

DISTRICT COURT, JEFFERSON COUNTY,
STATE OF COLORADO
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Plaintiff: SOLTERRA LLC a Colorado limited liability company

v.

Defendants: GREEN MOUNTAIN WATER AND SANITATION DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado;
FOSSIL RIDGE METROPOLITAN DISTRICT NO. 1, quasi-municipal corporation and political subdivision of the State of Colorado;
FOSSIL RIDGE METROPOLITAN DISTRICT NO. 2, a quasi-municipal corporation and political subdivision of the State of Colorado; and
FOSSIL RIDGE METROPOLITAN DISTRICT NO. 3, a quasi-municipal corporation and political subdivision of the State of Colorado.

▲ COURT USE ONLY ▲

Case No.

Division: Courtroom:

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MOTION FOR PRELIMINARY INJUNCTION

Plaintiff Solterra LLC (“Solterra”), by its attorneys Kutak Rock LLP, respectfully submits this Motion for Preliminary Injunction pursuant to C.R.C.P. 65, and in support states as follows:

CERTIFICATE OF COMPLIANCE WITH C.R.C.P. 121 § 1-15(8)

Pursuant to C.R.C.P. 121 § 1-15(8), undersigned counsel for Solterra certifies that he has conferred by email with counsel for Defendants, regarding the relief requested herein. The Motion is opposed.

I. INTRODUCTION

Solterra is the developer of the Solterra Community located in the City of Lakewood. Solterra has completed approximately 93% of the planned residential units for the development. The residential units that have been completed receive sanitary sewer service from (a) Fossil Ridge Metropolitan District No. 1, which owns the sanitary sewer mains and lines that are located within the boundaries of Fossil Ridge (the “Fossil Ridge Sewer System”), and (b) Green Mountain Water and Sanitation District (“Green Mountain”), which owns sewer mains and lines within the City of Lakewood (the “Green Mountain Sewer System”). The residential units are connected to the Fossil Ridge Sewer System.¹ Solterra funded and caused the construction of the Fossil Ridge Sewer System, including oversizing for future development (subject to a right of reimbursement from Fossil Ridge). Solterra also funded improvements and upsizing of the Green Mountain Sewer System. The oversizing of the Fossil Ridge Sewer System and the upsizing of the Green Mountain Sewer System were a requirement of Green Mountain in anticipation that developers of surrounding properties would use the Fossil Ridge and Green Mountain sewer systems.

Solterra has only 87 units remaining to complete its development of the Solterra Community. Despite Defendants’ multiple representations and promises that they would provide

¹ Neither Fossil Ridge nor Green Mountain treat sewer waste. Green Mountain transports the wastewater to Metro for treatment.

sanitary sewer service to Solterra's entire development, and Solterra's reasonable reliance on those representations, Defendants have refused to provide sewer service to any remaining development. Solterra has expended approximately \$10 million in connection with improvements on the remaining parcels. Solterra also has hired and retained a number of employees to complete design, planning and construction of the remaining units. If Solterra is unable to proceed promptly with the remaining development it will suffer significant harm to its reputation and good will within the City and with its development efforts in general. For example, there is likely to be empty lots and unfinished construction with the development, leaving the impression that Solterra is unable to complete what it started. It also may be forced to terminate employees, which will further impact its reputation and good will. Thus, Solterra is being irreparably harmed and will continue to be irreparably harmed absent a preliminary injunction that Defendants provide sanitary sewer service for the remaining residential units.

II. SUMMARY OF RELEVANT FACTS²

A. Organization of Fossil Ridge and Need for Sanitary Sewer Services.

In or around 2005, Solterra, as the developer of residential units on approximately 390 acres within the City, began the process of forming special districts to construct, own and operate various public improvements, including sanitary sewer, within the development. Compl. ¶ 27. Through those efforts FRMD No. 1, FRMD No. 2, and FRMD No. 3 were approved by the City in 2005 and subsequently by this Court. Compl. ¶ 21.

