

DISTRICT COURT, JEFFERSON COUNTY,
STATE OF COLORADO
100 Jefferson County Parkway,
Golden, Colorado 80419
Telephone: 303-271-6215

Plaintiff: SOLTERRA LLC, a Colorado limited liability company

v.

Defendants: FOSSIL RIDGE METROPOLITAN DISTRICT NO. 1, a 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.

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Case No. 2022CV31409

Division: 1 Courtroom: 540

FIRST AMENDED COMPLAINT AND JURY DEMAND

Pursuant to C.R.C.P. 15(a), Plaintiff Solterra LLC (“Plaintiff” or “Solterra”), by and through its attorneys, Kutak Rock LLP, hereby states and alleges the following amended claims against Defendants Fossil Ridge Metropolitan District No. 1, Fossil Ridge Metropolitan District No. 2, and Fossil Ridge Metropolitan District No. 3 (collectively “Defendants”):

PARTIES

1. Plaintiff Solterra LLC (“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 LLC 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. 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 located within Jefferson County, Colorado.

3. 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 located within Jefferson County, Colorado.

4. 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 located within Jefferson County, Colorado.

5. FRMD No. 1, FRMD No. 2, and FRMD No. 3 are collectively referred to herein as the “FRMD” or as “Defendants.”

JURISDICTION AND VENUE

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

7. 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, and have their principal operations in Colorado.

8. 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 upon a contract that was performed, at least in part, in Jefferson County, Colorado.

GENERAL ALLEGATIONS

A. Organization of FRMD and Approval of Service Plan.

9. 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.

10. The real property within FRMD encompasses approximately 390 acres and is located within the City of Lakewood, Colorado (“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.

11. The initial service plan for FRMD was conditionally approved by the City in August 2005, which plan was subsequently amended.

12. 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 “Service Plan.”)

13. A true and correct copy of the Service Plan is attached hereto as Exhibit A.

14. The Service Plan generally describes development within FRMD and the public improvements contemplated within the development, including both onsite improvements and regional improvements. Onsite improvements included water, sanitation, storm sewer, streets and roads, walkways, curb and gutter, parks, open space, common areas, and a community recreational center. Regional improvements included offsite sanitation, regional water, and work on major roads, namely South Indiana Street, Alameda Parkway, South McIntyre Boulevard, and Yale Avenue. (Service Plan, pp. 8-12.)

15. The Service Plan expressly authorizes FRMD “to provide for the planning, design, acquisition, construction, installation, relocation, and/or redevelopment of the Public Improvements and the provision of District Activities from its legally available revenues and by and through the proceeds of both Revenue Debt and General Obligation Debt to be issued by the Districts, as authorized by this 2007 Amended Service Plan.” (Service Plan, pp. 17-18.)

16. Public Improvements are defined to mean “a part or all of the improvements authorized to be planned, acquired, constructed, installed, relocated, redeveloped, operated, maintained and/or financed as generally described in **Exhibit B**, to serve the future taxpayers and inhabitants of the Service Area.” (Service Plan, p. 7.)

17. Exhibit B to the Service Plan generally identifies the following onsite and regional public improvements:

- a. Onsite Improvements: onsite water, onsite sanitary sewer, onsite storm sewer, Alameda Parkway, Baltic Drive, Iliff Avenue, South Indiana Street, Vassar Street, Lakewood City Park, Community Recreational center, open space, landscaping, and removal of existing utilities;
- b. Regional Improvements: offsite sanitary sewer, regional water, South Indiana Street, Alameda Parkway, S. McIntyre Boulevard, and Yale Avenue.

18. The Service Plan distinguishes between the Service District, which is FRMD No. 1, and the Financing Districts, which are FRMD No. 2 and FRMD No. 3, and describes the duties and responsibilities of the Service District and the Financing Districts. (Service Plan, pp. 5, 8, 9-15.)

19. The Service Plan also addresses the need for intergovernmental agreements by and among FRMD No. 1, FRMD No. 2, and FRMD No. 3, and expressly identifies and defines the Master IGA as “an agreement between the Districts that sets forth the specifics of the relationship between the Service District and the Financing Districts.” (Service Plan, pp. 6, 16.)

20. The Service Plan further provides as follows:

“Subject to City approval, the Districts may enter into one or more District IGAs to coordinate construction and administration of all Public Improvements and District Activities.” . . .

“Pursuant to the District IGAs, the **Districts will coordinate and cooperate with respect to financing, constructing, operating, and maintaining improvements that serve the Districts.** The District IGAs shall constitute a debt of the Financing Districts because they will impose an **obligation for the Financing Districts to pay revenues to the Service District sufficient to fund the financing, construction, operation and maintenance of the public improvements that serve the Districts.**”

(Service Plan, p. 16 (emphasis added).)

21. Following the approval of the Service Plan, the districts entered into the Master Intergovernmental District Facilities and Construction Agreement by and between FRMD No. 1, FRMD No. 2, and FRMD No. 3, dated January 8, 2008 (the “Master IGA”).

22. The Master IGA is attached hereto as Exhibit B and is discussed in greater detail in Section B below.

23. The Service Plan explains the need for the Districts:

“The need for special districts to provide services to the Project is crucial. Due to development of the Project, a substantial amount of **public infrastructure and services are necessary to support such development.** The use of the Districts will assure that development of the project pays its own way. Due to the significance of the required Public Improvements, organization of the Districts is critical for the requisite financing and construction and/or acquisition of the Public Improvements. **District IGAs between the Service District and the Financing Districts will assure that financing and construction of the Public Improvements takes place in a manner and at the time required.**

(Service Plan, pp. 12-13 (emphasis added).)

24. The Service Plan also recognizes the need for loans from Solterra (the Developer) to fund Public Improvements until homes are built, and in that regard, the Service Plan authorizes FRMD to issue General Obligation Debt or Revenue Debt to repay Solterra. The Service Plan specifically provides as follows:

“Appropriate Developer Loan Agreements between the Service District and the Developer will provide the means to fund Public Improvements that are needed before homes or other buildings could be completed, and enables the Developer to be reimbursed for such costs as assessed valuation increases and Debt is able to be issued to repay such obligation. **At the time at which sufficient assessed valuation is developed within the Financing Districts, the Financing Districts will issue General Obligation Debt and/or Revenue Debt sufficient to repay the Developer under the Developer Loan Agreements for further construction of the Public Improvements, as necessary.** In no event shall any such General Obligation Debt be issued in excess of the General Obligation Debt Limitation. Issuance of General Obligation Debt by Financing Districts shall be phased according to development and associated increases in the assessed valuation within each of the Financing Districts, respectively.

(Service Plan, p. 9 (emphasis added).)

25. Developer Loan Agreements is defined in the Service Plan as “any agreement between the Service District [FRMD No. 1] and the Developer [Solterra] recognizing advances made to the Service District by the Developer for costs of the Public Improvements, Regional Improvements, and District Activities and the Service District’s obligation to reimburse the Developer for the same.” (Service Plan, pp. 4-5.)

26. The Reimbursement Agreement, which is described and defined in Section C of this First Amended Complaint, is a Developer Loan Agreement as defined in the Service Plan.

