

<p>DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway, Golden, Colorado 80401 Telephone: 720-772-2500</p>	<p>DATE FILED: April 25, 2024 5:19 PM FILING ID: 6E9FAFEED6B61 CASE NUMBER: 2024CV30589</p>
<p>Plaintiff: SOLTERRA LLC a Colorado limited liability company</p> <p>v.</p> <p>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.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Case No. _____</p> <p>Division: _____ Courtroom: _____</p>
<p><i>Attorneys for Plaintiff Solterra:</i></p> <p>Neil L. Arney, #27860 KUTAK ROCK LLP 2001 16th Street, Suite 1800 Denver, CO 80202 Telephone: 303-297-2400 neil.arney@kutakrock.com</p> <p>Daniel Calisher, #28196 FOSTER GRAHAM MILSTEIN & CALISHER, LLP 360 South Garfield Street, Sixth Floor Denver, Colorado 80209 Telephone: 303-333-9810 calisher@fostergraham.com</p>	
<p>VERIFIED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF AND JURY DEMAND</p>	

Plaintiff Solterra LLC (“Plaintiff” or “Solterra”), by and through its attorneys, hereby states and alleges the following claims against Defendants Green Mountain Water and Sanitation District and Fossil Ridge Metropolitan Districts No.1, Fossil Ridge Metropolitan District No. 2, and Fossil Ridge Metropolitan District No. 3 (collectively “Defendants”):

PARTIES

1. Plaintiff Solterra (“Plaintiff” or “Solterra”) was organized as a Colorado limited liability company in 2005 under the name Carma Lakewood LLC. Carma Lakewood LLC changed its name to Solterra in 2011. Solterra’s primary place of business is at 6465 S. Greenwood Plaza Boulevard, Suite 700, Centennial, Colorado 80111. Solterra is the developer of the development described in further detail herein.

2. Green Mountain Water and Sanitation District (“Green Mountain”) is a quasi-municipal corporation and political subdivision of the State of Colorado. Green Mountain is located within the City of Lakewood, Jefferson County, Colorado. Green Mountain is governed by the Special District Act.

3. Fossil Ridge Metropolitan District No. 1 (“FRMD No. 1”) is a quasi-municipal corporation and political subdivision of the State of Colorado. FRMD No. 1 is governed by the Special District Act and its Service Plan. FRMD No. 1 is located within Jefferson County, Colorado.

4. Fossil Ridge Metropolitan District No. 2 (“FRMD No. 2”) is a quasi-municipal corporation and political subdivision of the State of Colorado. FRMD No. 2 is governed by the Special District Act and its Service Plan. FRMD No. 2 is located within Jefferson County, Colorado.

5. Fossil Ridge Metropolitan District No. 3 (“FRMD No. 3”) is a quasi-municipal corporation and political subdivision of the State of Colorado. FRMD No. 3 is governed by the Special District Act and its Service Plan. FRMD No. 3 is located within Jefferson County, Colorado.

6. FRMD No. 1, FRMD No. 2, and FRMD No. 3 are collectively referred to herein as the “Fossil Ridge” or “FRMD.”

7. Defendants Green Mountain, FRMD No. 1, FRMD No. 2, and FRMD No. 3 are herein collectively referred to as “Defendants” or separately referred to as “Defendant.”

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action pursuant to COLO. CONST. art. VI, § 9(1).

9. This Court has personal jurisdiction over the Defendants because, among other reasons, the Defendants are organized in Colorado, transact business in Colorado, own property in Colorado, have their principal operations in Colorado, and/or reside in Colorado.

10. Venue is proper in this Court pursuant to C.R.C.P. 98(c)(1) and 98(c)(4) because each of the Defendants is located within Jefferson County, Colorado and this is an action involving the provision of services in Jefferson County, Colorado for real property located in Jefferson County, Colorado. The action also involves harm caused to Plaintiff in Jefferson County, Colorado.

INTRODUCTION

11. Solterra is the sole developer within Fossil Ridge and has completed approximately 1,258 residential units, which is about 93% of its multi-phased development located within the City of Lakewood, Colorado (“City”). The residential units that have been completed have access to sanitary sewer owned by Fossil Ridge and Green Mountain. Solterra funded and constructed, or caused the construction of the sewer mains and lines comprising the Fossil Ridge sewer system. Solterra also funded the updating and upsizing of the Green Mountain sewer system for its development within Fossil Ridge. The existing residential units connect to the Fossil Ridge sewer system, which in turn connects to the Green Mountain sewer system. Neither Fossil Ridge nor Green Mountain process the wastewater. They simply collect and transport wastewater to Metro Water Recovery (“Metro”) for processing.

12. Solterra has three filings with a total of 94 residential units remaining to complete its development within Fossil Ridge. Solterra previously requested and received certificates of availability of sanitary sewer and building permits for 7 of the remaining 94 units and is actively constructing those 7 units.

13. Defendants have failed and refused to provide Solterra with the necessary certificates of availability of service that would allow Solterra to connect the remaining units to the existing Fossil Ridge and Green Mountain sanitary sewer systems.

14. Defendants’ refusals to provide the certificates are preventing Solterra from obtaining building permits from the City for the remaining 87 residential units and thus are preventing Solterra from completing the remainder of the planned development within Fossil Ridge.

GENERAL ALLEGATIONS

A. Green Mountain Is a Transporter of Sewer Waste.

15. Green Mountain is a special district governed by the Special District Act, C.R.S. §§ 32-1-101, *et seq*, but organized under Chapter 175, Session Law of 1939, as amended and reenacted.

16. Green Mountain provides water and sanitation service within the City.¹

17. Green Mountain does not process or treat sanitary sewer waste, but rather owns

¹ Green Mountain does not provide water to residents within Fossil Ridge. Water is provided to Fossil Ridge and its residents through Consolidated Mutual Water Company (“Consolidated”).

infrastructure located within the City to collect and transport wastewater to Metro for treatment.

18. On or about December 20, 1983, Green Mountain entered into an Agreement with Metropolitan Denver Sewage Disposal District No. 1 entitled Special Connectors Sewage Treatment and Disposal Agreement (the “1983 Special Connectors Agreement”). The 1983 Special Connectors Agreement allows Green Mountain to connect its sewer system to Metro and transport wastewater from within the City to Metro for processing.

19. Metropolitan Denver Sewage Disposal District No. 1 has since changed its name to Metro Wastewater Reclamation District and then to Metro Water Recovery (referred to herein as “Metro”).

