

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO		DATE FILED: June 6, 2019 4:22 PM FILING ID: A62AB000D6A27 CASE NUMBER: 2019CV30887
Court Address:	100 Jefferson County Parkway Golden, CO 80401	
Telephone No.:	(720) 772-2500	
Plaintiff: BIG SKY METROPOLITAN DISTRICT NO 1, a quasi-municipal corporation and political subdivision of the State of Colorado, v.		▲COURT USE ONLY▲
Defendant: GREEN MOUNTAIN WATER AND SANITATION DISTRICT, a quasi-municipal corporation and subdivision of the State of Colorado.		
<i>Counsel for Plaintiff</i> Charles E. Norton, #10633 NORTON & SMITH, P.C. 1331 17 th Street, Suite 500 Denver, Colorado 80202 Phone Number: (303) 292-6400 FAX Number: (303) 292-6401 E-mail: CNorton@NortonSmithLaw.com		Case Number: Div./Ctrm:
COMPLAINT		

Plaintiff Big Sky Metropolitan District No. 1 (“Big Sky” or “Plaintiff”), by and through its counsel, Norton & Smith, P.C. hereby states the following for its Complaint against defendant Green Mountain Water and Sanitation District (“Green Mountain” or “Defendant”).

PARTIES, RELATED ENTITIES, JURISDICTION, AND VENUE

1. Big Sky is a metropolitan district validly organized and existing pursuant to the Colorado Special District Act, section 32-1-101 et seq., C.R.S. Under section 32-1-305 (7), C.R.S., Big Sky is a quasi-municipal corporation and political subdivision of the state of Colorado with all the powers thereof.

2. The Service Plan for the Big Sky Big Sky Metropolitan Districts Nos. 1-7 (the “Big Sky Districts”) was approved by a unanimous vote of the Lakewood City Council on September 22, 2014 (the “Service Plan”). The Service Plan provides that Big Sky Districts “shall have the power and authority to provide the Public Improvements and related operation and maintenance services within and without the boundaries of the Districts as such power and authority is described in the Special District Act and other applicable statutes, common law and the Colorado Constitution, subject to the limitations set forth herein.”

3. “Public Improvements” are defined by the Service Plan as a part or all of the improvements authorized to be planned, designed, acquired, constructed, installed, relocated,

redeveloped and financed as generally described in the Special District Act. Section 32-1-103, C.R.S. defines a “metropolitan district” as a special district that provides two or more municipal services, including sanitation. A “sanitation district” pursuant to section 32-1-103 (18), C.R.S. means a special district that provides for storm or sanitary sewers, or both, as well as treatment and disposal works and facilities “and all necessary or proper equipment and appurtenances incident thereto.”

4. Big Sky was formed by owners, employees and agents of CDN Red Rocks, LP, the sole property owner within the Big Sky Districts, as a mechanism to finance and construct public infrastructure, including a sanitary sewer collection system. This mechanism has been used in numerous other instances in Colorado since at least the 1970’s; for example, developers formed special districts to provide public infrastructure for the Denver Technological Center and the Beaver Creek ski resort as well as the Denver West office park.

5. Green Mountain was originally organized in 1951 and it is also a quasi-municipal corporation and political subdivision of the state of Colorado, governed by the Special District Act.

6. Neither Big Sky nor Green Mountain treat wastewater. Instead, both Big Sky and Green Mountain are authorized to finance and construct sewer mains and related pipelines, meters, lift stations, and other infrastructure to collect wastewater generated by properties within their boundaries. The Special District Act and the Big Sky Service Plan also authorize both Green Mountain and Big Sky to collect wastewater from properties located outside of their boundaries.

7. Green Mountain collects wastewater both from properties located within its boundaries and from extraterritorial customers located outside the boundaries of Green Mountain. This wastewater is in turn transmitted to facilities owned and operated by the Metropolitan Denver Wastewater Reclamation District No. 1, also now known as Metro Wastewater (“Metro”) under a Special Connector’s Sewage Treatment and Disposal Agreement dated December 20, 1983 for treatment and disposal in accordance with federal and state regulatory requirements.

8. Green Mountain collects wastewater generated by properties within the Solterra subdivision, which is outside the boundaries of Green Mountain. Solterra is the largest single subdivision within the City of Lakewood, Colorado, and is located directly adjacent to Big Sky.

9. Green Mountain collects wastewater generated by properties within the Solterra subdivision under an extra-territorial service agreement, entitled the “Amended and Restated Intergovernmental Agreement for Extra-Territorial Sewer Service,” entered into between Green Mountain and the Fossil Ridge Metropolitan District No. 1 in November of 2014 (the “Fossil Ridge/Green Mountain IGA”). Fossil Ridge Metropolitan District No. 1 (“Fossil Ridge No. 1”) is a special district, governed under the terms of the Special District Act, and originally formed by agents and employees of Brookfield Residential Properties, for the purpose of developing public infrastructure within the Solterra subdivision.

