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Mountainside California 3, LLC and Timberline Highlands LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER

COMMUNITY SERVICES DISTRICT NO. 1
OF THE NORTHSTAR COMMUNITY
SERVICES DISTRICT, a legally constituted
governmental agency,

Plaintiff,

v.

MOUNTAINSIDE CALIFORNIA 2, LLC, a
Delaware limited liability company;
MOUNTAINSIDE CALIFORNIA 3, LLC, a
Delaware limited liability company;
TIMBERLINE HIGHLANDS LLC, a Delaware
limited liability company; and DOES 1
through 200, inclusive,

Defendants.

Case No. SCV0043081

VERIFIED ANSWER OF DEFENDANTS
MOUNTAINSIDE CALIFORNIA 2, LLC,
MOUNTAINSIDE CALIFORNIA 3, LLC AND
TIMBERLINE HIGHLANDS LLC TO
PLAINTIFF'S AMENDED COMPLAINT

Complaint Filed: June 4, 2019
Trial Date: Not Set

Defendants MOUNTAINSIDE CALIFORNIA 2, LLC, MOUNTAINSIDE CALIFORNIA 3,
LLC AND TIMBERLINE HIGHLANDS LLC ("Defendants"), hereby answers the complaint
("Complaint") of Plaintiff COMMUNITY SERVICES DISTRICT NO. 1 OF THE NORTHSTAR
COMMUNITY SERVICES DISTRICT ("Plaintiff") by admitting, denying and alleging as follows:

PRELIMINARY STATEMENT

Defendants aver that the Northstar Community Services District Community Facilities
District No. 1 (the "District") is effectively insolvent. The insolvency is attributable to: an

1 amount of debt far greater than the value of undeveloped land within the District, dated and
2 undevelopable land use entitlements, marketable property title related limitations due to the
3 absence of a current mountain development agreement with the current Northstar Resort
4 owner, Northstar California Resort ("Northstar"), and its operator, reversionary rights held by
5 prior land owners that limit the future investment horizon of the current landowners, and
6 critically lower historical absorption than projected when the bonds were issued in 2005 and
7 2006 shortly after Plaintiff was formed.

8 There is in excess of \$100,000,000 in bonds outstanding presently. The primary use of
9 funds was to develop the public infrastructure to service an 1,800-unit master-planned resort
10 community as imagined at Northstar since the 1970s. The major projects funded with District
11 funds included roads, water and wastewater infrastructure, and fire facilities.

12 When Northstar Mountain Properties LLC ("Master Developer" or "NMP") acquired all
13 the land from Trimont Land Holdings Inc. (Northstar's "Resort Owner") from the mid-mountain
14 area down to the old base Village in 2000, it was understood the Master Developer would
15 convey back to the Resort Operator, or its affiliate, all essential ski property as development
16 progressed. Those agreements and how the parties would work together were documented in
17 the Master Developer's operating agreement and subsequent amendments thereto.

18 Since the bonds were issued, the property within the District has experienced multiple
19 ownership changes, including real estate investment trusts, and investment banks, Morgan
20 Stanley and Barclays Capital. NMP sought bankruptcy protections and emerged from
21 bankruptcy in 2010 with a REIT (Crescent Real Estate Holdings LLC ("Crescent") and Barclays
22 Capital ("Barclays") as its members. Notable other properties in the District, the Ritz-Carlton at
23 Lake Tahoe and the Northstar Lodge (a Hyatt Residence Club) were not part of the NMP
24 bankruptcy but were foreclosed on by their lenders in 2010.

25 The 2010 bankruptcy proceedings explicitly rejected the NMP operating agreement but
26 detailed certain provisions that were to remain part of a new Master Development Agreement
27 ("MDA") between the Master Developer and Resort Operator which would frame critical and
28 complex developer-operator relations going forward and clear the path for development to

1 proceed. The bankruptcy court approved a Settlement Agreement, effective May 27, 2010,
2 and called for NMP and the Resort Owner to enter into a new MDA "promptly after the date of
3 this agreement." However, to date, nine years later, there still does not exist an agreed upon
4 MDA.

