District 4.

16. District 4 filed a Chapter 9 proceeding, Adjustment of Debts of a Municipality, in the United States Bankruptcy Court for the District of Colorado, Case No. 89B16240A.

17. Pursuant to a Plan for Adjustment of Debts filed on June 14, 1991, as modified on September 12, 1991 and December 12, 1991, and approved by an Order entered December 17, 1991, District 9 remains obligated under the IFA to pay District 4 for the Facilities.

18. However, in paragraph 6 of the Decree of Dissolution dated August 26, 2013, the Director of the Division of Local Government states:

6. Based upon review of the most recent available submission of financial statements to the Office of the State Auditor by the District [9], the District has been found to have no outstanding financial obligations.

19. Throughout the years, however, District 4, through its counsel, has communicated with the Division of Local Government regarding the financial obligations of District 9 to District 4, to wit:

(a) Attached as Exhibit A is correspondence dated November 15, 1994, stating, in part:

District 9 does have outstanding financial obligations. In this regard, I enclose herein a copy of the Amended and Restated Intergovernmental Financing Agreement ("District 9 Agreement") between District 9 and the Villages at Castle Rock Metropolitan District No. 4 ("District 4"). The District 9 Agreement is an important part of District 4's Chapter 9 bankruptcy plan that was approved by the Bankruptcy Court in December 1991.

(b) Attached as Exhibit B is correspondence dated March 20, 1998, which states, in part:

District 9 does have outstanding financial obligations. In this regard, I enclose herein a copy of the Amended and Restated Intergovernmental Financing Agreement dated January 13, 1987. This Agreement is an important part of District 4's Chapter 9 bankruptcy plan that was approved by the Bankruptcy Court in December 1991.

(c) Attached as Exhibit C is correspondence dated February 12, 1999 to the Office of the State Auditor, which states, in part:

District 9 does have outstanding financial obligations. In this regard, I enclose herein a copy of the Amended and Restated Intergovernmental Financing Agreement dated January 13, 1987. The Agreement is an important part of District 4's Chapter 9 bankruptcy plan that was approved by the Bankruptcy Court in December 1991.

(d) Attached as Exhibit D is an e-mail dated August 20, 2013 in response to an e-mail from the Division of Local Government, which is dated August 16, 2013 and is attached as Exhibit E. Exhibit D states, in part:

The bottom line is that the bondholders of District 4 are waiting in anticipation for tax and development fee money to start coming from District 9 pursuant to the District 9 Agreement . . . . The good news is that the District 4 Bonds shall be discharged and the Bonds shall no longer be deemed outstanding as of June 2, 2031 and if District 9 has not been reestablished by then we will welcome the State dissolving District 9.

20. C.R.S. § 32-1-710(1)(b) states:

(1) The division shall notify a special district by certified mail of the division's intent to certify the district dissolved if:

(a) . . .

(iv) . . ., and

(b) The district has no outstanding financial obligations.

21. Notwithstanding being provided with the IFA for a period of 19 years and the Plan for Adjustment and Order approving same, thereby establishing the financial obligation of District 9 to District 4, the Division of Local Government issued the Decree of Dissolution on August 26, 2013.

*CLAIM FOR RELIEF*

22. District 4 incorporates by reference its allegations set forth in paragraphs 1 through 21 above as if fully set forth herein.

23. There exists an actual and justiciable controversy regarding the interpretation and applicability of C.R.S. § 32-1-710(1)(b) on the issue of whether District 9 has outstanding financial obligations to District 4.

24. District 4 seeks a judicial determination and declaration that (a) District 9 has financial obligations to District 4; (b) as such, a condition precedent to the issuance of a Decree of Dissolution has not been satisfied; (c) as such, the Decree of Dissolution issued on August 26, 2013 is null and void; and (d) the Decree of Dissolution impairs the obligations of contract between District 4 and District 9.

WHEREFORE, District 4 petitions this Court to grant the relief requested in paragraph 24 above and for such other and further relief as the Court deems just and proper.

Respectfully submitted this 23rd day of January, 2014.