10. This civil action concerns Green Mountain’s breach of another intergovernmental agreement entered into by Green Mountain to provide extraterritorial sewer service, this time by

receiving wastewater generated by properties within Big Sky and from Big Sky's extraterritorial customers and transmitting that wastewater to Metro for treatment and disposal. This "Intergovernmental Agreement for Extra-Territorial Sewer Service" (the "Big Sky/Green Mountain IGA") was entered into on May 8, 2018 between Big Sky and Green Mountain. The civil action includes claims of simple breach of contract, anticipatory repudiation, Green Mountain's breach of the covenant of good faith and fair dealing that is contained implicitly in every contract entered into in the state of Colorado, and promissory estoppel. Big Sky also alleges that Green Mountain's actions violated Article II, section 11 of the Colorado Constitution.

11. This Court is the proper venue for this action pursuant to C.R.C.P. 98 (c) because Green Mountain is located entirely within the County of Jefferson, state of Colorado.

**ALLEGATIONS CONCERNING PLANNING FOR WASTEWATER COLLECTION
AND DISPOSAL IN THE ROONEY VALLEY**

12. The allegations set forth in paragraphs 1 through 11 of this Complaint are incorporated by this reference as though fully set forth herein.

13. Big Sky and Solterra are located within the boundaries of the City of Lakewood, Colorado, in a geographic area known as the Rooney Valley. Lakewood does not provide sanitary sewer service to the Rooney Valley. Because Big Sky and Solterra are within Lakewood, they are also within the service area of Metro and Green Mountain is permitted to serve them through its Special Connector's Agreement with Metro. On January 14, 2008, by Resolution No. 2008-5, the Lakewood City Council directed its City manager and City engineer to request that Metro include the rest of the Rooney Valley, not located within the City, to be included in the Metro service area. This request encompassed the property now owned by 3 Dinos LLC and General Shale. Lakewood's request was approved by Metro.

14. In 2005-2006, the Green Mountain Board of Directors commissioned a feasibility study regarding Green Mountain's providing sanitary sewer service to the Rooney Valley, including what is now the Solterra development and the entire area which would later be included within Big Sky Metropolitan Districts Nos. 1-7.

15. The feasibility study was delivered by the engineering firm of McLaughlin Rincon, Ltd. on January 31, 2006. McLaughlin Rincon opined that "The study area is contiguous to the present Green Mountain District boundaries and the District is the logical choice to provide lowest cost service." McLaughlin also noted that "Previous, preliminary work has been completed on cost allocation, institutional arrangements, and key points for an Intergovernmental Agreement."

16. The original Intergovernmental Agreement for Extra-Territorial Sewer Service was entered into between Fossil Ridge No. 1 and Green Mountain on January 15, 2008. Fossil Ridge No. 1 and Green Mountain then entered into the Green Mountain/Fossil Ridge IGA in November of 2014. A copy of the Green Mountain/Fossil Ridge IGA is attached to this Complaint as **Exhibit 1** and incorporated herein by this reference.

17. The Green Mountain/Fossil Ridge IGA contemplated service to a “Service Area” outside the boundaries of Green Mountain and encompassing the entire Solterra subdivision. This Service Area is depicted on the map attached as Exhibit A to the Green Mountain/Fossil Ridge IGA. For ease of reference, Plaintiff has attached a copy of this map as **Exhibit 2** to this complaint.

18. The Green Mountain/Fossil Ridge IGA also contemplated service to a “Future Development Area,” which is depicted on Exhibit A to the Fossil Ridge/Green Mountain IGA. This Future Development Area included the entirety of what is now and will be the Big Sky Districts, the Lightner area, which was contemplated for inclusion within one of the Big Sky Districts under the Big Sky Service Plan, and three parcels located to the west of the Big Sky Districts along State Highway C-470, labeled as “Rooney” on **Exhibit 2** to this Complaint.

19. As of the date of this Complaint, the “Rooney” parcels are owned by a Colorado limited liability company called “3 Dinos LLC.” The “Lightners FDN” parcel is owned by Cardel Homes. The CDN property is owned by a Colorado limited partnership entitled “CDN Red Rocks, LP.” The Solterra parcel has been substantially built out as single family and multi-family residential units. The developer of the Solterra project was a Colorado limited liability company called Brookfield Residential Properties.

20. At the time that the Green Mountain/Fossil Ridge IGA was entered into, Fossil Ridge No. 1 was controlled by a Board of Directors composed entirely of employees and agents of Brookfield Residential Properties.

21. Paragraph 2.6 of the Green Mountain/Fossil Ridge IGA states in part as follows:

Fossil Ridge agrees to size the Fossil Ridge Sewer System sufficiently large to accommodate anticipated flow from the Future Development Area...To the extent that sufficient oversize capacity is available in the Fossil Ridge Sewer System to accommodate the anticipated additional flows from any one of (sic) more properties in the Future Development Area, as a condition precedent to Green Mountain accepting Wastewater from any such properties, the property owner(s) must enter into an agreement with Fossil Ridge providing for, among other things, equitable and proportionate cost recovery for Fossil Ridge’s expense in oversizing the Fossil Ridge Sewer System and the manner in which water will be provided to such area.