5 While the history of ownership changes are complicated, in short, East West Partners,
6 Inc., NMP's manager of operations since the development's inception, was terminated effective
7 January 1, 2015, and Crescent assumed direct management of local operations. Barclays
8 and Crescent then offered their Northstar land assets for sale in late 2017. Barclays and
9 Crescent invested over \$100 million dollars since 2010 into the portfolio of assets located
10 within the District. Defendants and their affiliates acquired the portfolio in August 2018 for \$5
11 million.

12 NMP obtained entitlements to build up to 1,800 units at Northstar in 2004.
13 Construction commenced soon thereafter, and the first completed units were delivered in the
14 Village at Northstar to retail buyers in 2005. Due to the 2010 bankruptcy and the related
15 delinquencies to the District, the Rate and Method of Apportionment ("RMA") for the District
16 was revised in 2011 because the original version of the RMA placed an inordinate amount of
17 tax on parcels created by final subdivision maps. The revised RMA removed the final map tier
18 from the tax levy waterfall and spread the tax on all undeveloped land based on planned future
19 units per parcel and the total planned residential unit count was adjusted downward from
20 1,800 units to 1,500 units based on updated development expectations. The reduced
21 development projection was due to the fact that much of the future development land sits on
22 steep contours unsuitable for development and there was no proof of market demand for units
23 within multi-story condominium buildings at a price which would make development a
24 profitable proposition.

25 All future development units have program level entitlements only i.e., each individual
26 future project will be required to go through a standard County subdivision mapping and
27 design review process to ensure the proposed projects are in conformance with the Martis
28 Valley Design Guidelines and all other applicable restrictions. Such review will be subject to

1 public comments and potential legal challenges. While the backbone infrastructure is in place,
2 significant efforts and expenditures are required to build out infrastructure connecting future
3 phases. Finally, the RMA calls for a 2012 base back-up tax levy of \$576,595 per acre on
4 undeveloped land. The back-up special tax will be levied in a way the drives the total tax bill
5 on undeveloped parcels to levels that makes development economically infeasible and a total
6 tax levy that is higher than the value of the undeveloped land within the District.

7 ANSWER TO SPECIFIC ALLEGATIONS

8 Based upon and incorporating the Preliminary Statement, Defendants respond to the
9 allegations of the District's complaint as follows:

10 Defendants lack sufficient information upon which to admit or deny the allegations in
11 Paragraph 1 of the Complaint and, on that basis, deny those allegations.

12 Defendants lack sufficient information upon which to admit or deny the allegations in
13 Paragraph 2 of the Complaint and, on that basis, deny those allegations.

14 Defendants lack sufficient information upon which to admit or deny the allegations in
15 Paragraph 3 of the Complaint and, on that basis, deny those allegations.

16 Defendants admit the allegations contained in Paragraph 4 of the Complaint.

17 Defendants admit the allegations contained in Paragraph 5 of the Complaint.

18 Defendants admit the allegations contained in Paragraph 6 of the Complaint.

19 Defendants admit the allegations contained in Paragraph 7 of the Complaint that the
20 parcel is undeveloped and admit that the parcel has some but not all entitlements for future
21 residential units.

22 Defendants admit the allegations contained in Paragraph 8 of the Complaint that the
23 parcel is undeveloped and admit that the parcel has some but not all entitlements for future
24 residential units.

25 Defendants admit the allegations contained in Paragraph 9 of the Complaint that the
26 parcel is undeveloped and admit that the parcel has some but not all entitlements for future
27 residential units.

28 Defendants lack sufficient information upon which to admit or deny the allegations in

Paragraph 10 of the Complaint and, on that basis, deny those allegations.

Defendant lacks sufficient information upon which to admit or deny the allegations in Paragraph 11 of the Complaint and, on that basis, deny those allegations.

Defendants lack sufficient information upon which to admit or deny the allegations in Paragraph 12 of the Complaint and, on that basis, deny those allegations.

