

<b>DISTRICT COURT, JEFFERSON COUNTY, COLORADO</b> 100 Jefferson County Parkway, Golden, CO 80401	DATE FILED: July 25, 2019 4:53 PM FILING ID: 9B6122EEF135F CASE NUMBER: 2019CV31158
<b>Plaintiff:</b> CDN RED ROCKS, LP, a Colorado limited partnership,  v.  <b>Defendants:</b> GREEN MOUNTAIN WATER AND SANITATION DISTRICT, a quasi-municipal corporation and subdivision of the State of Colorado.	
<b>Attorneys for Plaintiff</b> Marsha M. Piccone, #15268; mpiccone@foxrothschild.com Caleb Durling, #39253; cdurling@foxrothschild.com FOX ROTHSCHILD LLP 1225 17th Street, Suite 2200 Denver, CO 80202 Telephone: 303-292-1200	▲ COURT USE ONLY ▲  Case No.  Division:
<b>COMPLAINT</b>	

Plaintiff CDN Red Rocks, LP (“CDN”) submits this Complaint against Defendant Green Mountain Water and Sanitation District (“Green Mountain”):

### INTRODUCTION

1. This case is about a Colorado special district, Green Mountain, which has reneged on its promises in binding agreements and in representations before the Jefferson County District Court to provide sanitary sewer services to the Rooney Valley, an area of Jefferson County partially within the City of Lakewood and bordered by Dinosaur Ridge and the town of Morrison to the west. Green Mountain’s actions were improper, arbitrary, and capricious and have caused substantial harm to CDN, a property owner within the now-deprived area, as not a single residence or business can be built on the property without the provision of sanitary sewer services to collect and dispose of wastewater. Beneficial public uses, including an enhanced and expanded visitor center for the nearby Dinosaur Ridge Park, have also been curtailed by Green Mountain’s actions.

2. CDN has already spent considerable funds to secure these sanitary sewer rights. Lakewood has granted CDN the vested right to build 1,630 residential units and 4,000,000 square feet of commercial space on the property. Without sewer services, it can build none of them. CDN's contract for millions with an interested buyer of the property cannot be completed.

3. CDN requests that the Court order Green Mountain to pay the damages caused by these unreasonable acts and order Green Mountain to provide CDN sanitary services as Green Mountain has promised and represented it would in multiple legally-binding documents.

### **PARTIES, JURISDICTION, AND VENUE**

4. CDN is a Colorado limited partnership.

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

6. Green Mountain has a service plan.

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

8. Jurisdiction over Green Mountain is proper pursuant to C.R.S. § 13-1-124 because Green Mountain is a quasi-municipal corporation and political subdivision of Colorado.

### **FACTUAL ALLEGATIONS**

#### **Green Mountain, CDN, and Big Sky Metropolitan District**

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

10. Big Sky was formed by owners, employees, and agents of CDN, the sole property owner within Big Sky (the "CDN Property"), to finance and construct public infrastructure, including a sanitary sewer collection system.

11. The Service Plan for Big Sky 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 "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.” “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.

12. C.R.S. § 32-1-103 defines a “metropolitan district” as a special district that provides two or more municipal services, including sanitation.

13. A “sanitation district” pursuant to C.R.S. § 32-1-103 (18) is 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.”

14. Big Sky is authorized to finance and construct sewer mains and related pipelines, meters, lift stations, and other infrastructure to collect wastewater generated by properties within its boundaries, but does not treat wastewater.

15. Green Mountain is authorized to finance and construct sewer mains and related pipelines, meters, lift stations, and other infrastructure to collect wastewater generated by properties within its boundaries, but does not treat wastewater.

16. The Special District Act and the Big Sky Service Plan also authorize Green Mountain and Big Sky to collect wastewater from properties located outside of their boundaries.

### **Wastewater Collection and Disposal in the Rooney Valley**

17. Green Mountain collects wastewater from properties located within its boundaries and from extra-territorial customers located outside its boundaries, which is in turn transmitted to facilities owned and operated by Metropolitan Wastewater Reclamation District (“Metro Wastewater”) 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.

18. Green Mountain collects wastewater generated by properties within the Solterra subdivision, which is outside the boundaries of Green Mountain.

19. Green Mountain is authorized to collect wastewater generated by properties within the Solterra subdivision, which is outside the boundaries of Green Mountain.

20. Solterra is the largest single subdivision within the City of Lakewood, Colorado, and is located directly adjacent to Big Sky.

21. 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 Fossil Ridge Metropolitan District No. 1 in November 2014 (the “Green Mountain/Fossil Ridge IGA”).

22. Fossil Ridge Metropolitan District No. 1 (“Fossil Ridge”) is a special district, governed under the terms of the Special District Act, organized for the purpose of developing public infrastructure within the Solterra subdivision.

23. Big Sky/CDN and Fossil Ridge/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.

24. Because Big Sky and Solterra are within Lakewood, they are also within the service area of Metro Wastewater and therefore Green Mountain is permitted to serve them through its Special Connector’s Agreement with Metro Wastewater.

25. In 2005 and 2006, the Green Mountain Board of Directors commissioned a feasibility study regarding Green Mountain providing sanitary sewer service to the Rooney Valley, including what is now the Solterra development (Fossil Ridge) and the entire area which would later be included within Big Sky.

26. The feasibility study, dated January 31, 2006, was conducted by an engineering firm and concluded “[t]he study area is contiguous to the present Green Mountain District boundaries and the District is the logical choice to provide lowest cost service,” and “[p]revious, preliminary work has been completed on cost allocation, institutional arrangements, and key points for an Intergovernmental Agreement.”