22. Fossil Ridge No. 1 financed and constructed a sanitary sewer system in accordance with Green Mountain’s instructions under the Green Mountain/Fossil Ridge IGA, sufficiently large to accommodate wastewater flows from the Future Development Area, including the 3 Dinos, Cardel, and CDN properties that are located in the Rooney Valley.

**ALLEGATIONS CONCERNING THE BIG SKY/GREEN MOUNTAIN/FOSSIL RIDGE
LITIGATION AND SETTLEMENT AND ENTRY INTO THE BIG SKY/GREEN
MOUNTAIN IGA**

23. The allegations set forth in paragraphs 1-22 of this Complaint are incorporated by this reference as though fully set forth herein.

24. After the organization of Big Sky in the fall of 2014, its Board of Directors began discussions with Green Mountain about receiving sanitary sewer service from Green Mountain.

25. These negotiations between Big Sky and Green Mountain were successful, and on September 8, 2015, Green Mountain issued a “will serve” letter stating that it was willing to provide sanitary sewer service to Big Sky. A copy of the September 8, 2015 letter signed by David Hartkopf, then the manager of Green Mountain, is attached to this Complaint as **Exhibit 3**.

26. After receiving the “will serve” letter, **Exhibit 3**, Big Sky deposited sums sufficient to pay Green Mountain’s management, legal, accounting, and engineering costs associated with preparing an intergovernmental agreement for sanitary sewer service. This agreement about the deposit was memorialized in a “Memorandum of Understanding Regarding Costs Associated with Extra-Territorial Service Request,” dated August 31, 2015 (the “MOU”). A copy of the MOU is attached to this Complaint as **Exhibit 4**.

27. Pursuant to the terms of the MOU, Big Sky has paid all of Green Mountain’s costs associated with obtaining sanitary sewer service from Green Mountain.

28. Beginning in January of 2015, Fossil Ridge No. 1 (then still controlled by Brookfield Residential Properties) took the position in correspondence from its counsel and in appearances at public hearings before the Green Mountain Board of Directors that Fossil Ridge No. 1 should be reimbursed under the Fossil Ridge/Green Mountain IGA for all costs associated with oversizing water system improvements in addition to sanitary sewer system improvements before Green Mountain and Big Sky could enter into an intergovernmental agreement to provide sanitary sewer service to Big Sky.

29. Both Big Sky and Green Mountain rejected Fossil Ridge No. 1’s demand, which they believed was contrary to the language of paragraph 2.6 of the Fossil Ridge/Green Mountain IGA, quoted in paragraph 20 of this Complaint.

30. Despite its belief that Fossil Ridge No. 1’s demand was frivolous, Green Mountain insisted that the dispute with Fossil Ridge No. 1 be resolved before it would enter into an extraterritorial service agreement with Big Sky. Green Mountain was concerned that it might be exposed to liability to Fossil Ridge No. 1 under the Fossil Ridge/Green Mountain IGA.

31. Green Mountain and Big Sky then decided to file suit against Fossil Ridge No. 1 for a declaratory judgment determining that no money would be owed to reimburse Fossil Ridge No. 1 for water system improvements and also determining the exact amount that would be owed by

Big Sky to Fossil Ridge No. 1 for the oversizing of the Fossil Ridge Sanitary Sewer System to accommodate wastewater flows from the Future Development Area, including the 3 Dinos property, the Cardel property, and the CDN property.

32. Green Mountain and Big Sky filed the lawsuit against Fossil Ridge No. 1 on September 1, 2017 in the Jefferson County District Court, Case No. 2017CV031368 (the “Fossil Ridge Litigation”). Green Mountain was represented by Peter Forbes, Esq. of the firm of Carver Schwarz McNab Kamper & Forbes, LLC. Big Sky was represented by the undersigned counsel, Charles E. Norton of the firm of Norton & Smith, P.C.

33. Prior to commencing the Fossil Ridge Litigation, Big Sky and Green Mountain also signed a Joint Interest Agreement in which Big Sky agreed to pay all of Green Mountain’s legal fees and costs associated with the Fossil Ridge Litigation. Big Sky has complied in full with that obligation.

34. While the summons, complaint, and civil cover sheet in the Fossil Ridge Litigation were out for service, the entire Board of Directors of Fossil Ridge No. 1 resigned on June 30, 2017. These individuals were all employees and agents of Brookfield Residential Properties.

35. Brookfield took the position that since the Board of Directors of Fossil Ridge was vacant, the Fossil Ridge Litigation could not go forward.

36. Soon after the resignation of the Brookfield Directors of Fossil Ridge, the Board of Directors of the Fossil Ridge Metropolitan District No. 3 (“Fossil Ridge No. 3”) filed motions in the Jefferson County District Court seeking the appointment of a new Board of Directors for Fossil Ridge No. 1. Brookfield filed cross-motions seeking the appointment of a receiver for Fossil Ridge No. 1.

