

DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO Denver City & County Building 1437 Bannock Street, Room 256 Denver, CO 80202 303-606-2300	DATE FILED: July 28, 2023 5:13 PM FILING ID: 1FE808863CFC3 CASE NUMBER: 2023CV32212
EBERT METROPOLITAN DISTRICT, a Colorado Special District,  <b>Plaintiff,</b>  v.  TOWN CENTER METROPOLITAN DISTRICT, a Colorado Special District,  <b>Defendant.</b>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> Case No.: 2023CV_____
Evan D. Ela, #23965 Harley G. Gifford, #38232 Cockrel Ela Glesne Greher & Ruhland, P.C. 44 Cook Street, Suite 620 Denver Colorado 80206 Telephone: 303-218-7200 Facsimile: 303-218-7220 E-Mail: eela@cegrlaw.com; hgifford@cegrlaw.com	Div.:                      Ctrm.:
<b>COMPLAINT</b>	

**COMES NOW** the Plaintiff Ebert Metropolitan District, a Title 32 Colorado Special District, by and through undersigned counsel and for this Complaint states as follows:

1. Ebert Metropolitan District, as Plaintiff, requests that the Court issue a mandatory injunction, order specific performance, and issue a writ of mandamus requiring Town Center Metropolitan District to bring all portions of the Community Fence and adjacent Common Area into compliance with the Master Declaration of Covenants, Conditions, and Restrictions for Green Valley Ranch North as more specifically described herein.

2. Ebert Metropolitan District (“**Plaintiff**”) is a quasi-municipal corporation and political subdivision of the State of Colorado and a duly organized and existing special district pursuant to Title 32, Colorado Revised Statutes.

3. Town Center Metropolitan District (“**Defendant**”) is a quasi-municipal corporation and political subdivision of the State of Colorado and a duly organized and existing special district pursuant to Title 32, Colorado Revised Statutes.

4. This action concerns the enforcement of covenants, conditions and restrictions upon real property located in the City and County of Denver.

5. Venue for this action is proper in the City and County of Denver, Colorado, pursuant to Rule 98(a) of the Colorado Rules of Civil Procedure.

6. This Court has subject matter jurisdiction over this matter as a court of general jurisdiction pursuant to Article VI, Section 9 of the Colorado Constitution.

### **ALLEGATIONS**

7. Green Valley Ranch North (“**GVRN**”) is the descriptive name for a real estate development project consisting of approximately 1,262 acres of real property located in the City and County of Denver, Colorado.

8. Plaintiff and Defendant’s legal boundaries are both located within GVRN.

9. GVRN has been overlain by the proper creation of Title 32 metropolitan districts, one now known as Ebert Metropolitan District and the other as Town Center Metropolitan District.

10. GVRN was to be developed as a planned community containing attached and detached single-family residential homes, multi-family residential buildings, with commercial and industrial areas, and with covenant controls. Ebert Metropolitan District was established as a residential district with debt obligations requiring tax revenue for the financing of infrastructure construction. Town Center Metropolitan District was established as a commercial control district with the contractual authority to manage expenditure of tax revenue for the installation of infrastructure throughout the Ebert Metropolitan District territory as well as commercial and residential development within the territory of Town Center Metropolitan District.

11. Until May 3, 2016, Oakwood Development Company LLC, a Colorado limited liability company (“**Oakwood**”) controlled both metropolitan districts through its corporate enterprise.

## **Master Declaration**

12. On August 10, 2001, Oakwood as the original declarant filed for recording with the office of the Clerk and Recorder for the City and County of Denver, Colorado at Reception No. 20-01133495, the Master Declaration of Covenants, Conditions, and Restrictions for Green Valley Ranch North (the “**Master Declaration**”), a copy of which is attached hereto as Exhibit A.

13. Upon information and belief, the entire territory of Plaintiff exists within the Community Area (“**Community Area**”) as defined at Section 2.13 of the Master Declaration.