Those districts, referred to as Fossil Ridge, are currently governed by the Second Amended Service Plan, which was approved and adopted by the City in 2007. Compl. ¶ 23, Ex. A. The Second Amended Service Plan states that “[s]anitation services will be provided to the Project by

² The factual background for this matter is set forth in detail in the Verified Complaint, which is filed herewith, and those details are incorporated herein. Plaintiff also adopts all defined terms from the Verified Complaint.

Green Mountain Water and Sanitation District.” *See* Compl. ¶¶ 37-39, Ex. A, § I(C)(4)(b); *see also* Compl. Ex. A, § IV(B) (“Sanitation services will be coordinated between [FRMD No. 1] and Green Mountain ... pursuant to intergovernmental agreements”).³ The Parties then entered into various agreements for Green Mountain to provide sewer service for all development within Fossil Ridge.

B. Relevant Agreements and Promises to Provide Sewer Service.

In 2007, Green Mountain issued a Will Serve Letter to FRMD No. 1, confirming that Green Mountain would provide sewer services to the Proposed Service Area. Compl. ¶ 40, Ex. C.

In 2008, Solterra and Green Mountain entered into a License Agreement that granted Green Mountain entry onto “all property owned by Solterra and located within the boundaries of Fossil Ridge” to provide sewer service. Compl. ¶ 47, Ex. E.

The 2014 IGA for Sewer Service between Green Mountain and FRMD No. 1 is the current governing agreement between FRMD No. 1 and Green Mountain for sewer service.⁴ Compl. ¶ 53, Ex. G. Pursuant to the 2014 IGA for Sewer Service, Green Mountain agreed to provide sewer service to all development within Fossil Ridge and to future development areas outside of Fossil Ridge up to a maximum of 1,727 equivalent residential units (“EQRs”). Compl. ¶ 60, Ex. G at § 2.1.

The 2014 IGA for Sewer Service also established the requirements for design and construction of the Fossil Ridge Sewer System, including that the Fossil Ridge Sewer System be oversized to serve a minimum capacity of 2,925 EQRs. Compl. ¶¶ 56, 62, 63, Ex. G at §3.2(C).

³ At the time Fossil Ridge was formed, the City had a contract with Metro providing that Metro would process all sewage flows from within the City. To allow Green Mountain to provide sewer service, the Parties worked with the City and Metro to allow Green Mountain to transport wastewater from Fossil Ridge to Metro. Compl. ¶¶ 34-35, 43.

⁴ Green Mountain and FRMD No. 1 first entered in an IGA for Sewer Service in 2008. Compl. ¶¶ 44-45, Ex. D. The 2014 IGA for Sewer Service updated and amended the 2008 IGA for Sewer Service.

The 2014 IGA for Sewer Service also required improvements (including upsizing) to the Green Mountain Sewer System, to be funded by Fossil Ridge. Compl. Ex. G at § 4.1. Solterra, however, funded the improvements because Fossil Ridge was unable to do so. Compl. ¶ 11.

Finally, the 2008 IGA for Maintenance is the current governing agreement between FRMD No. 1 and Green Mountain for sewer system maintenance. Compl. ¶ 52, Ex. F. The 2008 IGA for Maintenance provides that the Fossil Ridge Sewer System is owned by FRMD No. 1 and is to be operated and maintained by Green Mountain. Compl. ¶ 54.

C. Solterra's Development within Fossil Ridge and the Fossil Ridge Sewer System.

Solterra generally must secure sewer service for a unit before building the unit. To secure sewer service for a unit, Solterra must submit Construction Plans for Sanitary Sewer to Fossil Ridge and/or Green Mountain for approval, build the sewer mains and lines, connect the new infrastructure to the Fossil Ridge Sewer System, which is connected to the Green Mountain Sewer System, secure Certificates of Availability of Sewer Service, and pay certain fees. Compl. ¶¶ 73-85. Only after securing Certificates of Availability of Sewer Service can Solterra obtain building permits from the City. Compl. ¶¶ 77, 83, 104.

Solterra's phased development of Fossil Ridge has 21 filings. Compl. ¶ 67. Construction of the Fossil Ridge Sewer System for Filings 1-17 and 19 has been completed, and the Fossil Ridge Sewer System is and has been connected to the Green Mountain Sewer System, and Green Mountain has been receiving and transporting wastewater from the Fossil Ridge Sewer System to Metro for treatment. Compl. ¶¶ 68-72. The total number of residential units in Solterra Filings 1-17 and 19 is 1,258. Compl. ¶ 97.