/s/ Brian A. Magoon

Brian A. Magoon, No. 9072

Jena R. Akin, No. 45117

*Counsel for Plaintiff*

*(Original signature on file at Robinson Waters & O'Dorisio, P.C.)*

Plaintiff's Address:

5300 DTC Parkway, Suite 260  
Greenwood Village, CO 80111

# BREGA & WINTERS P.C. ATTORNEYS AT LAW

Ronald S. Loser  
Director

866-9426

DATE FILED: January 23, 2014 5:45 PM  
FILING ID: C091766DC9471  
CASE NUMBER: 2014GV30306

November 15, 1994

## GREELEY

Bradley D. Laue  
Pamela A. Shaddock  
Jerry D. Winters

## DENVER

James W. Bain  
Thomas D. Birge  
Charles F. Brega  
Dale E. Butler  
Robert R. Dornier  
Peter A. Gergely  
Wesley B. Howard  
Robert C. Kaufman  
Jennifer G. Kroll  
Ronald S. Loser  
Brian A. Magoon  
Loren L. Mall  
Cathryn B. Mayers  
Carla E. Minckley  
Jay John Schnell  
Nathan D. Simmons  
Scott L. Terrell

OF COUNSEL  
Mark Spitalnik

\* Member of the  
Patent Bar

One Northwest Center  
1700 Lincoln Street  
Suite 2222  
Denver, CO 80203  
FAX: (303) 861-9109  
(303) 866-9400

Lucia J. Smead  
Division of Local Government  
Department of Local Affairs  
1313 Sherman St., #521  
Denver, Colorado 80203

Re: Villages at Castle Rock Metropolitan Districts No.s 5, 8 and 9  
("District 5", "District 8" and "District 9")

Dear Ms. Smead:

Pursuant to our telephone conversation yesterday I am providing the following information concerning Districts 5, 8 and 9, to-wit:

### District 5

District 5 no longer has a Board of Directors due to the foreclosure of the land within the boundaries of District 5 by Castle Oaks Corp. The address of Castle Oaks Corp. is c/o Amex Oil & Gas, Inc., 1300 W. Sam Houston Parkway South, P. O. Box 42806, Houston, Texas 77242.

Prior to the loss of the former Directors of District 5 because they no longer were tax paying electors it was the intent of the Board to dissolve District 5. There are no residents within District 5.

### District 8

District 8 was dissolved by administrative action filed by the Attorney General's office. If you are unable to get a copy of the Order of Dissolution please give me a call and I will locate the Order and send you a copy.

EXHIBIT

A

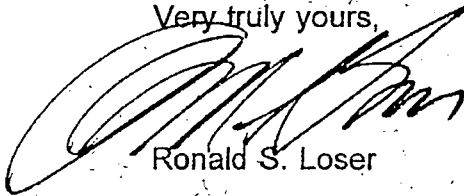
**BREGA & WINTERS P.C. ATTORNEYS AT LAW**

Kenneth Ash  
November 15, 1994  
Page 2

District 9

All of the land within District 9 is currently in the ownership of the Estate of Vernetta C. Memmen. District 9 currently does not have a Board of Directors. District 9 does have outstanding financial obligations. In this regard I enclose herein a copy of the Amended and Restated Intergovernmental Financing Agreement ("District 9 Agreement") between District 9 and the Villages at Castle Rock Metropolitan District No. 4 ("District 4"). The District 9 Agreement is an important part of District 4's Chapter 9 bankruptcy plan that was approved by the Bankruptcy Court in December 1991. The District 4 Board would entertain the consolidation of District 9 and District 4 in order to preserve the integrity of the District 9 Agreement. Please call me to discuss a proposed solution to this District 9 problem.