20. Section 305 of the 1983 Special Connectors Agreement, provides that Metro is the exclusive agency for operation of a sewage treatment system within its service area, which includes the City. This means that Green Mountain cannot process waste from the City and is merely a transporter of waste to Metro from residents within the City.

B. Formation of Fossil Ridge.

21. FRMD No. 1, FRMD No. 2, and FRMD No. 3 were each organized pursuant to Title 32 of the Colorado Revised Statutes (the “Special District Act”). The organization of each district was approved by an election of eligible electors held on November 1, 2005. Orders creating each of the districts were entered by the Jefferson County District Court in September and October 2006, and those orders were recorded with the Jefferson County Clerk and Recorder on October 10, 2006.

22. The real property within FRMD encompasses approximately 390 acres and is located within the City. The general boundaries of FRMD are State Highway C-470 on the west, West Yale Avenue on the south, and West Alameda Parkway on the north.

23. The governing service plan for FRMD is the Second Amended and Restated Service Plan for Fossil Ridge Metropolitan District No. 1, Fossil Ridge Metropolitan District No. 2, Fossil Ridge Metropolitan District No. 3, approved by the City on August 27, 2007 (the “Second Amended Service Plan”). (A true and correct copy of the Second Amended Service Plan is attached hereto as **Exhibit A.**)

C. Promises and Commitments to Provide Sewer Service to Development within Fossil Ridge.

24. In or around 2005, owners of approximately 696 acres of undeveloped land in the Rooney Valley area of the City approached Green Mountain to investigate options for providing sanitary sewer service for the development, which was then known as Springfield Green.

25. On or about January 31, 2006, the engineering firm McLaughlin Rincon Ltd., which was the engineering firm for Green Mountain, provided to the Green Mountain Board of Directors

with a feasibility study on providing sewer service for the Springfield Green development (“2006 Feasibility Study”).

26. One of the major developers within the proposed Springfield Green development was Solterra.

27. In 2005, Solterra began the process of forming Fossil Ridge as provided in paragraphs 21 to 23 above.

28. On August 8, 2005, the City conditionally approved the formation of Fossil Ridge.

29. On August 28, 2006, the City approved the Amended and Restated Service Plan (“First Amended Service Plan”) for Fossil Ridge following a public hearing. Notice of the public hearing was sent to interested parties, including Green Mountain. (A true and correct copy of the First Amended Service Plan is attached hereto as **Exhibit B**.)

30. Section I(C)(4)(b) of the First Amended Service Plan provides: “Sanitation services will be provided to the Project by Green Mountain Water and Sanitation District.”

31. Section IV(B) of the First Amended Service Plan provides: “Sanitation services will be coordinated between the Service District and Green Mountain Water and Sanitation District and/or other appropriate entities pursuant to intergovernmental agreements or other arrangements. The Service District will have authority to enter into such contracts and to acquire land and easements necessary to provide sanitation service for the Districts.”

32. FRMD No. 1 is the Service District under the First Amended Service Plan.

33. FRMD Nos. 2 and 3 are identified as the Financing Districts under the First Amended Service Plan.

34. At the time the Fossil Ridge districts were formed and Green Mountain was listed as a provider of sewer service, the City had a contract with Metro which requires that “all sewage flows from within the city limits of Lakewood must go to [Metro] for processing unless an exclusion is granted by [Metro].” That contract between the City and Metro remains in place today.

35. Based on the desires of Solterra and Defendants to have Green Mountain provide sewer service for all development within Fossil Ridge, they worked with the City and Metro to include all property within Fossil Ridge to be within the service area for Metro. On October 31, 2006, the City passed Ordinance O-2006-26 to re-include into the service area for Metro approximately 801.42 acres within the Rooney Valley and the City. The purpose of this re-inclusion was to allow Green Mountain to transport sanitary sewer wastewater from all development within that area to Metro for processing.

36. On August 14, 2007, FRMD No. 1 and Green Mountain entered into a

Memorandum of Understanding, indicating that FRMD No. 1 and Green Mountain were “engaged in good faith negotiations to complete a permanent legal structure for wastewater services to Fossil Ridge.”

37. On August 27, 2007, the City approved the Second Amended Service Plan for Fossil Ridge, following a public hearing in which notice was sent to interested parties, including Green Mountain.

38. Section I(C)(4)(b) of the Second Amended Service Plan provides: “Sanitation services will be provided to the Project by Green Mountain Water and Sanitation District.”

39. Section IV(B) of the Second Amended Service Plan provides: “Sanitation services will be coordinated between the Service District and Green Mountain Water and Sanitation District and/or other appropriate entities pursuant to intergovernmental agreements or other arrangements. The Service District will have authority to enter into such contracts and to acquire land and easements necessary to provide sanitation service for the Districts.” FRMD No. 1 is the Service District under the Second Amended Service Plan.

40. On September 11, 2007, Green Mountain issued a “will serve” letter to FRMD No. 1, providing: “This letter confirms that Green Mountain will provide sanitary sewer services to the Proposed Service Area, not to exceed a maximum number of equivalent dwelling units to be established by Green Mountain, and conditioned upon a) Green Mountain negotiating and entering into a satisfactory Intergovernmental Agreement with Fossil Ridge which includes payment by Fossil Ridge of the costs of improvements needed to serve the Proposed Service Area and b) Metro Wastewater Reclamation District consenting to the service.” (The September 11, 2007 will serve letter will hereinafter be referred to as the “Will Serve Letter.” A true and correct copy of the Will Serve Letter is attached hereto as **Exhibit C.**)

41. The Proposed Service Area as described in the Will Serve Letter was the entirety of the land located within Fossil Ridge, all of which was owned by Solterra. This totaled approximately 390 acres.

42. On September 14, 2007, counsel for Green Mountain sent an outline of proposed terms for several IGAs between Green Mountain and FRMD No. 1, regarding the provision of sanitary sewer service for development within Fossil Ridge.

43. In a further effort by Plaintiff and Defendants to have Green Mountain provide sanitary sewer service for development within Fossil Ridge, they again requested that the City and Metro include additional property within the service area of Metro. On December 13, 2007, the City passed Ordinance O-2007-33 to re-include approximately 26.52 acres into the service area of Metro. The purpose of this re-inclusion was to allow Green Mountain to transport sanitary sewer wastewater from development on that property to Metro for processing. In addition, on January 14, 2008, the City passed Ordinance 2008-5 to include approximately 148 acres adjacent to the City and in the Rooney Valley into the Metro service area. The purpose of this inclusion was to allow Green Mountain to transport sanitary sewer wastewater from development on that property

to Metro for processing.