The Fossil Ridge Sewer System has been oversized and all improvements to the Green Mountain Sewer System have been completed as provided in the 2014 IGA for Sewer Service.

Compl. ¶¶ 69-72. Construction of the Fossil Ridge Sewer System and of the improvements to the Green Mountain Sewer System were funded by Solterra and are subject to reimbursement from Fossil Ridge. Compl. ¶ 72.

The remaining areas for development within Fossil Ridge are Solterra Filings 18, 20, and 21. Compl. ¶ 73. For Filings Nos. 18 and 20, construction plans for sanitary sewer were approved, sewer mains and lines have been installed and approved by Green Mountain, and the connection of the Fossil Ridge Sewer System to the Green Mountain Sewer System has been completed, inspected, and approved by Green Mountain. Compl. ¶¶ 73-85. Green Mountain has issued three of fifteen Certificates of Availability of Sewer Service for Filing No. 18 and four of twenty Certificates of Availability of Sewer Service for Filing No. 20. Compl. ¶¶ 78, 84. Solterra paid the tap fees for those seven units. Compl. ¶ 108. Solterra needs 12 additional Certificates of Availability of Service for Filing No. 18 and 16 for Filing No. 20. *Id.*

Solterra Filing No. 21 is adjacent to Filing No. 19. Compl. ¶ 92. When sanitary sewer service was completed for Filing No. 19, it included a sewer main stub-out for Filing No. 21, which is within the boundaries of Fossil Ridge, is part of the Fossil Ridge Sewer System, and is connected to the Green Mountain Sewer System (the “Filing 21 Sewer Stub-Out”). Compl. ¶¶ 92-94. Thus, the completion of sanitary sewer construction for Filing No. 21 requires only an extension of the sewer main from the existing stub-out to Filing No. 21 units. No additional connection to the Green Mountain Sewer System is required. Compl. ¶ 94.

D. Defendants’ Refusal to Provide Sewer Service.

In early December 2022, Solterra became aware of Green Mountain’s proposed changes to the 2014 IGA for Sewer Service that would limit acceptance of wastewater from development within Fossil Ridge to those EQRs in service or permitted by the City as of January 15, 2023. The

effect of the proposed changes would prevent Solterra from completing development of Filings No. 18, 20, and 21. Compl. ¶¶ 102-103. Solterra had no prior knowledge of Green Mountain's attempt to limit additional development within Fossil Ridge. In fact, every indication was that sewer service would be provided to Filings Nos. 18, 20, and 21. Compl. ¶¶ 103. Upon learning of Green Mountain's efforts to prevent completion of Filings Nos. 18, 20, and 21, Solterra requested that Green Mountain issue the remaining 87 Certificates of Service for Filings Nos. 18, 20, and 21. Those requests were made prior to the January 15, 2023, which was the expiration of the Reserved Capacity term in the 2014 IGA for Service. Compl. ¶¶ 104, 106. Solterra also tendered to Green Mountain the Tap Fee Check in the amount of \$421,167 as payment for sewer development fees for the 87 residential units. Compl. ¶ 109.

Despite multiple requests from Solterra, Green Mountain has failed and refused to act on Solterra's request for 87 Certificates of Service for Filings Nos. 18, 20, and 21. Compl. ¶¶ 110-111. Solterra also has made multiple requests to FRMD No. 1 that it issue Certificates of Availability of Sewer Service for Filings Nos. 18, 20, and 21, and approve connection of the Filing No. 21 sewer lines to the previously installed stub-out. FRMD No. 1 has refused to act. Compl. ¶ 112. FRMD No. 1 also has failed to enforce the provisions of the 2014 IGA for Sewer Service as against Green Mountain. Compl. ¶ 112, 115-130.

Accordingly, Solterra has been unable to obtain building permits for the remaining twelve units planned for Filing 18, the sixteen units planned for Filing 20, and the 59 units planned for Filing 21. Compl. ¶¶ 78, 84, 98.