27. Solterra is specifically named in the Service Plan as the Developer and has a right to enforce the requirements of the Service Plan, especially those that relate to the Reimbursement

Agreement and FRMD's obligations to reimburse Solterra for advances made for Public Improvements, Regional Improvements, and District Activities. In addition, Solterra is a property owner within FRMD and thus is an interested party under the Service Plan and is entitled to enforce FRMD's obligations under the Service Plan.

28. District Activities is defined in the Service Plan to mean "any and all functions undertaken by the Districts in accordance with this Service Plan to effectuate the purposes for which the Districts are organized." (Service Plan, p. 5.)

29. The Service Plan set a debt limit for FRMD of \$91,000,000, which could be either General Obligation Debt or Revenue Debt as those terms are defined in the Service Plan. (Service Plan, pp. 4, 5, 8.)

30. The General Obligation Debt Limitation for FRMD is \$70,000,000. (Service Plan, pp. 5-6.)

31. The aggregate amount that can be repaid under a Developer Loan Agreement, which includes the Reimbursement Agreement, is \$91,000,000. (Service Plan, p. 4.) A total of \$70,000,000 can be repaid using general obligation debt of FRMD. (Service Plan, pp. 5-6.)

B. The Master IGA

32. Shortly after the Service Plan was approved, FRMD No. 1, FRMD No. 2, and FRMD No. 3 entered into the Master IGA, which sets forth the "manner in which the Districts shall implement the Service Plan." (Master IGA, p. 1.)

33. The Master IGA provides that "under the Service Plan, the Districts are **required to work together and coordinate their efforts with respect to all activities contemplated in the Service Plan** including but not limited to the management and administration of the Districts, the provision of essential services by the District and the **financing, construction, and maintenance of public improvements....**" (Master IGA, p. 1.)

34. The Master IGA provides, among other things, as follows:

- a. "the Service Plan describes certain facilities to be financed and constructed from debt proceeds to be issued by the Financing District, and/or from other funds held or obtained by the same, for the purpose of fulfilling the Financing District's commitments hereunder;"
- b. "the Districts agree that Facilities are needed by the Districts and that the Facilities will benefit the residents and property owners in the Districts in terms of cost, quality, level of service, and management and operation of such Facilities;"

- c. “the Districts have agreed, and the Service Plan provides, that the Service District will own, operate, maintain, and construct the Facilities benefiting the Districts, subject to discretionary transfer to other governmental entities or authorities;”
- d. “the Financing Districts **will pay all costs related to the construction, operation, and maintenance of said facilities by the Service District in accordance with this Agreement;**”
- e. “by and through this Agreement, the **Districts desire to provide for the implementation of the principles and objectives set forth in the Service Plan regarding financing, construction, operation, and maintenance of the Facilities;**”

(Master IGA, p. 2 (emphasis added).)

35. As set forth in Section 1.3 of the Master IGA, the terms and provisions of the Service Plan must be considered in order to construe the Master IGA properly and fully. Section 1.3 specifically provides as follows:

“Purpose and Scope of Agreement. The Districts state that the statements set forth in this Section 1.3 **are essential to the proper interpretation of this Agreement** and are intended to clarify the general intent of specific provisions contained herein, but are not intended to constitute an all-inclusive statement of the Districts’ intentions; **reference must also be made to the Service Plan for purposes of construing both this Agreement and the Districts’ intent.** The Districts agree that any one District shall be entitled to any remedy, order judgment or action which is, or may be, necessary to make the intentions of the Districts operative, as the same are expressed herein. Therefore, in light of the foregoing statements of limitation, the Districts’ general intentions are as follows:

a. The Service Plan: 1) states that the Service District will be responsible for managing the financing, construction, operation and maintenance of the “Facilities” (defined below) for the Districts’ benefit; and 2) describes the nature of the relationship between the Districts and contemplates that this Agreement would be executed by the Districts to effectuate that relationship.

b. The Service District will have little assessed valuation within its boundaries from which “General Obligation Debt” (as defined below) could be paid, and consequently contemplates that the Financing Districts will issue obligations that are appropriately secured or credit-enhanced by third parties. The Service Plan: 1) provides that the Service District obligations issued to pay for costs associated with the Facilities and Services **are intended to be repaid with payments from the**

Financing District and may be refunded or repaid from the proceeds of General Obligation Debt issued by the Financing District, when adequate assessed valuation exists within its boundaries; and 2) contemplates that virtually all of the assessed valuation of the property to be developed within the Districts' service areas will be located within the boundaries of the Financing District, and that the Financing District will issue "General Obligation Debt" or revenue "Bonds" in the manner contemplated by the Service Plan in order to pay its obligations created by this Agreement. Bond proceeds will be used to construct the Facilities for the Financing District in a manner consistent with the Service Plan. The Financing District will issue "General Obligation Debt" to capture the value of increases in the tax base within the Financing District that are caused, to a significant degree, by the availability of Services and Facilities from the Service District. The transfer of "Bond" proceeds from the Financing District to the Service District is intended to result in an equitable allocation of the costs of the Facilities to all the properties that are benefitted thereby.

c. ***

d. ***

e. The purpose of this Agreement is to set forth the rights and obligations of the Financing District to fully fund, and of the Service District to construct, own, transfer, operate and/or maintain the Facilities, which are of benefit to the Districts. **This Agreement shall, in all circumstances, be interpreted in accordance with the Service Plan and the intentions expressed therein regarding the role of each District. The Districts acknowledge that performance of this Agreement for the full term hereof is key to full implementation of the Service Plan. . . ."**

(Master IGA, §1.3 (emphasis added).)

36. Section 3.2(c) of the Master IGA provides as follows: "The Districts agree that the Financing District shall use best efforts to issue General Obligation Debt or Revenue Debt at the points in time identified in the Service Plan."

37. Under the Service Plan, the time for issuing debt to repay Solterra is as follows: **"At the time at which sufficient assessed valuation is developed within the Financing Districts, the Financing Districts will issue General Obligation Debt and/or Revenue Debt sufficient to repay the Developer under the Developer Loan Agreements for further construction of the Public Improvements, as necessary."** (Service Plan, p. 9.)

38. Section 3.3(c) of the Master IGA provides in relevant part as follows: “the Financing District hereby pledges its full faith and credit to the **punctual performance of its obligations, financial and otherwise, under this Agreement. . . .**”

39. Section 3.8 of the Master IGA provides as follows: “It is understood and agreed by the Financing District that its obligations hereunder are **absolute, irrevocable, and unconditional** except as specifically stated herein, **and so long as any obligation of the Financing District hereunder remains unfulfilled, the Financing District agrees that notwithstanding any fact, circumstance, dispute, or any other matter, it will not assert any right of setoff, counterclaim, estoppel, or other defense to its payment obligations, or take or fail to take any action which would delay payment to the Service District or impair the Service District’s ability to receive payments due hereunder.**”

40. Section 10.13 of the Master IGA provides that “Time is of the essence.”

C. Reimbursement Agreement.

41. On May 13, 2008, FRMD No. 1 entered into an agreement with Solterra entitled Reimbursement of Developer Loan and Public Infrastructure Acquisition Agreement (the “Reimbursement Agreement”). The Reimbursement Agreement was contemplated and authorized by the Service Plan and is a Developer Loan Agreement as defined in the Service Plan. (Service Plan, p. 9.)

