

STATE OF TEXAS

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COUNTY OF HARRIS

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BEFORE ME, the undersigned Notary Public, personally appeared ROBERT ROSE, who after being duly sworn stated as follows:

My name is Robert Rose. I am over twenty-one (21) years of age, have never been convicted of a felony or other crime involving moral turpitude, and am of sound mind and fully competent to make this affidavit. All of the facts recited below are within my personal knowledge and are true and correct.

1. Plaintiff 1620 Hawthorne Ltd. is a Texas Limited Partnership in good standing which owns commercial real property within the boundaries of the Montrose Management District (“MMD or District”). Plaintiff has its principal place of business in Harris County, Texas. Plaintiff has received and paid tax assessments imposed upon it by MMD for the past two years. I own 99% of Plaintiff in my capacity as a limited partner of Plaintiff. I own 100% of RJR Properties, Inc., which in turn owns 1% of Plaintiff and is the general partner.

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. Montrose Management District filed a Plea to the Jurisdiction in this matter on May 7, 2012, and set its Plea for an oral hearing on June 1, 2012. MMD’s Plea relates to an Original Petition filed by Plaintiff on April 5, 2012.

3. On May 25, 2012, Plaintiff filed its First Amended Original Petition. This Amended Petition adds additional Defendants to this case, asserts additional claims not previously asserted against MMD and against the new Defendants, and clarifies those claims raised previously against MMD.

4. The purpose of the Amended Petition was to ensure that this Court had subject matter jurisdiction over Plaintiff’s claims, to assert standing under the Texas Declaratory Judgments Act and as a taxpayer, to provide a cleaner and clearer basis for finding that governmental immunity does not apply, and to assert declaratory and injunctive relief to which Plaintiff believes it is entitled. In the unlikely event that this Court finds any curable defects in Plaintiff’s Amended Petition, then Plaintiff requests the Court to allow it to file an amended pleading to cure any such perceived

defects. Thus, Plaintiff reserves its right to further amend, should such action become necessary.

5. In addition to Defendant MMD, Plaintiff's Amended Petition adds each of the current members of the District's Board of Directors. Specifically, the new Defendants are: Claude Wynn, Chairman; Dr. Randy Mitchmore, Vice Chairman; Cassie Stinson, Secretary; Kathy Hubbard, Treasurer; Brad Nagar, Assistant Secretary; Robert Jara, Position 6; Bobby Heugel, Position 7; Dana Thorpe, Position 8; Lane Llewellyn, Position 9; Tammy Manning, Position 10; David Robinson, Position 11; Michael Grover, Position 12; Randy Ellis, Position 13; Dennis Murland, Position 14. As stated, these Defendants are all current members of the Montrose Management District Board of Directors ("Board Defendants"). The Board Defendants were sued in each of their respective representative capacities only, in order to comply with the Texas Supreme Court's requirements for necessary and proper parties in an ultra vires suit.

6. In addition, Plaintiff added Defendant Bill Calderon, who is the Executive Director for the Montrose Management District. Defendant Calderon was sued in his representative capacity only in order to comply with the Texas Supreme Court's requirements for necessary and proper parties in an ultra vires suit.

7. 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.

8. 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 assessed and/or taxed by the District.

9. On September 29, 2011, I personally delivered approximately 988 individually-signed Petitions for Dissolution to Defendant MMD (collectively referred to as the "Petition for Dissolution"). These Petitions, when added together, constituted more than 75% of the owners within MMD who were subject to the assessments of MMD. Moreover, these Petitions,

when added together, constituted more than 75% of the assessed value of the property in the District based upon the most recent certified county property tax rolls. 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. Just as one example, MMD uses its assessment to provide landscaping along Montrose Boulevard within the District. Tax-exempt and non-paying residential individuals and entities who own property within MMD benefit from these expenditures just as much as Plaintiff does. Determined to eradicate what the signers believe is an 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.¹

10. 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."

11. Although the 75 percent requirement was met by the Petition to Dissolve, Defendant MMD refused, and continues to refuse, to dissolve.

12. The District reached this 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 alleges in this lawsuit 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, Plaintiff alleges that both the District and the District's Board are violating state law.

13. Simply put, Plaintiff alleges that 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

¹ The Petition to Dissolve is voluminous. To facilitate the filing of these papers and for my affidavit, I have downloaded a true and correct copy of same onto a CD, and will file it with the District Clerk as Ex. A to this filing. A true and correct copy of same has been previously served on all Defendants. If they would like another copy, they can notify the undersigned counsel.

owners of the commercial properties contained within its boundaries². Thus, only a subset percentage of the actual owners within an improvement district will bear the brunt of the tax that benefits everyone. Plaintiff alleges that 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.

14. 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 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 admitted that the following property will be exempt from assessment: single-family detached residential, duplexes, triplexes, quadraplexes, condominiums, municipalities, counties, other political subdivisions, etc.

15. 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

² The property subject to these assessments was the land and improvements of the commercial property owners within the boundaries of the District. Properties exempt from the assessments were single-family detached residential, duplexes, triplexes, quadraplexes, condominiums, municipalities, counties, other political subdivisions, entities exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, public utilities, and recreational property or scenic use property the meets the requirements of Section 375.163, Texas Local Government Code.

County. Plaintiff alleges that, to interpret this law any other way, would be to ensure that it is unconstitutional.

