

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway, Golden, Colorado 80419 Telephone: 303-271-6215	DATE FILED: March 7, 2023 4:23 PM FILING ID: 3D47E86B5F1DF CASE NUMBER: 2005CV3044
IN RE: THE ORGANIZATION OF FOSSIL RIDGE METROPOLITAN DISTRICT NO. 1, CITY OF LAKEWOOD, JEFFERSON COUNTY, COLORADO	▲ COURT USE ONLY ▲
<i>Attorneys for Interested Party Solterra LLC:</i> Neil L. Arney, #27860 Mia K. Della Cava, #39861 KUTAK ROCK LLP 1801 California St., Suite 3000 Denver, CO 80202 Telephone: 303-297-2400 neil.arney@kutakrock.com mia.dellacava@kutakrock.com Daniel Calisher, #28196 Lawrence G. Katz, #32724 FOSTER GRAHAM MILSTEIN & CALISHER, LLP 360 South Garfield Street, Sixth Floor Denver, Colorado 80209 Telephone: 303-333-9810 calisher@fostergraham.com lkatz@fostergraham.com	Case No. 2005 CV 003044 Division: 1
<p style="text-align: center;">AMENDED AFFIDAVIT OF ANASTASIA URBAN IN SUPPORT OF MOTION PURSUANT TO C.R.S. § 32-1-207(3)(a) TO ENJOIN A MATERIAL MODIFICATION TO THE SERVICE PLAN AND ENFORCE MANDATORY OBLIGATIONS OF SERVICE PLAN</p>	

I, Anastasia Urban, hereby state and affirm as follows:

1. I am a professional engineer and currently hold the title Project Manager for Brookfield Properties Development, LLC, which is an affiliate of Solterra LLC.

2. I am familiar with and have knowledge regarding the Solterra development within the Boundaries of Fossil Ridge Metropolitan District No. 1, Fossil Ridge Metropolitan District No. 2, and Fossil Ridge Metropolitan District No. 3 (collectively “FRMD”).

3. The statements herein are true and correct based upon my personal knowledge, or where indicated, upon information and belief.

4. I provide this affidavit in support of Solterra’s Motion Pursuant to C.R.S. § 32-1-207(3)(a) to Enjoin a Material Modification to the Service Plan and to Service Plan and Enforce Mandatory Obligations of the Service Plans filed herewith. If required to do so, I will testify as set forth herein.

5. The current 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, which was approved by the City of Lakewood (“City”) on August 27, 2007 (the “Service Plan.”) (A true and correct copy of the Service Plan is attached hereto as Exhibit A.)

6. Carma Lakewood, LLC is defined as the Developer under the Service Plan. (Service Plan, p. 4.) Carma Lakewood, LLC changed its name to Solterra LLC on March 31, 2011. (A true and correct copy of the name change amendment is attached hereto as Exhibit B.)

7. The development within FRMD is a planned residential community commonly referred to as “Solterra” (hereinafter “Solterra Community”). The real property within FRMD encompasses approximately 390 acres and is located entirely 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.

8. Development within the Solterra Community has been phased with Filings numbering 1 through 21. Over 90% of the development is complete with residential units and infrastructure built out for Filings 1 through 17. Infrastructure has been installed and residential units are currently being built for Filing 19. Infrastructure including water and sanitary sewer lines has been installed for Filings 18 and 20. Filing 21 is in the final planning stages. Solterra Filings 1 to 21 are located entirely within the District Boundaries.

9. In total, approximately 1,237 single family detached homes and single family attached homes (townhomes) have been built. There are 23 single family townhomes being built in Filing 19 and approximately 94 single family attached homes (townhomes) that are to be built within Filings 18, 20, and 21. Solterra owns all the tracts for Filings 18, 19, 20, and 21, and an affiliate of Solterra is the only active home builder within FRMD.

10. Development of the Solterra Community includes extensive Public Improvements identified in the Service Plan, including onsite water, sanitary sewer, storm sewer, roads, a recreation center, parks, open space, and landscaping as well as regional water, sewer, and street expansions and improvements. The recreation center is known as the “Retreat,” which has a pool, fitness area, patio areas, outdoor fireplace, amphitheater, and clubhouse with large entertaining room, kitchen with appliances, bar, and dining room.

11. A true and correct copy of the Amended and Restated Intergovernmental Agreement for Extra-Territorial Sewer Service that was dated November 11, 2014 (the “2014 IGA”) is attached hereto as Exhibit C.

12. To the best of my knowledge, FRMD has caused expansions and extensions of Green Mountains’ sanitary sewer system necessary to serve the development within FRMD as

required in the 2014 IGA. The construction of the expansions and extensions for the sanitary sewer system was funded by Solterra pursuant to a reimbursement agreement with FRMD.