42. A true and correct copy of the Reimbursement Agreement is attached hereto as Exhibit C.

43. The purpose and intent of the Reimbursement Agreement was to allow FRMD to proceed with the acquisition, design, and construction of Public Infrastructure at a time when FRMD was unable to pay for or otherwise finance the Public Infrastructure. (Reimbursement Agreement, p. 1.) Specifically, Solterra as the developer agreed to fund the Public Infrastructure with the understanding that it would be repaid as soon as FRMD No. 2 and FRMD No. 3 were able to issue debt as provided in the Service Plan and the Master IGA.

44. Under the Reimbursement Agreement, FRMD No. 1, as the Service District, agreed to repay Solterra for any funds Solterra advanced for the planning, design, acquisition, construction, installation, relocation, redevelopment or maintenance of Public Infrastructure and to acquire any Public Infrastructure that was built by Solterra. FRMD No. 2 and FRMD No. 3 by virtue of the Service Plan and the Master IGA had previously agreed to issue bonds or other debt to satisfy the obligations of FRMD No. 1 to repay Solterra.

45. In reliance of the Reimbursement Agreement and the promises and representations of FRMD No. 2 and No. 3 to issue debt to repay advances, Solterra has advanced in excess of \$80 million that was used to acquire, design, develop, construct, and maintain Public Infrastructure for the benefit of FRMD and its residents. Solterra’s advances are described in more detail in Section E below.

46. Public Infrastructure is defined in the Reimbursement Agreement to mean “certain public infrastructure, improvements, and services, as described in the Act, including, but not limited to water, street, traffic and safety controls, transportation, parks and recreation, sanitation and mosquito control (among other powers permitted under Title 32 and subject to the Service Plan approved by the City of Lakewood Colorado) within and without its boundaries, **as authorized and in accordance with the [Service Plan].**” (Reimbursement Agreement, p. 1 (emphasis added).)

47. The Reimbursement Agreement acknowledges, recites and incorporates the obligations of FRMD No. 1, FRMD No. 2 and FRMD No. 3 set forth in the Service Plan and Master IGA.

48. The Reimbursement Agreement requires (just like the Service Plan) that all three FRMD districts cooperate and coordinate the financing, construction, operation, and maintenance of the Public Infrastructure. Specifically, the Reimbursement Agreement provides:

“[T]he **Districts are intended to cooperate and coordinate** the financing, construction, operation, and maintenance of the Public Infrastructure, with the District acting as the administrative entity in such responsibilities and District No. 2 and District No. 3 acting as the funding source for all such activities;”

(Reimbursement Agreement, p. 1 (emphasis added).)

49. The Reimbursement Agreement acknowledges and represents that the relationship among the FRMD districts is set forth in the Master IGA, which in turn is based on the obligations of the Service Plan. (Reimbursement Agreement, p. 1.)

50. The Reimbursement Agreement provides that FRMD No. 2 and FRMD No. 3 are obligated to issue general obligation bonds in order to fund Public Infrastructure “**at such time as it is reasonably feasible to do so, subject to the limitations of the Service Plan. . . .**” (Reimbursement Agreement, p. 2.)

51. Solterra relied on the obligations of all the FRMD districts as set forth in the Service Plan, the Master IGA and the Reimbursement Agreement in entering into the Reimbursement Agreement and agreeing to advance funds for the payment of Public Infrastructure for the benefit of FRMD. For example, the Service Plan provides that: “At the time at which sufficient assessed valuation is developed within the Financing Districts, the Financing Districts **will issue** General Obligation Debt and/or Revenue Debt sufficient to repay the Developer under the Developer Loan Agreements for further construction of the Public Improvements, as necessary.” (Service Plan, p. 9.) In addition, the Master IGA provides that: “the Financing District **will issue** ‘General Obligation Debt’ or revenue ‘Bonds’ in the manner contemplated by the Service Plan in order to pay its obligations created by this Agreement. . . . The Financing District **will issue** ‘General Obligation Debt’ to capture the value of increases in the tax base within the Financing District that are caused, to a significant degree, by the availability of Services and Facilities from the Service District.”

52. FRMD entered into the Reimbursement Agreement for the purpose of inducing Solterra to advance funds for construction of public infrastructure or to construct public infrastructure for the benefit of FRMD. In exchange, FRMD agreed to reimburse Solterra for all “District Eligible Costs,” which is defined to mean:

“costs related to the provision of Public Infrastructure, including but not limited to any costs relating to organization of the Districts, general administration, operations, maintenance, engineering, surveying, the costs of acquiring land necessary for the Public Infrastructure, and construction and/or acquisition of the Public Infrastructure, whether such costs are funded directly to the District by the Developer, paid by the Developer for the direct benefit of the District, or whether the District acquires the same from the Developer.”

(Reimbursement Agreement, § 1.)

53. Pursuant to the Reimbursement Agreement, FRMD No. 1 agreed to repay Solterra for Prior Costs (as defined in the Reimbursement Agreement) and District Eligible Costs from the net proceeds of general obligation bonds or revenue bonds issued by FRMD No. 2 and FRMD No. 3 (“Bonds”) up to the debt limitations set forth in the Service Plan.

54. FRMD pledged the net proceeds of all Bonds for the purpose of repaying Solterra.

55. Pursuant to Section 3(a) of the Reimbursement Agreement, FRMD No. 1’s obligation to reimburse Solterra (the “Repayment Obligation”) arises under two scenarios.

- a. When Solterra “has deposited such amount in immediately available funds with the District, for the purpose of funding District Eligible Costs;” Under this scenario, Solterra provides funds to FRMD and FRMD constructs or acquires the Public Infrastructure.
- b. “in the case of the provision of Public Infrastructure to be acquired by the District from the Developer, when the District has provided notice of acceptance to the Developer, together with the notice that the District does not have funds at such time to pay the applicable Purchase Price (as hereinafter defined), and the Developer has provided a Bill of Sale with respect to such Public Infrastructure, all in accordance with paragraph 6 hereof.” This scenario applies in those situations where the Public Infrastructure is constructed or acquired by Solterra with the intention that it be transferred to FRMD or another governmental entity.

56. FRMD No. 1 has incurred Repayment Obligations under both scenarios as provided in Section E below.

57. Section 3(b) of the Reimbursement Agreement requires that FRMD No. 1 record all Repayment Obligations in its accounting schedules. Specifically, Section 3(b) provides as follows:

“Within three (3) days of the incurrence of a Repayment Obligation, the District shall record the applicable amount of advance or purchase price owed on accounting schedules to be maintained by the District for such purpose, showing the amount of all Repayment Obligations, the date incurred, and the total amount of Repayment Obligations owed to the Developer under this Agreement.”

58. Pursuant to the requirements of Section 3(b) of the Reimbursement Agreement, the financial records of FRMD show the total amount owed as a Repayment Obligation to Solterra. Specifically, the Audited Financials of FRMD No. 1 for the year ending December 31, 2019, list as long-term obligations “Developer Advances” totaling \$67,808,823, which includes principal and interest for both capital improvements and operations. The Audited Financials for FRMD for 2020 continue to show a long-term liability for unreimbursed advances made by Solterra to FRMD for District Eligible Costs in an amount of \$61,478,702. Thus, the audited financials of FRMD acknowledge that there is a current Payment Obligation to Solterra of at least \$61 million.