27. The original Intergovernmental Agreement for Extra-Territorial Sewer Service was entered into between Fossil Ridge and Green Mountain on January 15, 2008. Fossil Ridge and Green Mountain then entered into the amended Green Mountain/Fossil Ridge IGA in November 2014.

28. The Green Mountain/Fossil Ridge IGA contemplated Green Mountain providing sanitary sewer service to a “Service Area” outside the boundaries of Green Mountain and encompassing the entire Solterra subdivision.

29. The Green Mountain/Fossil Ridge IGA contemplated Green Mountain providing sanitary sewer service to a separate “Future Development Area.”

30. This Future Development Area included the entirety of what is now Big Sky—comprising the CDN Property.

31. In the Green Mountain/Fossil Ridge IGA, Fossil Ridge agreed to “oversize” its sewer system to account for anticipated future development in the Future Development Area. Green Mountain/Fossil Ridge IGA ¶ 2.6.

32. Section 2.6 of the Green Mountain/Fossil Ridge IGA stated that as a precondition of Green Mountain accepting wastewater from the Future Development Area, the property owners in that area had to reach an agreement with Fossil Ridge on “equitable and proportionate cost recovery” for Fossil Ridge’s expenses to oversize its sewer system. *Id.*

33. Fossil Ridge 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 CDN Property.

### **Lakewood Grants CDN Vested Rights to Develop its Property**

34. CDN secured commitments from the relevant governmental entity to ensure it had a vested right to develop the Property.

35. On December 10, 2009, the City of Lakewood entered into a Development Agreement for Solterra Centre Official Development Plan Regarding Vested Rights (the “Vested Rights Agreement”), pursuant to C.R.S. §§ 24-68-101 to -106. The agreement is attached as Exhibit 1.

36. Pursuant to the Vested Rights Agreement, Lakewood found there was a site specific development plan for the CDN Property which “creates vested property rights to develop the Property in the manner contemplated by the Site Specific Development Plan.” The term of the agreement is 25 years.

37. The recorded development plan for the CDN Property, called Solterra Centre, provides for a maximum of 1,630 dwelling units and a non-residential (i.e, commercial) maximum of 4,000,000 square feet.

### **Big Sky Receives a “Will Serve” Letter from Green Mountain Agreeing to Provide Sanitary Sewer Service to the CDN Property**

38. After Big Sky organized in the fall of 2014, its board of directors (comprised of CDN stakeholders) initiated discussions with Green Mountain for Big Sky/CDN to receive sanitary sewer services from Green Mountain.

39. On September 8, 2015, Green Mountain issued a “will serve” letter stating that it was willing to provide sanitary sewer service to Big Sky for the CDN Property (the “Big Sky ‘will serve’ letter”). The letter, signed by David Hartkopf, Green Mountain’s then-manager, is attached as Exhibit 2.

40. Green Mountain’s manager David Hartkopf was authorized by Green Mountain to send Big Sky the Big Sky “will serve” letter on behalf of Green Mountain.

41. The Big Sky “will serve” letter identifies the property covered by the letter and Green Mountain’s agreement to provide it sanitary sewer service.

42. The identified property includes all of the CDN Property.

43. Green Mountain made a commitment to Big Sky in the Big Sky “will serve” letter that Green Mountain would provide sanitation service, as defined in the Special District Act, to the CDN Property.

44. Green Mountain stated its sanitary sewer service was conditioned on resolution of two conditions: (1) satisfaction of the cost-sharing mechanism in the Green Mountain/Fossil Ridge IGA’s section 2.6; and (2) execution of a separate intergovernmental agreement between Green Mountain and Big Sky. Both conditions have now been satisfied.

45. Green Mountain and Big Sky separately memorialized their agreement for Green Mountain to provide sanitary sewer services to Big Sky in a “Memorandum of Understanding Regarding Costs Associated with Extra-Territorial Service Request,” dated August 31, 2015 (the “Green Mountain/Big Sky MOU”).

46. Green Mountain agreed in the Green Mountain/Big Sky MOU that it “is a special district organized and operating under Title 32 of the Colorado Revised Statutes for purposes including providing sewer services inside and outside its boundaries[.]”

47. Green Mountain agreed in the Green Mountain/Big Sky MOU that Big Sky “is a special district organized and operating under Title 32 of the Colorado Revised Statutes for purposes including providing sewer services within and without its boundaries[.]”

48. Green Mountain’s board president Lewis Short executed the Green Mountain/Big Sky MOU on behalf of Green Mountain.

49. Green Mountain’s board president Lewis Short was authorized by Green Mountain to enter into the Green Mountain/Big Sky MOU on behalf of Green Mountain.

50. Pursuant to the Green Mountain/Big Sky MOU, Big Sky deposited sufficient funds with Green Mountain to pay its management, legal, accounting, and engineering costs associated with preparing an intergovernmental agreement for sanitary sewer service.

51. Big Sky has paid all of Green Mountain’s costs associated with obtaining sanitary sewer service from Green Mountain.

52. CDN has advanced all of those costs to Big Sky, making CDN the party which has ultimately paid for all of Green Mountain’s costs to date for Big Sky receiving sanitary sewer services.

53. Green Mountain made a commitment to Big Sky in the Green Mountain/Big Sky MOU that Green Mountain would provide sanitation service, as defined in the Special District Act, to the CDN Property.

### **The Fossil Ridge Litigation**

54. As the Solterra development was built in Fossil Ridge, a dispute arose over which parties should bear the costs of oversizing the Fossil Ridge water system, which Fossil Ridge had agreed to construct pursuant to section 2.6 of the Green Mountain/Fossil Ridge IGA.

55. Fossil Ridge claimed that it should be reimbursed under the IGA for all costs associated with oversizing both the sewer system and water system before Green Mountain and Big Sky could enter into an intergovernmental agreement to provide sanitary sewer service to Big Sky.

