

DISTRICT COURT, DOUGLAS COUNTY, COLORADO 4000 Justice Way Castle Rock, CO 80109	
IN RE THE MATTER OF VILLAGES AT CASTLE ROCK METROPOLITAN DISTRICT #9	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
Brian A. Magoon, No. 9072 Jena R. Akin, No. 45117 Robinson Waters & O'Dorisio, P.C. 1099 18th Street, Suite 2600 Denver, CO 80202-1926 T: 303-297-2600 F: 303-297-2750 E: bmagoon@rwolaw.com; jakin@rwolaw.com <i>Counsel for The Villages at Castle Rock Metropolitan  District No. 4</i>	Case No. 1985 CV 306
<p style="text-align: center;"><b>UNOPPOSED MOTION TO INTERVENE</b></p>	

The Villages at Castle Rock Metropolitan District No. 4 ("District 4"), by and through its undersigned counsel, hereby files its Motion to Intervene, and in support thereof states as follows:

**CERTIFICATE OF COMPLIANCE PURSUANT TO C.R.C.P. 121 § 1-15(8)**

1. Counsel for District 4 and the Division of Local Government of the Colorado Department of Local Affairs ("the Division") have conferred regarding the Motion to Intervene, and the Division does not oppose the relief requested in this Motion.

**BACKGROUND**

2. The Division filed a Petition for Order and Certification of Dissolution of Special District on January 24, 2014 (the "Petition"), seeking an order of dissolution of the Villages at Castle Rock Metropolitan District No. 9 ("District 9").

3. C.R.S. § 32-1-710(1)(b) provides that the Division may administratively dissolve a district if it has no outstanding financial obligations. District 4 alleges that District 9 in fact has outstanding financial obligations pursuant to intergovernmental agreements between the two districts, and therefore, that District 9 may not be administratively dissolved.

4. Specifically, District 4 asserts that pursuant to (a) the Intergovernmental Regional Facilities Agreement between and among District 4, District 9, and the Villages at Castle Rock Metropolitan District Nos. 1, 2, 3, 5, 7, and 8, dated August 14, 1986, as amended and restated November 18, 1986, May 26, 1987, and December 13, 1988, and (b) an Intergovernmental Financing Agreement between District 4 and District 9, dated November 18, 1986, as amended and restated January 13, 1987 (the "Intergovernmental Agreements"), District 9 has financial obligations owed to District 4. Under the Intergovernmental Agreements, District 4 issued 1986 Revenue Bonds in the amount of \$32,175,000. From that amount, \$2,918,291.00 was expended in constructing (1) Water Supply/Treatment/Storage and Transmission Facilities and (2) Wastewater Treatment/Interceptors and Regional Diversions for the benefit of District 9 (the "Facilities"). Per the Intergovernmental Agreements and the terms of an Order confirming District 4's bankruptcy plan in 1991, District 9 remains obligated to repay District 4 for the Facilities.

5. Considering the existence of District 9's financial obligations to District 4, on January 23, 2014 District 4 filed a Complaint for Declaratory Relief (the "Complaint") in the District Court of the City and County of Denver, seeking 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 Declaration of Dissolution has not been satisfied; (c) as such, the Declaration of Dissolution issued on August 26, 2013 is null and void; and (d) the Declaration of Dissolution impairs the obligations of contract between District 4 and District 9. A copy of the Complaint is attached hereto as Exhibit 1.

6. District 4 seeks to intervene as a Defendant in this action in order to oppose and object to the Petition filed by the Division on the same grounds as those cited in the Complaint in the Denver District Court. If allowed to intervene, District 4 will file the attached Response in Opposition to the Petition for Order and Certification of Dissolution of Special District and Request for Stay or, Alternatively, an Evidentiary Hearing. See Response in Opposition, attached hereto as Exhibit 2, seeking to stay this proceeding pending a final resolution of the Complaint in Denver or, in the alternative, a one-half day evidentiary hearing.

7. District 4 seeks to intervene as of right according to C.R.C.P. 24(a). In the alternative, District 4 contends that it may intervene based on its claim that District 9 owes it financial obligations, which is a question of law or fact in common with the Petition, providing District 4 with a permissive right to intervene.

### **LEGAL AUTHORITY**

8. C.R.C.P. 24(a) provides that "[u]pon timely application anyone shall be permitted to intervene in an action: . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." All three elements of C.R.C.P. 24(a)(2) - a property interest, an impairment of the ability to protect it, and inadequate

representation - must be present before a right to intervene arises. *Feigin v. Secs. Am., Inc.*, 992 P.2d 675, 678 (Colo. App. 1999) (rev'd on other grounds).