37. Fossil Ridge No. 3 was under the control of a Board of Directors composed of homeowners within their District, while Fossil Ridge No. 1 consisted entirely of property owned by Brookfield. Fossil Ridge No. 1 controlled the provision of public services, including trash collection and the operation of a club house, within the Solterra development. The homeowners in Fossil Ridge No. 3 argued that these critical public services needed to be managed by a Board of Directors composed of homeowner representatives.

38. The Jefferson County District Court, Judge Lily Oefler presiding, agreed with the position of the homeowner directors of Fossil Ridge No. 3. In an order dated November 13, 2017, Judge Oefler denied the relief requested by Brookfield and ordered that five members of the homeowner-controlled Fossil Ridge Metropolitan Districts Nos. 2 and 3 be appointed as directors for Fossil Ridge No. 1 through the date of the next Board election in May of 2018.

39. During the period between November 13, 2017 and April 5, 2018, Big Sky and Green Mountain worked diligently with the appointed homeowner board of Fossil Ridge No. 1 to reach a settlement of the Big Sky litigation while conducting pre-trial activities in the case.

40. The negotiations among Big Sky, Green Mountain, and Fossil Ridge were successful. Big Sky, Fossil Ridge, and CDN entered into an “Intergovernmental Agreement Regarding Reimbursement for Rooney Valley Sanitary Sewer System Improvements” (the “Big Sky/Fossil Ridge IGA”). The Big Sky/Fossil Ridge IGA was part of Exhibit A to the Declaratory Judgment and Decree entered by Judge Enquist of the Jefferson County District on April 5, 2018, which resolved the Fossil Ridge Litigation. A copy of the Declaratory Judgment and Decree with exhibits is attached to this Complaint as **Exhibit 5**.

41. The Big Sky/Fossil Ridge IGA contained a number of key provisions, including the following:

a. Big Sky, CDN, or the future owner of the CDN property agreed to pay Fossil Ridge \$1.3 million to reimburse it for the oversizing of the Fossil Ridge Sanitary Sewer System to accommodate wastewater flows from the Future Development Area, including the 3 Dinos, CDN, and Cardel properties;

b. Fossil Ridge agreed that payment of this \$1.3 million figure would fully satisfy the obligations of Green Mountain to require that “property owner(s) must enter into an agreement with Fossil Ridge providing for, among other things, equitable and proportionate cost recovery for Fossil Ridge’s expense in oversizing the Fossil Ridge Sewer System,” as required by Section 2.6 of the Green Mountain/Fossil Ridge IGA;

c. Big Sky and Fossil Ridge stipulated that Big Sky had fulfilled the additional requirement in paragraph 2.6 of the Green Mountain/Fossil Ridge IGA that property owners in the Future Development Area must specify the manner in which water will be provided to such area, since water service to the Future Development Area will be provided by the Consolidated Mutual Water Company.

42. The entry of the Declaratory Judgment and Decree on April 5, 2018 removed the last legal obstacles for Green Mountain to fulfill its frequently repeated promise to provide sanitary sewer service to Big Sky and the Future Development Area. The parties negotiated and reached mutual agreement, and the Big Sky/Green Mountain IGA was approved by a unanimous vote of the Green Mountain Board of Directors on May 8, 2018 and of the Big Sky Board of Directors on May 14, 2018. A fully executed copy of the Big Sky/Green Mountain IGA is attached to this Complaint as **Exhibit 6**.

43. The Big Sky/Green Mountain IGA is a carefully crafted agreement intended to cover all of the costs of Green Mountain in providing wastewater collection service to Big Sky while allowing property owners within the Future Development Area to have access to Green Mountain’s sanitary sewer system for the purpose of transmitting wastewater through that system for treatment by Metro. Green Mountain would also receive tap fee income in excess of \$6 million under the Big Sky/Green Mountain IGA; while 50% of those tap fees are to be rebated to Big Sky for a period of time to reimburse Big Sky for financing certain improvements to be owned by Green Mountain, Green Mountain will still receive in excess of \$3 million while having all of its costs of serving the Future Development Area covered by Big Sky.

44. The Big/Sky Green Mountain IGA unambiguously states as follows: “Green Mountain hereby agrees to accept Wastewater from Big Sky, which is collected from and generated within the Big Sky Service Area and Big Sky Expanded Service Area and does not exceed a peak hour flow rate of 1.267 MGD, pursuant to all of the terms contained herein.” The map attached as Exhibit A to the Big Sky/Green Mountain IGA (**Exhibit 6** to this Complaint) clearly depicts the Big Sky Service Area as including the property owned by 3 Dinos, Cardel, and CDN.

45. Through the date of this Complaint, and pursuant to the terms of the MOU and the Joint Interest Agreement between Big Sky and Green Mountain, and in reliance on the promises of Green Mountain to provide sanitary sewer service to the Big Sky Service Area, Big Sky has expended \$691,863.45 including the payment of Big Sky’s and Green Mountain’s legal fees, accounting fees, engineering fees, and administrative costs, in order to conclude the Big Sky/Green Mountain IGA.