III. LEGAL STANDARD

Preliminary injunction is designed to prevent immediate and irreparable harm to a party. *City of Golden v. Simpson*, 83 P.3d 87, 96 (Colo. 2004). In Colorado, a preliminary injunction

will be granted if the plaintiff shows the following factors weigh in its favor:

1. A reasonable probability of success on the merits;
2. Danger of real, immediate, and irreparable injury that may be prevented by injunctive relief;
3. No plain, speedy, and adequate remedy at law;
4. Granting of a preliminary injunction will not disserve the public interest;
5. The balance of the equities favors the injunction; and
6. The injunction will preserve the status quo pending a trial on the merits.

Rathke v. MacFarlane, 648 P.2d 648, 653-54 (Colo. 1982). While all factors are not required, Solterra can satisfy all six factors here against both Green Mountain and Fossil Ridge.

IV. ARGUMENT

A. Likelihood of Success on the Merits.

A reasonable probability of success as to one claim is sufficient to support injunctive relief.

Am. Television & Commc'ns Corp. v. Manning, 651 P.2d 440, 444 (Colo. App. 1982). In this case, Solterra is likely to be successful on each claim it has brought.

1. Promissory Estoppel.

Promissory estoppel is a quasi-contractual cause of action that, under certain circumstances, provides a remedy for a party who relied on a promise made by another party, even though the promise was not contained in an enforceable contract. *See Wheat Ridge Urban Renewal Auth. v. Cornerstone Grp. XXII, L.L.C.*, 176 P.3d 737, 741 (Colo. 2007). A claim for promissory estoppel consists of four elements: (1) a promise; (2) that the promisor reasonably should have expected would induce action or forbearance by the promisee or a third party; (3) on which the promisee or third party reasonably and detrimentally relied; and (4) that must be enforced in order to prevent injustice. *See, e.g., Cherokee Metro. Dist. v. Simpson*, 148 P.3d 142, 151 (Colo. 2006). Where these elements are present, a promise becomes binding and may be enforced through the

normal remedies available under contract law. *Bd. of Cnty. Comm'rs v. DeLozier*, 917 P.2d 714, 716 (Colo. 1996).

Here, Solterra is not a party to the 2014 IGA for Sewer Service and does not otherwise have a written contract with Defendants regarding the provision of sewer services. However, both Green Mountain and Fossil Ridge made numerous promises to Solterra that they would provide sewer services. The promises include, without limitation,

- a. Green Mountain and Fossil Ridge working together with the City and Metro to ensure that the land within Fossil Ridge was within the service area for Metro so that Green Mountain could transport wastewater from Fossil Ridge to Metro;
- b. Green Mountain and Fossil Ridge entering into multiple agreements in which they repeatedly represented that sanitary sewer service would be provided to all development within the boundaries of Fossil Ridge;
- c. Green Mountain and Fossil Ridge's agreement that sewer service would be provided for up to 1,727 EQRs;⁵
- d. Green Mountain providing sanitary sewer services for Filings Nos. 1 to 17 and 19 by allowing connection of residential units within those filings to the Green Mountain Sewer System, collecting wastewater from those residential units, and transporting wastewater from those residential units to Metro for processing;
- e. Fossil Ridge providing sanitary sewer service for Filings Nos. 1 to 17 and 19 by allowing residential units within those filings to connect to the Fossil Ridge Sewer System;
- f. Green Mountain approving the construction plans for sanitary sewer for Filings Nos. 18 and 20, and approving the Filing No. 21 Sewer Stub-Out;
- g. Green Mountain overseeing and approving the construction of sanitary sewer for Filings Nos. 18 and 20, and the Filing No. 21 Sewer Stub-Out, including connection to the Green Mountain Sewer System;
- h. Fossil Ridge allowing the construction of sewer mains and lines for Filings Nos. 18, 20, and 21, including connection of those lines to the Fossil Ridge Sewer System;
- i. Green Mountain issuing Certificates of Availability of Sewer Service for three residential units within Filing No. 18 and four residential units within Filing No. 20

⁵ When fully built out the total EQRs in the Solterra development will be only 1,352 residential units.

and accepting tap fees for those seven units; and

- j. Green Mountain and Fossil Ridge engineers reviewing and approving the construction plans for Filing No. 21.