9. The interest that an intervenor must show is an interest in the subject matter of the litigation. *Hulst v. Dower*, 213 P.2d 834, 836 (Colo. 1949). "The existence of the interest of a proposed intervenor should be determined in a liberal manner. It is the better practice to apply the rule relating to intervention in such a way that, whenever possible and compatible with efficiency and due process, issues relating to the same transaction can be resolved in the same lawsuit and at the trial court level." *Feigin*, 992 P.2d at 679 (citing *O'Hara Group Denver, Ltd. v. Marcor Housing Systems, Inc.*, 595 P.2d 679 (1979)).

10. Even if a party does not have an absolute right of intervention, C.R.C.P. 24(b) provides that "[u]pon timely application anyone may be permitted to intervene in an action: . . . (2) when an applicant's claim or defense and the main action have a question of law or fact in common."

11. The rules of intervention are to be liberally construed so that all related controversies may be settled in one action. *Great Neck Plaza, L.P. v. Le Peep Restaurants, LLC*, 37 P.3d 485, 488 (Colo. App. 2001).

### ARGUMENT

12. It is a general rule that political subdivisions of the state lack standing to challenge the constitutionality of a state statute directing the performance of their duties. *Romer v. Fountain Sanitation Dist.*, 898 P.2d 37, 40 (Colo. 1995). However, District 4 has standing to bring this case because the statute under which the Division brings its Petition, C.R.S. § 32-1-710, does not direct the performance of District 4's duties. *Fountain Sanitation*, 898 P.2d at 40. Thus, District 4 is not a subordinate agency of the Division for purposes of C.R.S. § 32-1-710. See *Romer v. Bd. of Cty Comm'rs*, 956 P.2d 566, 574 (Colo. 1998).

13. District 4 seeks to intervene in this case from the perspective of a private party with the authority to challenge the unconstitutional impairment of its legally protected interest, i.e., its contract rights. See *South Suburban Park & Recreation Dist. v. Bd. of Assessment Apps.*, 894 P.2d 771, 773 (Colo. App. 1995); see also Colo. Const. art. II, § 11 ("No . . . law impairing the obligation of contracts . . . shall be passed by the general assembly.").

14. District 4 asserts an absolute right of intervention in this case pursuant to C.R.C.P. 24(a)(2) because it can satisfy all three elements required by the rule: (1) District 4 has an interest relating to the property which is the subject of the Division's Petition; (2) an order granting the Petition would impair or impede District 4's ability to protect that interest; and (3) District 4's interest is not adequately represented by existing parties.

15. One of the preconditions to administrative dissolution of a special district under C.R.S. § 32-1-710 is that the district has no "financial obligations." C.R.S. § 32-1-710(1)(b).

Therefore, District 4 has an interest relating to the dissolution of District 9 because District 9 owes District 4 "financial obligations" according to the intergovernmental agreements between the parties.

16. An order entered by this Court granting the Division's Petition would impair or impede District 4's ability to protect its interest in the debt owed to it by District 9 because the order would cause District 9 to cease to exist.

17. District 4's interest in this action is not adequately represented by existing parties because the Division's interest in dissolving District 9 is directly opposed to District 4's interest in collecting funds owed to it by District 9. No other party has objected to the Division's Petition, and no other party could adequately represent District 4 because to the best of District 4's knowledge, information, and belief, District 9 owes no other party any financial obligations.

18. In the alternative, District 4 qualifies for permissive intervention pursuant to C.R.C.P. 24(b). District 4's contention that District 9 has financial obligations is a question central to the determination of the Division's Petition because it is a statutory requirement for administrative dissolution of a special district under C.R.S. § 32-1-710(1)(b).

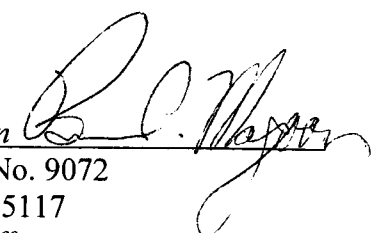
### CONCLUSION

19. District 4 seeks leave to intervene as a Defendant in this action in order to file a Response in Opposition (Exhibit 2) to the Division's Petition for Order and Certification of Dissolution of Special District. District 4 contends that it may intervene as of right pursuant to C.R.C.P. 24(a) due to its financial interest in District 9's continued existence, the fact that a dissolution of District 9 would impair or impede that financial interest, and that no existing party adequately represents District 4's interest in such. In the alternative, District 4 contends that it qualifies for permissive intervention pursuant to C.R.C.P. 24(b).