**ALLEGATIONS CONCERNING GREEN MOUNTAIN’S CHANGE OF DIRECTION
AND DECISION TO REPUDIATE ITS OBLIGATIONS UNDER THE BIG SKY/GREEN
MOUNTAIN IGA**

46. The allegations set forth in paragraphs 1 through 45 are incorporated by this reference as though fully set forth.

47. During the period between the execution of the Big Sky/Green Mountain IGA in May of 2018 and the Green Mountain Board of Directors’ meeting on June 12, 2018, Big Sky and Green Mountain worked diligently to implement the terms of the approved IGA. Big Sky’s engineers provided plans for a lift station and other improvements to be constructed at Big Sky’s expense to allow transmission of wastewater generated from properties in the Big Sky Service Area into the Green Mountain system.

48. At the election held on May 8, 2018, three new directors, Alex Plotkin, Jeff Baker, and Adrienne Hanagan (the “New Directors”) were elected to the Green Mountain Board. All of the New Directors had during the election campaign expressed varying degrees of hostility toward further growth and development in the Rooney Valley.

49. The New Directors took office on June 12, 2018. Immediately thereafter, the New Directors embarked on a course of action intended to repudiate the policy of Green Mountain that had been in effect at least since the mid-2000’s (if not from the inception of Green Mountain in 1951) of acting as a water and sanitation utility provider to all customers located within the Green Mountain service area as approved by Metro who were willing and able to pay for service, including related infrastructure costs, whether those customers were within Green Mountain’s boundaries or outside of them.

50. Instead, the New Directors intended to use their control of access to the Green Mountain sanitation system to prevent the development of the properties owned by CDN, 3 Dinos, and Cardel and to render those properties as de facto open space. This strategy eventually culminated in Green Mountain’s repudiation of its obligations under the Big Sky/Green Mountain IGA.

51. On September 4, 2018, Ms. Hanagan signed a letter approved by the New Directors that was sent to interested “stakeholders” in the City of Lakewood. This letter indicated that the Green Mountain Board was now retaining additional legal counsel to determine what service commitments “have been obligated to by this Agreement.” The letter was intended to communicate the New Director’s concerns to “any organization using such agreement as a substitute for a valid will serve letter of service from Green Mountain Water and Sanitation District.”

52. Ms. Hanagan’s letter ignored, or failed to disclose, that Green Mountain had delivered “will serve” letters to Big Sky in September of 2015, to the Green Tree Metropolitan Districts Nos. 1 and 2 in November of 2016, and to Cardel Homes in March of 2017. The will serve letter to Cardel specifically contemplated that Cardel would make use of the Big Sky lift station and to the extent it did so, Green Mountain’s willingness to serve Cardel was subject to the willingness to serve letter issued to Big Sky. The letter to the Green Tree Districts, which serve the 3 Dinos property, also said that to the extent that Green Tree’s sewage flowed through the Big Sky Sanitary Sewer System, Green Mountain’s service to Green Tree would be contingent upon Green Tree reimbursing Big Sky for required oversizing of the Big Sky Sanitary Sewer System.

53. In furtherance of the New Directors’ desire to repudiate Green Mountain’s contractual obligations to Big Sky, Green Mountain discharged their general counsel of many years, Icenogle Seaver Pogue, on September 17, 2018. In Icenogle’s place, the New Directors instead hired Mr. Brian Matise of the firm of Burg Simpson Eldredge Hersh & Jardine, P.C. on September 20, 2018 as “special counsel.” Mr. Matise also agreed to serve as interim general counsel to Green Mountain while it searched for a replacement for Icenogle Seaver Pogue.

54. Mr. Matise had responded to a “Request for Proposal” (RFP) from Green Mountain dated August 15, 2018 which stated that the special counsel would be asked to opine on the validity of the Big Sky/Green Mountain IGA, the exposure to Green Mountain if any party sought to invalidate the IGA, any affirmative defenses in the event of litigation against Green Mountain, and whether insurance coverage would be available to pay the costs of litigation against Green Mountain. The RFP also indicated that the Green Mountain Board of Directors would ask special counsel to opine about the possible consequences including litigation if “one party” stopped all further engineering work regarding “the IGA’s.”

55. Big Sky entered into negotiations with Mr. Matise, and the two sides discussed some points of clarification that might be made with regard to an amended Big Sky/Green Mountain IGA. Big Sky did not at any time express a willingness to give up its contractual right to have sewer service for the entire Big Sky Service Area from Green Mountain.

56. On January 8, 2019, the New Directors voted to approve a motion instructing Mr. Matise to draft a letter stating that Green Mountain “will take no further action or perform any additional work as related to the Big Sky IGA until the Big Sky Metro District is brought into compliance by the City of Lakewood City Council as related to the expansion of said District Boundaries and purposes provided by the IGA.” The New Directors also instructed the Green Mountain engineer to cease reviewing engineering plans submitted by Big Sky for sanitary sewer improvements including the lift station required to allow proper connection between the Big Sky Sanitary

Sewer System and the Green Mountain Sanitary Sewer System, an improvement specifically contemplated by the Big Sky/Green Mountain IGA. This action was later characterized by the New Directors as a “suspension” of the Big Sky/Green Mountain IGA. These actions by Green Mountain were without any substantial legal justification or excuse.