14. As stated in Section 1.2 of the Master Declaration, the Master Declaration was executed to (a) further a common and general plan for the Community Area, (b) enhance and protect the quality, value, aesthetic nature, desirability, and attractiveness of the Community Area, (c) provide a mechanism to review additions and changes to commercial, industrial, and residential structures located within the Community Area, (d) provide a mechanism for the enforcement of the provisions of this Master Declaration, and (e) define certain duties, powers, and rights of owners of real property within GVRN for the benefit of all lots and owners and purchasers of all lots.

15. GVRN includes the real property upon which the Green Valley Ranch Golf Club is located, which course consists of an 18-hole golf course, a 9-hole golf course, and a clubhouse complex (together the “**Golf Course**”), all of which is owned and maintained by Defendant.

16. The Golf Course is bounded in significant part by a black metal fence separating private residential lots from the property owned by Defendant and the City and County of Denver known as the “**Community Fence**”. A map of GVRN showing the fence types throughout GVRN and surrounding the Golf Course property is attached hereto as Exhibit B.

17. Upon information and belief, the Golf Course and adjacent open spaces contained within the Community Fence is wholly a part of the Community Area.

18. Section 4.1(a)(i) of the Master Declaration states:

“No property within the Community Area shall be permitted to fall into disrepair, and all property within the Community Area, including any Improvements and landscaping thereon, shall be kept and maintained in a clean, safe, attractive, and sightly condition, in good repair, and in accordance with all Applicable Laws. Maintenance, repair, and upkeep of the Community Area shall be allocated among the Owners as follows: (A) the maintenance, repair, and upkeep of each Site shall be the responsibility of the Owner of the Site; (B) the maintenance, repair, and upkeep of Golf Course Site shall be the responsibility of the Town Center District; (C) the maintenance, repair, and upkeep of those Common Areas owned by the City shall be the responsibility of the City except as may otherwise be

provided herein or in a Notice of Annexation, Plat, a Supplemental Declaration, or other Recorded instrument; and (D) the maintenance, repair, and upkeep of all other Common Areas shall be the responsibility of the Town Center District except as may otherwise be provided herein or in a Notice of Annexation, Plat, a Supplemental Declaration, or other Recorded instrument.”

19. Defendant has a clear duty under the Master Declaration, both as the owner of the Golf Course and as the only caretaker of the other Common Areas, to enforce the covenants set out in the Master Declaration.

20. Section 4.1(a)(iv) of the Master Declaration provides in part that if the Community Fence is located on a lot line separating privately-owned lots (defined as “Sites” at Section 2.58 of the Master Declaration) from the Golf Course, or on any property owned by the Plaintiff or the Defendant, then the Defendant “shall be responsible for maintaining, repairing, and replacing, in a reasonably attractive manner, such Community Fence.”

21. The Master Declaration further grants Defendant an easement across all privately-owned lots for the purpose of maintaining, repairing, and replacing the Community Fences.

22. Section 4.1(a)(v) of the Master Declaration mandates in part:

“An Owner shall not modify or replace a Community Fence adjoining its Site without prior Electronically Transmitted or written approval from the [Defendant].”

23. Section 4.2 of the Master Declaration functions to automatically assign and delegate to Defendant every Owner’s “authority, power, right, and responsibility to enforce the covenants, limitations, and restrictions . . . set forth in this Master Declaration . . .”.

24. Section 6.14 of the Master Declaration requires that if a violation of the Master Declaration exists, Defendant shall require the violator to remedy or remove said violation. Additionally, if the violating party does not correct the violation, Defendant “may enter upon such property and remove the noncomplying Improvement to Property, or may otherwise remedy the noncompliance . . .”.

### **Service Agreement**

25. On November 1, 2018, Plaintiff and Defendant entered into a Second Amended and Restated District Facilities Construction, Funding and Service Agreement (the “**Service Agreement**”), attached hereto as Exhibit C.

26. Paragraph 3.6 of the Service Agreement states that “[t]his Agreement and the actions taken to approve its adoption shall constitute a contract between the Districts, and shall be and remain irrevocable unless and until terminated in accordance with their terms.”