44. On January 15, 2008, FRMD No. 1 and Green Mountain entered into an Intergovernmental Agreement for Extra-Territorial Sewer Service (“2008 IGA for Sewer Service”). (A true and correct copy of the 2008 IGA for Sewer Service is attached hereto as **Exhibit D.**)

45. Section 2.4 of the 2008 IGA for Sewer Service defines the Service Area as the area “which is presently within or will be included into the boundaries of Fossil Ridge.”

46. The 2008 IGA for Sewer Service also contemplated sewer service for future development areas, including areas that were re-included by the City into the Metro service area as alleged in paragraphs 35 and 43.

47. On January 15, 2008, Solterra and Green Mountain entered into a License Agreement that granted Green Mountain entry onto Solterra property for the purposes of inspecting the Fossil Ridge Sewer System and monitoring wastewater flowing through the Fossil Ridge Sewer System. (A true and correct copy of the License Agreement is attached hereto as **Exhibit E.**)

48. The January 15, 2008 License Agreement was recorded and runs with all land owned by Solterra located within Fossil Ridge. The License Agreement granted Green Mountain access to all land within Fossil Ridge so that it could provide sewer service for development within Fossil Ridge.

49. The License Agreement provides as follows: “[Green Mountain] will be providing sewer service to Fossil Ridge for the Property and, therefore, [Green Mountain] needs to have the right of access to the Property in order to provide such service.” The term Property is defined in the License Agreement as all property owned by Solterra and located within the boundaries of Fossil Ridge.

50. In March 2008, FRMD No. 1 and Green Mountain entered into an Intergovernmental Agreement for Temporary Sewer Main Construction.

51. On June 10, 2008, FRMD Nos. 2 and 3 sent a letter to Green Mountain to entice Green Mountain to enter into the 2008 IGA for Sewer Service and an agreement to maintain the Fossil Ridge Sewer System, namely the Intergovernmental Agreement for Maintenance and Repair of Sewer System. The June 10, 2008 Letter provides: “The Districts make the representations set forth in this letter to induce Green Mountain to enter into the Service Agreement, and amendments thereto, and the Maintenance Agreement.”

52. On September 19, 2008, FRMD No. 1 and Green Mountain entered into an Intergovernmental Agreement for Maintenance and Repair of Sewer System (“2008 IGA for Maintenance”). (A true and correct copy of the 2008 IGA for Maintenance is attached hereto as **Exhibit F.**)

53. The 2008 IGA for Maintenance is the governing agreement between FRMD No. 1 and Green Mountain regarding Green Mountain's maintenance and repairs of the Fossil Ridge Sewer System.

54. The 2008 IGA for Maintenance provides that the sewer system located within the boundaries of Fossil Ridge is owned by FRMD No. 1 and is to be operated and maintained by Green Mountain.

55. On November 11, 2014, FRMD No. 1 and Green Mountain entered into an Amended and Restated Intergovernmental Agreement for Extra-Territorial Sewer Service ("2014 IGA for Sewer Service"). (A true and correct copy of the 2014 IGA for Sewer Service is attached hereto as **Exhibit G.**)

56. The 2014 IGA for Sewer Service is the governing agreement between FRMD No. 1 and Green Mountain regarding the provision of sewer service to transport wastewater from Fossil Ridge to Metro.

57. The 2014 IGA for Sewer Service requires that the Fossil Ridge Sewer System be designed and constructed in accordance with the terms of the 2014 IGA for Sewer Service and all rules and regulations and design standards, criteria and specifications of Green Mountain.

58. Section 2.4 of the 2014 IGA for Sewer Service defines the Service Area as the area that "is presently within or will be included into the boundaries of one of the Districts." In other words, Green Mountain agreed to provide service to all property owned by Solterra and located within the boundaries of Fossil Ridge.

59. The real property within the boundaries of Fossil Ridge is approximately 390 acres and is located entirely within the City.

60. Section 2.1 of the 2014 IGA for Sewer Service provides: "Green Mountain hereby agrees to accept Wastewater from Fossil Ridge, which is collected from and generated within the Service Area and does not exceed 1,727 equivalent residential units ("EQRs"), pursuant to all terms contained herein."

61. Section 2.2 of the 2014 IGA for Sewer Service provides: "Green Mountain will reserve sufficient capacity in its Green Mountain Wastewater Collection System to accommodate 1,727 EQRs received from Fossil Ridge (the "Reserved Capacity") for a period of fifteen (15) years from January 15, 2008, provided that Fossil Ridge is in compliance with the terms and conditions of this Agreement. The Parties may mutually agree, in writing, to extend the period of time such capacity will be reserved by additional 5 year periods."

62. Section 3.2(C) of the 2014 IGA for Sewer Service provides: "The Fossil Ridge Sewer System shall be sized to accommodate anticipated flow from the Service Area and the Future Development Area, as reasonably determined by Green Mountain, and shall be designed to accommodate a minimum capacity of 2,925 equivalent residential units (which includes the

Reserved Capacity).”

63. The Green Mountain sewer system was upsized to service up to a minimum of 2,925 additional EQRs from Fossil Ridge and the Future Development Area. These improvements were identified as the GM Improvements in Section 4.1 of the 2014 IGA for Sewer Service.

64. Solterra paid for the construction of Fossil Ridge Sewer System, including the oversizing of that system as required in the 2014 IGA, subject to reimbursement from Fossil Ridge. Solterra also paid for the upsizing and improvements of the Green Mountain sewer system as required the 2014 IGA, subject to reimbursement from Fossil Ridge.

D. Solterra’s Development within Fossil Ridge.

65. In reliance on the various promises and representations by Green Mountain and Fossil Ridge that sanitary sewer service would be provided for all development by Solterra within Fossil Ridge, Solterra began development in or around 2006 and has continued development up through the filing of this Complaint.

66. Solterra is and has been the only developer within Fossil Ridge.

67. Solterra’s development has been in phases with a total of 21 separate filings.

68. Solterra has completed construction of residential units for Solterra Filings 1 to 17 and 19, including construction of the Fossil Ridge Sewer System servicing those units.

69. For Solterra Filings 1-17, and 19, 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. Thus, all wastewater from the residential units within those Solterra Filings is delivered to Metro for processing.

70. The Fossil Ridge Sewer System has been designed, constructed and oversized as provided in the 2014 IGA for Sewer Service.

