

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, CO 80401 Telephone: 303-271-6215	DATE FILED: March 21, 2023 4:56 PM FILING ID: 884A36626C524 CASE NUMBER: 2005CV3044
<b>IN RE: THE ORGANIZATION OF FOSSIL RIDGE          METROPOLITAN DISTRICT NO. 1, CITY OF          LAKEWOOD, JEFFERSON COUNTY, COLORADO</b>	
<i>Attorneys for Fossil Ridge Metropolitan District Nos. 1, 2          and 3</i> Kelley B. Duke, #35168 Benjamin J. Larson, #42540 IRELAND STAPLETON PRYOR & PASCOE, PC 717 17 <sup>th</sup> Street, Suite 2800 Denver, Colorado 80202 Telephone: (303) 623-2700 Fax No.: (303) 623-2062 E-mail: <a href="mailto:kduke@irelandstapleton.com">kduke@irelandstapleton.com</a> <a href="mailto:blarson@irelandstapleton.com">blarson@irelandstapleton.com</a>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case No. 2005 CV 003044  Division: 1
<b>DEFENDANT FOSSIL RIDGE METROPOLITAN DISTRICT NOS. 2 AND 3'S          RESPONSE TO AMENDED 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 THE SERVICE PLAN</b>	

Defendant Fossil Ridge Metropolitan District Nos. 2 and 3 (the “Financing Districts”), by and through undersigned counsel, IRELAND STAPLETON PRYOR & PASCOE, PC, hereby file this Response to Solterra, LLC’s Amended Motion Pursuant to C.R.S. § 32-1-207(3)(a) to Enjoin a Material Modification to the Service Plain and Enforce Mandatory Obligations of the Service Plan (“Amended Motion”), stating as follows:

## JOINDER IN THE SERVICE DISTRICT'S RESPONSE

The Financing Districts join in the Response filed by Fossil Ridge Metropolitan District No. 1 (the "Service District"). The Amended Motion should be denied for the reasons set forth in the Service District's Response. The Financing Districts also provide brief additional context and argument specific to them as set forth below.

### ARGUMENT

As explained in the Service District's Response, the initial Motion to Enjoin Material Modification ("Initial Motion") filed by Solterra, LLC ("Brookfield")<sup>1</sup> contained numerous misstatements and omissions, which counsel for the Service District addressed in a February 24, 2023 letter to Brookfield's counsel (attached as **Exhibit 1**). The Districts' counsel also advised Brookfield that including the Financing Districts in the Initial Motion was particularly egregious because the Financing Districts' role is limited to financing certain public infrastructure and district activities; they do not provide any services to the Solterra development. Am. Mot, Urban Aff., Ex. A, § I.C.1, p. 9 ("The Financing Districts will be responsible for providing the tax base needed to pay the debt service associated with Debt to be issued to construct the Public Improvements and provide the District Activities described herein.")

The August 27, 2007 Second Amended and Restated Service Plan ("Service Plan") also expressly provides that Green Mountain Water and Sanitation District ("Green Mountain") is the sanitary sewer service provider through an Intergovernmental Agreement with the Service District. *Id.* at § I.C(4)(b), p. 12, § IV.B, p. 16. Consequently, the Financing Districts are not parties to the

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<sup>1</sup> Solterra LLC is the developer and commonly known by its parent company, Brookfield Residential (Colorado) LLC. "Brookfield" is used to avoid confusion with the Solterra community.

Intergovernmental Agreement for Extra-Territorial Sewer Service between Green Mountain and the Service District (as amended in 2014, the “Green Mountain IGA”). *See* Am. Mot, Urban Aff., Ex. C.

Despite counsel’s conferral, the Amended Motion continues to include the Financing Districts by improperly lumping them together with the Service District. *See generally* Am. Mot. (defining “FRMD” as, collectively, the Service District and the Financing Districts, and repeatedly referring to “FRMD” throughout the Amended Motion; referring to the sewer infrastructure within the development as the “FRMD sewer system” (pp. 1-2); falsely contending that “Green Mountain and FRMD were negotiating changes to their agreement that would deny sewer service to the remaining Solterra development” (p. 2); falsely contending that “FRMD” has refused to provide sanitary sewer services (p. 7); falsely contending that “FRMD . . . agreed to provide sanitary sewer service” (p. 7); and, asserting that “FRMD and Green Mountain have not entered into a new IGA” (p. 10)).

Ultimately, the Amended Motion demands that the Financing Districts be enjoined from denying sewer service to Brookfield and ordered to provide sanitary sewer service to Brookfield. Am. Mo. at 16. As explained in the Service District’s Response, the relief requested by Brookfield can only apply to Green Mountain, not to any of the Districts. None of the Districts has done anything to deny sewer service to Brookfield because they are not the sewer service provider—Green Mountain is. None of the Districts can possibly provide sewer service to Brookfield because they are not the service provider—only Green Mountain can do that. These basic realities apply with even greater force to the Financing Districts, who have never had a contract with Green

Mountain and whose role is limited to providing the tax base to finance certain public infrastructure services.

**CONCLUSION**

The Amended Motion should be denied for the reasons set forth in the Service District's Response. None of the Districts should have been brought into Brookfield's dispute with Green Mountain, but Brookfield's inclusion of the Financing Districts is particularly meritless. The Financing Districts will be seeking their fees and costs in connection with responding to the Amended Motion.

DATED: March 21, 2023

IRELAND STAPLETON PRYOR & PASCOE, PC

*/s/ Kelley B. Duke*

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Kelley B. Duke, #35168

Benjamin J. Larson, #42540

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21st day of March, 2023, a true and correct copy of the foregoing **DEFENDANT FOSSIL RIDGE METROPOLITAN DISTRICT NOS. 2 AND 3'S RESPONSE TO AMENDED 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 THE SERVICE PLAN** was filed and served via CCEF on all counsel of record.

*/s/ Dawn A. Brazier*

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Dawn A. Brazier