27. Among other items, Paragraph 5.5 of the Service Agreement requires that Defendant, for itself and on behalf of Plaintiff,

“shall have the authority, duty and power to enforce the Master Declaration of Covenants, Conditions and Restrictions for Green Valley Ranch North (the Covenants), including without limitation the implementation and enforcement of covenants and rules and procedures for the notice of alleged violations, conduct of hearings and imposition of associated fees, as well as the establishment and administration of the design review guidelines, and establishment of regulations and rules for the design and other review procedures prescribed by the Covenants. In doing so [Defendant] shall have the right and authority to delegate the design review functions to a Design Review Committee, as provided in the Covenants, and establish procedures for the appeal of decisions by the Design Review Committee. [Defendant] shall also have the right to delegate any of aforesaid activities and duties to committees of its choosing in consultation with the Ebert Board.”

#### **Failure to Enforce Covenants**

28. Section 4.1(a)(i) of the Master Declaration further states: “At its option, the Town Center District may contract with third parties to perform its maintenance, repair, and upkeep obligations hereunder.”

29. Upon information and belief, in accordance with Section 4.1(a)(i) of the Master Declaration, Defendant has delegated enforcement of the Master Declaration to Westwind Management Group, LLC., (“**Westwind**”), but retained ultimate authority to resolve disputes and direct enforcement policies.

30. Upon information and belief, in December, 2021, Defendant or Westwind conducted an audit of residential lots located adjacent to the Golf Course. The audit identified violations of the Master Declaration numbering forty-six (46) illegal gate or fence violations with respect to the Community Fence and sixty-three (63) landscape violations occurring on Defendant’s property adjacent to the Community Fence. Although the audit was conducted in 2021, the violations have gone unaddressed (as described below and demonstrated by Exhibits H through K hereto) by Defendant as of the date of this Complaint. A copy of the audit is attached hereto as Exhibit D.

31. Upon information and belief, Defendant was made aware that owners of residential lots had modified the Community Fence without prior written approval from the Defendant by modifying the uniformity of the Community Fence, allowing the installation of gates, and allowing the installation of unauthorized landscaping and land use within the publicly owned land in GVRN. An example of such communication is attached hereto as Exhibit E.

32. On or about November 3, 2022, Westwind informed all residents in writing that many homeowners, within the legal boundaries of the Plaintiff and Defendant, have modified the Community Fence and that such modifications are not allowed. Westwind further stated that all gates installed in the Community Fence shall be removed and the Community Fence shall be restored to its original state by April 30, 2023, a copy of which is attached hereto as Exhibit F.

33. On or about December 30, 2022, Defendant, through Defendant's District Manager, Timberline District Consulting, LLC ("TDC"), reversed Westwind's November 3, 2022 decision and informed all residents that Defendant "will not be requiring homeowners to restore the gates to their original condition. Going forward, the installation of gates will not be approved or allowed on district property." A copy of such communication is attached hereto as Exhibit G.

34. As of the date of this Complaint, violations of the Master Declaration by Owners with respect to the Community Fence persist, and enforcement by Defendant, Westwind, or TDC to rectify such violations has not been performed. Photographs taken contemporaneously with the date of this Complaint are described below to demonstrate lack of covenant enforcement over an 18-month period since the audit of violations was done.

- a. Photographed examples of gate installation violations to the Community Fence are included as Exhibit H hereto.
- b. Photographed examples of damage and lack of maintenance violations to the Community Fence are included as Exhibit I hereto.
- c. Photographed examples of landscape violations of the Common Area by Site Owners and are included as Exhibit J hereto.
- d. Photographed examples of landscape violations on property owned and maintained by Defendant are included as Exhibit K hereto.

35. Plaintiff has repeatedly notified the Defendant, through its agent TDC and Westwind, of the violations to the Master Declaration.

36. Plaintiff afforded the Defendant an opportunity to correct the violations of the Master Declaration. Notwithstanding Plaintiff's requests and demands, Defendant continues to be in violation of the covenants, conditions, and restrictions by its failure to enforce covenanted limitations and restrictions as described in the Mater Declaration.