Compl. ¶ 132.

Defendants should have reasonably expected that Solterra would rely on these promises to its detriment. Defendants knew that, as the developer and owner of the land in question, Solterra would fund the planning and construction of the Fossil Ridge Sewer System and financially support FRMD No. 1 in connection with FRMD No. 1's obligations under the 2014 IGA for Sewer Service, based on Solterra's understanding that Defendants would provide sewer service to all Solterra development. Further, Defendants required Solterra to pay for oversizing the Fossil Ridge Sewer System and improving and upsizing the Green Mountain Sewer System. The improvements to the Green Mountain Sewer System were ostensibly "necessary for acceptance of Fossil Ridge's Wastewater." Compl. Ex. G, § 4.1. Defendants should have reasonably known that Solterra paid for such improvements with the understanding that Defendants would provide sewer service for all planned development within Fossil Ridge and adjacent developments.

Indeed, Solterra relied to its detriment on Defendants' promises by actually causing the Fossil Ridge Sewer System and Green Mountain Sewer System to be sized to service up to 2,925 EQRs and paying for the cost of oversizing and upsizing the sewer systems. The oversizing of the systems was based on expectations that Green Mountain and Fossil Ridge would provide sewer service for the entirety of Solterra's development up to 1,727 EQRs and to adjacent developments up to 2,925 EQRs. Solterra also relied to its detriment on Defendants' promises by paying millions of dollars for planning, engineering, and construction of infrastructure for Filings Nos. 18, 20, and 21 for which service is being denied. Defendants' refusal to provide sanitary sewer service for

Filings Nos. 18, 20, and 21 means that Solterra will be unable to complete development of those Filings to its detriment.

These facts and their consequences were generally known by Defendants in a prior related proceeding, and injustice will result if Defendants' promises are not enforced. Thus, it is likely that Solterra will succeed on the merits of its promissory estoppel claim.

2. Unjust Enrichment.

Unjust enrichment is a quasi-contractual, equitable remedy designed to undo a benefit conferred on one party at the unfair expense of another party. *Pulte Home Corp., Inc. v. Countryside Cmty. Ass'n, Inc.*, 382 P.3d 821, 833 (Colo. 2016). To recover under an unjust enrichment theory, a plaintiff must prove three elements: "(1) [T]he defendant received a benefit (2) at the plaintiff's expense (3) under circumstances that would make it unjust for the defendant to retain the benefit without commensurate compensation." *Id.* (quoting *Lewis v. Lewis*, 189 P.3d 1134, 1141 (Colo. 2008)).

As detailed above, Defendants have made promises and representations that they would provide sanitary sewer service to Solterra for the entirety of Solterra's development within Fossil Ridge and to adjacent developments. Compl. ¶¶ 132, 141. Solterra, at the demands of Green Mountain and Fossil Ridge, paid for the Fossil Ridge Sewer System and Green Mountain Sewer System to be sized to service up to 2,925 EQRs. Based on Defendants' approvals, Solterra also funded the design, development, and construction of the sewer system and other infrastructure for Filings Nos. 18, 20, and 21 and has proceeded with development within those filings.

Thus, Solterra expected that sewer service would be provided for all development within Fossil Ridge up to at least 1,727 EQRs, and expended resources to plan for Filings Nos. 18, 20, and 21. Solterra also expected that Defendants would permit Green Mountain to provide sewer

service to adjacent developments so that Solterra could recoup its upsizing/oversizing expenditures. Upon completion of Solterra Filings Nos. 18, 20, and 21, the total number of residential units will be 1,352, well below the anticipated 1,727 Solterra units or the planned-for 2,925 total units. Defendants, however, have refused to provide sewer service to the last remaining 87 units of Solterra development or any additional development.

Defendants have received tremendous benefit from the design, development, and construction of the Fossil Ridge Sewer System (including its oversizing) and from the upsizing and improvement of the Green Mountain Sewer System, at Solterra's expense. It would be unjust for Defendants to retain this benefit without compensation to Solterra. Thus, it is likely that Solterra will succeed on the merits of its unjust enrichment claim.

