

CAUSE NO. _____

1620 HAWTHORNE LTD. Plaintiff	§ § § § § § § § § §	IN THE DISTRICT COURT
vs.		HARRIS COUNTY, TEXAS
MONTROSE MANAGEMENT DISTRICT, Defendant.		_____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION AND SUIT FOR
DECLARATORY JUDGMENT**

TO THE HONORABLE JUDGE OF THIS COURT:

Plaintiff, 1620 Hawthorne Ltd., hereby files this suit alleging claims and causes of action for Breach of Contract, Declaratory Judgment and Constitutional Impairment of Contract against Defendant Montrose Management District (“MMD” or “the District”) and in support shows as follows:

I.

Parties /Service

1. Plaintiff is a Texas Limited Partnership which owns commercial real property within the boundaries of Defendant. Plaintiff has its principal place of business in Harris County, Texas.

2. Defendant Montrose Management District is a Municipal Management District created by the Texas legislature and subject to the provisions

of Chapter 375 of the Local Government Code. The address for service is: Attn: David Hawes at Hawes, Hill & Calderon LLP, 10103 Fondren Rd., Suite 300, Houston, TX 77096.

II.
Rule 190 Designation

3. This case is designated as Level II for discovery under Rule 190.

III.
Jurisdiction/Venue

4. This Court has jurisdiction under Chapter 375 of the Local Government Code and under the general grant of jurisdiction with which District Courts are vested by the Texas Constitution. Venue for this action is designated as Harris County by Chapter 375 of the Local Government Code and by Section 15.002 of the Civil Practice and Remedies Code since Defendant is located in Harris County.

IV.
Background Facts

5. On June 17, 2005, the Texas Legislature enacted Chapter 3843 of the Texas Special District Local Laws Code. By this legislation, the Texas Legislature created a special district called the Harris County Improvement District no. 6, commonly referred to locally as the East Montrose Management District. On June 19, 2009, the Texas Legislature similarly enacted Chapter 3878 of the Texas Special District Local Laws Code. By this legislation, the Texas Legislature

created a special district called the Harris County Improvement District no. 11, commonly referred to locally as the West Montrose Management District.

6. On February 15, 2011, the East Montrose Management District and the West Montrose Management District were consolidated into one, commonly referred to locally as the Montrose Management District (hereafter referred to as either “the District” or “MMD”). Plaintiff owns commercial property within the District and has been illegally assessed and/or taxed by the District.

7. On September 29, 2011, an individual named Robert Rose personally delivered approximately 988 individually-signed Petitions for Dissolution to Defendant MMD (collectively referred to as the “Petition for Dissolution”). One of the signers of the Petition for Dissolution is Plaintiff herein. The persons signing the Petition for Dissolution were upset with the fact that the District had recently assessed their respective properties with a burdensome and costly new tax, and that such assessments and/or taxes were going to be used for the mutual benefit of many non-commercial property owners who were exempt under state law from being assessed and/or taxed by the District. Determined to eradicate this unfair, illegal and unconstitutional assessment and/or tax, the signers submitted collectively the Petition for Dissolution, which requested the District’s Board of Directors (referred to as the “Board”) to immediately dissolve the District.

8. The statutory basis for such a Petition for Dissolution may be found

in Section 375.262(1) of the Texas Local Government Code. This statute requires that the District's Board dissolve the District upon receipt of a written petition filed with the Board by the owners of "75 percent or more of the assessed value of the property in the District based upon the most recent certified county property tax rolls."

9. Although the 75 percent requirement was met by the Petition to Dissolve, Defendant MMD refused, and continues to refuse, to dissolve. Indeed, rather than comply expeditiously with their mandatory and ministerial duty to dissolve, Defendant MMD's Board instead stiff-armed the required dissolution—choosing instead to engage in a sham investigation into the sufficiency and/or adequacy of the Petition to Dissolve. In truth, this sham investigation was concocted to camouflage the fact that the District desperately needed to buy more precious time so that the District's lawyers and representatives could huddle behind closed doors and in secret in a vain attempt to try and figure out how to evade their clear statutory duty to dissolve. Once the District thought that it had figured out how to defend itself against extinction, their plot was hatched, and through a course of collusive and illegal actions and meetings, the District ignored, and continues to ignore, its legal obligation to dissolve and instead falsely maintained that the 75 percent requirement had not been satisfied.

10. The District reached this bogus conclusion by interpreting the 75 percent requirement to include the total value of all the properties by all owners of property, both residential and commercial, wherever located in the District. But Plaintiff will show that the District's interpretation is clearly erroneous and is indeed perverse. By interpreting the 75 percent dissolution threshold as requiring the support of those owners who have not and cannot legally be assessed by the District, both the District and the District's Board are violating state law.

11. Simply put, MMD has turned state law on its head. Their logic cannot survive a reasoned analysis. The purpose of an improvement district is to provide services and improvements to all property owners within the improvement district by taxing and/or assessing solely the owners of the commercial properties contained within its boundaries. Thus, only a subset percentage of the actual owners within an improvement district will bear the brunt of the tax that benefits everyone. Clearly, it is not reasonable to assume that non-commercial owners of real property and improvements within the District, who reap the benefits of the assessment and/or tax expenditures but do not have to pay for any services or improvements, will be inclined to dissolve the District. Their motivation is exactly the opposite—they will want to keep the District alive and continue to enjoy the free services and improvements windfall created by the Texas Legislature.