37. The Defendant, by its acts or omissions to act, is in violation of the covenants, conditions and restrictions in the Master Declaration, including but not limited to the following:

- a. Defendant has intentionally refused to restrict owners of residential lots (Sites) adjacent to the Golf Course from modifying (installing gates) or replacing the Community Fence.

- b. Defendant has failed to maintain, repair, or replace the Community Fence so as to keep it in a reasonably attractive and functioning manner.
- c. Defendant has failed to maintain, repair, and keep up all Common Areas in the vicinity of the Community Fence for which Defendant has the obligation to maintain, repair, and keep up.
- d. Defendant has arbitrarily and capriciously enforced the Master Declaration in regards to the Community Fence.

### **Summary**

38. Plaintiff's residents and constituents have an expectation that the Master Declaration will be enforced to preserve the quality, value, aesthetic nature, desirability, and attractiveness of the neighborhoods within GVRN as set out in Section 1.2 of the Master Declaration. Attached hereto as Exhibit L are pictures of signs along public streets within GVRN proclaiming that the above-described property values are protected by enforcement of covenants contained in the Master Declaration. As Exhibits H through K hereto demonstrate, the expectations of residents and prospective buyers within the community have not been met and will not be met unless Defendant is compelled to perform its duty to enforce protections granted by property covenant.

39. By intentionally refusing to enforce the Master Declaration as mandated by its terms, and by refusing to meet its contractual duties as set forth in the Service Agreement, the Defendant is itself violating the Master Declaration and breaching the Service Agreement.

40. Defendant took upon the responsibility to enforce the covenants contained in the Master Declaration, provide District services, and maintain District Facilities (Paragraphs 5.5, 5.5 [sic], and 5.6 of the Service Agreement), and to date has failed to perform its obligations.

41. Defendant's failure to enforce the Master Declaration, if permitted to continue, will inflict upon the Plaintiff and other property owners in GVRN great and irreparable damage for which there is no adequate remedy at law.

### **FIRST CLAIM FOR RELIEF - MANDATORY INJUNCTION BASED ON VIOLATIONS OF THE MASTER DECLARATION**

42. "The grant or denial of injunctive relief lies within the sound discretion of the trial court and will be reversed only upon a showing of an abuse of that discretion." Langlois v. Board of County Com'rs, 78 P.3d 1154 (Colo. App. 2003) *citing* Scott v. City of Greeley, 931 P.2d 525 (Colo.App.1996).

43. If merely restraining the doing of an act or acts will not effectuate the relief to which the moving party is entitled, an injunction may be made mandatory." C.R.C.P. 65(f).

44. A mandatory injunction resembles specific performance in its requirement of affirmative performance. A mandatory injunction's essential purpose, like that of a negative injunction, is to preserve the status quo and prevent injury, rather than to redress past wrongs. Snyder v. Sullivan, 705 P.2d 510 (Colo. 1985).

45. In order to maintain the Community Fence's *status quo* no alteration or modification of the Community Fence should have been made without the prior written approval from the Defendant, and Defendant has allowed alterations without such approval.

46. Upon being made aware that as many as forty-six (46) covenant violations had been made to the Community Fence and as many as sixty-three (63) covenant violations had occurred on Common Area owned or maintained by Defendant, Defendant arbitrarily chose not to enforce the Master Declaration against violators or alternatively, to perform corrections.

47. The Master Declaration specifically mandates that "the [Defendant] shall be responsible for maintaining, repairing, and replacing, in a reasonably attractive manner, such Community Fence." Section 4.1(a)(iv). Further, to effectuate this mandate, Defendant is empowered with an easement across all privately-owned residential property for the purpose of maintaining, repairing, and replacing any and all Community Fences. Section 4.1(a)(iv).