71. All Improvements to the Green Mountain sewer system, as defined in Section 4.1 of the 2014 IGA for Sewer Service, have been completed as required by Green Mountain.

72. Construction of the Fossil Ridge Sewer System and the improvements to the Green Mountain sewer system were funded by Solterra and were subject to reimbursement from Fossil Ridge.

E. Status of Solterra’s Remaining Development within Fossil Ridge.

73. The remaining areas for development within Fossil Ridge are Solterra Filings 18, 20, and 21.

Solterra Filing No. 18.

74. Solterra Filing No. 18 comprises 15 residential units.

75. On or about July 10, 2018, the Construction Plans for Sanitary Sewer for Solterra Filing No. 18 were reviewed, approved and signed by Green Mountain and its engineer.

76. The sewer mains and lines for Solterra Filing No. 18, which are part of the Fossil Ridge Sewer System, have been constructed and installed up to the lot lines. Green Mountain inspected and approved the construction and installation of those sewer mains and lines. Fossil Ridge was informed of the construction and installation and did not object thereto.

77. The Fossil Ridge Sewer System for Solterra Filing No. 18 has been connected to the Green Mountain sewer system and that connection was inspected and approved by Green Mountain.

78. Green Mountain previously issued three Certificates of Availability of Sewer Service for Filing No. 18. Solterra has submitted those Certificates of Availability of Sewer Service to the City and obtained building permits for three units in Filing No. 18. Solterra is actively constructing three of the 15 units for Filing No. 18.

79. Despite repeated requests by Solterra, Green Mountain and FRMD No. 1 have failed and refused to provide the remaining twelve (12) Certificates of Availability of Sewer Service for Filing No. 18, preventing Solterra from completing its development of Filing No. 18.

Solterra Filing No. 20.

80. Solterra Filing No. 20 comprises 20 residential units.

81. On or about May 20, 2020, the Construction Plans for Sanitary Sewer for Solterra Filing No. 20 were reviewed, approved and signed by Green Mountain and its engineer.

82. The sewer mains and lines for Solterra Filing No. 20, which are part of the Fossil Ridge Sewer System, have been constructed and installed up to the lot lines. Green Mountain inspected and approved the construction and installation of those sewer mains and lines. Fossil Ridge was informed of the construction and installation and did not object thereto.

83. The Fossil Ridge Sewer System for Solterra Filing No. 20 has been connected to the Green Mountain sewer system and that connection was inspected and approved by Green Mountain.

84. Green Mountain previously issued four Certificates of Availability of Sewer Service for Filing No. 20. Solterra has submitted those Certificates of Availability of Sewer Service to the City and obtained building permits for four units in Filing No. 20. Solterra is actively

constructing four of the 20 units for Filing No. 20.

85. Despite repeated requests by Solterra, Green Mountain and FRMD No. 1 have failed and refused to provide the remaining sixteen (16) Certificates of Availability of Sewer Service for Filing No. 20, preventing Solterra from completing its development of Filing No. 20.

Solterra Filing No. 21.

86. Solterra Filing No. 21 comprises 59 residential units.

87. The Construction Plans for Sanitary Sewer for Solterra Filing No. 21 were reviewed and approved by engineers for Green Mountain in or around September 2022.

88. At least as early as September 9, 2022, Green Mountain's primary engineer, Terry Kenyon of Merrick, indicated to the Green Mountain board that Filing No. 21 was ready for approval.

89. Mr. Terry Kenyon served as the primary engineer for Green Mountain in relation to Fossil Ridge from approximately 2005 until early 2023. Mr. Kenyon was with the firm of McLaughlin Rincon Ltd. in 2006 and completed the 2006 Feasibility Study for Green Mountain.

90. The minutes for the September 13, 2022 Regular Meeting of the Board of Directors of Green Mountain contain a statement by Mr. Kenyon that the Filing No. 21 drawings need a signature.

91. The Construction Plans for Sanitary Sewer for Solterra Filing No. 21 were subsequently provided to Fossil Ridge and its engineers for review and approval. The engineers for Fossil Ridge, who also are employed by the Merrick firm, approved the Construction Plans for Sanitary Sewer for Solterra Filing No. 21 on or around November 30, 2022.

92. Solterra Filing No. 21 is adjacent to Filing No. 19, which has been completed. When sanitary sewer service was constructed and installed for Filing No. 19 it included a sewer main stub-out for Filing No. 21 (hereinafter the "Filing 21 Sewer Stub-Out"). The Filing No. 21 Sewer Stub-Out is within the boundaries of Fossil Ridge, is part of the Fossil Ridge Sewer System, and is connected to the Green Mountain Sewer System.

93. The Filing No. 21 Sewer Stub-Out was inspected and approved by Green Mountain at the time the Filing No. 19 sewer lines and mains were constructed and installed.

94. The completion of sanitary sewer for Filing No. 21 requires only an extension of the sewer main from the existing Filing No. 21 Sewer Stub-Out to the Filing No. 21 units. No additional connection to the Green Mountain Sewer System is required.

95. Green Mountain has been aware of Solterra Filings No. 18, 20, and 21 and Solterra's intention to construct approximately 94 residential units for those Filings since at least

July 2020. From at least July 2020 through March 2022, Green Mountain and its engineer maintained Construction Project Status Spreadsheets, which include reference to the Solterra Filings Nos. 18, 20, and 21 as well as when the projects began, when the plans were approved by Green Mountain engineers, when the plans were signed, and construction status.

96. Fossil Ridge has been aware of Solterra Filings No. 18, 20, and 21 and Solterra's intention to construct approximately 94 residential units for those Filings since at least July 2020.

97. The total number of residential units in Solterra Filings 1 to 17 and 19 is 1,258.

98. The remaining number of units to be built in the Solterra Community is 94, including the 15 units for Filing No. 18, 20 units for Filing No. 20, and 59 units for Filing No. 21. Solterra previously received Certificates of Service for seven (7) units in Filings 18 and 20, and is actively constructing those seven units.

99. Upon completion of Solterra Filings Nos. 18, 20, and 21, the total number of residential units will be 1,352.

F. Refusal to Provide Sanitary Sewer Service for Solterra Filings Nos. 18, 20, and 21.

100. Upon information and belief, in or around October 2022 counsel for FRMD No. 1 and Green Mountain began negotiations regarding an extension of the Reserved Capacity term set out in Section 2.2 of the 2014 IGA for Sewer Service, which term was set to expire on January 15, 2023.