The allegations contained in Paragraph 13 of the Complaint consist of Plaintiff's characterization of its claims and the underlying legal bases, and thus no response to those allegations is required. To the extent an answer is required, Defendants lack sufficient information to either admit or deny the remaining allegations contained in Paragraph 13 of the Complaint and, on that basis, deny those allegations.

Defendants lack sufficient information upon which to admit or deny the allegations in Paragraph 14 of the Complaint and, on that basis, deny those allegations.

Defendants lack sufficient information upon which to admit or deny the allegations in Paragraph 15 of the Complaint and, on that basis, deny those allegations.

Defendants lack sufficient information upon which to admit or deny the allegations in Paragraph 16 of the Complaint and, on that basis, deny those allegations.

The allegations contained in Paragraph 17 of the Complaint consist of Plaintiff's characterization of its claims and the underlying legal bases, and thus no response to those allegations is required. To the extent an answer is required, Defendants lack sufficient information to either admit or deny the remaining allegations contained in Paragraph 17 of the Complaint and, on that basis, deny those allegations.

Defendants admit the allegations contained in Paragraph 18 of the Complaint.

Defendants admit the allegations contained in Paragraph 19 of the Complaint.

The allegations contained in Paragraph 20 of the Complaint consist of Plaintiff's characterization of its claims and the underlying legal bases, and thus no response to those allegations is required. To the extent an answer is required, Defendants lack sufficient information to either admit or deny the remaining allegations contained in Paragraph 20 of the Complaint and, on that basis, deny those allegations.

1 The allegations contained in Paragraph 21 of the Complaint consist of Plaintiff's
2 characterization of its claims and the underlying legal bases, and thus no response to those
3 allegations is required. To the extent an answer is required, Defendants lack sufficient
4 information to either admit or deny the remaining allegations contained in Paragraph 21 of the
5 Complaint and, on that basis, deny those allegations.

6 The allegations contained in Paragraph 22 of the Complaint consist of Plaintiff's
7 characterization of its claims and the underlying legal bases, and thus no response to those
8 allegations is required. To the extent an answer is required, Defendants lack sufficient
9 information to either admit or deny the remaining allegations contained in Paragraph 22 of the
10 Complaint and, on that basis, deny those allegations.

11 The allegations contained in Paragraph 23 of the Complaint consist of Plaintiff's
12 characterization of its claims and the underlying legal bases, and thus no response to those
13 allegations is required. To the extent an answer is required, Defendants lack sufficient
14 information to either admit or deny the remaining allegations contained in Paragraph 23 of the
15 Complaint and, on that basis, deny those allegations.

16 Defendants admit the allegations contained in Paragraph 24 of the Complaint that the
17 tax payment was not made but Defendants lack sufficient information to either admit or deny
18 the remaining allegations contained in Paragraph 24 of the Complaint and, on that basis,
19 deny those allegations.

20 Defendants admit the allegations contained in Paragraph 25 of the Complaint that the
21 tax payment was not made but Defendants lack sufficient information to either admit or deny
22 the remaining allegations contained in Paragraph 25 of the Complaint and, on that basis,
23 deny those allegations.

24 Defendants admit the allegations contained in Paragraph 26 of the Complaint that the
25 tax payment was not made but Defendants lack sufficient information to either admit or deny
26 the remaining allegations contained in Paragraph 26 of the Complaint and, on that basis,
27 deny those allegations.

28 Defendants admit the allegations contained in Paragraph 27 of the Complaint that the

1 tax payment was not made but Defendants lack sufficient information to either admit or deny
2 the remaining allegations contained in Paragraph 27 of the Complaint and, on that basis,
3 deny those allegations.

4 The allegations contained in Paragraph 28 of the Complaint consist of Plaintiff's
5 characterization of its claims and the underlying legal bases, and thus no response to those
6 allegations is required. To the extent an answer is required, Defendants lack sufficient
7 information to either admit or deny the remaining allegations contained in Paragraph 28 of the
8 Complaint and, on that basis, deny those allegations.

9 Defendants lack sufficient information upon which to admit or deny the allegations in
10 Paragraph 29 of the Complaint and, on that basis, deny those allegations.