3. Taking without Just Compensation.

The Fifth Amendment to the United States Constitution provides that “private property [shall not] be taken for public use, without just compensation.” U.S. Const. Amend. V; *see also Britton v. Keller*, 851 F. App'x 821, 824 (10th Cir. 2021) (unpublished) (noting that the Takings Clause applies against state and municipal entities through the Fourteenth Amendment). The Colorado Constitution also prohibits the taking of private property for public use without just compensation. Colo. Const. art. II, § 15.8.

A property owner may bring an “inverse condemnation” claim when state action has the effect of substantially depriving the property owner of the use and enjoyment of the property, but the state has not formally brought condemnation proceedings. To prove an inverse condemnation claim, the property owner must establish: (1) that there has been a taking or damaging of a property interest; (2) for a public purpose without just compensation; (3) by a governmental or public entity that has the power of eminent domain but which has refused to exercise it. *See Kobobel v. State*

Dept. of Nat. Res., 249 P.3d 1127, 1133 (Colo. 2011) (citing *Thompson v. City & Cnty. of Denver*, 958 P.2d 525, 527 (Colo. App. 1998)). Inverse condemnation does not require a physical taking of property. The claim may result from nonacquisitive governmental action “when the governmental activity substantially impairs an owner’s use of the property.” *Am. Family Mut. Ins. Co. v. Am. Nat’l Prop. & Cas. Co.*, 370 P.3d 319, 326 (Colo. App. 2015) (quoting *Bd. of Cnty. Comm’rs v. Flickinger*, 687 P.2d 975, 983 (Colo. 1984)).

Solterra owns the land comprising Filings 18, 20, and 21. Green Mountain and FRMD No. 1’s actions in failing and refusing to provide sewer service for Solterra Filings Nos. 18, 20, and 21 have substantially impaired Solterra’s use of its property. Such property is within the Solterra master development, and without sanitary sewer service, Solterra is unable to develop the property, which deprives Solterra of all economically beneficial use of its property. It also deprives Solterra of the right to use the sanitary sewer and other infrastructure that was designed, developed, and constructed for Filings Nos. 18, 20, and 21.

The taking is for a public purpose: The alleged purpose of Green Mountain and FRMD No. 1’s failure and refusal to provide sewer service for Solterra Filings Nos. 18, 20, and 21 was to restrict development and use of water for public benefit. As a result, Green Mountain and Fossil Ridge, governmental entities, have the infrastructure to provide expanded sewer services to the public, without requiring the public to pay for infrastructure upgrades. Green Mountain and FRMD No. 1 have not compensated Solterra for the fair value of the property and property rights taken by their actions. Finally, no formal condemnation proceedings have been instituted, meaning neither Green Mountain nor FRMD No. 1 has exercised its power of eminent domain.

It is unjust that Solterra alone bear the brunt of this taking. *See, e.g., Armstrong v. United States*, 364 U.S. 40, 49 (1960). Green Mountain and FRMD No. 1 have failed to provide Solterra

any compensation for their actions which prevent Solterra from using its property. Thus, Solterra is likely to succeed on the merits of its Takings Claims under the U.S. Constitution and the Colorado Constitution.

B. Real, Immediate, and Irreparable Injury May Be Prevented by Injunctive Relief.

Irreparable harm exists where, absent an injunction, a party will suffer certain and substantial injury for which no adequate compensation or corrective relief will be available at a later date. *Tri-State Generation & Transmission Ass'n, Inc. v. Shoshone River Power, Inc.*, 805 F.2d 351, 355 (10th Cir. 1986).

Absent a preliminary injunction ordering that Defendants provide sewer services for Solterra Filings No. 18, 20, and 21, Solterra will be irreparably harmed. Solterra has relied on the numerous broken promises detailed above that Defendants would provide sewer services and Solterra's development plan could continue. If Solterra is unable to continue development, Solterra's business reputation will suffer. For example, Solterra will lose the goodwill of possible customers by virtue of its inability to complete the development. The unfinished development is also undesirable and unsightly for current and potential Solterra customers of the completed development units. Solterra also hired numerous employees to complete development of Filings Nos. 18, 20, and 21. Without an injunction that allows Solterra development to continue, Solterra may be forced to lay off these individuals, causing further harm to Solterra's business reputation. This reputational damage represents certain and substantial injury for which no adequate compensation or corrective relief will be available at a later date.