20. A Proposed Order granting the relief sought is submitted herewith.

WHEREFORE, District 4 seeks an Order permitting District 4 to intervene as a Defendant in this action and permitting District 4 to file the attached Response in Opposition to the Division's Petition for Order and Certification of Dissolution of Special District (Exhibit 2), and for such other and further relief as the Court deems just and proper.

Respectfully submitted this 30th 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.)*

*CERTIFICATE OF SERVICE*

I hereby certify that on January 30, 2014, I electronically filed and served the foregoing via ICCES and/or placed a true and correct copy of the foregoing in the U.S. Mail, first-class postage thereon prepaid, addressed to the following:

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

Douglas County Assessor  
301 Wilcox Street  
Castle Rock, CO 80104

John W. Suthers, Attorney General  
Leeann Morrill, First Assistant Attorney General  
Maurice G. Knaizer, Senior Assistant Attorney General  
Public Officials Unit, State Services Section  
1300 Broadway, 6th Floor  
Denver, CO 80203

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

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

/s/ Donna C. Steir 

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

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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

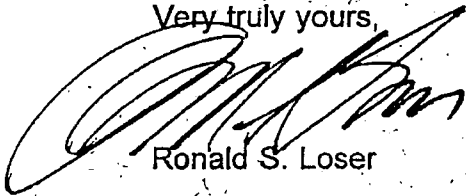
**BREGA & WINTERS P.C. ATTORNEYS AT LAW**

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

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

**DENVER**

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S. Scott Lasher  
Ronald S. Loser  
Jack R. Luellen  
Brian A. Magoon  
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Glenn W. Merrick  
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Jay W. Enyart

**GREELEY**

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

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").

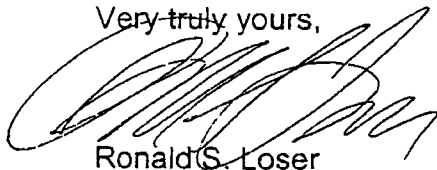
All of the land within District 9 is currently owned by the Memmen family. No development has occurred in District 9 and there are no homes within the boundaries of District 9.

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  
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CASE NUMBER: 2014CV30306

February 12, 1999

**Ronald S. Loser**  
Director

(303) 866-9426

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## DENVER

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## 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

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

Attachments: Scanned from a Xerox multifunction device001.pdf



Scanned from a  
Xerox multifunc...

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  
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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)

9/4/2013

DISTRICT COURT, DOUGLAS COUNTY, COLORADO 4000 Justice Way Castle Rock, CO 80109	▲ COURT USE ONLY ▲
IN RE THE MATTER OF VILLAGES AT CASTLE ROCK METROPOLITAN DISTRICT #9	
Brian A. Magoon, No. 9072 Jena R. Akin, No. 45117 Robinson Waters & O'Dorisio, P.C. 1099 18th Street, Suite 2600 Denver, CO 80202-1926 T: 303-297-2600 F: 303-297-2750 E: bmagoon@rwolaw.com; jakin@rwolaw.com <i>Counsel for The Villages at Castle Rock Metropolitan          District No. 4</i>	Case No. 1985 CV 306
<b>RESPONSE IN OPPOSITION TO PETITION FOR ORDER AND CERTIFICATION          OF DISSOLUTION OF SPECIAL DISTRICT AND REQUEST FOR STAY OR,          ALTERNATIVELY, AN EVIDENTIARY HEARING</b>	

The Villages at Castle Rock Metropolitan District No. 4 ("District 4"), by and through its undersigned counsel, hereby files its Response in Opposition to Petition for Order and Certification of Dissolution of Special District and Request for Stay or, Alternatively, an Evidentiary Hearing, and in support thereof states as follows:

#### **BACKGROUND**

1. This action arose when the Division of Local Government ("the Division") of the Colorado Department of Local Affairs filed a Petition for Order and Certification of Dissolution of Special District on January 24, 2014 (the "Petition"), seeking certification of the Division's Declaration of Dissolution of the Villages at Castle Rock Metropolitan District No. 9 ("District 9").