59. Under Section 10.13 of the Reimbursement Agreement, “time is of the essence.”

D. Development within FRMD.

60. The development within FRMD is a planned residential community commonly referred to as “Solterra” (hereinafter the “Solterra Community”). Development within the Solterra Community is a phased development with Filings 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 has been installed for Filings 18 and 20. Filing 21 is in the final planning stages. In total, approximately 1,237 single family detached homes and single family attached homes (townhomes) have been built with approximately 117 single family homes either under construction or to be built.

61. Twenty-Three (23) single family attached homes (townhomes) are under construction in Filing 19, and there are approximately 94 single family attached homes (townhomes) that are to be built in Filings 18, 20, and 21. Solterra owns the remaining undeveloped lots, and an affiliate of Solterra is the only active home builder within FRMD.

62. The development includes 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.

63. FRMD has a current population of approximately 2,700.

64. According to the Jefferson County Assessor the actual value of the residential units built within the Solterra Community and other real property located within FRMD for 2022 is in excess of \$1.0 billion. The assessed value for the property located with FRMD for 2022 is \$73,802,900.

65. The assessed value as of 2022 is 30% higher than projected in the Service Plan for the entire completed development.

66. The actual values and the assessed values have increased dramatically as a direct result of Solterra's development within FRMD, including the design, planning, construction and installation of Public Infrastructure that Solterra funded. By way of example, based on information from Jefferson County Assessor, the actual property values within FRMD increased from approximately \$97 million in 2010, to over \$342 million in 2014, to over \$865 million in 2020, to over \$1.0 billion in 2022. Assessed values have increased from approximately \$16 million in 2010, to over \$31million in 2014, to over \$65 million in 2020 to over \$73 million in 2022.

67. Construction and sale of the remaining residential units within Filings 18, 20, and 21, is expected to be completed in 2026.

E. Advances by Solterra and FRMD's Repayment Obligation.

68. From 2005 through the present, Solterra has made direct loans/advances to FRMD, which funds were used for the planning, design, acquisition, construction, installation, relocation, and maintenance of Public Infrastructure (hereinafter "Direct Loans from Solterra"). Solterra also paid substantial amounts to acquire, design, develop, and construct Public Infrastructure for the benefit of FRMD ("Solterra Built Infrastructure").

69. Solterra has paid in excess of \$80 million for Public Infrastructure in both Direct Loans from Solterra and Solterra Built Infrastructure. The amounts paid by Solterra constitute Prior Costs and District Eligible Costs under the Reimbursement Agreement and Solterra is entitled to reimbursement for those amounts.

70. To date, Solterra has received reimbursement from FRMD of only \$36.9 million.

71. A large percentage of the unreimbursed amounts paid by Solterra for Public Infrastructure were Direct Loans from Solterra. In an independent engineering report prepared for FRMD by Independent District Engineering Services, LLC ("IDES") in June 2017 (the "IDES 2017 Report"), IDES identified approximately \$45.8 million in unreimbursed public improvements that were built for the benefit of FRMD. Of those \$45.8 million, approximately \$32.3 million of the public improvements were built by the District using loans from Solterra.

72. A true and correct copy of the IDES 2017 Report is attached hereto as Exhibit D.

73. As outlined in Paragraph 55 above, a Repayment Obligation arises immediately when Direct Loans from Solterra were made. Thus, Repayment Obligations arose immediately when Solterra loaned funds to FRMD for Public Infrastructure. No acceptance or approval process

is required to trigger a Repayment Obligation for Direct Loans from Solterra. The amount of FRMD's unsatisfied Repayment Obligation based on Direct Loans from Solterra is well in excess of \$32.3 million identified in the IDES 2017 Report, including accrued and unpaid interest at the contract rate of 6%. (Reimbursement Agreement, § 4.)

74. The audited financials of FRMD No. 1 corroborate that there is a current Repayment Obligation in excess of \$32.3 million. In fact, the FRMD audited financials for 2020 provide that as of December 31, 2020 there was a Repayment Obligation to Solterra of more than \$61 million, and no further payments have been made to Solterra since that date.

75. In general, prior to June of 2017, Public Infrastructure benefiting FRMD was completed through Direct Loans from Solterra for which no approval and acceptance by FRMD is required to trigger the Repayment Obligation. Construction contracts for Public Infrastructure that were entered into by FRMD prior to June 2017 also were completed through Direct Loans from Solterra. Construction of Public Infrastructure, for which contracts were entered into after June 2017, was generally completed as Solterra Built Infrastructure because FRMD were not cooperative in working with Solterra to ensure that Public Infrastructure was built in a timely manner to all development of residential units.

76. With regard to Solterra Built Infrastructure, FRMD is fully aware of the Public Infrastructure that has been built and approved the design and construction of the infrastructure where necessary.

77. FRMD also has the IDES 2017 Report, which discloses and recommends acceptance by FRMD of approximately \$13.0 million in Solterra Built Infrastructure. That Solterra Built Infrastructure comprises water and sanitary sewer service. (IDES 2017 Report, Attachment C.1.) The construction related water service was completed by Consolidated Mutual Water Co. ("Consolidated") and paid for by Solterra. Consolidated is the water service provider under the Service Plan, and as such Consolidated has accepted and now maintains those improvements. The sanitary sewer service provider under the Service Plan is Green Mountain Water and Sanitation District ("Green Mountain"), which has accepted and now owns and maintains the sanitary sewer improvements. FRMD is fully aware that the improvements for water and sanitary sewer service identified in the IDES 2017 Report have been accepted by the service providers and has not taken any steps to stop acceptance of those improvements.

78. The Public Infrastructure that was completed as Solterra Built Infrastructure after June 2017 includes some limited street and storm sewer improvements, water service improvements, and sewer service improvements. Those improvements are and will be owned and maintained by public entities other than FRMD. Streets and storm sewer improvements are owned and maintained by the City, and the City has accepted all street and storm sewer improvements up through Filing 13 and has provided initial acceptance for street and storm sewer improvements associated with Filings 14, 15, and 16. FRMD is fully apprised of the street and storm sewer improvements that have been accepted by the City and has not taken any action to stop the City's acceptance of such improvements.

79. Within the FRMD service area, as provided in the Service Plan, water service is provided by Consolidated. Consolidated, along with FRMD where necessary, has approved and accepted all public improvements related to water service up through and including Filing 20.

80. Within the FRMD service area, as provided in the Service Plan, sanitary sewer service is provided by Green Mountain. Green Mountain, along with FRMD where necessary, has approved and accepted all public improvements related to sanitary sewer service up through and including Filing 20.

81. The Solterra Built Infrastructure that will be owned and maintained by FRMD is generally limited to landscaping for open space, public parking areas, alleys, and walkways. FRMD has not been cooperative with Solterra in approving and accepting such improvements and recently advised Solterra that it would not accept or maintain any parking lots and landscaping that were planned for Filings 18, 20 and 21, causing Solterra to change its development plans for those filings.

82. Based on the Direct Loans from Solterra alone, there is a current Payment Obligation under the Reimbursement Agreement that exceeds the amount being sought by Solterra in this Complaint, namely \$31,870,000. This is corroborated by the audited financials for FRMD No. 1.