57. Contemporaneously with these events, from September 2018 until March of 2019, a group of activists from Solterra and other parts of the City of Lakewood engaged in a lobbying campaign intended to cause the Lakewood City Council to force Green Mountain to repudiate its contractual obligations under the Big Sky/Green Mountain IGA. These activists were in communication with the New Directors, and upon information and belief coordinated their efforts in parallel with the New Directors.

58. The leader of these lobbying efforts was Mr. John Henderson, a resident of Solterra who had been active during the controversy surrounding the control of Fossil Ridge and who has expressed hostility toward any further development in the Rooney Valley. For example, at a public meeting of the Jefferson County Commissioners, Mr. Henderson opined that the owners of the 3 Dinos property should be willing to simply donate their property around the C-470 interchange for use as open space.

59. Mr. Henderson coordinated his efforts with various special interest groups working to prohibit development in the Rooney Valley. He encouraged members to attend Lakewood City Council meetings with the purpose of pressuring Council to oppose the Big Sky/Green Mountain IGA. One of these groups, the self-styled “Save Dino Ridge.org.,” distributed a post card urging residents to attend a meeting of the Lakewood City Council on January 28, 2019. The post card stated the political motives of the group with remarkable directness: “**Sewer Service:** A key component of future development on the Ridge and throughout the Rooney Valley. Control of the sewer equals control of future development and our sewer tax rates.”

60. During his appearances before the Lakewood City Council and the Green Mountain Board, Mr. Henderson made a number of statements that were false or materially misleading. Among these were the following:

a. That Big Sky was controlled by Brookfield instead of CDN; the two companies are wholly separate and without connection, and in fact Big Sky had just completed litigation against Fossil Ridge No. 1 that was initiated when Fossil Ridge No. 1 was controlled by Brookfield, litigation which Mr. Henderson falsely stated was a “sham”;

b. That the President of Big Sky, Mr. Tom Morton, was currently an employee of Brookfield when in fact Mr. Morton had separated from Brookfield in 2014 after Brookfield had acquired Mr. Morton’s previous employer, Carma, and Mr. Morton and Brookfield had substantial disagreements about the future direction of Brookfield and the Solterra development;

c. That Green Mountain would incur substantial financial risk from the Big Sky/Green Mountain IGA when in fact it had no financial obligations and all the costs of

the IGA had been paid in full by Big Sky and future expenditures would have to be funded in advance by Big Sky;

d. That the Big Sky/Green Mountain IGA would result in a profit to Brookfield, when in fact it does not profit any private entity, except to the extent that it allows CDN, 3 Dinos, and Cardel to obtain sewer service on the same basis as other residential and commercial users. Without sewer service, CDN, 3 Dinos, and Cardel cannot develop their properties which are in turn rendered effectively worthless;

e. That Big Sky had falsely claimed to be paying expenses, but would receive a 50% rebate of tap fees; however, these tap fees would come from users within Big Sky and would only continue for a maximum of 10 years or until Big Sky was compensated for paying the costs of a limited number of improvements that would be owned and operated by Green Mountain. Green Mountain would thus initially receive 50% of the revenues from tap fees collected from users served by Big Sky, revenue which Green Mountain did not have before and which will be received after Big Sky had advanced the full costs of the Green Mountain improvements; after the expiration of the rebate or the full reimbursement of Big Sky, Green Mountain would keep 100% of its tap fees from Big Sky users.

61. Among the inaccurate legal theories raised by Mr. Henderson before the Lakewood City Council and on his blog site was the argument that the Big Sky/Green Mountain IGA violated the terms of the Big Sky Service Plan and constituted a “material modification” of the Service Plan as that term is defined in section 32-1-207, C.R.S. On numerous occasions, Mr. Henderson asked Council to hold a “public hearing” to consider this issue.

62. On January 23, 2019, Mr. Tim Cox, the Lakewood City Attorney, delivered to the public an executive summary of an opinion letter he had issued to Council, stating his conclusion that it was “unlikely that the (Big Sky/Green Mountain IGA) rises to the level of a material modification of the Big Sky Service Plan.”

63. On January 25, 2019, Mr. Matise, as special counsel to Green Mountain, wrote a letter to Mr. Tim Cox, the Lakewood City attorney, stating that the Green Mountain “Board has requested that the Lakewood City Council formally consider a resolution that providing extraterritorial service under the IGA would not be a material modification of the Big Sky Service Plan.” Mr. Matise also said that while he needed to point out some issues that were not considered in Mr. Cox’s executive summary, he found the executive summary to be a “reasonable analysis” and stated that he did “not disagree with the opinions expressed in that document.” A copy of this letter is attached to this Complaint as **Exhibit 7**.

