DISTRICT COURT, JEFFERSON COUNTY, COLORADO

Court Address: 100 Jefferson County Parkway
Golden, CO 80401

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LONGS PEAK METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado;

Plaintiff

v.

CITY OF WHEAT RIDGE, a Colorado home-rule municipality;

Defendant

and

WHEAT RIDGE URBAN RENEWAL AUTHORITY d/b/a RENEWAL WHEAT RIDGE, a body corporate and politic; and,
Cynthia H. Coffman in her capacity as the Attorney General for the State of Colorado;

Potentially Interested Parties.

▲ **COURT USE ONLY** ▲

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Case No.:

Div.: Ctrm.:

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, Longs Peak Metropolitan District (the "**District**"), submits this Complaint for Declaratory Judgment pursuant to C.R.S. §§ 13-51-101 *et seq.*, and C.R.C.P. Rule 57.

PARTIES, JURISDICTION, AND VENUE

1. The District is a quasi-municipal corporation and political subdivision of the State of Colorado organized and existing pursuant to the "Special District Act", § 32-1-101, *et seq.*, C.R.S.

2. The City of Wheat Ridge (the "**City**") is a home-rule municipality and political subdivision of the State of Colorado organized and existing under a home-rule charter pursuant to Article XX of the *Constitution of the State of Colorado* ("**Constitution**").

3. The Wheat Ridge Urban Renewal Authority d/b/a Renewal Wheat Ridge (the "**URA**") is a Colorado urban renewal authority and body corporate and politic of the State of Colorado organized and existing pursuant to Colorado's Urban Renewal Law §§ 31-25-101, *et seq.*, C.R.S. (the "**Act**") and Chapter 25, Article II, Section 25-23 of the City of Wheat Ridge City Charter. The URA may claim an interest in this action pursuant to C.R.C.P. Rule 57(3)(j).

4. Cynthia H. Coffman in her capacity as the Attorney General of the State of Colorado may wish to be heard on this matter pursuant to C.R.C.P. Rule 57(3)(j) and § 13-51-115, C.R.S.

5. Jurisdiction and Venue are proper in the District Court of Jefferson County, Colorado under C.R.C.P. 98 because the District, City, and URA are all organized and existing within Jefferson County, Colorado.

GENERAL ALLEGATIONS

6. The Wheat Ridge City Council ("**City Council**") adopted a resolution approving the I-70/Kipling Corridors Urban Renewal Plan (the "**Plan**") in May 2009 as authorized and governed by the Act.

7. The Plan is an urban renewal plan adopted in accordance with and governed by the processes and procedures established by the State Legislature in the Act.

8. The Act authorizes the City Council to adopt the Plan and the URA to undertake projects to prevent and eliminate slums and blight ("**Blight**") within the area described in the Plan (the "**Area**").

9. The Plan states that "a primary method of financing projects within the Area will be through the use of property tax and City Sales Tax increments. The … [URA] shall be authorized to pledge all or any portion of such property tax and City Sales Tax increment revenues for financing public infrastructure that benefits the Area pursuant to one or more Cooperation Agreements." [Plan, p. 54, § 8.5.1] This is referred to as "tax increment financing".

10. The Act and Plan provide for the creation of a "Tax Increment Area" within which tax increments will be collected to implement tax increment financing ("**TIF**") within the Plan's Area. An amendment to the Plan creates the "Tax Increment Area." [Plan, p. 54, § 8.5.2]; [Plan, p. 10, § 2]

11. The City Council adopted Resolution 50-2015 on or about December 14, 2015, amending the Plan to create a Tax Increment Area for the entire Plan Area, including but not limited to all property within the District's boundaries (the "**District Property**").

12. The City Council's approval of the Plan amendment to create the Tax Increment Area was authorized and controlled by the Act. The Act limits the URA's collection of tax increments to the Tax Increment Area for a period of twenty-five years from the date of the amendment.

13. The URA has identified a portion of the District Property known as Clear Creek Crossing as a "Potential Development Area" (the "**PDA**") in which it is "authorized to pledge all or any portion of such property tax and City Sales Tax increment revenues for financing public infrastructure that benefits the Area pursuant to one or more Cooperation Agreements" under the Act. [Plan, p. 54, § 8.5.1].

14. The District anticipates issuing bonds ("**Bonds**") secured in part by the District's debt service mill levy to finance the construction of public infrastructure ("**Public Infrastructure**") related to a development project in the PDA.

