

16. In a prior lawsuit between the Developer and Districts 2 and 3 (Case No. 05CV3044), this Court determined the following facts to be undisputed: For the first decade of the Solterra development, the Developer had total control of the Boards because (a) the Developer owned the 1.1 acre parcel<sup>2</sup> that comprised the Service District, and the Service District's five-member Board was comprised entirely of employees, representatives, or agents of the Developer; and, (b) the Board for District 2 and the Board for District 3 also were comprised of the Developer's employees, representatives, or agents, with the exception of two resident directors on the District 2 Board and one resident director on the District 3 Board.

17. As a result, the Developer represented both sides in drafting and executing the controlling documents and agreements at issue in this case, including the Service Plan, Reimbursement Agreement, and Master IGA (all as defined below) (collectively, the "Governing Documents"). Consequently, there were no arms-length negotiations between the Districts and the Developer when those Governing Documents were put in place.

18. Instead, the Developer made deliberate decisions for itself as to: (a) what legal rights, if any, it would have under the Governing Documents; (b) the legal interrelationship between the Service District and the Financing Districts; and (c) what legal relationship, if any, the Developer would have with the Service District and the Financing Districts.

---

<sup>2</sup> The Districts subsequently discovered that the Developer had excluded all of the land within the Service District, except a 10-square-foot area, further ensuring that no one other than the Developer's employees, representatives, or agents could serve on the Service District's Board.

19. Because the Developer was solely responsible for preparing the Governing Documents, to the extent there is any doubt as to their meaning, they must be construed against the Developer.

---

- c. The Developer is obligated to maintain and repair Developer-built infrastructure (i) that has not been accepted by the Service District or (ii) as required by recorded plats signed by the Developer.

#### **FOURTH COUNTERCLAIM FOR RELIEF**

##### **Accounting (Service District vs. Solterra)**

143. The Districts incorporate the preceding paragraphs of the Counterclaims as if set forth fully herein.

144. The Districts have repeatedly sought an accurate, full, and complete accounting of, among other things: alleged reimbursable Developer costs and accrued interest; how prior

35

5058346.5

bond proceeds have been applied; and the remaining amount of eligible Developer costs, if any, that are owed to the Developer from the proceeds of General Obligation Debt.

145. The Developer has failed and refused to provide this accounting.

146. Given the nearly two-decade history of the Solterra development and the fact that the Developer controlled the Districts until 2017, it is nearly impossible for the Districts to determine what amount, if any, is owed to the Developer from General Obligation Debt.

147. This uncertainty makes it extremely difficult for the Districts to plan for their financial future.

148. Accordingly, the Developer, as the party seeking repayment for alleged reimbursable costs it purportedly incurred since 2006, must account for such costs.

149. The Districts respectfully request that the Developer be ordered to account for all alleged reimbursable Developer costs and accrued interest, how prior bond proceeds have been applied, and the remaining amount, if any, that is owed to the Developer from General Obligation Debt.

#### **FIFTH COUNTERCLAIM FOR RELIEF**

##### **Breach of the Reimbursement Agreement – Failure to Follow the IAP and Maintain Developer-Built Infrastructure (Service District v. Solterra)**

150. The Districts incorporate the preceding paragraphs of the Counterclaims as if set forth fully herein.

156. As a result, the Service District has been forced to incur maintenance and repair expenses for Developer-built infrastructure that the Service District has not accepted. The Developer has refused to reimburse those expenses.

157. The Service District has satisfied all conditions precedent, if any, to its right to bring this claim against the Developer.

158. As a result of the Developer's breach, the Service District has been damaged in an amount to be proved at trial.

### **SIXTH COUNTERCLAIM FOR RELIEF**

#### **Unjust Enrichment (Districts vs. Solterra)**

159. Upon information and belief, the Developer received a financial benefit in the form of hundreds of millions of dollars in revenues from developing lots and constructing and selling homes in the Solterra community.

160. Upon information and belief, the Developer was able to sell lots to builders at several multiples of the Developer's cost to purchase the land based, in large part, on the local public improvements the Developer is trying to charge to the Districts.

161. If the Service District is required to reimburse the Developer for the cost of these local private improvements, the Developer will essentially be "double-dipping" in its revenue collection at the Districts' expense.

162. Under the circumstances described above, it would be unjust for the Developer to retain such benefit without commensurate compensation to the Districts.

163. The Developer's actions have caused and will continue to cause the Districts significant harm and damages if the Financing Districts must bond to reimburse the Developer for local public improvements. Alternatively, the Districts are entitled to appropriate equitable relief, including without limitation, an order that the Financing Districts are not required to bond for—and the Service District is not required to pay for—local public improvements.

### **SEVENTH COUNTERCLAIM FOR RELIEF**

#### **Breach of the Reimbursement Agreement – Breach of the Duty of Good Faith and Fair Dealing by Contracting Through and Unilaterally Deeding Property to the Service District (Service District v. Solterra)**

164. The Districts incorporate the preceding paragraphs of the Counterclaims as if set forth fully herein.

165. The Service District and Developer entered into the Reimbursement Agreement.