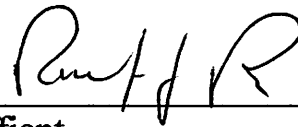
16. In addition to the foregoing facts regarding the District's refusal to dissolve, Plaintiff alleges that another serious issue exists with respect to whether the West Montrose Management District's assessment was void and illegal in the first place. Section 3878.204(2) of the Texas Special District 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 follows: (1) Moore, E Bailey, HCAD 044-184-000-0055. Bailey Moore's property is a residential property and therefore not subject to the assessment. As of the filing of Plaintiff's Original Petition, it is still classified as a residential property; (2) Mitchmore Living Trust, HCAD 054-234-000-0015. Randy Mitchmore operates a dental business from this property, but he also claims a residential homestead exemption. As a residential homestead the property has not been subject to the assessment; and (3) Carter, Michael M, HCAD 054-234-000-0012. Michael Carter operates a funeral business from this property, but he also claims a residential homestead exemption. As a residential homestead his property has not been subject to the assessment. Because of these facts, Plaintiff alleges that the assessment 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.

17. 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, because the land within this area was not devoted primarily to commercial development and business activity.

18. Plaintiff alleges that it has standing to bring various claims against all of the Defendants. With respect to Plaintiff's claims for declaratory and injunctive relief against the Defendants that MMD's unspent tax assessments are illegal and/or unconstitutional, Plaintiff asserts that it is a taxpayer within the MMD. As shown by Exhibits "B" and "C", attached hereto, 1620 Hawthorne Ltd. was assessed by MMD and has paid at least two assessments by MMD. Exhibit B is a true and correct copy of one tax

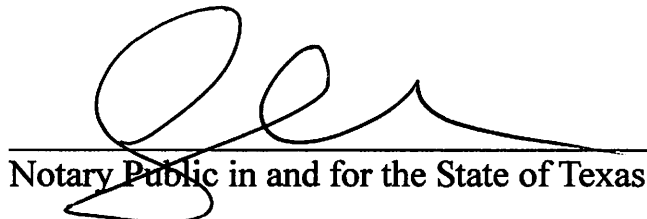
assessment which was paid in March of 2011 in the amount of \$530.63. Exhibit C is a true and correct copy of another tax assessment which was paid in December of 2011 in the amount of \$544.60. These specific assessments, as well as all other assessed and collected tax assessments, are used by MMD for its operations and activities. Accordingly, Plaintiff alleges that it has both state and municipal standing as a taxpayer, as defined and explained in *Williams v. Lara*, 52 S.W.3d 171, 180 (Tex. 2001), to seek declaratory and injunctive relief, so long as this suit does not seek to recover assessed tax funds previously expended. By this suit, Plaintiff does not seek reimbursement from MMD for those tax assessments that have already been assessed, collected and spent. To the contrary, Plaintiff only seeks a declaration that MMD does not have the authority to spend—prospectively—previously-assessed and collected but yet-to-be spent taxes, for all of the reasons asserted herein. Thus, under these circumstances, Plaintiff has standing as a taxpayer to assert claims to restrain prospective governmental expenditures—money that has not yet been spent. *Bland Indep. Sch. Distr.*, 34 S.W.3d 547, 556-58 (Tex. 2000). In addition, Plaintiff seeks injunctive relief solely to bar MMD from spending—prospectively—any such collected but unspent funds. As long as the public money has not yet been spent, the taxpayer is considered to have a justiciable interest in ensuring that the money not be spent illegally. As of this filing, MMD assessed \$1,321,936.00 and collected \$1,235,246.00 in 2011. As of May 14, 2012, MMD had \$1,351,065 remaining on deposit (unspent funds). Unless enjoined, MMD will continue to spend such tax assessments, which Plaintiff asserts is illegal and in violation of both the Texas and Federal Constitutions. More specifically, MMD’s purported authority to make these assessment stems from a petition of 25 signatures which, as was more fully explained above, contains several signatures from persons and/or entities that are not eligible to be counted as a signer authorized to sign such a petition. Accordingly, Plaintiff alleges that these facts render said petition void. Moreover, even if the original petition of 25 signatures is deemed to be valid, which Plaintiff denies, MMD’s continued existence is nevertheless in question, given that a valid dissolution petition was timely submitted by Plaintiff and many other property owners within MMD. Plaintiff asserts that, without any factual or legal basis, MMD rejected the dissolution petition reasons which are neither factually or legally valid. Because MMD has no discretion and has a clear and absolute ministerial duty to dissolve, Plaintiff alleges that any further expenditure of such tax assessments would be illegal. Further, Plaintiff falls into a certain class of taxpayers who are not being treated fairly or equally, that being an owner of commercial real

property within the boundaries of MMD made subject to tax assessment by the District. State law, as well as the District's own website, says that MMD does not possess the authority to render a tax assessment against any other type of landowner within the District, and yet all other owners of real property within the same MMD, who do not meet the definition of commercial owners, reap the same benefits from such taxation and yet do not have to pay any portion of such assessment. Plaintiff asserts that such disparate and unequal treatment amounts to a violation of the equal protection clause of both the Texas and United States Constitutions, and Plaintiff argues that it has standing to assert such claims.



Affiant

Sworn and subscribed to me on this 29th day of May, 2012.



Notary Public in and for the State of Texas