64. Mr. Matise’s letter created outrage among the New Members of the Green Mountain Board (at least after the letter became a matter of public knowledge). On February 2, 2019 Ms. Hanagan directed Mr. Matise to retract his letter of January 25, 2019 which he did on February 4. At their meeting on February 12, 2019, Ms. Hanagan further directed Mr. Matise to cease all activity on behalf of the Green Mountain Water and Sanitation District. At the same meeting, the New Members “approved of entering into an agreement with John Henderson to act as a Title

32 consultant” to Green Mountain. Green Mountain thus knowingly selected a consultant who had actively lobbied on behalf of special interest groups to terminate or negate the Big Sky/Green Mountain IGA as Green Mountain’s principal adviser about the scope of Green Mountain’s obligations under the IGA.

65. In an effort to force the issue with regard to the validity of the Big Sky/Green Mountain IGA under the Big Sky Service Plan, on April 11, 2019, Big Sky published and served a notice on the City of Lakewood and all “interested persons” pursuant to section 32-1-207 (3)(b), C.R.S. This notice stated that Big Sky intended to enter into one or more extraterritorial service agreements to provide sanitary sewer service to properties within the Big Sky Service Area as depicted on Exhibit A to the Big Sky/Green Mountain IGA.

66. Section 32-1-207 (3)(b), C.R.S. provides that no action to enjoin the activity of a special district on the basis that it is a “material modification” of the district service plan may be maintained unless it is brought within 45 days after the special district has published and served notice of its intent to undertake the activity.

67. After seeking additional legal advice about the scope of the Big Sky Service Plan, the City of Lakewood declined to file an injunctive action before the 45-day deadline under section 32-1-207 expired on May 28, 2019.

68. Green Mountain did file a motion as provided for in section 32-1-207 (3)(a), C.R.S. to enjoin the performance of its own contract, the Big Sky/Green Mountain IGA. Briefing on the motion is currently pending in Case No. 2014CV031904, which is the original case file regarding the organization of Big Sky. Big Sky will argue that Green Mountain lacks standing to file the motion and that the Big Sky/Green Mountain IGA is not a material modification of the Big Sky Service Plan.

69. At its regular Board meeting held on April 9, 2019, the Green Mountain Board of Directors enacted a resolution declaring “the Big Sky IGA to be invalid, and void since its inception, against public policy, and therefore terminates the Big Sky IGA effective immediately this 9th day of April, 2019.” A copy of the resolution of April 9 is attached hereto as **Exhibit 8**.

FIRST CLAIM FOR RELIEF
(Breach of Contract)

70. The allegations set forth in paragraphs 1 through 69 of this Complaint are incorporated by this reference as though fully set forth herein.

71. Section 10.2 of the Big Sky/Green Mountain IGA governs the termination of the IGA. It defines the instances where Green Mountain may terminate the IGA, including “Failure by Big Sky to pay any costs, fees or charges due under this Agreement...”

72. None of the conditions allowing termination of the Big Sky/Green Mountain IGA have taken place; for example, Big Sky has paid all the of Green Mountain’s expenses that Big Sky was required to pay under the Big Sky/Green Mountain IGA.

73. Green Mountain's termination was without legal force or effect. It constitutes an anticipatory repudiation of the Big Sky/Green Mountain IGA, and therefore Green Mountain has breached its contract with Big Sky.

74. Section 10.1 of the Big Sky/Green Mountain IGA provides that any party may seek monetary damages or an order of specific performance, declaratory or injunctive relief in the event of a breach of any provision of the Big Sky/Green Mountain IGA.

WHEREFORE, Plaintiff Big Sky requests that this Court enter judgment in its favor and against Green Mountain as follows:

- a. For a decree of specific performance, ordering Green Mountain to allow Big Sky to connect with the Green Mountain sanitary sewer system under the terms and conditions specified in the Big Sky/Green Mountain IGA and that Green Mountain accept Wastewater from Big Sky, which is collected from and generated within the Big Sky Service Area and Big Sky Expanded Service Area and does not exceed a peak hour flow rate of 1.267 million gallons per day, pursuant to all of the terms contained in the Big Sky/Green Mountain IGA;
- b. That this Court maintain continuing jurisdiction of this case for the purpose of ensuring compliance by Green Mountain after the entry of a decree of specific performance, including the use of the Court's contempt powers as necessary and permitted by law;
- c. For general and special damages, in a monetary amount to be determined at trial and including an award of attorney's fees incurred in bringing and maintaining this action;
- d. For Big Sky's costs of suit;
- e. For such other and further relief as this Court may deem just.

SECOND CLAIM FOR RELIEF
(Breach of the Covenant of Good Faith and Fair Dealing)

75. The allegations set forth in paragraphs 1 through 74 of this Complaint are incorporated by this reference as though fully set forth herein.

76. Under Colorado law, every contract contains an implied duty of good faith and fair dealing. This covenant is contained in contracts entered into by political subdivisions of the state of Colorado such as Green Mountain and Big Sky.

77. The good faith performance doctrine attaches to contracts to effectuate the intentions of the parties and to honor their reasonable expectations.