11 The allegations contained in Paragraph 30 of the Complaint consist of Plaintiff's
12 characterization of its claims and the underlying legal bases, and thus no response to those
13 allegations is required. To the extent an answer is required, Defendants lack sufficient
14 information to either admit or deny the remaining allegations contained in Paragraph 30 of the
15 Complaint and, on that basis, deny those allegations.

16 Defendants pray for judgement as set forth below.

17 **AFFIRMATIVE DEFENSES**

18 By way of additional affirmative defenses to the allegations of the Complaint herein,
19 Defendants alleges as follows:

20 **FIRST AFFIRMATIVE DEFENSE**

21 **(Failure to State a Cause of Action)**

22 The Complaint, and each purported cause of action alleged therein, fails to state facts
23 sufficient to constitute a cause of action against Defendants.

24 **SECOND AFFIRMATIVE DEFENSE**

25 **(Estoppel)**

26 The Complaint, and each purported cause of action alleged therein, is barred because
27 Plaintiff is estopped by its own conduct to claim any right to damages or any relief against
28 Defendants.

1 THIRD AFFIRMATIVE DEFENSE

2 (Laches)

3 The Complaint, and each purported cause of action alleged therein, is precluded under
4 the doctrine of laches.

5 FOURTH AFFIRMATIVE DEFENSE

6 (Proximate Cause)

7 The injuries alleged in the Complaint, and each cause of action alleged therein, if they
8 exist at all, resulted from a cause or causes not proximately related to any purported act or
9 omission by Defendants.

10 FIFTH AFFIRMATIVE DEFENSE

11 (Unclean Hands)

12 The Complaint, and each purported cause of action alleged therein, is barred because
13 Plaintiff comes to this Court with unclean hands.

14 SIXTH AFFIRMATIVE DEFENSE

15 (Waiver)

16 Plaintiff is barred from obtaining the relief sought in the Complaint, or any relief
17 whatsoever, because Plaintiff has waived his right to assert each and all of the claims
18 contained in the Complaint by prior conduct.

19 SEVENTH AFFIRMATIVE DEFENSE

20 (Consent)

21 The Complaint, and each purported cause of action alleged therein, is barred because
22 Plaintiff consented to the alleged conduct.

23 EIGHTH AFFIRMATIVE DEFENSE

24 (Failure to Mitigate Damages)

25 Plaintiff is barred from obtaining the relief sought in the Complaint, or any relief
26 whatsoever, because if Plaintiff suffered any loss, damage, or injury, which proposition is
27 expressly denied and stated only for the purpose of framing this defense, such loss, damage, or
28 injury was proximately caused, in whole or in part, by Plaintiff's failure to mitigate damages.

1 NINTH AFFIRMATIVE DEFENSE

2 (Assumption of Risk)

3 The Complaint, and each purported cause of action alleged therein, is barred because
4 Plaintiff assumed the risk.

5 TENTH AFFIRMATIVE DEFENSE

6 (Failure to Satisfy a Condition Precedent)

7 The Complaint, and each purported cause of action alleged therein, is barred pursuant
8 to Plaintiff's failure to satisfy a condition precedent.

9 ELEVENTH AFFIRMATIVE DEFENSE

10 (Impossibility)

11 The Complaint, and each purported cause of action alleged therein, is precluded under
12 the doctrine of impossibility.

13 TWELFTH AFFIRMATIVE DEFENSE

14 (Additional Affirmative Defenses)

15 Defendants currently have insufficient knowledge or information upon which to form a
16 belief as to whether they may have additional, as yet unstated, affirmative defenses available.
17 Defendants reserve the right to assert additional affirmative defenses in the event that
18 discovery indicates that they would be appropriate.