56. Big Sky and Green Mountain rejected Fossil Ridge's demand which they believed was contrary to section 2.6 of the Green Mountain/Fossil Ridge IGA.

57. Green Mountain required that the dispute with Fossil Ridge be resolved before it would enter into an intergovernmental agreement with Big Sky.

58. As a result, Green Mountain and Big Sky sued Fossil Ridge in Jefferson County District Court, Case No. 2017CV031368 (the "Fossil Ridge Litigation") for a declaratory judgment to determine, *inter alia*, the amount that would be owed by Big Sky to Fossil Ridge for the oversizing of the Fossil Ridge sanitary sewer system to accommodate sanitary sewer flows from the Future Development Area, including the CDN Property.

59. Green Mountain represented to the Jefferson County District Court that it "was organized for purposes including the provision of sewer service inside and outside its boundaries." Fossil Ridge Litigation, Compl., ¶ 3.

60. Green Mountain represented to the Jefferson County District Court that Big Sky was "a 'metropolitan district' within the meaning of Colorado law because it was formed to provide two or more of the services set forth in C.R.S. §32-1-103 (10), including sanitation and water services, inside and outside its boundaries to promote the general welfare of its inhabitants." *Id.* ¶ 4.

61. Green Mountain represented to the Jefferson County District Court that Big Sky and Green Mountain were prepared to enter into an IGA to provide service to Big Sky. *Id.* ¶ 19.

62. Green Mountain stated that Fossil Ridge was thwarting Green Mountain from providing service to Big Sky, thus "preventing Green Mountain from collecting significant sewer system development fees and increasing its customer base." *Id.* ¶ 1.

63. Green Mountain's attorneys were authorized by Green Mountain to file the complaint on behalf of Green Mountain.

64. Green Mountain made a commitment to Big Sky in filing the Fossil Ridge Litigation complaint that Green Mountain would provide sanitation service, as defined in the Special District Act, to the CDN Property.

65. Prior to commencing the Fossil Ridge Litigation, Big Sky, Green Mountain, and CDN signed an August 8, 2017 Joint Interest Agreement (the "Green Mountain/Big Sky/CDN Joint Interest Agreement") in which Big Sky and CDN agreed to pay all of Green Mountain's legal fees and costs associated with the Fossil Ridge Litigation.

66. Green Mountain made a commitment to Big Sky and CDN in the Green Mountain/Big Sky/CDN Joint Interest Agreement that Green Mountain would provide sanitation service, as defined in the Special District Act, to the CDN Property.

67. Green Mountain agreed in the Green Mountain/Big Sky/CDN Joint Interest Agreement that "Green Mountain has a substantial economic interest in providing service to the Future Development Area," where the Future Development Area "encompasses Big Sky's Service Area."

68. Green Mountain's board president Carl Mulay executed the Green Mountain/Big Sky/CDN Joint Interest Agreement on behalf of Green Mountain.

69. Green Mountain's board president Carl Mulay was authorized by Green Mountain to enter into the Green Mountain/Big Sky/CDN Joint Interest Agreement on behalf of Green Mountain.

70. Big Sky and CDN have complied in full with the Green Mountain/Big Sky/CDN Joint Interest Agreement, which obligated CDN and Big Sky to pay Green Mountain's legal fees and costs.

71. CDN advanced the money and thus paid all of Green Mountain's legal fees and costs to secure a positive outcome in the Fossil Ridge Litigation.

72. Green Mountain represented to Big Sky, CDN, Fossil Ridge, and the district court its desire to provide service to Big Sky as a basis for the existence of the controversy and for Green Mountain's right to pursue a declaratory judgment.

73. The parties to the Fossil Ridge Litigation reached a settlement agreement.

74. One of the aspects of the settlement of the litigation was an Intergovernmental Agreement Regarding Reimbursement for Rooney Valley Sanitary Sewer System Improvements, entered into between Big Sky, Fossil Ridge, and CDN (the "Fossil Ridge/Big Sky IGA").



75. The Fossil Ridge/Big Sky IGA was filed with the district court as part of a Declaratory Judgment and Decree (the “Fossil Ridge Decree”).

76. Green Mountain, Fossil Ridge, and Big Sky filed the decree to dismiss the case with the district court.

77. The joint motion seeking the decree stated “Green Mountain desires to provide sewer service to Big Sky within the Future Development Area, which triggers Section 2.6 of the Amended IGA.” Joint Motion for Fossil Ridge Decree ¶ 4.

78. Green Mountain’s attorneys were authorized by Green Mountain to file the joint motion seeking the decree on behalf of Green Mountain.

79. By filing the motion, Green Mountain represented to the district court that the facts contained therein were true and correct.

80. Green Mountain represented to the district court in the decree that “Green Mountain desires to provide sewer service to the Future Development Area upon satisfaction of specified conditions, including the execution of an agreement among the property owner(s) in the Future Development Area and Fossil Ridge complying with the requirements of Section 2.6 of the Amended IGA.” Fossil Ridge Decree ¶ 9; *see also id.* ¶ 21.

81. Green Mountain represented to the district court in the decree that Green Mountain’s condition to provide sanitary sewer service—an agreement between Fossil Ridge and the property owners of the Future Development Area—had been satisfied, in the form of the Fossil Ridge/Big Sky IGA. *Id.* ¶ 11.

82. Green Mountain represented to the district court in the decree that it agreed with Fossil Ridge and Big Sky that the Fossil Ridge/Big Sky IGA satisfied section 2.6 of the Fossil Ridge/Green Mountain IGA that as a condition to Green Mountain providing sanitary sewer service to the Future Development Area, Fossil Ridge and the property owners in the area reach an agreement on how Fossil Ridge could recover its costs for oversizing its sewer system. *Id.* ¶¶ 22-24.