Very truly yours,



Ronald S. Loser

RSL/jao

cc: Karl Kasch



# BREGA & WINTERS P.C. ATTORNEYS AT LAW

March 20, 1998

DATE FILED: January 23, 2014 5:45 PM  
FILING ID: C091766DC9471  
CASE NUMBER: 2014CV30306

**Ronald S. Loser**  
Director

866-9426

**DENVER**

James W. Bain  
Stuart N. Bennett  
Charles F. Brega  
Robert R. Dormer  
Kathleen M. Flynn  
Jennifer S. Fox  
Wesley B. Howard  
Robert C. Kaufman  
S. Scott Lasher  
Ronald S. Loser  
Jack R. Luellen  
Brian A. Magoon  
Loren L. Mall  
Glenn W. Merrick  
Scott T. Rodgers  
Jay John Schnell

**COUNSEL**

Jay W. Enyart

**GREELEY**

William W. Hughes  
Bradley D. Laue  
Pamela A. Shaddock  
Jerry D. Winters

United Plaza  
Suite 402  
1100 Tenth Street  
Greeley, CO 80631  
FAX: (970) 352-6547  
(970) 352-4805

Lillie Fuller  
Division of Local Government  
Department of Local Affairs  
1313 Sherman St., Room 521  
Denver, Colorado 80203

Re: Villages at Castle Rock Metropolitan District No. 9 ("District 9")

Dear Ms. Fuller:

Pursuant to our telephone conversation on March 17th, I am requesting that you consider me to be the contact person for District 9. I am the attorney for Villages at Castle Rock Metropolitan District No. 4 ("District 4").

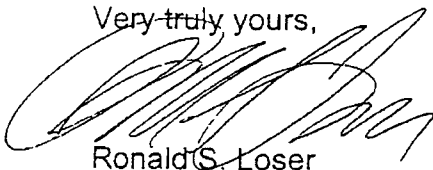
All of the land within District 9 is currently owned by the Memmen family. No development has occurred in District 9 and there are no homes within the boundaries of District 9.

District 9 currently, and for some years in the past, has no Board of Directors. District 9 does have outstanding financial obligations. In this regard I enclose herein a copy of the Amended and Restated Intergovernmental Financing Agreement dated January 13, 1987. This Agreement is an important part of District 4's Chapter 9 bankruptcy plan that was approved by the Bankruptcy Court in December 1991.

District 4 is currently attempting to work with one of the Memmen family members so that District 9 can be re-activated. I will keep you informed as to the progress of this effort.

Please call if you have any questions.

Very truly yours,



Ronald S. Loser

RSL/jao

cc: District 4 Board Members  
Karl Kasch

**EXHIBIT**

B

# BREGA & WINTERS P.C. ATTORNEYS AT LAW

DATE FILED: January 23, 2014 5:45 PM  
FILING ID: C091766DC9471  
CASE NUMBER: 2014CV30306

February 12, 1999

**Ronald S. Loser**  
Director

(303) 866-9426

rloser  
@brega-winters.com

## DENVER

James W. Bain  
Stuart N. Bennett  
Charles F. Brega  
Wendy R. Brueggeman  
Robert R. Dormer  
Jennifer S. Fox  
Brent W. Houston  
Wesley B. Howard  
Robert C. Kaufman  
S. Scott Lasher  
Eric B. Liebman  
Ronald S. Loser  
Brian A. Magoon  
Loren L. Mall  
Glenn W. Merrick  
Scott T. Rodgers  
Jay John Schnell

## COUNSEL

Jay W. Enyart

## GREELEY

William W. Hughes  
Bradley D. Laue  
Pamela A. Shaddock  
Jerry D. Winters

Yolanda Foley  
Office of the State Auditor  
200 East 14th Avenue  
Denver, Colorado 80203-2211

Re: Villages at Castle Rock Metropolitan District No. 9 ("District 9")

Dear Ms. Foley:

Pursuant to our telephone conversation this week, I am submitting to you the status of District 9. I am the contact person for District 9 and I am the attorney for the Villages at Castle Rock Metropolitan District No. 4 ("District 4").

All of the land within District 9 is currently owned by the Memmen family. No development has occurred in District 9 and there are no homes within the boundaries of District 9.