2. C.R.S. § 32-1-710 provides that the Division may administratively dissolve a district if, among other things, it has no outstanding financial obligations. C.R.S. § 32-1-710(1)(b). District 4 alleges that District 9 in fact has outstanding financial obligations pursuant to intergovernmental agreements between the two districts, and therefore, that District 9 may not be administratively dissolved. District 4 asserts the Division's Declaration of Dissolution (Exhibit B to the Petition) was improvidently issued and thus should not be certified by this Court.

3. District 4 filed a Complaint for Declaratory Relief (the "Complaint") in the District Court of the City and County of Denver on January 23, 2014, seeking 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 Declaration of Dissolution has not been satisfied; (c) as such, the Declaration of Dissolution issued on August 26, 2013 is null and void; and (d) the Declaration of Dissolution impairs the obligations of contract between District 4 and District 9. A copy of the Complaint is attached hereto as Exhibit 1.

4. District 4 now requests that this Court stay this action pending a final resolution of its Complaint filed in Denver District Court or, in the alternative, a one-half day evidentiary hearing to be held on or before Friday, February 21, 2014. As the lack of outstanding financial obligations is a condition precedent to administrative dissolution of a district under C.R.S. § 32-1-710, a final ruling on District 4's Complaint in Denver District Court will resolve the key issue of whether the Division's Petition may be certified by this Court. District 4 contends that District 9 has outstanding financial obligations and therefore, the Declaration of Dissolution should never have been issued.

### STANDING

5. District 4 may oppose the Petition and Declaration of Dissolution on the basis that District 9 has outstanding financial obligations as contemplated by C.R.S. § 32-1-710(1)(b). It is a general rule that political subdivisions of the state lack standing to challenge the constitutionality of a state statute directing the performance of their duties. *Romer v. Fountain Sanitation Dist.*, 898 P.2d 37, 40 (Colo. 1995). However, District 4 has standing to bring this case because the statute under which the Division brings its Petition, C.R.S. § 32-1-710, does not direct the performance of District 4's duties. *Fountain Sanitation*, 898 P.2d at 40 ("political subdivisions of the state do not have standing to challenge the constitutionality of a state statute directing the performance of their duties") (emphasis added). Thus, District 4 is not a subordinate agency of the Division for purposes of C.R.S. § 32-1-710. See *Romer v. Bd. of Cty Comm'rs*, 956 P.2d 566, 574 (Colo. 1998) (holding that a county department of social services was a subordinate agency pursuant to the Colorado Human Services Code when it makes expenditures for social services and therefore lacked standing to compel the State Department of Human Services to reduce statewide social services expenditures).

6. District 4 has a legally protected interest, because, in contravention of Colorado Constitution Article II, § 11, the Declaration of Dissolution impairs the obligations of contract between District 4 and District 9, by which District 9 is obligated to repay District 4 for constructing certain facilities to the benefit of District 9. District 4 has the same rights as any private party to enforce its contractual rights under the intergovernmental agreements and to not have its contract unconstitutionally impaired in contravention of Colorado Constitution Article II, § 11. See *South Suburban Park & Recreation Dist. v. Bd. of Assessment Apprs.*, 894 P.2d 771, 773 (Colo. App. 1995) (holding that to the extent a special district assumed obligations to pay taxes, it assumed the position of any other taxpayer and was entitled to the same due process as

any private taxpayer); *see also* Colo. Const. art. II, § 11 ("No . . . law impairing the obligation of contracts . . . shall be passed by the general assembly.").

7. The U.S. Supreme Court has held that a state legislature, in the exercise of its rights to govern municipalities and public property, may not pass laws impairing the rights of existing creditors of a municipality. *Mount Pleasant v. Beckwith*, 100 U.S. 514, 532 (1879).

### **FACTUAL ALLEGATIONS**

8. 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.

9. There are two relevant intergovernmental agreements governing the relationship between District 4 and District 9:

- (a) an 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").

10. Pursuant to the IRFA and the IFA, District 4 issued four series of 1986 Revenue Bonds in the amount of \$32,175,000, in part, to fund the construction of (a) Water Supply/Treatment/Storage and Transmission Facilities and (b) Wastewater Treatment/Interceptors and Regional Diversions (the "Facilities") for the benefit of District 9. Of the \$32,175,000 issued as 1986 Revenue Bonds, District 4 incurred \$2,918,291.00 in constructing the Facilities that benefited District 9.

11. 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.

12. District 4 subsequently 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. 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.

13. The Declaration of Dissolution issued by the Division 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 declaration 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.