83. The district court granted the joint motion and entered the Fossil Ridge Decree on April 5, 2018, as an order of the court.

84. The CDN Property is within the Future Development Area referenced in the motion and decree which Green Mountain filed with the district court. *See id.* ¶ 11.

85. Green Mountain made a commitment to Big Sky in the Fossil Ridge Decree that Green Mountain would provide sanitation service, as defined in the Special District Act, to the CDN Property.

86. Green Mountain made a commitment to Big Sky in the Joint Motion for Fossil Ridge Decree that Green Mountain would provide sanitation service, as defined in the Special District Act, to the CDN Property.

87. The Fossil Ridge/Big Sky IGA resolved one of the two conditions listed in the Big Sky “will serve” letter issued by Green Mountain.

88. The Fossil Ridge/Big Sky IGA, to which CDN is a signatory, contained a number of key provisions, including the following:

A. “Whereas, subject to all necessary approvals by Metro Wastewater, wastewater flows generated by properties within the Big Sky Territory *will be accepted by Green Mountain under the Metro IGA and pursuant to an intergovernmental agreement to be entered into by and between Green Mountain and Big Sky[.]*” (Fossil Ridge/Big Sky IGA at 2 (emphasis added));

B. Big Sky, CDN, or the future owner of the CDN property agreed to pay Fossil Ridge \$1,300,000 to reimburse it for oversizing the Fossil Ridge Sanitary Sewer System to accommodate wastewater flows from the Future Development Area; and

C. Fossil Ridge agreed that the \$1,300,000 payment would satisfy Green Mountain’s requirement 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 provided by section 2.6 of the Green Mountain/Fossil Ridge IGA.

### **The Green Mountain/Big Sky IGA**

89. Following the entry of the Fossil Ridge Decree on April 5, 2018, Green Mountain and Big Sky entered into the Intergovernmental Agreement for Extra-Territorial Sewer Service (the “Green Mountain/Big Sky IGA”), which 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.

90. The first draft of the Green Mountain/Big Sky IGA was drafted by Green Mountain’s then-general counsel Jennifer Ivey and then circulated to Big Sky and its counsel.

91. Green Mountain agreed in the Green Mountain/Big Sky IGA that it “is a special district organized and operating under Title 32 of the Colorado Revised Statutes for purposes including providing sewer services inside and outside its boundaries[.]”

92. Green Mountain agreed in the Green Mountain/Big Sky IGA that “Big Sky is a special district organized and operating under Title 32 of the Colorado Revised Statutes for purposes including providing sewer services within and without its boundaries[.]”

93. Green Mountain agreed in the Green Mountain/Big Sky IGA that “[b]y the signature of its representative below, each party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.”

94. Green Mountain’s board president Carl Mulay executed the Green Mountain/Big Sky IGA on behalf of Green Mountain.

95. Green Mountain’s board president Carl Mulay had Green Mountain’s authority to execute the Green Mountain/Big Sky IGA on behalf of Green Mountain.

96. The Green Mountain/Big Sky IGA resolved the second of the two conditions listed in the Big Sky “will serve” letter issued by Green Mountain.

97. The Green Mountain/Big Sky IGA states that “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.”

98. The CDN Property is within the Big Sky Service Area.

99. The CDN Property is within the Big Sky District.

100. Green Mountain made a commitment to Big Sky in the Green Mountain/Big Sky IGA that Green Mountain would provide sanitation service, as defined in the Special District Act, to the CDN Property.

101. Through the date of this Complaint, and pursuant to the terms of the Green Mountain/Big Sky MOU and the Green Mountain/Big Sky/CDN Joint Interest Agreement, and in reliance on the promises of Green Mountain to provide sanitary sewer service to the Big Sky Service Area, Big Sky and CDN have expended hundreds of thousands of dollars, including the payment of Big Sky’s and Green Mountain’s legal fees, accounting fees, engineering fees, and administrative costs, in furtherance of the Green Mountain/Big Sky IGA.

102. Because the property within Big Sky remains undeveloped and does not yet yield significant tax revenue, CDN has been forced to advance these fees and costs to Green Mountain and will not be reimbursed unless the CDN Property is allowed to be developed.

### **A New Board at Green Mountain Reneges on its Past Legal Commitments**

103. From May 2018 through June 12, 2018, Big Sky and Green Mountain worked 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.

104. At the May 8, 2018 election, three new directors were elected to the five-member Green Mountain Board of Directors. The new directors were Alex Plotkin, Jeff Baker, and Adrienne Hanagan (the “New Directors”). Hanagan was elected board chair.

105. All of the New Directors had during the election campaign expressed varying degrees of opposition toward further growth and development in the Rooney Valley.

106. Upon taking office, the New Directors embarked on a course of action intended to repudiate the policy of Green Mountain of acting as a water and sanitation utility provider to all customers willing and able to pay for service, including related infrastructure costs, whether those customers were within Green Mountain’s boundaries or outside of them.

107. The New Directors used their control of access to the Green Mountain sanitation system to prevent the development of the CDN Property properties and to render it *de facto* open space.

108. In furtherance of the New Directors’ desire to halt development in the Rooney Valley and repudiate Green Mountain’s promises and contractual obligations to Big Sky and CDN, Green Mountain discharged their longtime general counsel. In their place, the New Directors retained Brian Matisse.

109. Matisse had responded to a “Request for Proposal” (RFP) from Green Mountain which stated that the special counsel would be asked to opine on the validity of the Green Mountain/Big Sky 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 would ask special counsel to opine about the possible consequences including litigation if “one party” stopped all further engineering work regarding “the IGA’s.”