District 9 currently, and for some years in the past, has no Board of Directors. District 9 does have outstanding financial obligations. In this regard I enclose herein a copy of the Amended and Restated Intergovernmental Financing Agreement dated January 13, 1987. This Agreement is an important part of District 4's Chapter 9 bankruptcy plan that was approved by the Bankruptcy Court in December 1991.

District 4 is currently attempting to work with one of the Memmen family members so that District 9 can be re-activated. I will keep you informed as to the progress of this effort.

Please call if you have any questions.

Very truly yours,

  
Ronald S. Loser

RSL/kmm

cc: District 4 Board Members  
Karl Kasch

**EXHIBIT**

C

## Ronald Loser

From: Ronald Loser  
Sent: Tuesday, August 20, 2013 11:28 AM  
To: 'jarrod.biggs@state.co.us'  
Subject: FW: Scanned from a Xerox multifunction device

Attachments: Scanned from a Xerox multifunction device001.pdf

DATE FILED: January 23, 2014 5:45 PM  
FILING ID: C091766DC9471  
CASE NUMBER: 2014CV30306



Scanned from a  
Xerox multfunc...

In response to your e-mail to me I have attached a Plan for Adjustment of Debts that was confirmed by the United States District Court for the District of Colorado in Bankruptcy on December 18, 1991. Please note Section 6.5 Executory Contracts, Subsection d, where the Villages at Castle Rock Metropolitan District No. 4 ("District 4") was required to assume the Intergovernmental Financing Agreement between the District and The Villages at Castle Rock Metropolitan District No. 9 dated November 18, 1986, as amended and restated January 13, 1987 ("District 9 Agreement"). The District 9 Agreement has been previously e-mailed to you. The bottom line is that the bondholders of District 4 are waiting in anticipation for tax and development fee money to start coming from District 9 pursuant to the District 9 Agreement. I am not a litigator and I don't know the reaction the Federal Bankruptcy Court will have to State interference with the Plan for Adjustment of Debts. The good news is that the District 4 Bonds shall be discharged and the Bonds shall no longer be deemed outstanding as of June 2, 2031 and if District 9 has not been reestablished by then we will welcome the State dissolving District 9.

Ronald Loser  
Attorney at Law  
Robinson Waters & O'Dorisio, P.C.  
1099 18th Street, Suite 2600  
Denver, CO 80202  
T: 303-297-2600  
F: 303-297-2750  
E: rloser@rwolaw.com  
Web: www.rwolaw.com

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\*\*\*\*\*  
\*\*\*\*\*

-----Original Message-----

From: CopierBig@rwolaw.com [mailto:CopierBig@rwolaw.com]  
Sent: Tuesday, August 20, 2013 11:07 AM  
To: Ronald Loser  
Subject: Scanned from a Xerox multifunction device



**Ronald Loser**

**From:** Biggs - DOLA, Jarrod [jarrod.biggs@state.co.us]

**Sent:** Friday, August 16, 2013 3:39 PM

**To:** Ronald Loser

**Cc:** Justin Smith; Scott Olene - DOLA

**Subject:** Villages at Castle Rock Metropolitan District No. 9 Administrative Dissolution

**Attachments:** Villages At Castle Rock Metro 9 Election File.pdf; Villages At Castle Rock Metro 9 Audit File.pdf; Villages At Castle Rock Metro 9 Budget File.pdf

DATE FILED: January 23, 2014 5:45 PM  
FILING ID: C091766DC9471  
CASE NUMBER: 2014CV30306

Mr. Loser,

I am following up with you concerning your letter dated July 18, 2013 in response to our Notice of Intent to Dissolve the Villages at Castle Rock Metropolitan District No. 9 (District 9).

In that letter you outline that the district has not had Board Members for a number of years. The last available election results on hand at the division are from the 1990 election where the two open seats were deemed vacant as no nominations were received to fill those seats (see attached "Villages At Castle Rock Metro 9 Election File.pdf" pp. 9). I question the ability of this district to continue, as according to our records there have not been directors to authorize any financial transactions, or to even speak on behalf of the district for approximately two decades.