78. A violation of the duty of good faith and fair dealing gives rise to a claim for breach of contract.

79. Following the election of the New Members, Green Mountain violated the duty of good faith and fair dealing. These violations include, but are not limited to, the suspension of the Big Sky/Green Mountain IGA and the refusal to review engineering plans for the lift station and other improvements called for by the IGA; the effort to lobby the City of Lakewood and to act in concert with third-party interest groups to invalidate the IGA; the purported termination of the IGA through the April 9, 2019 Resolution; and an effort to persuade Metro not to include the Big Sky Service Area within the Metro service area despite Metro's clear willingness to serve Big Sky.

WHEREFORE, Plaintiff Big Sky requests that this Court enter judgment in its favor and against Green Mountain as follows:

- a. For an order finding that Green Mountain has breached the covenant of good faith and fair dealing;
- b. For general damages, in a monetary amount to be determined at trial and sufficient to compensate Big Sky for losses that are the natural and probable consequence of the breach, including an award of attorney's fees incurred in bringing and maintaining this action; and for special damages in an amount that Green Mountain knew or should have known when the contract was made probably would be incurred by Big Sky if Green Mountain breached the IGA, including but not limited to costs of obtaining alternative sewer service;
- c. For Big Sky's costs of suit;
- d. For such other and further relief as this Court may deem just.

THIRD CLAIM FOR RELIEF
(Violation of Article II, section 11 of the Colorado Constitution)

80. The allegations contained in paragraphs 1 through 79 of this Complaint are incorporated by this reference as though fully set forth herein.

81. Under the Colorado Constitution, the General Assembly is prohibited from enacting any law that is "retrospective in its operation..." *Colo. Const. art. II, section 11*.

82. This prohibition against retrospective laws at the state level applies equally to local government.

83. A law is retrospective if it impairs a vested right. The Green Mountain Board Resolution of April 9, 2019 purported to wipe out the contract rights of Big Sky under the Green Mountain IGA, impaired the public interest by denying Green Mountain tap fee income from the Big Sky Service Area in excess of \$6 million over the life of the IGA; denied sewer service to future

residents and businesses operating within the Big Sky Service Area; defeated the bona fide expectations of Big Sky that it would receive sewer service from Green Mountain; and surprised Big Sky and the owners of the CDN, 3 Dinos, and Cardel properties who relied on the IGA which had been properly ratified by the Green Mountain Board.

84. Big Sky is a party interested under the Big Sky/Green Mountain IGA whose rights are affected by the Resolution of April 9, 2019. Big Sky is thus entitled to have the construction and validity of the Resolution determined by this Court and to have a declaration of the constitutionality of the Resolution pursuant to C.R.C.P. 57 and the Uniform Declaratory Judgments Law, section 13-51-101et seq., C.R.S.

WHEREFORE, Plaintiff Big Sky requests that this Court enter judgment in its favor and against Green Mountain as follows:

- a. For a declaration of this Court that the Green Mountain Board Resolution of April 9, 2019 is unconstitutional under Article II, section 11 of the Colorado Constitution and that the Resolution is null, void, and of no legal force or effect;
- b. For Big Sky's attorney's fees and costs of suit;
- c. For such other and further relief as this Court may deem just.

**FOURTH CLAIM FOR RELIEF
(Promissory Estoppel)**

85. The allegations set forth in paragraphs 1 through 84 of this Complaint are incorporated by this reference as though fully set forth herein.

86. Promissory estoppel is a quasi-contractual cause of action that, under certain circumstances, provides a remedy for a party who relied on a promise made by another party, even if the promise was not contained in an unenforceable contract.

87. On multiple occasions as detailed in this Complaint, Green Mountain promised Big Sky that it would provide sanitary sewer collection service to properties within the Big Sky Service Area.

88. Green Mountain should reasonable have expected that its promise would have induced action by Big Sky, CDN, 3 Dinos, and Cardel.

89. Big Sky, 3 Dinos, CDN, and Cardel reasonably and detrimentally relied on Green Mountain's promise by multiple actions, including but not limited to the funding by Big Sky of all engineering and legal costs incurred by Big Sky and Green Mountain in achieving the Big Sky/Green Mountain IGA; the funding by Big Sky of Big Sky's and Green Mountain's costs in the Fossil Ridge litigation; and Big Sky's incurring a legal obligation to Fossil Ridge to pay \$1.3 million to reimburse Fossil Ridge for oversizing its sanitary sewer system to provide service to the Big Sky Service Area, including the CDN, 3 Dinos, and Cardel properties.

90. Green Mountain's promise must be enforced to prevent injustice.

WHEREFORE, Plaintiff Big Sky requests that this Court enter judgment in its favor and against Green Mountain as follows:

- a. For preliminary and permanent injunctive relief enforcing Green Mountain's promise to provide sanitary sewer service to the Big Sky Service Area;
- b. For an award of damages in an amount to be proven at trial and sufficient to compensate Big Sky for its expenditures in reliance on Green Mountain's promise;
- c. For Big Sky's attorney's fees and costs of suit;
- d. For such other and further relief as this Court may deem just.

Dated this 6th day of June, 2019

NORTON & SMITH, P.C.

s/ Charles E. Norton
Charles E. Norton, #10633
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ADDRESS FOR PLAINTIFF

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