48. The Master Declaration specifically mandates that the Defendant shall prevent any property within the Community Area to "fall into disrepair, and property within the Community Area, including any Improvements and landscaping thereon, shall be kept and maintained in a clean, safe, attractive, and sightly condition, in good repair, . . .". Section 4.1(a)(i).

49. The Master Declaration at Section 4.1(a)(v) requires Defendant to issue a written approval to a Site Owner prior any modification to the Community Fence and when no approval is given, Defendant has the ability and requirement to return the Community Fence to its original state.

50. Defendants continued failure to enforce covenants and violation of the Master Declaration will inflict upon the Plaintiff and other property owners in GVRN great and irreparable damage for which there is no adequate remedy at law.

**SECOND CLAIM FOR RELIEF – PERMANENT INJUNCTIONS AND SPECIFIC PERFORMANCE BASED ON BREACH OF CONTRACT**

51. Paragraph 6.2 of the Service Agreement provides that "in the event of breach of any provision of this Agreement, . . . either District may seek from a court of competent jurisdiction temporary and/or permanent restraining orders, or orders of specific performance, to compel the other to perform in accordance with the obligations set forth under this Agreement."



52. Defendant has breached the terms of the Service Agreement by failing to enforce the Master Declaration as compelled by the Service Agreement at Paragraph 5.5. Defendant has failed to require prior approval for modifications to the Community Fence, and has failed to maintain the Community Fence in its original condition, and has failed to maintain the Community Area adjacent to the Community Fence to the standards required by the Master Declaration.

53. Defendant has failed to maintain Golf Course and Common Area properties that it owns or has sole caretaker responsibility for to the standards required by the Master Declaration. Plaintiff is entitled to specific performance by Defendant per the terms of the Service Agreement at Paragraph 6.2.

54. Without Court intervention by issue of an order requiring specific performance, Defendant's continued breach of the Service Agreement and concurrent violation of the Master Declaration will inflict upon the Plaintiff and other property owners in GVRN great and irreparable damage for which there is no adequate remedy at law.

55. Without Court intervention by issue of temporary injunction preventing conveyance or other alienation of the subject property until violations are corrected, Defendant's continued breach of the Service Agreement and concurrent violation of the Master Declaration will inflict upon the Plaintiff and other property owners in GVRN great and irreparable damage for which there is no adequate remedy at law.

56. Without Court intervention by issue of a permanent injunction restraining and enjoining the Defendant from continuing to violate the Master Declaration in any way, Defendant's continued breach of the Service Agreement and concurrent violation of the Master Declaration will inflict upon the Plaintiff and other property owners in GVRN great and irreparable damage for which there is no adequate remedy at law.

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

57. Paragraph 6.2 of the Service Agreement provides that “in the event of breach of any provision of this Agreement, in addition to contractual remedies, either District may ask a court of competent jurisdiction to enter a writ of mandamus to compel the Board of Directors of the defaulting District to perform its duties under this Agreement, . . .”.

58. Rule 106(a)(2), C.R.C.P provides that a Plaintiff seeking issuance of a writ of mandamus file a complaint in the district court. A writ of mandamus is appropriate to compel a governmental body to perform an official act specifically required by law. C.R.C.P. 106(a)(2). *Lamm v. Barber*, 192 Colo. 511, 565 P.2d 538 (Colo.1977). In considering whether to issue a writ of mandamus, Colorado courts have generally applied a three-part test: (1) the plaintiff must have a clear right to the relief sought; (2) the defendant must have a clear duty to perform the act

requested; and (3) there must be no other available remedy.” *Local Union No. 1 of Intern. Union of Operating Engineers v. Metro Wastewater Reclamation Dist.*, 876 P.2d 82 (Colo. App. 1994).

59. Section 10.8 of the Master Declaration identifies the persons entitled to enforce the Master Declarations. While such persons include the Plaintiff, pursuant to the Service Agreement at Paragraph 5.5, Defendant assumed for itself all rights and duties to enforce the Master Declaration leaving Plaintiff no right to enforce. No other remedy is available for Plaintiff to ensure enforcement of the Master Declaration.