14. In paragraph 6 of the Declaration of Dissolution (Exhibit B to the Petition) dated August 26, 2013, the Director of the Division states:

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.

15. Throughout the years, however, District 4, through its counsel, has communicated with the Division regarding the financial obligations of District 9 to District 4. *See* Complaint (Exhibit 1) and Exhibits A - E, attached thereto.

16. 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.

17. 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 issued the Declaration of Dissolution on August 26, 2013.

18. Thus, District 4 filed its Complaint in Denver District 4 due to the fact that no financial obligation is a condition precedent to the issuance of a Declaration of Dissolution, and the Declaration of Dissolution impairs contractual obligations between District 4 and District 9 in contravention of Colorado Constitution Article II, Section 11.

19. The Division filed its Petition on Friday, January 24, 2014. C.R.S. § 32-1-710(3) provides, in part:

The Court shall make a determination on the division's declaration within thirty days after the declaration has been submitted . . . .

### CONCLUSION

20. Pursuant to the IRFA and the IFA, District 4 has a legally protected interest in being repaid by District 9 for the \$2,918,291.00 spent in constructing the Facilities for the benefit of District 9. Dissolution of District 9 under C.R.S. § 32-1-710, because of District 9's outstanding financial obligations, would impair District 4's contract rights because it would cause District 4's contractual obligee to cease to exist.

21. Accordingly, District 4 seeks an Order staying this action pending a final determination in Denver District Court as to whether District 9 has outstanding financial obligations owed to District 4. The determination of whether District 9 has outstanding financial obligations will settle the key question of whether the Division may, by application of C.R.S. § 32-1-710, administratively dissolve District 9 by Declaration of Dissolution, or if the Division should not have issued the Declaration of Dissolution in this case due to outstanding financial obligations owed to District 4.

22. Alternatively, District 4 is seeking a one-half day evidentiary hearing to be held on or before February 21, 2014.

23. A Proposed Order granting the relief sought is submitted herewith.

WHEREFORE, District 4 seeks an Order staying this action pending a final resolution of the Complaint for Declaratory Relief in Denver District Court (Exhibit 1) or, alternatively, a one-half day evidentiary hearing to be held on or before February 21, 2014, and for such other and further relief as the Court deems just and proper.

Respectfully submitted this 30th 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.)*

*CERTIFICATE OF SERVICE*

I hereby certify that on January 30, 2014, I electronically filed and served the foregoing via ICCES and/or placed a true and correct copy of the foregoing in the U.S. Mail, first-class postage thereon prepaid, addressed to the following:

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

Douglas County Assessor  
301 Wilcox Street  
Castle Rock, CO 80104

John W. Suthers, Attorney General  
Leeann Morrill, First Assistant Attorney General  
Maurice G. Knaizer, Senior Assistant Attorney General  
Public Officials Unit, State Services Section  
1300 Broadway, 6th Floor  
Denver, CO 80203

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

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

/s/ Donna C. Steir

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

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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

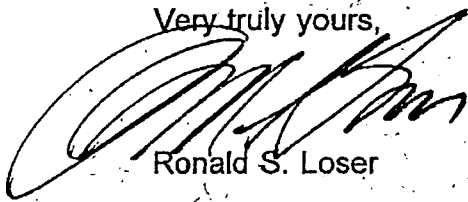
**BREGA & WINTERS P.C. ATTORNEYS AT LAW**

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

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

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FAX: (970) 352-6547  
(970) 352-4805

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").

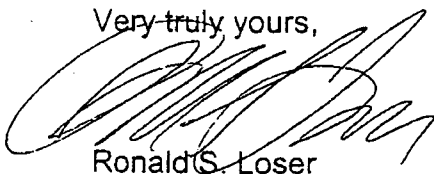
All of the land within District 9 is currently owned by the Memmen family. No development has occurred in District 9 and there are no homes within the boundaries of District 9.

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

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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

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

Attachments: Scanned from a Xerox multifunction device001.pdf



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  
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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).

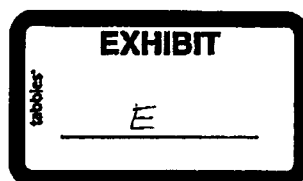
It appears that some of the districts originally involved with the intergovernmental financing agreement have been able to successfully dissolve without harm to the bankruptcy proceeding of District 4. As of this point our records show that Villages At Castle Rock Metropolitan Districts No. 3, 5, and 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)

9/4/2013