15. The District requires all of the District's property tax mill levy (including the increment directed to the URA) and additional funds to support Bonds to finance Public Infrastructure that will eliminate and prevent Blight in the PDA.

16. The District's revenue is not sufficient to support Bonds that can finance all of the Public Infrastructure needed in the PDA to eliminate existing Blight and help prevent the occurrence of Blight in the PDA.

17. On July 1, 2016, the District sent a letter to the URA asking it to consider a Cooperation and/or Development Agreement with the District whereby the URA would contribute the portion of the property tax increment that it receives under the Act to the District to finance Public Infrastructure required to eliminate Blight in the PDA, as authorized by the Act.

18. The URA responded to the District's letter on July 20, 2016 stating that it was "certainly interested in learning more about the New Project" in the PDA, but the URA could not commit to a TIF financing arrangement until it was able to "evaluate the New Project in its entirety."

19. On August 16, 2016, the District proposed to the URA two agreements to provide the funding necessary to eliminate Blight in the PDA:

A. The first arrangement proposed a Cooperation Agreement requiring the URA to remit the portion of the District's property tax increment back to the District allowing the District to use all of its property tax mill levy proceeds to support the Bonds to finance Public Infrastructure (the "**Cooperation Agreement**").

B. The second arrangement proposed a development agreement between the URA and District under which the URA would contribute a portion of the property and/or sales tax increments from the Tax Increment Area to the District to provide any additional financing required to construct Public Infrastructure necessary to eliminate Blight in the PDA (the "**Redevelopment Agreement**").

20. The Cooperation Agreement was approved by the URA Board of Commissioners on September 6, 2016 and by the District board of directors on November 14, 2016.

21. The Cooperation Agreement provides that the URA will "remit back to the District that portion of property tax increment generated from the District's property tax mill levy on parcels within the District's Boundaries that is deposited into the special fund of the [URA]".

22. The Cooperation Agreement is a valid and binding agreement made under the Act, Chapter 25, Article II, Section 25-23 of the Wheat Ridge City Charter, and the amended Plan.

23. The payment from the URA under the Cooperation Agreement will likely exceed $2.5 million over time.

24. The Cooperation Agreement provides that "the District and [URA] … expect to enter into a Redevelopment Agreement… which may provide that the [URA] … will commit to the District a portion of the Urban Renewal Plan's property tax increment area revenues on an annual basis".

25. The Redevelopment Agreement contemplated in the Cooperation Agreement, and any TIF financing arrangement(s) thereunder, will be valid and binding agreements made under the Act, Chapter 25, Article II, Section 25-23 of the Wheat Ridge City Charter, and the amended Plan.

26. Payments from the URA to the District under the Redevelopment Agreement will likely exceed $2.5 million over time.

27. On Tuesday, November 3, 2015, the City's voters were presented with Ballot Question 300 ("**BQ300**"). BQ300 asked:

> "Shall the Wheat Ridge City Charter be amended as follows? Any action by an agency, agent, authority, commission, committee, City Council, department, employee or official of the City of Wheat Ridge, approving or changing a sales or property tax increment financing (TIF), revenue sharing or cost sharing arrangement pursuant to Part 1 of the Colorado Urban Renewal Law[("**TIF Arrangement**")], must be ratified by the Wheat Ridge City Council via a vote on a formal agenda item, at a regularly scheduled business meeting, that is advertised as a hearing. If the value of the said sales or property tax increment financing (TIF), revenue sharing or cost sharing exceeds $2.5 million, the City Council action of approval must be ratified by the registered electors of the City of Wheat Ridge at a special or regular election. The base amount for voter approval of any sales or property tax increment financing (TIF) will be any financing exceeding $2.5 million. To account for inflation and/or increased construction costs, every third year after March 1, 2015, the base amount will be increased by 5%. Effective Date: This amendment will take effect and apply to all actions undertaken by an agency, agent, authority,

commission, committee, City Council, department, employee or Official of the City of Wheat Ridge subsequent to March 1, 2015 and thereafter?"

28. BQ300 passed by a margin of 51.8% "Yes" to 48.1% "No" and was codified by the City Council via Ordinance No. 11-03-2015(1) in Part I, Chapter XII, Section 12.10 of the Wheat Ridge City Charter.

29. The procedures and election required in Part I, Chapter XII, Section 12.10 of the Wheat Ridge City Charter (hereinafter referred to as "**BQ300**") were not contained in nor authorized by the Act.