12. Thus, when understood in this context, it is obvious that dissolution must be an option to those commercial landowners who are subject to the assessment and/or tax, such that 75 percent of that group may petition to obliterate the existence of the District if they so choose. Indeed, Defendant MMD's own website and official records admit that it has no legal authority whatsoever to assess any property owners other than commercial property owners. For example, the District has judicially admitted that the property subject to assessment will solely be the land and improvements of the commercial property owners within the boundaries of the District. The District has further judicially admitted that the following property will be exempt from assessment: single-family detached residential, duplexes, triplexes, quadraplexes, condominiums, municipalities, counties, other political subdivisions, etc.

13. Thus, the fact that the District may not assess and/or tax non-commercial property owners is not even subject to legitimate debate, as the Texas Legislature has clearly specified that the MMD may not assess any land or improvements unless owned by commercial property owners. Thus, it is obvious that the 75 percent threshold clearly and unambiguously relates to 75 percent of the assessed value of the commercial properties within the District who have been assessed by the District, not by 75 percent of the owners within the geographical boundaries of the District who are not (and cannot ever legally be) assessed by the

District but have been assessed by other instrumentalities of government, such as an ad valorem tax by Harris County. To interpret this law any other way would be to ensure that it is unconstitutional.

14. In addition to the foregoing facts regarding the District's unlawful and illegitimate attempt to avoid dissolution, another serious issue exists with respect to whether the West Montrose Management District's assessment was void and illegal in the first place. Section 3878.204(2) of the Texas Special District Local Laws Code empowered that entity to assess or finance a service or improvement project so long as a petition of "at least 25 owners of real property in the district that will be subject to the assessment, if more than 25 persons own real property subject to the assessment in the district according to the most recent certified tax appraisal roll for Harris County." However, not all of the owners who signed the petition in August of 2009 were eligible to do so, as will be proven by Plaintiff. Because of this fact, the petition was not in compliance with state law and the West Montrose Management District's assessment and/or tax is void as a matter of law.

15. Finally, prior to September 1, 2011, the only areas eligible to become an improvement district under 375.201 were those which existed in "an area devoted primarily to commercial development and business activity inside the boundaries of a municipality." Neither the East Montrose Management District nor the West Montrose Management District met these criteria.

V.
CAUSES OF ACTION

A Suit for Declaratory Judgment

16. Plaintiff incorporates the foregoing paragraphs herein by reference. Plaintiff brings this action pursuant to the authority of the Texas Declaratory Judgments Act, Texas Civil Practice & Remedies Code, Chapter 37. Plaintiff would note that governmental immunity is waived if a statute or ordinance is challenged as invalid. Plaintiff hereby requests the following declaratory relief:

- a) the November 14, 2011 Order of the District, attached hereto as Exhibit A, is void on its face due to the fact that the District wrongfully misinterpreted the 75 percent requirement contained in Section 375.262(1) of the Texas Local Government Code to include properties assessed by other entities rather than just by the District itself;
- b) the District has a clear and unambiguous ministerial duty to dissolve and its failure to do so constitutes a clear abuse of discretion. In the alternative, should the Court find that the District's interpretation of the 75 percent threshold is correct, which Plaintiff denies, then Plaintiff seeks a declaration that Section 375.262(1) of the Texas Local Government Code permitting dissolution is unconstitutional, both on its face and as applied to this Plaintiff. More specifically, the taxation of only non-residential property owners, whether referred to as a tax or as an

assessment, coupled with the fact that those burdened by the tax cannot dissolve the taxing authority because of the 75 percent rule, is in violation of the equal protection provisions of both the Texas and United States Constitutions, e.g., Article III, Section 1, of the Texas Constitution and Amendment XIV of the United States Constitution, and also is a violation of the substantive due process guarantees found in the 5th and 14th Amendments to the United States Constitution and the due course of law provision of Article 1, Section 19 of the Texas Constitution;

- c) to the extent that Chapter 375 of the Local Government Code purports to authorize imposing a financial burden on non-residential properties to benefit all properties within the District, that law is unconstitutional, both on its face and as applied to this Plaintiff. More specifically, the taxation of only non-residential property owners, whether referred to as a tax or as an assessment, coupled with the fact that assessments and/or taxes benefit other property owners not burdened by the tax, is in violation of the equal protection provisions of both the Texas and United States Constitutions, e.g., Article III, Section 1, of the Texas Constitution and Amendment XIV of the United States Constitution, and also is a violation of the substantive due process guarantees found in the 5th and 14th Amendments to the United States Constitution and the due course of law provision of

Article 1, Section 19 of the Texas Constitution;

- d) all of the East Montrose Management District's assessments and/or taxes which have been instituted since August of 2009 are void and must be reimbursed to those who were forced to pay those illegal assessments and/or taxes; and
- e) neither the East Montrose Management District nor the West Montrose Management District met the criteria established prior to September 1, 2011; namely, that the only areas eligible to become an improvement district under 375.201 were those which existed in "an area devoted primarily to commercial development and business activity inside the boundaries of a municipality."

VI. **CONCLUSION**

For the reasons detailed above, Plaintiff 1620 Hawthorne Ltd. respectfully requests that this Court declare the parties' rights and obligations as requested herein, together with all reasonable and necessary attorneys' fees, all costs of court, as well as all other and further relief to which Plaintiff may show itself to be justly entitled.

Respectfully Submitted,

ANDY TAYLOR & ASSOCIATES, P.C.

BY: 

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