13. FRMD and Green Mountain have provided sanitary sewer service for Solterra Filings 1 to 17. Pursuant to the Service Plan, the sanitary sewer service was to be dedicated to Green Mountain. However, I am informed and understand that, on or about September 19, 2008, FRMD No. 1 and Green Mountain entered into an Intergovernmental Agreement for Maintenance and Repair of Sewer System (the “2008 IGA for Maintenance”), whereby the parties agreed that FRMD No. 1 owned and would retain ownership of the sewer system within the boundaries of FRMD and that Green Mountain would provide maintenance and repair services for the FRMD sewer system. A true and correct copy of the 2008 IGA for Maintenance is attached hereto as Exhibit G.

14. FRMD and Green Mountain also agreed to provide sanitary sewer service for Filing 19 by, among other things, Green Mountain reviewing and approving the design and construction of the sanitary sewer infrastructure for Filing 19, FRMD reviewing and approving the master site plan, including layout for sewer services, FRMD being provided with an opportunity to review and object to the design and construction of the sewer system, and not objecting, Green Mountain providing Certificates of Sanitary Sewer Service Availability (the “Certificates of Service”) for each of the residential units within Filing 19. The Certificates of Service are a requirement of the City to issue building permits for the residential units. Solterra also paid to Green Mountain the sewer tap fees for each of the residential units within Filing 19.

15. On December 9, 2022, Solterra first learned that Green Mountain and FRMD No. 1 were negotiating a renewal of the 2014 IGA. Solterra also learned on December 9, 2022, that

Green Mountain was proposing terms for the renewed agreement that would prevent Solterra from completing its planned development within the Solterra Community by refusing to provide sewer service for the planned residential units within Filings 18, 20, and 21. (A true and correct copy of amended and restated IGA proposed by Green Mountain is attached hereto as Exhibit D.)

16. I was told by representatives of Green Mountain that Green Mountain was intentionally trying to curb development within the Solterra Community and the Green Mountain service area generally. I am informed and understand that similar statements were made to Solterra's counsel by counsel for FRMD.

17. Shortly after learning of the negotiations regarding the renewal of the 2014 IGA, Solterra began communicating with FRMD and Green Mountain to ensure that both had accurate information regarding the status of Solterra's development and the limited number of additional residential sewer connections that are needed for Solterra to complete fully its development within FRMD. We advised both FRMD and Green Mountain of the following status:

a. A total of 1,260 residential units have been completed or are under construction with building permits issued by the City, which includes Filings 1 to 17 and 19.

b. The total number of residential units remaining for development in Filings 18, 20, and 21 is 94.

c. The total EQRs that are and will be in service within FRMD – upon completion of the development – is 1,354, which is substantially below the 1,727 EQRs reserved under the 2014 IGA.

d. The remaining 94 residential units (EQRs) break down as follows:

- i. Filing 18 has a total of 15 residential units. The sewer main and sewer lines up to the lots have been installed pursuant to construction plans reviewed and approved by Green Mountain, and the City. In addition, FRMD reviewed and approved the Master Site Plan for Filing 18, which included layout of sewer service, and based on my understanding of the process, FRMD would have been provided the opportunity to review and object to the design and construction of the sewer main and sewer lines, and FRMD did not object. Solterra requested and received Certificates of Service from Green Mountain and has paid sewer tap fees for 3 of the 15 residential units in Filing 18.
- ii. Filing 20 has a total of 20 residential units. The sewer main and sewer lines up to the lots have been installed pursuant to construction plans reviewed and approved by Green Mountain and the City. In addition, FRMD reviewed and approved the Master Site Plan for Filing 20, which included sewer system layout, and based on my understanding of the process, FRMD would have been provided an opportunity to review and object to the design and construction of the sewer main and sewer lines and FRMD did not object. Solterra requested and received Certificates of Service from Green

Mountain and has paid sewer tap fees for 4 of the 20 residential units in Filing 20.

- iii. Filing 21 has a total of 59 residential units. The construction plans for sanitary sewer service for Filing 21 have gone through six (6) rounds of review and comments by Green Mountain. FRMD also has reviewed and provided comments to the sanitary sewer construction plans for Filing 21. The construction plans were first submitted to Green Mountain in April 2019. The last submittal was on November 30, 2022. Solterra was recently advised by Green Mountain staff that the latest construction plans are ready for signature by Green Mountain.

(True and correct copies of communications to FRMD and to Green Mountain are attached hereto as Exhibits E and F.)