F. Prior Bond Issuances by FRMD and Repayments to Solterra.

83. Despite having paid more than \$80 million for Public Infrastructure benefitting FRMD, Solterra has received reimbursement from FRMD of only \$36.9 million.

84. To make the prior reimbursement payments to Solterra, FRMD issued General Obligation Debt totaling approximately \$38,130,000. Subtracting the prior General Obligation Debt issued by FRMD from the \$70 million General Obligation Debt Limitation leaves a balance of approximately \$31,870,000 of additional General Obligation Debt that FRMD can issue under the Service Plan, the Reimbursement Agreement, and the Master IGA.

85. The prior reimbursements by FRMD were from the following bond issuances by FRMD No. 1 and FRMD No. 3:

- a. In 2009, FRMD No. 1 issued Tax-Supported Revenue Bonds in the Par amount of \$7,000,000 (the “2009 Bonds”). From the 2009 Bonds, Solterra received a repayment under the Reimbursement Agreement of approximately \$5,659,823. The 2009 Bonds were refunded in 2010 with no new money and no payments to Solterra.
- b. In 2014, FRMD No. 3 issued General Obligation Limited Tax Bonds (the “2014 Bonds”) in the Par Amount of \$8,715,000, which resulted in a payment to Solterra of \$8,853,965.

- c. In 2016, FRMD No. 3 issued General Obligation Tax Bonds (the “2016 Bonds”) in the Par Amount of \$12,415,000, which resulted in a payment to Solterra of \$12,591,882.
- d. On or about October 21, 2020, FRMD No. 3 issued Limited Tax General Obligation Refunding and Improvement Bonds (the “2020 Bonds”). The 2020 Bonds refunded the 2010 Bonds, the 2014 Bonds, and the 2016 Bonds. The 2020 Bonds also constituted new debt with a par amount of \$10 million, which resulted in a reimbursement payment to Solterra of \$9,811,962.

86. From these prior bond issuances, the amount paid to Solterra totaled approximately \$36,917,633.

87. The total amount of General Obligation Debt issued by FRMD (not including refunding bonds) to date is \$38,130,000. The additional amount of General Obligation Debt that FRMD is allowed to issue under the \$70 million General Obligation Debt Limitation is \$31,870,000.

88. The amount of District Eligible Costs incurred by Solterra exceeds \$80.0 million, and of that amount, a current Payment Obligation exists of more than \$32 million. Those amounts exceed the remaining amount of \$31,870,000 under the General Obligation Debt Limitation, and thus FRMD are required to repay Solterra \$31,870,000.

G. Solterra’s Demands for Payment and Notices of Default.

89. Starting in or around July 2017 after the residents of FRMD assumed control of FRMD, Solterra made repeated demands on FRMD to satisfy its reimbursement obligations under the Reimbursement Agreement. The demands included, without limitation:

- a. A letter dated November 7, 2019, from Solterra to the Boards of FRMD, demanding reimbursement of approximately \$42 million that was owed at that time. (A true and correct copy of the November 7, 2019 letter is attached hereto as Exhibit E.) In response to this and other less formal demands, FRMD issued the 2020 Bonds as described in Paragraph 85(d) above, which resulted in a payment to Solterra of approximately \$9 million.
- b. A letter dated December 16, 2021, from counsel for Solterra to counsel for FRMD demanding reimbursement of approximately \$32 million that was owed at that time. (A true and correct copy of the December 16, 2021 letter is attached hereto as Exhibit F.)

90. In addition to these formal demands, Solterra had meetings and discussions directly with board members of FRMD over a period of many months regarding the reimbursement obligation. Counsel for Solterra also had multiple email and telephone communications with

counsel for FRMD requesting that FRMD satisfy the reimbursement obligations under the Reimbursement Agreement.

91. The November 7, 2019 letter (Exhibit E), the December 16, 2021 letter (Exhibit F) and subsequent less formal written communications stated, unequivocally, that FRMD had an obligation to issue new debt to satisfy the Repayment Obligations under the Reimbursement Agreement, and thus constitute written notice of default under the Reimbursement Agreement. The December 16, 2021 letter provides that Solterra would seek legal relief if FRMD did not fulfil its obligations. It has been more than thirteen (13) months since the December 16, 2021 letter, and FRMD has not taken any action to satisfy its obligation or cure the default.

92. In or around August 2022, in an effort to be transparent and encourage FRMD to proceed with its Repayment Obligations, Solterra disclosed a report from an independent engineer, the Schedio Group, regarding public improvements for FRMD. (A true and correct copy of the Schedio Group report is attached hereto as Exhibit G.) Schedio Group concluded that as of August 2022, based on its review of plans, contracts, pay applications and other documents and information, there were in excess of \$44 million in unreimbursed public improvements benefitting FRMD. In addition to the report, Solterra shared all the documents reviewed by Schedio Group and the expansive spreadsheets created by Schedio Group concerning the public improvements. Solterra also allowed FRMD and its consultants to question the engineers at Schedio Group regarding the spreadsheets and the conclusions reached.

93. The \$44 million identified by Schedio Group constitutes District Eligible Costs under the Reimbursement Agreement.

94. On at least two occasions between December 2021 and August 2022, Solterra provided FRMD with reports from financial analysts specializing in public financing, showing that the current assessed value of property within FRMD supported the issuance of general obligation debt sufficient to repay Solterra for current Repayment Obligations at least up to \$31,870,000.

95. Notwithstanding Solterra's repeated requests that FRMD satisfy its repayment obligations and notwithstanding the extensive information provided by Solterra, FRMD has refused to satisfy its obligations to issue new debt to repay Solterra.

H. FRMD Admits Its Obligation to Repay Solterra Under the Reimbursement Agreement.

96. FRMD has repeatedly admitted and acknowledged the obligation to repay Solterra under the Reimbursement Agreement, the amounts owed to Solterra, and the obligations of FRMD Nos. 2 and 3 to finance the reimbursements. By way of example, in the Official Statement for the 2020 Bonds (the "2020 Official Statement"), FRMD makes the following admissions:

- a. "The Indenture defines the 'Improvement Project' as the repayment of certain obligations of District No. 1 under the Reimbursement Agreement with the Developer (as defined therein). The 'Reimbursement Agreement' is defined in the Indenture as the

Reimbursement of Developer Loan and Public Infrastructure Acquisition Agreement dated as of May 13, 2008 by and between District No. 1 and the Developer, **pursuant to which District No. 1 evidenced an intent to repay the Developer for certain amounts advanced to District No. 1 for both capital improvement purposes and operations purposes. . . .**” (2020 Official Statement, p. 39.)