101. As part of those negotiations, in early December 2022, Green Mountain 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 proposal and intent of Green Mountain was to prevent Solterra from completing its development of Filings Nos. 18, 20, and 21.

102. Counsel for FRMD No. 1 alerted Solterra's counsel to Green Mountain's proposed changes to the existing 2014 IGA for Sewer Service on or around December 9, 2022.

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, based on prior approvals and construction of sanitary sewer for Filings Nos. 18 and 20 and approval of the numerous reviews and approvals of the construction plans for Filing No. 21.

104. Upon learning of Green Mountain's efforts to prevent completion of Filings Nos. 18, 20, and 21, Solterra requested that Green Mountain issue Certificates of Service for Filings 18, 20, and 21. Those requests were made prior to the January 15, 2023 expiration of the Reserved Capacity term in the 2014 IGA for Service.

105. Certificates of Service are typically a requirement of the City to issue building permits.

106. Solterra requested 87 Certificates of Service from Green Mountain.

107. Solterra previously requested and obtained from Green Mountain 3 Certificates of Service for Filing No. 18 and 4 Certificates of Service for Filing No. 20.

108. Solterra previously paid sewer development fees for 3 units at Filing No. 18 and 4 units at Filing No. 20, leaving a total of 87 tap permits needed to complete construction of residential units within the Solterra Community.

109. Prior to January 15, 2023, Solterra tendered to Green Mountain a check in the amount of \$421,167 as payment for sewer development fees for the 87 residential units at the 2023 rate of \$4,841 per unit (the "Tap Fee Check").

110. Despite multiple requests from Solterra, the Green Mountain Board of Directors has failed and refused to take action on Solterra's request for 87 Certificates of Service for Filings Nos. 18, 20, and 21.

111. Green Mountain retains possession of the Tap Fee Check.

112. 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 take such action.

113. No changes to the 2014 IGA for Sewer Service were agreed upon by Green Mountain and FRMD No. 1.

114. The 2014 IGA for Sewer Service remains in full force and effect, except for the Reserved Capacity that expired on January 15, 2023.

G. The Fossil Ridge Sewer System.

115. FRMD No. 1 owns the sanitary sewer system that is located within the boundaries of Fossil Ridge.

116. The Fossil Ridge Sewer System is a collection system that delivers wastewater to Green Mountain Sewer System, which in turn delivers wastewater to Metro for processing.

117. Pursuant to the terms of the Second Amended Service Plan, each of the Fossil Ridge districts is authorized to provide sanitary sewer service for development within its boundaries. FRMD has taken a number of actions indicating that it is the owner of the Fossil Ridge Sewer System.

118. In or around February 2008, Fossil Ridge adopted a Joint Resolution Concerning the Adoption of Sewer Rules and Regulations pursuant to which Fossil Ridge adopted the Rules and Regulations of Green Mountain regarding sanitary sewer service.

119. The Joint Resolution Concerning the Adoption of Sewer Rules and Regulations provides: “Prior to receiving approval to connect to the District Sewer System, each new User shall pay a System Development Fee (“SDF”) to District No. 1 in the amount of the current Sewer SDF as set by the Districts’ Board. Additionally, Users shall pay to District No. 1 the then-current system development fee, or similar fee, imposed by the Metropolitan Denver Wastewater Reclamation District (“Metro”) for each new user. The Sewer SDF and Metro System development fee shall be paid concurrent with or in advance of the Districts approving the connection of any new User to the Sewer System.”

120. On or about March 10, 2009, Fossil Ridge adopted an Amended and Restated Joint Resolution Concerning the Imposition of District Fees (“Amended Resolution”).

121. The Amended Resolution provides: “Prior to receiving approval to connect to the District Sewer System, each new Customer shall pay a System Development Fee (“SDF”) to District No. 1 or designated recipient, which shall equal the then current Green Mountain System Development Fee and an administration fee of \$261. Additionally prior to connection to the District Sewer System, Customers shall pay to District No. 1 an amount equal to then-current system development fee, or similar fee that is imposed by the Metropolitan Denver Wastewater Reclamation District (“Metro”) for each new Customer connected to the District Sewer System (the “Metro Fee”).”

122. The Amended Resolution also provides: “Tapping/Inspection Fees shall be imposed upon all Customers making connection to the District Sewer System in an amount equal to the costs of inspection and records processing for making the taps as are charged to the District by Green Mountain. Such Tapping and Inspection fees shall be due prior to discharge of sewage into the District Sewer System and may be incorporated into the SDF. The Districts may rely on inspection by Green Mountain”

123. On or about December 9, 2015, FRMD adopted a Joint Resolution Concerning the Imposition of Various Fees, Rates, Penalties and Charges for Sanitary Sewer Services and Facilities (the “2015 Resolution”).

124. The 2015 Resolution contains the same basic language as the Amended Resolution and includes a provision regarding possible need to upsize or update facilities of Metro and Green Mountain’s right to set rates and fees.

125. FRMD No. 1 imposes fees on the residents of Fossil Ridge for sewer service and collects payment of those fees from the residents.

126. FRMD No. 1 pays Green Mountain for sewer service under the 2014 IGA for Sewer

Service and pays for Green Mountain to maintain the sewer system under the 2008 IGA for Maintenance.

127. Section 2.3 of the 2014 IGA for Sewer Service provides: “Before connecting any new customer to the Fossil Ridge Sewer System, Fossil Ridge shall submit to Green Mountain a written application for a permit to discharge Wastewater from the specific property, shall pay any system development fee or other required fees and shall receive approval by Green Mountain of the permit.”

128. Section 6.1 of the 2014 IGA for Sewer Service provides: “Fossil Ridge shall pay a System Development Fee (“SDF”) to Green Mountain for each new User connected to the Fossil Ridge Sewer System, in the amount of the current Sewer SDF as set by the Board of Directors of Green Mountain. Additionally, Fossil Ridge shall pay the then-current system development fee, or similar fee, imposed by Metro (the “Metro Development Fee”) for each new User connected to the Fossil Ridge Sewer System.”

129. The City identifies Fossil Ridge as the sanitary sewer service provider for development within Fossil Ridge.

130. Fossil Ridge has acknowledged and agreed that sanitary sewer service should be provided to Solterra Filings Nos. 18, 20, and 21 by submitting a joint statement to Green Mountain requesting that Green Mountain issue the Certificates of Availability of Sewer Service and tap permits for the residential units for Filing Nos. 18, 20, and 21. Fossil Ridge has failed and refused to allow Solterra to connect to the Fossil Ridge Sewer System for Filing Nos. 18, 20, and 21 and has failed and refused to take action to enforce Green Mountain’s obligations to provide the sewer service promised to Solterra.