30. The procedures and requirement for an election contained in BQ300 add substantial burdens and uncertainty to the URA's process of funding Public Infrastructure to eliminate Blight in the PDA in the manner established by the State Legislature in the Act.

31. BQ300 adds additional procedural requirements to the Act's requirements, including the requirement for an election, that can only apply to invalidate the Cooperation Agreement entered into by the URA and the District pursuant to the Act whereby the URA commits to return tax increments received from the District Property to the District, as authorized by the Act.

32. The procedural requirements and requirement for an election added to the Act's requirements by BQ300 can only preclude or invalidate a Redevelopment Agreement to be entered into by the District and the URA whereby the URA commits to the District a portion of the Urban Renewal Plan's property and/or sales tax increment area revenues, as authorized by the Act.

33. The District is a person whose rights, status and other legal relations created by the Act, the Cooperation Agreement and the proposed Redevelopment Agreement are affected by BQ300 (See, § 13-51-103, C.R.S.), and pursuant to § 13-51-106, C.R.S., the District is entitled to a declaration of the construction and validity of the Cooperation Agreement and proposed Redevelopment Agreement, and, whether BQ300 is preempted by the Act.

34. An actual case and controversy exists in that the District and the URA have entered into the Cooperation Agreement and anticipate entering into the Redevelopment Agreement, each of which will involve revenue sharing of tax increments in excess of $2.5 million and which may or may not be precluded or invalidated by the requirements of BQ300.

35. The declarations sought herein will terminate the uncertainty or controversy giving rise to this case.

FIRST CLAIM FOR RELIEF

(Declaratory Judgment –The Requirements of BQ300 are Matters of Statewide Concern that are Preempted by Act)

36. The District incorporates the General Allegations set forth above into this First Claim for Relief.

37. The State has plenary authority in matters of statewide concern and municipalities may only regulate a matter of statewide concern if the Constitution or statute so authorizes.

38. The Act's procedural requirements, and, the powers and authority delegated by the State to the City and URA through the Act, and the limitations imposed thereon, are matters of statewide concern as demonstrated by the comprehensive nature of the Act and factors for consideration established in the Act:

A. The Act declares the prevention and elimination of slums and blight to be a matter of statewide concern. § 31-25-102, C.R.S.

B. The Act provides that every urban renewal authority has all the powers necessary or convenient under the Act to carry out and effectuate the Act's purposes and provisions, including to carry out urban renewal plans by undertaking "urban renewal projects and making any and all contracts and other instruments which it may deem necessary or convenient to exercise its powers… including… contracts for advances, loans, grants, and contributions". §§ 31-25-105(1), (1)(b), C.R.S.

C. The Act establishes a comprehensive procedural and substantive administrative framework for forming an urban renewal authority and approving and implementing urban renewal plans to effectuate the purpose of preventing and eliminating Blight as a matter of statewide concern. §§ 31-25-104, 107, C.R.S.

D. The Act provides that advances, loans, grants, and contributions can be financed using a TIF Arrangement made pursuant to the Act. §31-25-107(9)(a)(II), C.R.S.

E. The Cooperation Agreement between the District and URA furthers the Plan's goals, effectuates the Act's purposes and provisions, and is authorized by the Act. § 31-25-103(10)(c), C.R.S.

F. The proposed Redevelopment Agreement between the District and URA would be part of a valid urban renewal project to accomplish the Plan's goals, effectuate the Act's purposes and provisions, and is authorized by the Act. § 31-25-103(10)(c), C.R.S.

G. The State has a substantial interest in municipalities' uniform application of the Act's procedural and substantive requirements.

H. The State has a substantial interest in the uniform ability for urban renewal authorities and their governing bodies to exercise the powers and decision-making authority delegated by the State in the Act.

I. BQ300's application will create significant extraterritorial impacts.

J. The State has traditionally established the procedural and substantive requirements for regulating urban renewal authorities and carrying out the prevention and elimination of Blight through the Act and its predecessor legislation.

K. The State has traditionally established and delegated the powers and decision-making authority for carrying out the Act's purpose.

L. The Constitution does not grant the power to establish the procedural and substantive requirements for regulating urban renewal authorities to either the State or its municipalities.

39. As matters of statewide concern, the General Assembly of the State of Colorado:

A. Intended to occupy the field of setting the procedural and substantive requirements for regulating urban renewal authorities when it adopted the Act; and,

B. Intended to occupy the field when it established and delegated certain powers and decision-making authority to the URA under the Act and not to other entities like the City or its electors.