110. The New Directors instructed Matisse to draft a letter. That letter stated 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.”

111. 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 Green Mountain/Big Sky IGA.

112. From September 2018 to March 2019, a group of activists from Solterra and Lakewood engaged in a lobbying campaign intended to cause the Lakewood City Council to force Green Mountain to repudiate its contractual obligations under the Green Mountain/Big Sky IGA.

113. Upon information and belief, these activists were in communication with and coordinated their efforts with the New Directors.

114. The leader of these lobbying efforts was John Henderson, a resident of Solterra who has expressed hostility toward any further development in the Rooney Valley.

115. Upon information and belief, Henderson coordinated his efforts with various special interest groups working to prohibit development in the Rooney Valley, including but not limited to encouraging members to attend Lakewood City Council meetings with the purpose of getting the council to oppose the Green Mountain/Big Sky 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: “**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.”

116. Henderson demanded Lakewood hold a public hearing on the issue of whether the Green Mountain/Big Sky IGA violated the terms of the Big Sky Service Plan as a “material modification” of the Service Plan. Lakewood declined and its City Attorney concluded in an executive summary that the Green Mountain/Big Sky IGA was not a material modification of the Big Sky Service Plan.

117. Subsequently, Green Mountain’s attorney Brian Matisse wrote to Lakewood that the “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.” Green Mountain’s attorney stated that Lakewood’s conclusion that the Green Mountain/Big Sky IGA was not a material modification of the Big Sky Service Plan was “*a reasonable analysis*” and that he did “*not disagree with the opinions expressed in that document*” (emphasis added).

118. The New Directors disagreed with Matisse’s letter.

119. The New Directors then terminated Matisse and ordered him to retract the letter.

120. The New Directors then appointed Henderson as its “Title 32 consultant” to the board.

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

### **Green Mountain’s Invalidation of the Green Mountain/Big Sky IGA**

122. On April 9, 2019, the Green Mountain Board of Directors enacted the Resolution of the Green Mountain Water and Sanitation District Terminating the Intergovernmental Agreement for Extra-Territorial Sewer Service with Big Sky Metropolitan District No. 1 (the

“April 9, 2019 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 9<sup>th</sup> day of April, 2019.”

123. Section 10.2 of the Green Mountain/Big Sky 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[.]” None of the conditions allowing termination of the Green Mountain/Big Sky IGA have taken place.

124. Without sanitary sewer service, CDN cannot construct a single home or business on its property when Lakewood’s Vested Rights Agreement allows it to construct 1,630 dwelling units and 4,000,000 square feet of non-residential development.

125. No sewer service means no development.

126. CDN, relying on the repeated legal and contractual promises made by Green Mountain to provide services to Big Sky (which is the CDN Property) has reimbursed *Green Mountain* hundreds of thousands of dollars for its engineering costs and attorneys’ fees to successfully litigate the Fossil Ridge Litigation on behalf of both Green Mountain and Big Sky.

127. CDN has an agreement with a purchaser to purchase the CDN Property for millions. The purchaser remains ready, willing, and able to complete the purchase. Green Mountain’s announcement of a permanent refusal to provide sanitary sewer services to the Rooney Valley means CDN and the purchaser cannot complete the purchase.

**FIRST CLAIM FOR RELIEF  
(Violation of the Takings Clause)**

128. Plaintiff incorporates the allegations contained in this Complaint.

129. The Takings Clause in the Fifth Amendment of the United States Constitution states “private property [shall not] be taken for public use, without just compensation.” The Fifth Amendment of the United States Constitution has been incorporated into the Due Process Clause of the Fourteenth Amendment and is binding on the states and their political subdivisions.

130. The Takings Clause of the Colorado Constitution, Article II, section 15, similarly states that “[p]rivate property shall not be taken or damaged, for public or private use, without just compensation.”

131. CDN has a property interest in constructing commercial and residential units on its property, or selling it to a developer to construct the units.

132. The property interest is reaffirmed in the Vested Rights Agreement with CDN. C.R.S. § 24-68-103.

133. The Vested Rights Agreement establishes CDN's vested property right to develop the property and construct 1,630 dwelling units and 4,000,000 square feet of non-residential development.

134. CDN cannot develop the property without sanitary sewer service.

135. Green Mountain had previously committed to provide sanitary sewer services to CDN's property in the Big Sky "will serve" letter, the Green Mountain/Big Sky MOU, the Green Mountain/Big Sky IGA, the Green Mountain/Fossil Ridge IGA, the Green Mountain/Big Sky/CDN Joint Interest Agreement, and its filings with the Jefferson County District Court in the Fossil Ridge Litigation.

136. CDN had a legitimate expectation that it would receive sanitary sewer services from Green Mountain because of the Big Sky "will serve" letter, the Green Mountain/Big Sky MOU, Green Mountain's representations in the Fossil Ridge Litigation, the Green Mountain/Fossil Ridge IGA, the Green Mountain/Big Sky/CDN Joint Interest Agreement, and the Green Mountain/Big Sky IGA.

137. Green Mountain is a public utility.

138. Green Mountain's purpose is to provide sanitary sewer services. *See* C.R.S. § 40-1-103(1)(a)(I).

139. Green Mountain has no zoning power or power to determine land use.

140. Green Mountain is required to provide those services or provide for an equivalent replacement. C.R.S. § 40-7-102.

141. Green Mountain has deprived CDN of sanitary sewer services. Without provision of sanitary sewer services, CDN cannot build a single home or commercial structure on its property as they would lack sewer services.

142. Green Mountain's actions are a *per se* taking

143. Green Mountain's act terminating the Green Mountain/Big Sky IGA and refusing to provide sanitary sewer service to CDN constitutes a *per se* taking because it does not substantially advance any legitimate state interest.