- b. After issuing the 2020 Bonds, FRMD caused \$9,811,962 to be paid to Solterra (the Developer) as repayment of advances under the Reimbursement Agreement.
- c. At pages 48 to 50 of the 2020 Official Statement, FRMD summarizes the Reimbursement Agreement and its obligations to repay Solterra for amounts Solterra advanced or paid to construct Public Improvements within FRMD or for the benefit of FRMD.
- d. “As of December 31, 2019, the Developer has submitted to District No. 1, \$57,422,430 in costs, which the Developer believes qualifies as District Eligible Costs and **which have not been reimbursed under the Reimbursement Agreement** by District No. 1 through bond proceeds. Applying the 6% interest provided under the Reimbursement Agreement, the outstanding interest is \$10,386,393, for a combined total of \$67,808,823. The Districts and their consultants continue to evaluate District No. 1’s reimbursement obligation pursuant to the Reimbursement Agreement. As set forth in greater detail in Section E above, the Districts have already issued \$28,130,000 in General Obligation Bonds that qualify as General Obligation Debt under the Service Plan. When the amount of previously issued General Obligation Debt is added to \$10,000,000 (the par amount of the [2020 Bonds] issued to fund the Improvement Project), and that combined amount is subtracted from the \$70,000,000, the maximum potential amount owed to the Developer is \$31,870,000, which can be paid with the proceeds from additional General Obligation Bonds or Revenue Bonds funded through the District Capital Fees, or any combination thereof.” (2020 Official Statement, p. 50.)
- e. The Audited Financials of FRMD No. 1 for the year ending December 31, 2019, list as long-term obligations “Developer Advances” totaling \$67,808,823, which includes principal and interest for both capital improvements and operations. This follows the requirement in the Reimbursement Agreement Section 3(b).

- f. The Audited Financials for FRMD for the year ending December 31, 2020 continue to show a long-term liability for unreimbursed advances made by Solterra to FRMD for District Eligible Costs in an amount of \$61,478,702, which far exceeds the \$31,870,000 that remains under the debt limitation. This tracks the requirement in Reimbursement Agreement Section 3(b).

97. Based on the statements and admissions by FRMD, FRMD are obligated to cooperate and coordinate the issuance of additional bonds to repay Solterra at least \$31,870,000 for advances made for District Eligible Costs and FRMD Nos. 2 and 3 are obligated to issue new debt to finance the repayment.

I. FRMD No. 2 and 3 Have Absolute, Irrevocable, and Unconditional Obligation to Finance the Reimbursement of Solterra.

98. The Service Plan requires that FRMD No. 2 and FRMD No. 3 issue bonds to repay Solterra when there is sufficient assessed value. There is sufficient assessed value to support the issuance of additional debt at least up to \$31,870,000, which is the amount remaining under the General Obligation Debt Limitation.

99. In addition, the Master IGA, when construed with the Service Plan as required, provides that FRMD No. 2 and FRMD No. 3 have an obligation to finance capital improvements and operations and to repay Solterra for those amounts Solterra paid for such capital improvements and that such obligation is “absolute, irrevocable, and unconditional.” (Master IGA, § 3.8.)

100. Solterra reasonably relied on the financing and payment obligations set forth in the Service Plan and Master IGA when entering into the Reimbursement Agreement.

101. Solterra reasonably relied on the commitments by FRMD No. 2 and FRMD No. 3 to issue Bonds for the purpose of reimbursing Solterra. Moreover, Solterra reasonably relied on the commitments of FRMD No. 2 and No. 3 to issue bonds, not at their leisure, but rather as soon as the assessed value in the development area is sufficient. Here, the assessed value is more than sufficient to support issuing additional general obligation bonds up to at least \$31,870,000. FRMD No. 2 and FRMD No. 3 and the residents located within those districts have received enormous benefit from Solterra’s payment of Public Infrastructure and yet FRMD No. 2 and FRMD No. 3 have failed and refused to issue Bonds to the detriment of Solterra, resulting in unjust enrichment to FRMD No. 2 and FRMD No. 3.

J. Solterra Has Paid Excess Maintenance Fees for Benefit of FRMD.

102. As explained in Paragraph 55 above, the Repayment Obligation (as defined in the Reimbursement Agreement) arises in two ways.

103. First, the Repayment Obligation arises immediately for funds advanced to FRMD No. 1 for the purpose of funding District Eligible Costs. Under this scenario, Solterra had no obligation to construct, maintain, or warranty the Public Infrastructure for which the funds were

used. Despite that, FRMD have failed and refused to take possession of and maintain such improvements, forcing Solterra to service and maintain the improvements.

104. Second, in those instances where Solterra directly paid for the construction of Public Infrastructure, the Repayment Obligation arises in accordance with the Infrastructure Acquisition Procedures set forth in Exhibit A to the Reimbursement Agreement. FRMD has unfairly and unreasonably delayed acceptance of Public Infrastructure for which Solterra paid, causing Solterra to service and maintain the improvements for several years and well beyond the one-year warranty period established in the Infrastructure Acquisition Procedures.

K. FRMD Are Unfairly Benefitting from the Direct Loans from Solterra and the Solterra Built Infrastructure.

105. FRMD and their residents have had (for many years) and continue to have full access to and use of \$80 million in Public Infrastructure that was financed by Solterra through direct loans or that was built by Solterra. FRMD have only paid Solterra \$36.9 million. This is unjust and unfair to Solterra. The unfairness is exacerbated because there is a debt limitation in place that limits the amount that Solterra can be repaid to \$31,870,000. Thus, even though FRMD fail and refuse to fulfil their obligations, Solterra cannot recover more through interest or otherwise because of the debt limit.

L. Solterra Is Entitled to Recover Its Attorneys' Fees and Costs to Enforce the Reimbursement Agreement.

106. The Reimbursement Agreement provides that “If a Party must commence legal action to enforce its rights and remedies under this Agreement, the prevailing Party shall be paid, in addition to any other relief, its costs and expenses, including reasonable attorneys’ fees, of such action or enforcement.”

FIRST CLAIM FOR RELIEF
(BREACH OF REIMBURSEMENT AGREEMENT AGAINST FRMD
NO. 1 FOR FAILURE TO REPAY SOLTERRA)

107. Solterra incorporates the allegations of Paragraphs 1 through 106, inclusive, as if fully set forth herein.

108. The Reimbursement Agreement is a binding enforceable agreement, which entitles Solterra to receive repayment for District Eligible Costs for which it advanced funds to FRMD No. 1 (Direct Loans from Solterra) or for which it directly paid the costs of the Public Infrastructure (Solterra Built Infrastructure).

109. The Reimbursement Agreement recites and incorporates the Service Plan and the Master IGA, and the Reimbursement Agreement is to be construed with the Service Plan and the Master IGA.

110. The Reimbursement Agreement requires that FRMD No. 1, FRMD No. 2, and FRMD No. 3 cooperate and coordinate the financing, construction, operation and maintenance of Public Infrastructure, including the obligations to repay Solterra.

111. Solterra has funded Public Infrastructure for which it has not received reimbursement. The amounts paid by Solterra constitute District Eligible Costs. The amount of District Eligible Costs funded by Solterra for which it has not been reimbursed is in excess of \$44 million, not including accrued and unpaid interest.

112. Of the \$44 million currently identified as District Eligible Costs, FRMD is required to pay \$31,870,000, which is the amount remaining on the \$70 million debt limit set forth in the Service Plan.

113. An immediate Repayment Obligation exists for the \$31,870,000 of District Eligible Costs. That amount or more arises from Direct Loans from Solterra for which there is an immediate repayment obligation under the Reimbursement Agreement.

114. Under the Reimbursement Agreement when construed with the Service Plan and Master IGA, FRMD No. 2 and No. 3 are obligated to issue new debt to repay Solterra when the assessed value of the property within FRMD is sufficient to support additional debt.