H. Fossil Ridge and Green Mountain Additional Commitments to Provide Sewer Service to Future Development Area.

131. In 2017, Green Mountain and Big Sky Metropolitan District No. 1 (“Big Sky”), which was seeking to develop a portion of the Future Development Area, sued FRMD No. 1 for declaratory relief under the 2014 IGA for Sewer Service. The action was captioned *Big Sky Metropolitan District No. 1, et al. v. Fossil Ridge Metropolitan District No. 1*, Case Number 2017CV31368 (Jefferson County District Court) (hereinafter the “Big Sky Litigation”). The purpose of the Big Sky Litigation was to determine its obligation to reimburse FRMD No. 1 for use of the oversized Fossil Ridge Sewer System and the upsized Green Mountain Sewer System.

132. The parties resolved the Big Sky Litigation in March 2018, pursuant to entry of a judgment based on stipulated facts (the “Stipulated Judgment”). In the Stipulated Judgment, the following statements and admissions are made:

- a. Green Mountain desires to provide sewer service to the Future Development Area upon satisfaction of specified conditions, including the execution of an agreement among property owner(s) in the Future Development Area

and Fossil Ridge complying with the requirements of Section 2.6 of the Amended IGA.

- b. Fossil Ridge, Big Sky, and owners of the property located within Big Sky entered into an intergovernmental agreement in which Big Sky and the property owner agreed to reimburse Fossil Ridge \$1.3 million for oversizing the Fossil Ridge Sewer System (the “Big Sky/Fossil Ridge IGA for Reimbursement”).
- c. The Big Sky/Fossil Ridge IGA for Reimbursement also allows other owners of property with the Future Development Area to become parties to the agreement in order to obtain sewer service from the Fossil Ridge Sewer System and the Green Mountain Sewer System.
- d. Big Sky and Green Mountain previously entered into an intergovernmental agreement in which Green Mountain agreed to accept wastewater from the Big Sky development via the Fossil Ridge Sewer System and deliver that wastewater to Metro (the Green Mountain/Big Sky IGA for Sewer Service”).

133. Nothing in the Big Sky Litigation indicates that either Fossil Ridge or Green Mountain intended to discontinue providing sewer service to Solterra or development within Fossil Ridge. Rather, the implication of the Stipulated Judgment is Green Mountain and Fossil Ridge would be expanding the sewer service beyond Fossil Ridge development to include the Future Development Area.

134. Solterra funded the oversizing of the Fossil Ridge Sewer System and, under the terms of the Reimbursement Agreement and/or the Second Amended Service Plan, Solterra is entitled to the \$1.3 million that Fossil Ridge is to receive from Big Sky and/or owners of the property within Big Sky.

135. Despite the representations and promises that Green Mountain and Fossil Ridge intended to provide sewer service to development within Big Sky, they have failed and refused to do so, harming Fossil Ridge and its ability to recover for amounts it paid to oversize the Fossil Ridge Sewer System.

FIRST CLAIM FOR RELIEF
**(PROMISSORY ESTOPPEL AGAINST DEFENDANTS GREEN MOUNTAIN AND
FRMD NO. 1)**

136. Solterra incorporates the allegations of Paragraphs 1 through 135, inclusive, as if fully set forth herein.

137. Defendants have made promises and representations that they would provide sanitary sewer service to Solterra for the entirety of its development within Fossil Ridge, including

but not limited to the following:

- a. Green Mountain and Fossil Ridge worked 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 entered 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 agreed that sewer service would be provided for up to 1,727 EQRs;²
- d. Green Mountain provides 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 provides 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 approved the construction plans for sanitary sewer for Filings Nos. 18 and 20, and the Filing No. 21 Sewer Stub-Out included in Filing No. 19;
- g. Green Mountain oversaw and approved construction of sanitary sewer lines and mains 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 allowed the construction of sewer mains and lines for Filings Nos. 18 and 20, and the Filing No. 21 Sewer Stub-Out, including connection of those lines to the Fossil Ridge Sewer System;
- i. Green Mountain issued Certificates of Availability of Sewer Service for three residential units within Filing No. 18 and four residential units within Filing No. 20, and accepted payment from Solterra of tap fees for those seven units;
- j. Green Mountain and Fossil Ridge engineers reviewed and approved the construction plans for Filing No. 21 prior to January 15, 2023; and

² When fully built out the total EQRs in the Solterra development will be only 1,352.

- k. Green Mountain and Fossil Ridge's promises and representations that it would provide sewer service to development within the Future Development Area, allowing Solterra to be reimbursed for its cost of oversizing the Fossil Ridge Sewer System and upsizing the Green Mountain Sewer System.

138. To its detriment, Solterra, at the demands of Green Mountain and Fossil Ridge, caused the Fossil Ridge Sewer System and Green Mountain sewer system to be sized to service up to 2,925 EQRs and paid for the cost of upsizing the sewer systems with the expectation that sewer service would be provided for all development within Fossil Ridge up to at least 1,727 EQRs. The oversizing of the systems to service up to 2,925 was based on expectations that Green Mountain and Fossil Ridge would provide sewer service for adjacent developments, and that Solterra would be reimbursed from other developers that would subsequently be using those sewer systems. Defendants have refused to provide sewer service to other developers, which have prevented Solterra from obtaining reimbursement for the oversizing of the systems.

139. Solterra also relied to its detriment on the promises, representations and demands of Defendants regarding the provision of sanitary sewer service, by paying millions of dollars for planning, engineering, and construction of sewer systems for Filings Nos. 18, 20, and 21 for which service is being denied.

140. In addition, Defendants' refusal to provide sanitary sewer service for Filings 18, 20, and 21 means that Solterra is unable to complete development of those Filings.

141. Defendants should have reasonably expected that Solterra would rely on the promises and representations to its detriment.

142. Defendants have received tremendous benefit from the sewer systems that were constructed and funded by Solterra.

143. Solterra has been damaged as a result of the promises and representations of Defendants and is entitled to an award of damages in an amount proved at trial. The damages that Solterra has incurred and will incur as a result of Defendants' actions include approximately \$10 million expended on improvements for Filings 18, 20, and 21 that cannot be used. It also will lose expected revenues of over \$65 million and lost profits of approximately \$5 million. In addition, Solterra will lose its ability to be reimbursed for the cost of oversizing the Fossil Ridge Sewer System and improving and upsizing Green Mountain Sewer System, an amount of approximately \$12 million.