144. Green Mountain does not have a legitimate state interest in backing out of its prior agreements with CDN and another governmental entity, Big Sky, or in misrepresenting to the Jefferson County District Court in the Fossil Ridge Litigation that it would provide services that it will now not provide.

145. Green Mountain's act also constitutes a *per se* taking because it denied CDN any economically viable use of CDN's property.

146. CDN has a contract to sell the CDN Property for millions to a purchaser who desires to develop the property as provided for by the Vested Rights Agreement. The transaction cannot be completed because of Green Mountain's actions. There is now no economically beneficial use of the property.

147. Green Mountain's actual reason for terminating the Green Mountain/Big Sky IGA is to stop growth in undeveloped parcels.

148. This violates Green Mountain's limited statutory authority to provide sanitary sewer services.

149. Green Mountain does not have the power to make zoning or land use decisions.

150. Green Mountain has the power of eminent domain. C.R.S. § 32-1-1004.

151. Green Mountain has not paid CDN just compensation for taking the CDN Property.

152. Because Green Mountain's actions completely impair CDN's use and enjoyment of its property, Green Mountain has violated the Taking Clause of the United States and Colorado Constitutions and CDN is owed just compensation.

153. In the alternative, if the taking has not eliminated all economically beneficial use of the Property, a regulatory taking has occurred.

154. The action's economic effect has prevented CDN from building any of the permitted 1,630 dwelling units and 4,000,000 square feet of non-residential development which Lakewood has granted to CDN a vested right to construct. CDN's remaining use of the land is nonexistent.

155. Green Mountain's action has interfered with CDN's reasonable investment-backed expectations of the property, based on Green Mountain's past representations and approval of providing sanitary sewer service to CDN.

156. Green Mountain had the specific intent to take the CDN Property and have it become *de facto* open space by preventing all future development on the property, achieved by cutting off sanitary sewer service to it.

157. The Green Mountain New Directors and their allies, including John Henderson, stated this was their intent in public statements and, even if it was not their intent, this was the direct, natural, or probable result of their actions.



158. These acts to deny sanitary sewer services were *ultra vires* and outside of their authority.

159. These acts were an abuse of Green Mountain's statutory authority which is limited to the provision of sanitary sewer services.

160. Green Mountain has violated the Takings Clause of the United States and Colorado Constitutions and CDN is owed just compensation.

**SECOND CLAIM FOR RELIEF  
(Failure to Serve by Public Utility)**

161. Plaintiff incorporates the allegations contained in this Complaint.

162. Green Mountain is a public utility charged with operating and maintaining sanitary sewer services. C.R.S. § 40-1-103(1)(a)(I).

163. Green Mountain agreed to provide extra-territorial sanitary sewer services to CDN's property, which is manifested in the Big Sky "will serve" letter, the Green Mountain/Big Sky MOU, the Green Mountain/Big Sky IGA, the Green Mountain/Fossil Ridge IGA, the Green Mountain/Big Sky/CDN Joint Interest Agreement, and the representations made by Green Mountain to the Jefferson County District Court in in the Fossil Ridge Litigation.

164. Green Mountain's actions abandoning its service to CDN violates state law as it has abandoned service without equivalent replacement. C.R.S. § 40-7-102; 4 C.C.R. 723-5: 5103(a).

165. CDN has been damaged as a result of Green Mountain's improper abandonment of sanitary sewer services, as it cannot exercise its rights in the property to develop it for residential or commercial use or sell it to another party to develop the same.

**THIRD CLAIM FOR RELIEF  
(Violation of the Vested Property Rights Act)**

166. Plaintiff incorporates the allegations contained in this Complaint.

167. The Vested Rights Agreement grants CDN the vested right to construct 1,630 dwelling units and 4,000,000 square feet of non-residential development.

168. The Vested Rights Agreement was established pursuant to C.R.S. §§ 24-68-101 to -106, by which a local government in Colorado can recognize a vested property right that a property owner has based on fulfillment of the local government's application and permitting process for a site specific development plan.

169. Once a vested property right is established, any zoning or land use action by a local government to impair, prevent, or diminish the vested property is precluded. C.R.S. § 24-68-105.

170. Lakewood's Vested Rights Agreement granted to CDN is enforceable against Green Mountain because a vested property right recognized by one governmental entity with jurisdiction over a site specific development plan is effective against any other governmental entity with jurisdiction over the property. C.R.S. § 24-68-106.

171. Green Mountain has impaired and diminished CDN's vested property rights through its purported land use decision to withhold sanitary sewer service.

172. CDN has been damaged by Green Mountain's action to withhold sanitary sewer service.

173. Green Mountain's action prevents CDN from building any dwelling units or non-residential development on this property, resulting in the complete loss of the vested property right.

174. Green Mountain has not paid just compensation.

175. Green Mountain has violated the Vested Property Rights Act and CDN is entitled to its remedies available under the statute.

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

176. Plaintiff incorporates the allegations contained in this Complaint.

177. Green Mountain made a promise to CDN (and Big Sky) that Green Mountain would receive wastewater generated by the property owned by CDN within Big Sky and transmit that wastewater to Metro for treatment and disposal. Green Mountain made this promise in its representations to the Jefferson County District Court in the Fossil Ridge Litigation, the Green Mountain/Big Sky/CDN Joint Interest Agreement, the Big Sky "will serve" letter, the Green Mountain/Big Sky MOU, the Green Mountain/Fossil Ridge IGA, and the Green Mountain/Big Sky IGA.

178. It was foreseeable that Green Mountain should have expected that the promise would induce reliance, action, or forbearance by CDN.