After reviewing the audit file, the last available financial statement from 1989 did not reflect any debts on the part of District 9 other than developer advances ("Villages At Castle Rock Metro 9 Audit File.pdf" pp. 1). You mention in your letter that "No development has occurred in District 9 and there are no homes within the boundaries of District 9". In that case the pro-rata share of debt and operations pursuant to the financing agreement would be zero as any activity to this point has not been performed on behalf of District 9.

Additionally reviewing the file further, it appears there has been difficulty in working with the Memmen family or any other eligible electors to reactivate the district; a similar letter has been inserted into the file dated March 20, 1998 ("Villages At Castle Rock Metro 9 Budget File.pdf" pp. 1).

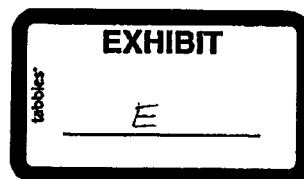
It appears that some of the districts originally involved with the intergovernmental financing agreement have been able to successfully dissolve without harm to the bankruptcy proceeding of District 4. As of this point our records show that Villages At Castle Rock Metropolitan Districts No. 3, 5, and 8 have dissolved in 1993, 1995, and 1994 respectively. I am unaware how District 9 is distinctly different.

If there are aspects of the plan I am not understanding, I would invite any additional light you could shed on the issue. If there are no other apparent mitigating circumstances we intend to file the declaration of dissolution and allow the District Court to evaluate the need for District 9 in regard to Villages at Castle Rock Metropolitan District No. 4's bankruptcy plan and make a determination regarding the future of this district.

If you have any additional information, please let me know by the end of next week (Aug 23). If I do not hear from you, I will proceed with the declaration and we will move forward from that point.

If there are any questions, please let me know.

Best regards,



9/4/2013

Jarrold

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**Jarrold Biggs**

Division of Local Government

Colorado Department of Local Affairs

[dola.colorado.gov/dlg](http://dola.colorado.gov/dlg)

W: (303) 866-4493

C: (720) 357-6981

[jarrod.biggs@state.co.us](mailto:jarrod.biggs@state.co.us)

BRIAN A. MAGOON  
TELEPHONE: (303) 297-2600, Ext. 144  
WRITER'S E-MAIL: [bmagoon@rwolaw.com](mailto:bmagoon@rwolaw.com)

February 7, 2014

Douglas County Board of County Commissioners  
100 Third Street  
Castle Rock, CO 80104

Douglas County Assessor  
301 Wilcox Street  
Castle Rock, CO 80104

Douglas County Clerk & Recorder  
301 Wilcox Street  
Castle Rock, CO 80104

Town of Castle Rock  
100 North Wilcox Street  
Castle Rock, CO 80104

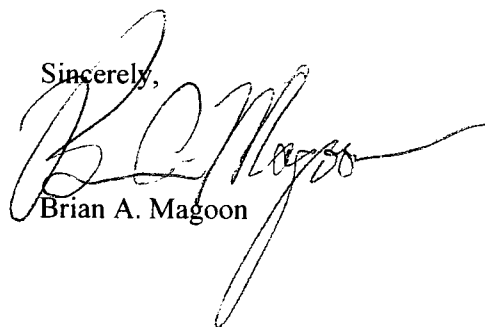
Re: Villages at Castle Rock Metropolitan District No. 4--  
*In re the Matter of Villages at Castle Rock Metropolitan District #9*  
Douglas County District Court Civil Action No. 1985CV306

To Whom It May Concern:

Enclosed please find:

1. Order Granting District 4's Motion to Intervene in 1985CV306, entered February 5, 2014.
2. District 4's Response in Opposition to Petition for Order and Certification of Dissolution of Special District and Request for Stay or, Alternatively, an Evidentiary Hearing, filed in 1985CV306.
3. Stipulated Motion to Stay filed in 1985CV306.
4. Complaint for Declaratory Relief, filed in Denver District Court on January 23, 2014, Civil Action No. 2014CV30306.

Sincerely,



Brian A. Magoon

BAM/dcs

Enclosures