60. Without Court intervention by issue of a writ of mandamus against Defendant, Defendant’s continued breach of the Service Agreement and concurrent violation of the Master Declaration will inflict upon the Plaintiff and other property owners in GVRN great and irreparable damage for which there is no adequate remedy at law.

**WHEREFORE**, the Plaintiff respectfully requests judgment against the Defendant as follows:

1. Issue a mandatory injunction requiring the Defendant or anyone acting on behalf of the Defendant to bring all portions of the Community Fence into compliance with the covenants, conditions, and restrictions of the Master Declaration and ordering the Defendant to correct violations within GVRN (summarized below) that are the subject matter of this action:

- a. Remove all modifications to the Community Fence that violate the original appearance and integrity of the Community Fence as originally installed.
- b. Repair all damaged sections of the Community Fence.
- c. Paint and otherwise continually maintain the Community Fence to enhance and protect the quality, value, aesthetic nature, desirability, and attractiveness of the Community Area as required by the Master Declaration.
- d. Restore and maintain Common Areas to enhance and protect the quality, value, aesthetic nature, desirability, and attractiveness of the Community Area as required by the Master Declaration.

2. Order specific performance by the Defendant or anyone acting on behalf of the Defendant to enforce the Master Declaration as required by the Service Agreement and bring all aspects of the Community Area into compliance with the covenants, conditions, and restrictions of the Master Declaration as summarized below:

- a. Restore and maintain the Community Fence to its original condition as described in Paragraphs 1.a. – c. immediately above.

- b. Restore and maintain Common Areas to enhance and protect the quality, value, aesthetic nature, desirability, and attractiveness of the Community Area as required by the Master Declaration.
3. Enjoin the Defendant from conveying or otherwise alienating any subject property until the violations are corrected.
4. Enter a writ of mandamus against the Defendant or anyone acting on behalf of the Defendant to enforce the Master Declaration as required by the Service Agreement and bring all aspects of the Community Area into compliance with the covenants, conditions, and restrictions as required by the Master Declaration as summarized below:
  - a. Restore and maintain the Community Fence to its original condition as described in Paragraphs 1.a. – c. immediately above.
  - b. Restore and maintain Common Areas to enhance and protect the quality, value, aesthetic nature, desirability, and attractiveness of the Community Area as required by the Master Declaration.
5. Award Plaintiff its costs and expenses, including attorney fees, incurred in this action pursuant to Section 10.14 of the Master Declaration.
6. Further, Plaintiff requests this Court to establish a performance period of one-hundred twenty-six (126) days following the date of Orders issued by this Court, and that upon Plaintiff's Motion demonstrating failure of substantial performance by Defendant, the Defendant be found in Contempt of Court.
7. Award Plaintiff such additional relief as the Court determines just and proper.

Respectfully submitted this 28th day of July 2023.

*E-filed per C.R.C.P. Rule 121*



---

Evan D. Ela, #23965  
Harley G. Gifford, #38232  
*Attorneys for Plaintiff*

**VERIFICATION**

STATE OF COLORADO   )  
  )  
COUNTY OF DENVER   )

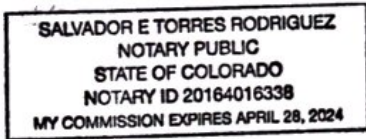
I, Bruce Shibles, President of Ebert Metropolitan District, state under oath that I have read the foregoing Complaint and that the contents thereof are true and correct to the best of my knowledge and belief.

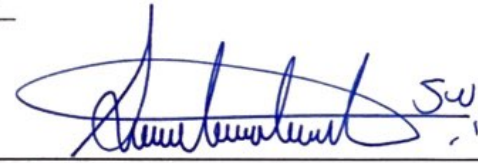
  
\_\_\_\_\_  
Bruce Shibles  
Ebert Metropolitan District

Subscribed under oath before this 25<sup>th</sup> day of July 2023, by Bruce Shibles.

Witness my hand and official seal.

My commission expires: 04/28/2024



  
\_\_\_\_\_  
Notary Public