179. CDN in fact reasonably and substantially relied on the promise to its detriment. CDN entered into the Green Mountain/Fossil Ridge IGA and the Green Mountain/Big Sky/CDN Joint Interest Agreement and advanced the funds to Big Sky to pay hundreds of thousands of dollars of Green Mountain's engineering and legal fees in the Fossil Ridge Litigation, consistent with the Green Mountain/Big Sky MOU, the Big Sky "will serve" letter, and in reliance on the Green Mountain/Big Sky IGA. CDN has entered into a contract to sell the Property to a purchaser

based on Green Mountain's promise to provide sanitary sewer service and conditioned on CDN obtaining sanitary sewer service.

180. CDN has suffered damages as a result of Green Mountain's breach of its promise. This promise must be enforced to prevent injustice.

**FIFTH CLAIM FOR RELIEF**  
**(42 U.S.C. § 1983 Due Process Violation)**

181. Plaintiff incorporates the allegations contained in this Complaint.

182. 42 U.S.C. § 1983 provides that “[e]very person who, under color of any statute, ordinance, regulation, custom, or usage of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .”

183. Green Mountain is a “person” within the meaning of 42 U.S.C. § 1983.

184. CDN has a vested property right to develop its property or sell its property to a buyer to develop, as established in the Vested Rights Agreement. C.R.S. § 24-68-103.

185. CDN relied on its vested rights in the property to, *inter alia*, advance the legal and engineering fees and costs to Big Sky for Green Mountain's benefit in the Fossil Ridge Litigation and in entering into a contract to sell its property and expend the costs to undertake that contract.

186. The United States Constitution's Fourteenth Amendment states that no state shall “deprive any person of . . . property[] without due process of law.”

187. Green Mountain has acted under the color of law by issuing the April 9, 2019 Resolution voiding the Green Mountain/Big Sky IGA and refusing to provide sanitary sewer services to CDN's property.

188. Green Mountain's action deprived CDN of its vested rights in its property.

189. Green Mountain provided CDN with no due process before it deprived CDN of its vested rights in its property.

190. Green Mountain has reneged on its repeated commitments to CDN. Green Mountain represented its commitment to provide those services in the Big Sky “will serve” letter, the Green Mountain/Big Sky MOU, the Green Mountain/Big Sky IGA, the Green Mountain/Fossil Ridge IGA, the Green Mountain/Big Sky/CDN Joint Interest Agreement, and the representations made by Green Mountain to the Jefferson County District Court in in the Fossil Ridge Litigation to secure relief it sought and represented facts as true which it now seeks to rebuke.

191. Green Mountain's actions are arbitrary and capricious.

192. Green Mountain's stated reasons are pretextual and *ultra vires*.

193. Green Mountain's statutory authority is to provide sanitary sewer services.

194. Green Mountain lacks the statutory authority to make zoning decisions.

195. Green Mountain is attempting to control land use in its service area by withholding sanitary sewer services it is required to provide.

196. Lakewood, which has the right to determine zoning in the Rooney Valley, has determined that CDN's use of its Property is proper and granted CDN the Vested Rights Agreement.

197. Because of Defendant's misconduct, Plaintiff has been damaged in an amount to be proven at trial.

**SIXTH CLAIM FOR RELIEF**  
**(42 U.S.C. § 1983 Takings Violation)**

198. Plaintiff incorporates the allegations contained in this Complaint.

199. 42 U.S.C. § 1983 provides that “[e]very person who, under color of any statute, ordinance, regulation, custom, or usage of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .”

200. Green Mountain is a “person” within the meaning of 42 U.S.C. § 1983.

201. CDN has a vested property right in its ability to develop its property or sell its property to a buyer to develop, as provided in the Vested Rights Agreement. C.R.S. § 24-68-103. CDN relied on its vested rights in the property to, *inter alia*, advance the legal and engineering fees and costs to Big Sky for Green Mountain's benefit in the Fossil Ridge Litigation and in entering into a contract to sell its property and expend the costs to undertake that contract.

202. The Takings Clause in the Fifth Amendment of the United States Constitution states “private property [shall not] be taken for public use, without just compensation.”

203. Green Mountain has acted under the color of law by issuing the April 9, 2019 Resolution to void the Green Mountain/Big Sky IGA and refusing to provide sanitary sewer services to CDN's property.

204. Green Mountain's actions completely impair CDN's use and enjoyment of its property.

205. Green Mountain's actions were arbitrary and capricious.

206. The board has fired attorneys who gave it legal advice which it did not want to hear and then hired as a "consultant" Henderson whose stated goal is to turn the CDN Property into *de facto* open space.

207. Green Mountain's April 9, 2019 Resolution ignores repeated prior commitments Green Mountain has made to provide sanitary sewer service to the CDN Property.

208. Green Mountain's action was a taking of the CDN Property.

209. Green Mountain has not paid CDN just compensation for taking its property. As a result, Green Mountain has violated the Takings Clause.

210. Because of Defendant's misconduct, Plaintiff has been damaged in an amount to be proven at trial.

#### **SEVENTH CLAIM FOR RELIEF (Impairment of Contract)**

211. Plaintiff incorporates the allegations contained in this Complaint.

212. Article 1, section 10 of the United States Constitution states that "[n]o state shall . . . pass any . . . impairing the obligations of contracts[.]"

213. Article II, section 11 of the Colorado Constitution similarly states that "[n]o . . . law impairing the obligation of contracts . . . shall be passed by the general assembly."

214. Lakewood has granted CDN the Vested Rights Agreement which established CDN's vested right in the site specific development plan of the property. C.R.S. § 24-68-103.

215. Green Mountain's rescission of the Green Mountain/Big Sky IGA has impaired CDN's Vested Rights Agreement and the Green Mountain/Big Sky/CDN Joint Interest Agreement.