C. There Is No Plain, Speedy, and Adequate Remedy at Law.

Injunctive relief is proper where there is no adequate and just way to compensate the moving party for loss due to the difficulty of ascertaining damages. *See Bullock v. Cayot*, 501

P.2d 147, 149 (Colo. App. 1972). As explained above, Solterra faces irreparable harm if an injunction is not issued. The corresponding loss in Solterra's business goodwill and reputation cannot be ascertained in money damages. Equitable relief is necessary here.

D. The Remaining *Rathke* Factors Weigh in Favor of Granting a Preliminary Injunction.

Granting a preliminary injunction will not disserve the interests of the public. Solterra seeks to continue and complete its development of 87 residential units that have already been planned. Green Mountain and Fossil Ridge seek to halt this and all additional development in the area. The requested injunction allowing the development of Filings Nos. 18, 20, and 21 – for which significant expenditures have already been made – serves the interests of the public by providing housing with dependable sewer service.

The balance of equities also favors the injunction. As noted, Solterra has carried the burden of upsizing and oversizing Green Mountain and Fossil Ridge's sewer systems. Solterra has also undertaken significant effort and expense in designing the plans for Filings Nos. 18, 20, and 21. Now, as it stands with no injunction, Solterra is unable to continue development of Filings Nos. 18, 20, and 21, which causes extreme damage and reputational harm to Solterra. On the other hand, there would be no harm to Defendants if an injunction issued requiring them to provide sewer service for Filings Nos. 18, 20, and 21. When completed, the total EQRs in the Solterra development will be 1,352, which is 375 EQRs fewer than what was agreed to in the Reserved Capacity term. Defendants have already received the benefit of upsized and oversized systems and have approved the construction plans for Filings Nos. 18, 20, and 21.

Finally, the injunction will preserve the status quo pending a trial on the merits. The status quo that preliminary injunctions seek to preserve is the "last uncontested status between the parties which preceded the controversy." *Dominion Video Satellite, Inc. v. Echostar Satellite Corp.*, 269

F.3d 1149, 1155 (10th Cir. 2001) (quotation omitted). Here, the last uncontested status of the Parties is that Solterra would be provided sewer service for all Solterra development within Fossil Ridge, not to exceed 1,727 EQRs. With the requested relief, the total EQRs in the Solterra development will be 375 EQRs fewer than what was agreed to in the Reserved Capacity term. Accordingly, an injunction that requires Defendants to provide sewer service to Solterra development would preserve the last uncontested status between the parties pending a trial on the merits.

CONCLUSION

Wherefore, under Rule 65(a) of the Colorado Rules of Civil Procedure Solterra respectfully requests the Court to issue a Preliminary Injunction in favor of Solterra and against Defendants making the findings Rule 65 requires and granting the following relief:

A. An Order that Defendants issue the requested Certificates of Availability of Sewer Service for the remaining 87 units in Filings No. 18, 20, and 21;

B. An Order that Defendants otherwise take all necessary actions to provide sewer service to Solterra Filings No. 18, 20, and 21;

C. An Order that Defendants approve connection of the Filing No. 21 sewer lines to the previously installed stub-out;

D. An Order that Defendants otherwise take all necessary actions to provide sewer service to Solterra Filings No. 18, 20, and 21, and to comply with the obligations under the 2014 IGA for Sewer Service;

E. Enjoining Defendants from taking any further actions preventing or impeding Solterra from completing development of Filings Nos. 18, 20, and 21, pending resolution on the merits;

F. Finding the security for the Preliminary Injunction should be nominal; and

G. Entering such further relief for Solterra as the Court deems just and proper.

Respectfully submitted this 25th day of April, 2024.

KUTAK ROCK, LLP

By: /s/Neil L. Arney

Neil L. Arney, #27860

Attorneys for Plaintiff Solterra LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of April, 2024, the foregoing **MOTION FOR PRELIMINARY INJUNCTION** was filed and electronically served upon all counsel of record via Colorado Courts E-Filing.

s/ Edna Gray _____
Edna Gray