19 PRAYER FOR RELIEF

20 WHEREFORE, Defendants prays for judgment as follows:

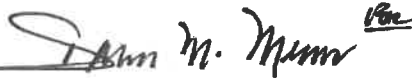
- 21 1. That Plaintiff take nothing by his Complaint from Defendants;
- 22 2. That the Complaint against Defendants be dismissed in its entirety with
23 prejudice;
- 24 3. That Plaintiff is denied each and every demand and prayer for relief contained in
25 the Complaint;
- 26 4. For cost of suits incurred herein, including reasonable attorneys' fees; and
- 27 5. For such other and further relief as the Court deems just and equitable.

28 ///

1 Dated: August 5, 2019

Respectfully submitted,

WEINTRAUB TOBIN CHEDIAK COLEMAN GRODIN
Law Corporation

4 
By: _____

Louis A. Gonzalez, Jr.
State Bar No. 157373

Attorneys for Defendants Mountainside California
2, LLC, Mountainside California 3, LLC and
Timberline Highlands LLC

VERIFICATION

I, Clifton Taylor, declare:

I am the Vice President of Defendant Mountainside California 2, LLC, party to the above-entitled action, and I have been authorized to make this verification on its behalf.

I have read the foregoing Verified Answer of Defendants Mountainside California 2, LLC, Mountainside California 3, LLC and Timberline Highlands LLC to Plaintiff's Amended Complaint and know the contents thereof. I certify that the same is true to the best of my knowledge, except as to the matters therein stated on information and belief and, as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 2, 2019, at ROSEVILLE, California.



Clifton Taylor

VERIFICATION

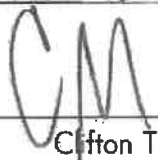
I, Clifton Taylor, declare:

I am the Vice President of Defendant Mountainside California 3, LLC, party to the above-entitled action, and I have been authorized to make this verification on its behalf.

I have read the foregoing Verified Answer of Defendants Mountainside California 2, LLC, Mountainside California 3, LLC and Timberline Highlands LLC to Plaintiff's Amended Complaint and know the contents thereof. I certify that the same is true to the best of my knowledge, except as to the matters therein stated on information and belief and, as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 2, 2019, at ROSEVILLE, California.



Clifton Taylor

VERIFICATION

I, Clifton Taylor, declare:

I am the Vice President of Defendant Timberline Highlands LLC, party to the above-entitled action, and I have been authorized to make this verification on its behalf.

I have read the foregoing Verified Answer of Defendants Mountainside California 2, LLC, Mountainside California 3, LLC and Timberline Highlands LLC to Plaintiff's Amended Complaint and know the contents thereof. I certify that the same is true to the best of my knowledge, except as to the matters therein stated on information and belief and, as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 2, 2019, at ROSEVILLE, California.



Clifton Taylor

Community Services District No. 1 of the Northstar Community Services District
v. Mountainside California 2, LL, et al.
Placer County Superior Court Case No. SCV0043081

PROOF OF SERVICE

I am a citizen of the United States, employed in the City and County of Sacramento, California. My business address is 400 Capitol Mall, 11th Floor, Sacramento, California 95814. I am over the age of 18 years and not a party to, nor interested in, the within action. On this date, I caused to be served the following:

**VERIFIED ANSWER OF DEFENDANTS MOUNTAINSIDE CALIFORNIA 2, LLC,
MOUNTAINSIDE CALIFORNIA 3, LLC AND TIMBERLINE HIGHLANDS LLC TO PLAINTIFF'S
AMENDED COMPLAINT**

XX United States mail by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing mail in accordance with this office's practice whereby the mail is deposited in a United States mailbox after the close of the day's business.

_____ By personally delivering, or causing to be delivered, a true copy thereof to the persons at the addresses set forth below.

_____ Via overnight courier

_____ Via facsimile

Andrews L. Collier Kevin M. O'Brien Austin C. Cho DOWNEY BRAND LLP 621 Capitol Mall, 18 th Floor Sacramento, CA 95814 Telephone: (916) 444-1000 Facsimile: (916) 444-2100 Email: acollier@downeybrand.com orbien@downeybrand.com acho@downeybrand.com	
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Attorneys for Plaintiff

I declare under penalty of perjury that the foregoing is true and correct.

Executed August 5, 2019, at Sacramento, California.



Tracy Thorne