115. The current, 2022, assessed value of the real property located within the FRMD boundaries is \$73,802,900. That amount will support additional general obligation bonds up to the par amount of \$31,870,000.

116. Despite repeated requests from Solterra, FRMD No. 1 has failed and refused to cooperate and coordinate with FRMD No. 2 and FRMD No. 3 to issue new debt to repay Solterra.

117. FRMD No. 1 has breached the Reimbursement Agreement for failing to coordinate and cooperate with FRMD No. 2 and No. 3 to issue new debt and by failing to repay Solterra for District Eligible Costs.

118. Solterra repeatedly notified FRMD No. 1 of its obligation to repay the amounts loaned by Solterra for Public Infrastructure. FRMD No. 1 has failed and refused to cure the breaches.

119. Solterra has been damaged as a direct result of the breach.

120. Solterra is entitled to an award of damages in an amount proved at trial, but not less than \$31,870,000.

121. Solterra also is entitled to recover prejudgment interest, post-judgment interest, and costs of suit, including attorneys' fees.

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

- a. An order of judgment against FRMD No. 1 and in favor of Solterra;
- b. An award of money damages in an amount to be proved at trial, including prejudgment and post-judgment interest;
- c. A mandatory injunction that FRMD No. 1 immediately coordinate and cooperate with FRMD Nos. 2 and 3 to issue new general obligation debt up to \$31,870,000 to repay Solterra and to repay Solterra;
- 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.

SECOND CLAIM FOR RELIEF
(DECLARATORY RELIEF REGARDING REIMBURSEMENT OBLIGATION AGAINST FRMD)

122. Solterra incorporates the allegations of Paragraphs 1 through 121, inclusive, as if fully set forth herein.

123. As set forth herein, an actual case or controversy exists as to the parties' rights and obligations regarding Solterra's request for repayment of amounts it advanced toward the design, planning, acquisition, construction, maintenance, *etc.* of Public Infrastructure, which constitute District Eligible Costs under the Reimbursement Agreement.

124. Solterra asserts that FRMD No. 1 has a legal obligation to coordinate and cooperate with FRMD No. 2 and FRMD No. 3 to issue new debt and to repay Solterra for District Eligible Costs up to the amount of \$31,870,000.

125. Solterra asserts that a Repayment Obligation exists under the Reimbursement Agreement for the \$31,870,000.

126. Solterra also asserts that FRMD Nos. 2 and 3 have a legal obligation to issue general obligation or revenue bonds to repay Solterra.

127. FRMD have failed and refused to issue new debt or to repay Solterra for unreimbursed District Eligible Costs incurred by Solterra.

128. Solterra is entitled to judicial declarations pursuant to C.R.C.P. 57 and C.R.S. §§ 13-51-101 *et seq.* as follows:

- a. Solterra is entitled to reimbursement of District Eligible Costs not previously reimbursed;

- b. A Repayment Obligation exists for the District Eligible Costs at least up to the amount of \$31,870,000.
- c. FRMD No. 1 is obligated to reimburse Solterra for unreimbursed District Eligible Costs up to the remaining debt limitation of \$31,870,000;
- d. FRMD No. 1 is obligated to cooperate and coordinate with FRMD Nos. 2 and 3 to issue general obligation or revenue bonds to finance the reimbursement of Solterra, up to the remaining debt limitation;
- e. FRMD Nos. 2 and 3 are obligated to issue general obligation bonds to finance the reimbursement of Solterra up to the remaining debt limitation of \$31,870,000;
- f. Solterra is entitled to recover prejudgment and post-judgment interest on the unreimbursed District Eligible Costs it funded; and
- g. Solterra is entitled to recover its costs and expenses, including attorneys' fees related to the enforcement of the reimbursement obligation.

WHEREFORE, Solterra, prays that the Court enter judgment in its favor and against FRMD, and each of them, on this Second Claim for Relief and that the court enter the following declarations:

- a. Solterra is entitled to reimbursement of District Eligible Costs not previously reimbursed;
- b. FRMD No. 1 is obligated to reimburse Solterra for unreimbursed District Eligible Costs up to the remaining debt limitation;
- c. FRMD No. 1 is obligated to cooperate and coordinate with FRMD Nos. 2 and 3 to issue general obligation or revenue bonds to finance the reimbursement of Solterra;
- d. FRMD Nos. 2 and 3 are obligated to issue general obligation or revenue bonds to finance the reimbursement of Solterra;
- e. Solterra is entitled to recover prejudgment and post-judgment interest on the unreimbursed District Eligible Costs it funded;
- f. Solterra is entitled to recover its costs and expenses, including attorneys' fees related to the enforcement of the reimbursement obligation; and

- g. Such other and further relief as the Court deems just and proper under the circumstances.

THIRD CLAIM FOR RELIEF
**(BREACH OF REIMBURSEMENT AGREEMENT AGAINST FRMD NO. 1
REGARDING OVERPAYMENT OF MAINTENANCE)**

129. Solterra incorporates the allegations of Paragraphs 1 through 128, inclusive, as if fully set forth herein.

130. The Reimbursement Agreement is a binding and enforceable agreement.

131. As alleged in detail herein, Solterra has performed its obligations under the Reimbursement Agreement and/or its performance was excused.

132. FRMD No. 1 has failed to maintain public improvements that were built using Direct Loans from Solterra, resulting in Solterra paying to maintain Public Infrastructure for the benefit of FRMD.

133. FRMD No. 1 has failed and refused to take possession of and maintain various public improvements within FRMD that were constructed by Solterra, resulting in Solterra paying excess amounts in maintaining the Public Infrastructure of FRMD.

134. FRMD No. 1 has breached the Reimbursement Agreement by failing and refusing to take possession of and/or failing to maintain various public improvements within FRMD.

135. Solterra repeatedly notified FRMD No. 1 of its obligation to take possession of and/or maintain various Public Infrastructure within FRMD. FRMD No. 1 has failed and refused to cure the breaches.

136. Solterra has been damaged as a direct result of the breaches and is entitled to recover damages in an amount proved at trial.

137. Solterra also is entitled to recover prejudgment interest, post-judgment interest, and costs of suit, including attorneys' fees.

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

- a. An order of judgment against FRMD No. 1 and in favor of Solterra;
- b. An award of money damages in an amount to be proved at trial, including prejudgment and post-judgment interest;
- c. An award of attorneys' fees and costs; and

- d. Such other and further relief as the Court deems just and proper under the circumstances.

FOURTH CLAIM FOR RELIEF
**(BREACH OF THE COVENANT OF GOOD FAITH AND
FAIR DEALING AGAINST FRMD NO. 1)**

138. Solterra incorporates the allegations of Paragraphs 1 through 137, inclusive, as if fully set forth herein.

139. The Reimbursement Agreement is a binding and enforceable agreement. The Reimbursement Agreement recites and incorporates the Service Plan and the Master IGA, and the Reimbursement Agreement is to be construed with the Service Plan and the Master IGA.

140. As alleged herein, Solterra has performed its obligations under the Reimbursement Agreement or is excused from performance.

141. FRMD No. 1 was obligated to act reasonably and in good faith to, among other things, (a) coordinate and cooperate with FRMD No. 2 and FRMD No. 3 to issue promptly new debt to repay Solterra for District Eligible Costs, (b) cause Solterra to be repaid promptly for District Eligible Costs it advanced under the Reimbursement Agreement, and (c) maintain and/or take possession of and maintain various public improvements funded or built by Solterra.