144. Solterra also will be irreparably harmed by the failed promises and representations of Defendants in that, among other things, (a) Solterra has hired numerous employees to complete development of Filings 18, 20, and 21 and may be forced to lay off those individuals, which will cause harm to Solterra's business reputation; and (b) Solterra will be unable to complete development of the remaining filings, leaving open lots and partially constructed infrastructure. Defendants' failed promises and representations have caused and will continue to cause harm to Solterra's reputation by virtue of its inability to complete the planned development. Based on the

irreparable harm caused by Defendants, Solterra is entitled to a mandatory injunction requiring that Defendants provide sanitary sewer service for Solterra Filings Nos. 18, 20, and 21.

WHEREFORE, Solterra, prays that the Court enter judgment in its favor and against Defendants on this First Claim for Relief and that it be awarded the following relief:

- a. An order of judgment against Defendants Green Mountain and FRMD No. 1, and each of them, and in favor of Solterra;
- b. A preliminary and permanent injunction that Green Mountain and FRMD No. 1 forthwith provide sanitary sewer service for Solterra Filings 18, 20, and 21 within Fossil Ridge;
- c. An award of money damages in an amount to be proved at trial, including prejudgment and post-judgment interest; and
- d. An award of costs and such other and further relief as the Court deems just and proper under the circumstances.

SECOND CLAIM FOR RELIEF
(UNJUST ENRICHMENT AGAINST DEFENDANTS)

145. Solterra incorporates the allegations of Paragraphs 1 through 144, inclusive, as if fully set forth herein.

146. Defendants have made promises and representations that they would provide sanitary sewer service to Solterra for the entirety of its development within Fossil Ridge, including but not limited to the following:

- a. Green Mountain and Fossil Ridge worked 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 entered 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 agreed that sewer service would be provided for up to 1,727 EQRs;³
- d. Green Mountain provides 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

³ When fully built out the total EQRs in the Solterra development will be only 1,352.

residential units, and transporting wastewater from those residential units to Metro for processing;

- e. Fossil Ridge provides 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 approved the construction plans for sanitary sewer for Filings Nos. 18 and 20, and the Filing No. 21 Sewer Stub-Out included in Filing No. 19;
- g. Green Mountain oversaw and approved construction of sanitary sewer lines and mains 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 allowed construction of sewer mains and lines for Filings Nos. 18 and 20, and the Filing No. 21 Sewer Stub-Out, including connection of those lines to the Fossil Ridge Sewer System;
- i. Green Mountain issued Certificates of Availability of Sewer Service for three residential units within Filing No. 18 and four residential units within Filing No. 20 and accepted payment from Solterra of tap fees for those seven units;
- j. Green Mountain and Fossil Ridge engineers reviewed and approved the construction plans for Filing No. 21 prior to January 15, 2023; and
- k. Green Mountain and Fossil Ridge's promises and representations that it would provide sewer service to development within the Future Development Area, allowing Solterra to be reimbursed for its cost of oversizing the Fossil Ridge Sewer System and upsizing the Green Mountain Sewer System.

147. Solterra funded the design, development and construction of the sanitary sewer for Filings 18, 20, and 21 and has proceeded with development within those filings with the reasonable expectation that Defendants would provide sanitary sewer service for all of Solterra's development within Fossil Ridge including for Filings 18, 20, and 21.

148. Solterra also funded the oversizing of sanitary sewer for the Fossil Ridge Sewer System and the Green Mountain Sewer System with the expectation that it would be provided sanitary sewer service for all development within Fossil Ridge and that Defendants would provide sanitary sewer service for other surrounding development that would allow Solterra to recover for oversizing of sanitary sewer that was required by Defendants.

149. Defendants and each of them have received tremendous benefit from the design, development and construction of sanitary sewer for the Fossil Ridge Sewer System and for the oversizing and upgrading of the Green Mountain Sewer System.

150. Defendants have been and will continue to be unjustly enriched if they are permitted to use and enjoy the Fossil Ridge Sewer System and the oversized and upgraded Green Mountain Sewer System without providing service to Solterra for the remaining 87 residential units and/or paying Solterra for the amount it paid to build out and oversize the sewer systems.

151. Solterra has been and will be irreparably harmed by the failed promises and representations of Defendants in that, among other things, (a) Solterra has hired numerous employees to complete development of Filings 18, 20, and 21 and may be forced to lay off those individuals, which will cause harm to Solterra's business reputation; and (b) Solterra will be unable to complete development of the remaining filings, leaving open lots and partially constructed infrastructure. Defendants' failed promises and representations have caused and will continue to cause harm to Solterra's reputation by virtue of its inability to complete the planned development. Because of the irreparable harm caused by Defendants, Solterra is entitled to a mandatory injunction requiring that Defendants provide sanitary sewer service for Solterra Filings Nos. 18, 20, and 21.

152. Solterra also is entitled to an award of damages in an amount proved at trial for the unjust enrichment of Defendants.

WHEREFORE, Solterra, prays that the Court enter judgment in its favor and against Defendants, and each of them, on this Second Claim for Relief and that it be awarded the following relief:

- a. An order of judgment against Defendants and in favor of Solterra;
- b. A preliminary and permanent injunction that Defendants forthwith provide sanitary sewer service for Solterra Filings 18, 20, and 21 within Fossil Ridge;
- c. An award of money damages in an amount to be proved at trial, including prejudgment and post-judgment interest;
- d. Such other and further relief as the Court deems just and proper under the circumstances.

THIRD CLAIM FOR RELIEF
(TAKING WITHOUT JUST COMPENSATION IN VIOLATION OF THE U.S. CONSTITUTION AGAINST DEFENDANTS GREEN MOUNTAIN AND FRMD NO. 1)

153. Solterra incorporates the allegations of Paragraphs 1 through 152, inclusive, as if fully set forth herein.

154. 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.

155. Green Mountain and FRMD No. 1 have not compensated Solterra for the fair value of the property and property rights taken by their actions.

156. Solterra has been and will be irreparably harmed by the actions of Defendants in that, among other things, (a) Solterra has hired numerous employees to complete development of Filings 18, 20, and 21 and may be forced to lay off those individuals causing harm to Solterra's business reputation; and (b) Solterra will be unable to complete development of the remaining filings, leaving open lots and partially constructed infrastructure. Defendants' actions have caused and will continue to cause harm to Solterra's reputation by virtue of its inability to complete the planned development. Because of the irreparable harm caused by Defendants, Solterra is entitled to a mandatory injunction requiring that Defendants provide sanitary sewer service for Solterra Filings Nos. 18, 20, and 21.