40. Nevertheless, BQ300:

A. Amends and adds to the procedural requirements established by the State in the Act; and,

B. Redistributes the decision-making authority delegated to the URA by the State through the Act to the City and/or its electors.

41. Neither the Constitution, the Act, nor any other State statute delegates to municipalities the authority to adopt legislation that modifies the Act's comprehensive administrative framework or delegation of powers and decision-making authority.

Accordingly, the District is entitled to a declaration that BQ300 is preempted by the Act and does not affect the validity of the Cooperation Agreement or proposed Redevelopment Agreement, including provisions that pledge tax increments collected by the URA under the Act for use by the District for the construction of Public Infrastructure in the PDA, regardless of the amount.

ALTERNATIVE SECOND CLAIM FOR RELIEF

(Declaratory Judgment – The Requirements of BQ300 Address Matters of Mixed State and Local Concern that are Preempted by Act)

42. The District incorporates by this reference the General Allegations set forth in paragraphs 1 through 41 above.

43. For matters of mixed state and local concern, a municipality may only enact legislation that coexists with a state statute, and thus, a state statute preempts conflicting local legislation to the extent of the conflict.

44. The matter of establishing the Act's procedural and substantive requirements, the manner in which municipalities carry out the Act's comprehensive administrative framework established

by its procedural and substantive requirements, and the free exercise of the powers and decision-making authority delegated by the Act are all matters that are, at the very least, mixed state and local concern.

45. In creating the Act's comprehensive administrative framework, the State impliedly intended to forbid municipalities from modifying the Act's procedural and substantive requirements and from modifying or redistributing the powers and decision-making authority delegated by the Act.

46. The State intended to occupy the field of regulating the procedural and substantive requirements necessary to effectuate the Act's purpose.

47. The State intended to occupy the field of regulating the powers and decision-making authority delegated by the Act.

48. The Act preempts BQ300 because the Act impliedly evinces a legislative intent to occupy the field of regulating the Act's procedural and substantive requirements, and, its distribution of powers and decision-making authority.

49. BQ300 authorizes what the Act forbids, thereby creating an operational conflict, because it invades the field the State intended to occupy and modifies the Act's comprehensive administrative framework by requiring one, and in some cases, two additional procedures before an agreement approving or changing a TIF Arrangement made pursuant to the Act becomes valid and binding, and, because it modifies and redistributes the powers and decision-making authority established and delegated by the Act.

50. The Act vests decision-making authority to enter into contracts approving or changing TIF Arrangements with urban renewal authorities.

51. BQ300 does not give legal effect to a URA contract approving or changing a TIF Arrangement even if the contract is valid and binding under the Act.

52. BQ300 vests the ultimate decision-making authority to enter into contracts approving or changing a TIF Arrangement with the City Council, and in some cases, the City's registered electors.

53. BQ300 forbids what the Act authorizes, thereby creating an operational conflict, because:

A. It forbids an otherwise valid and binding TIF Arrangement under the Act from being effective without further ratification; and,

B. It strips the URA of its statutorily delegated authority to enter into valid and binding agreements containing TIF Arrangements and redistributes that authority to the City Council, and in some cases, the City's registered electors.

54. The operational conflict created by BQ300 materially impedes and can only be applied to prevent the URA's furtherance of the State's interests via the Act, including protecting the health and welfare of its citizens through preventing and eliminating Blight.

55. In the event of implied preemption or preemption by an operational conflict, a state statute preempts a municipal initiative when the legislative matter is of mixed state and local concern.

Accordingly, the District is entitled to a declaration that BQ300 is preempted by the Act and does not affect the validity of the Cooperation Agreement or proposed Redevelopment Agreement, including provisions that pledge tax increments collected by the URA under the Act for use by the District for the construction of Public Infrastructure in the PDA, regardless of the amount.

PRAYER FOR RELIEF

WHEREFORE, the District respectfully requests that the Court issue orders:

a. declaring BQ300 invalid because it is preempted by the Act under Claim 1; or

b. declaring BQ300 invalid because it is preempted by the Act under Claim 2; and

c. for such other relief as the Court deems just and proper.

Respectfully submitted this 14th day of April, 2017.

SETER & VANDER WALL, P.C.

By: *s/ Kim J. Seter*
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