142. FRMD No. 1 has failed to act in good faith to, among other things, (a) coordinate and cooperate with FRMD No. 2 and FRMD No. 3 to timely issue new debt to repay Solterra for District Eligible Costs, (b) timely cause Solterra to be repaid for District Eligible Costs it advanced under the Reimbursement Agreement, and (c) maintain and/or take possession of various public improvements funded or built by Solterra.

143. FRMD No. 1's failure to act fairly and in good faith constitutes a breach of the covenant of good faith and fair dealing implied in the Reimbursement Agreement and has denied Solterra the benefit of the Reimbursement Agreement.

144. Solterra has been damaged by FRMD No. 1's breach of the covenant of good faith and fair dealing in an amount to be proved at trial.

145. Solterra also is entitled to recover prejudgment interest, post-judgment interest, and costs of suit, including attorneys' fees.

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

- a. An order of judgment against FRMD No. 1 and in favor of Solterra;
- b. An award of money damages in an amount to be proved at trial, including prejudgment and post-judgment interest;

- c. A mandatory injunction that FRMD No. 1 immediately coordinate and cooperate with FRMD Nos. 2 and 3 to issue new general obligation debt to repay Solterra and to repay Solterra; and
- d. Such other and further relief as the Court deems just and proper under the circumstances.

FIFTH CLAIM FOR RELIEF
(UNJUST ENRICHMENT AGAINST FRMD NO. 2 AND FRMD NO. 3)

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

147. FRMD No. 1, FRMD No. 2, and FRMD No. 3 are governed by the same Service Plan.

148. Pursuant to the Service Plan and related documents, which apply jointly and equally to FRMD No. 1, FRMD No. 2, and FRMD No. 3, FRMD No. 1, FRMD No. 2, and FRMD No. 3 are intended to work in tandem for the common and/or mutual purpose of, among other things: (1) supporting development of public infrastructure within the FRMD development; (2) coordinating and cooperating with respect to financing, constructing, operating, and maintaining improvements that service the Districts; (3) assuring that development pays its own way by assuring that financing and construction of the Public Improvements takes place in a manner and at the time required; (4) coordinating their efforts with respect to all activities contemplated in the Service Plan including, without limitation, financing, design, planning, construction, and maintenance of public improvements; and (5) ensuring that the repayment of Solterra is timely under the Service Plan.

149. As evidenced by the common and/or mutual purpose set forth in the Service Plan, FRMD No. 1, FRMD No. 2, and FRMD No. 3 are not independent, “third parties” of each entity, but were rather established to accomplish the same goal, as set forth in the Service Plan and herein.

150. As a result, Solterra had a reasonable expectation that the Financing Districts (FRMD Nos. 2 and 3) would issue general obligation and/or revenue debt as required under the Service Plan and related documents.

151. Solterra has funded Public Infrastructure for which it has not received reimbursement. The amount of District Eligible Costs funded by Solterra for which it has not been reimbursed is in excess of \$44 million, not including accrued and unpaid interest.

152. Solterra funded the Public Infrastructure in reliance on the irrevocable and unconditional commitments made by FRMD No. 2 and FRMD No. 3 to finance the repayment of amounts Solterra advanced for Public Infrastructure.

153. FRMD No. 2 and FRMD No. 3 have received tremendous benefit from the Public Infrastructure funded by Solterra.

154. Solterra also has financed or built public improvements in and around FRMD that FRMD has failed and refused to maintain and/or take possession of, resulting in Solterra paying excess amounts in maintaining the Public Infrastructure of FRMD.

155. FRMD No. 2 and FRMD No. 3 have been and will continue to be unjustly enriched if they are permitted to use and enjoy the Public Infrastructure funded and maintained by Solterra without paying for the Public Infrastructure and the excess amounts paid by Solterra to maintain the Public Infrastructure.

156. Solterra is entitled to an award of damages in an amount proved at trial for the unjust enrichment of FRMD No. 2 and FRMD No. 3.

WHEREFORE, Solterra, prays that the Court enter judgment in its favor and against FRMD No. 2 and FRMD No. 3 on this Fifth Claim for Relief and that it be awarded the following relief:

- a. An order of judgment against FRMD No. 2 and FRMD No. 3 and in favor of Solterra;
- b. An award of money damages in an amount to be proved at trial, including prejudgment and post-judgment interest;
- c. A mandatory injunction that FRMD Nos. 2 and 3 forthwith issue general obligation bonds or revenue bonds to repay Solterra; and
- d. Such other and further relief as the Court deems just and proper under the circumstances.

SIXTH CLAIM FOR RELIEF
(PROMISSORY ESTOPPEL AGAINST FRMD NO. 2 AND FRMD NO. 3)

157. Solterra incorporates the allegations of Paragraphs 1 through 156, inclusive, as if fully set forth herein.

158. FRMD No. 2 and FRMD No. 3 made numerous promises and representations that they would issue debt to repay Solterra for Public Infrastructure that Solterra funded.

159. The oral and written promises and representations made by FRMD No. 2 and No. 3 are set forth in, without limitation: (a) the Service Plan and proceedings related thereto; (b) in the offering documents, official statements and other documents related to the 2009 Bonds, the 2014 Bonds, the 2016 Bonds and the 2020 Bonds; (c) negotiations and communications related to the Reimbursement Agreement, and/or (d) the Master IGA.

160. Solterra reasonably relied to its detriment on the promises and representations made by FRMD No. 2 and FRMD No. 3 and funded Public Infrastructure within FRMD both as Direct Loans from Solterra and Solterra Built Infrastructure.

161. FRMD No. 2 and FRMD No. 3 should have reasonably expected that Solterra would rely on the promises and representations to its detriment.

162. FRMD No. 2 and FRMD No. 3 have received tremendous benefit from the Public Infrastructure funded by Solterra and the promises and representations should be enforced to avoid injustice and harm to Solterra.

163. Solterra has been damaged as a result of the promises and representations of FRMD No. 2 and No. 3 and is entitled to an award of damages in an amount proved at trial, but not less than \$31,870,000.

WHEREFORE, Solterra, prays that the Court enter judgment in its favor and against FRMD No. 2 and FRMD No. 3 on this Sixth Claim for Relief and that it be awarded the following relief:

- a. An order of judgment against FRMD No. 2 and FRMD No. 3 and in favor of Solterra;
- b. An award of money damages in an amount to be proved at trial, including prejudgment and post-judgment interest;
- c. A mandatory injunction that FRMD Nos. 2 and 3 forthwith issue general obligation bonds or revenue bonds to repay Solterra; and
- d. Such other and further relief as the Court deems just and proper under the circumstances.

JURY TRIAL

Plaintiffs request a jury for all claims to which they are entitled to trial by jury.

Respectfully submitted this 8th day of February, 2023.

KUTAK ROCK, LLP

By: /s/Neil L. Arney

Neil L. Arney, #27860

Attorneys for Plaintiff Solterra LLC

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February, 2023, the foregoing **FIRST AMENDED COMPLAINT AND JURY DEMAND** was filed and electronically served upon all counsel of record via Colorado Courts E-Filing.

s/ Edna Gray _____
Edna Gray