157. Solterra also is entitled to an award of damages against Defendants in an amount proved at trial based on their violations of Solterra's constitutional rights.

WHEREFORE, Solterra, prays that the Court enter judgment in its favor and against Green Mountain and FRMD No. 1, and each of them, on this Third Claim for Relief and that it be awarded the following relief:

- a. An order of judgment against Green Mountain and FRMD No. 1 and in favor of Solterra;
- b. A preliminary and permanent injunction that Green Mountain and FRMD No. 1 forthwith provide sanitary sewer service for Solterra Filings 18, 20, and 21 within Fossil Ridge;
- c. An award of just compensation for the value of its property taken by Defendants;
- d. An award of attorneys' fees and costs; and
- e. Such other and further relief as the Court deems just and proper under the circumstances.

FOURTH CLAIM FOR RELIEF
(TAKING WITHOUT JUST COMPENSATION IN VIOLATION OF THE COLORADO CONSTITUTION AGAINST DEFENDANTS GREEN MOUNTAIN AND FRMD NO. 1)

158. Solterra incorporates the allegations of Paragraphs 1 through 157, inclusive, as if

fully set forth herein.

159. 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.

160. 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 the benefit of the public.

161. Green Mountain and FRMD No. 1 have not compensated Solterra for the fair value of the property and property rights taken by their action.

162. Green Mountain and FRMD No. 1 have the power of eminent domain and have failed or refused to exercise such power.

163. Solterra has been and will be irreparably harmed by the actions of Defendants in that, among other things, (a) Solterra has hired numerous employees to complete development of Filings 18, 20, and 21 and will be forced to lay off those individuals causing harm to Solterra's business reputation; and (b) Solterra will be unable to complete development of the remaining filings, leaving open lots and partially constructed infrastructure. Defendants' actions have caused and will continue to cause harm to Solterra's reputation by virtue of its inability to complete the planned development. Because of the irreparable harm caused by Defendants, Solterra is entitled to a mandatory injunction requiring that Defendants provide sanitary sewer service for Solterra Filings Nos. 18, 20, and 21.

164. Solterra also is entitled to an award of damages against Defendants in an amount proved at trial based on their violations of Solterra's constitutional rights.

WHEREFORE, Solterra, prays that the Court enter judgment in its favor and against Green Mountain and FRMD No. 1, and each of them, on this Fourth Claim for Relief and that it be awarded the following relief:

- a. An order of judgment against Green Mountain and FRMD No. 1 and in favor of Solterra;
- b. A preliminary and permanent injunction that Green Mountain and FRMD No. 1 forthwith provide sanitary sewer service for Solterra Filings 18, 20, and 21 within Fossil Ridge;
- c. An award of just compensation for the value of property taken by Defendants in an amount to be proved at trial, including prejudgment and post-judgment interest;

- d. An award of attorneys' fees and costs; and
- e. Such other and further relief as the Court deems just and proper under the circumstances.

FIFTH CLAIM FOR RELIEF
**(BREACH OF CONTRACT AGAINST DEFENDANTS GREEN MOUNTAIN AND
FRMD NO. 1)**

165. Solterra incorporates the allegations of Paragraphs 1 through 164, inclusive, as if fully set forth herein.

166. The 2014 IGA for Sewer Service is a binding and enforceable agreement.

167. Based on the circumstances taken as a whole, Solterra was and is an intended beneficiary of the 2014 IGA for Sewer Service. At least the following facts and circumstances show that Solterra was an intended beneficiary:

- a. At the time the parties executed the 2014 IGA for Sewer Service, the entire service area comprised land owned by Solterra;
- b. The purpose of the 2014 IGA for Sewer Service, when read with the Second Amended Service Plan and other related documents, was for FRMD No. 1 and Green Mountain to provide sanitary sewer service to all development undertaken by Solterra within the boundaries of Fossil Ridge;
- c. Solterra is and has been the only developer within Fossil Ridge;
- d. Solterra's development within Fossil Ridge is residential and sewer service was and is a requirement for Solterra to complete its residential development within Fossil Ridge;
- e. At the time the 2014 IGA for Sewer Service was executed the parties to the agreement knew and understood that the agreement was for the benefit of Solterra, and the intent was to benefit Solterra by establishing a sewer system to allow Solterra to complete its residential development within Fossil Ridge; and
- f. At the time that FRMD No. 1 executed the 2014 IGA for Sewer Service, FRMD No. 1 knew and understood that Solterra had been and would continue advancing funds to FRMD No. 1 in order to satisfy the requirements of the 2014 IGA for Sewer Service.

168. As a third-party beneficiary to the 2014 IGA for Sewer Service, Solterra has the right to enforce the terms and conditions of the agreement.

169. Green Mountain and FRMD No. 1 have breached the 2014 IGA for Sewer Service by, among other things, failing and refusing to provide sewer service to Solterra' remaining development, namely Filings Nos. 18, 20, and 21.

170. Solterra has been damaged as a proximate result of the breaches by Green Mountain and FRMD No. 1 in amounts to be proved at trial.

WHEREFORE, Solterra, prays that the Court enter judgment in its favor and against Green Mountain and FRMD No. 1, and each of them, on this Fifth Claim for Relief and that it be awarded the following relief:

- a. An order of judgment against Green Mountain and FRMD No. 1 and in favor of Solterra;
- b. An award of damages in an amount proved a trial;
- c. An award of prejudgment and post-judgment interest;
- d. An award of attorneys' fees and costs; and
- e. Such other and further relief as the Court deems just and proper under the circumstances.

JURY TRIAL

Solterra requests a jury for all claims for which it is entitled to trial by jury.

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

Plaintiff's Address:

6465 S. Greenwood Plaza Bld.
Suite 700
Centennial, Colorado 80111

VERIFICATION

I, Anastasia Urban, am a professional engineer and hold the position of Project Manager for Brookfield Properties Development LLC, which is an affiliate of Plaintiff Solterra LLC. I have reviewed the factual allegations contained in the foregoing Complaint and the factual statements are true and accurate to the best of my knowledge and understanding.

s/ Anastasia Urban _____
Anastasia Urban

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of April, 2024, the foregoing **COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF AND JURY DEMAND** was filed and electronically served upon all counsel of record via Colorado Courts E-Filing.

s/ Edna Gray _____
Edna Gray