18. I reviewed the posted video for the Green Mountain December 13, 2022 board meeting. During discussion by the Green Mountain board on renewal of the 2014 IGA and the restrictions on further sanitary sewer service, both the Green Mountain board and representatives of FRMD stated that they were generally aware of the status of Filings 18, 20, and 21 and nonetheless stated that they were not interested in ensuring service for the remaining development. In fact, Terry Larson, the president of the FRMD No. 2 board and the Assistant Secretary of the FRMD No. 1 board, stated that “To us, it doesn’t matter whether there are any more townhouses built or not. . . . when I look at the services that we have to provide, I don’t think that we gain much by

having more townhouses. They are a headache for us. Snow removal, everything else.” The video for the December 13, 2022 Green Mountain board meeting is available online at www.greenmountainwater.org/district/board. The discussion regarding renewal of the 2014 IGA starts at approximately 2:06:20 in the video. Tom Waterman, the president of FRMD No. 1, was present when these statements were made and did not object to or attempt to correct any statements made by Mr. Larson.

19. In light of the proposed changes to the 2014 IGA and at the direction of Green Mountain’s legal counsel, Solterra promptly submitted requests to Green Mountain for Certificates of Service for the remaining 87 residential units needed to complete development of residential units within the Solterra Community. This represents the 94 units remaining for Filings 18, 20, and 21, less the 7 Certificates of Service already obtained for Filings 18 and 20.

20. Solterra also tendered to Green Mountain a check in the amount of \$421,167 as payment for sewer tap fees for the remaining 87 residential units at the 2023 rate of \$4,841 per tap (the “Tap Fee Check”).

21. I initially submitted the requests for Certificates of Service for 87 residential units on January 5, 2023. The requests were resubmitted on January 9, 2023, after I was advised that Green Mountain had adopted a new form.

22. I hand delivered the Tap Fee Check on January 6, 2023 and tendered the check as payment for 87 tap permits. Green Mountain refused to accept the check at that time. The Tap Fee Check was sent to Green Mountain on January 12, 2023, by Federal Express. Green Mountain management holds the check.

23. On January 9, 2023, Solterra, through its attorney, also proposed language for the renewed 2014 IGA to make it clear that sanitary sewer service would be provided to the remaining 94 units for Filings 18, 20, and 21.

24. Counsel for Solterra and I have made repeated inquiries with Green Mountain and its counsel regarding the requests for Certificates of Service and the payment of tap fees. No action has been taken by Green Mountain on the requests for Certificates of Service and no tap fee permits have been issued to Solterra. In addition, FRMD and Green Mountain have not entered into a new agreement that would ensure service to Filings Nos. 18, 20, and 21 as required under the Service Plan.

25. I attended the Green Mountain board meetings on January 10, 2023 and February 14, 2023. During both meetings, statements were made on behalf of Solterra asking that Green Mountain act on the requests for Certificates of Service and issue the sewer tap permits. No action has been taken by Green Mountain.

26. Solterra's requests for the 87 Certificates of Service and the tender of the Tap Fee Check for tap permits were made within the terms of the 2014 IGA. The additional service requested by Solterra would bring the total residential units being serviced within the Solterra Community to 1,354 EQRs which is much less than the 1,727 EQRs reserved by Green Mountain under the 2014 IGA.

27. Counsel for Solterra have communicated with the City Attorney for the City of Lakewood. Based on those conversations, the City has not approved any changes to the Service Plan regarding sanitary sewer service and expects FRMD and Green Mountain to comply with the requirements of the Service Plan.

28. The manager of Green Mountain represented to me that the sanitary sewer construction plans for Filing 19 were acceptable and that he was only waiting on board approval to sign.

29. Solterra has expended millions in planning, design, development and infrastructure installation for Filings 18, 20, and 21 and would be prevented from completing development of those filings if sanitary sewer service is not provided. Solterra also would lose the opportunity to complete and sell 94 single family residential units at approximately \$700,000 per unit.

Respectfully submitted this 7th day of March, 2023.

s/Anastasia Urban
Anastasia Urban

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

Subscribed, sworn to, and acknowledged before me by Anastasia Urban this ___th day of March, 2023.

Witness my hand and official seal.

My commission expires: _____.

[SEAL]

{ This affidavit has been approved and is in the process of being signed and notarized. }

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of March, 2023, the foregoing **AMENDED AFFIDAVIT OF ANASTASIA URBAN IN SUPPORT OF MOTION PURSUANT TO C.R.S. § 32-1-207(3)(a) TO ENJOIN A MATERIAL MODIFICATION TO THE SERVICE PLAN AND ENFORCE MANDATORY OBLIGATIONS OF SERVICE PLAN** was filed and electronically served upon all counsel of record via Colorado Courts E-Filing and

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s/ Edna Gray _____
Edna Gray