216. CDN has lost its ability to use its vested contract rights to construct residential and commercial units on its property because Green Mountain is refusing to receive wastewater from the property.

217. Green Mountain’s rescission substantially impairs CDN’s Vested Rights Agreement because none of the vested development rights can be used or the land sold for others to use them.

218. Green Mountain’s substantial impairment was not reasonable or necessary and does not fulfill a legitimate public purpose.

219. Green Mountain’s substantial impairment frustrates CDN and Lakewood’s purpose in entering into the Vested Rights Agreement to allow for specified development.

220. Green Mountain’s substantial impairment is inconsistent with the statements Green Mountain made to the Jefferson County District Court in the Fossil Ridge litigation to secure dismissal of that action.

221. The April 9, 2019 Resolution is a breach of the valid Green Mountain/Big Sky IGA, the Big Sky “will serve” letter, the Green Mountain/Big Sky MOU, the Green Mountain/Fossil Ridge IGA, the Fossil Ridge Decree, and the Green Mountain/Big Sky/CDN Joint Interest Agreement.

222. This Court should hold that the April 9, 2019 Resolution violated the Contracts Clause of the United States and Colorado Constitutions and declare that the resolution is null, void, and without legal force or effect.

**EIGHTH CLAIM FOR RELIEF**  
**(Improper Retrospective Government Action)**

223. Plaintiff incorporates the allegations contained in this Complaint.

224. 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.

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

226. A law is retrospective if it impairs a vested right.

227. Lakewood executed the Vested Rights Agreement which established CDN’s vested right in the site specific development plan of the property. C.R.S. § 24-68-103.

228. The Green Mountain Board’s April 9, 2019 Resolution wiped out the contract rights of CDN in the Vested Rights Agreement, and impaired the public interest by denying CDN its vested right to develop the CDN Property.

229. The resolution denied sanitary sewer service to future residents and businesses operating on the CDN Property, defeated the bona fide expectations of CDN that it would receive sewer service from Green Mountain, and surprised CDN who relied on the Green Mountain/Big Sky IGA and the Green Mountain/Big Sky/CDN Joint Interest Agreement which had been properly ratified by Green Mountain.

230. CDN is an interested party under the Green Mountain/Big Sky IGA, the Big Sky “will serve” letter, the Green Mountain/Big Sky MOU, the Green Mountain/Fossil Ridge IGA, the Fossil Ridge Decree, and the Green Mountain/Big Sky/CDN Joint Interest Agreement, whose rights are affected by Green Mountain’s April 9, 2019 Resolution. CDN 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, C.R.S. § 13-51-101 *et seq.*

231. This Court should hold that the April 9, 2019 Resolution violated the anti-retrospective provision of the Colorado Constitution and declare that the resolution is null, void, and without legal force or effect.

**NINTH CLAIM FOR RELIEF  
(Breach of Contract)**

232. Plaintiff incorporates the allegations contained in this Complaint.

233. Green Mountain, Big Sky, and CDN entered into the Green Mountain/Big Sky/CDN Joint Interest Agreement regarding the Fossil Ridge Litigation.

234. CDN and Big Sky performed under the Green Mountain/Big Sky/CDN Joint Interest Agreement by, *inter alia*, paying Green Mountain’s attorney’s fees in the Fossil Ridge Litigation.

235. Green Mountain has failed to perform its obligations under the Green Mountain/Big Sky/CDN Joint Interest Agreement by refusing to provide sanitary sewer service to CDN.

236. Green Mountain’s breach has caused CDN damages.

237. In addition, settlement agreements are contracts.

238. In the Fossil Ridge Litigation, Big Sky, Green Mountain, and Fossil Ridge entered into a settlement agreement in the form of the Fossil Ridge Decree.

239. The settlement agreement was an outcome of the Green Mountain/Big Sky/CDN Joint Interest Agreement.

240. Big Sky, Green Mountain, and Fossil Ridge jointly moved the Jefferson County District Court to enter the binding decree.

241. The Jefferson County District Court entered the settlement agreement based on the representations of the parties.

242. In the decree, Green Mountain represented to the Jefferson County District Court that it “desires to provide sewer service to Big Sky within the Future Development Area” and that Green Mountain’s preconditions to provide those services had been satisfied, in the form of the Fossil Ridge/Big Sky IGA.

243. Green Mountain was stating its true intentions when it told the district court that it wanted to provide sanitary sewer services to Big Sky.

244. The parties to the decree intended that, as a result of the Fossil Ridge Decree, Green Mountain would provide sanitary sewer service to the CDN Property within Big Sky.

245. Green Mountain’s provision of sanitary sewer service would directly benefit CDN.

246. CDN is thus a third-party beneficiary of the Fossil Ridge Decree.

247. CDN is also a third-party beneficiary of the Big Sky “will serve” letter, the Green Mountain/Big Sky MOU, the Green Mountain/Big Sky IGA, and the Green Mountain/Fossil Ridge IGA.

248. In all these agreements, CDN is a contemplated third-party beneficiary. The parties intended by all of these agreements for Green Mountain to provide sanitary sewer service to the CDN Property within Big Sky. In these agreements, CDN is often mentioned by name, has contractual duties, and/or has financial commitments.

249. Green Mountain has breached the Fossil Ridge Decree, the Big Sky “will serve” letter, the Green Mountain/Big Sky MOU, the Green Mountain/Big Sky IGA, and the Green Mountain/Fossil Ridge IGA by refusing to provide sanitary sewer service to Big Sky, including the CDN Property.

250. Fossil Ridge, Big Sky, and CDN have performed all of their respective obligations under the Fossil Ridge Decree, the Big Sky “will serve” letter, the Green Mountain/Big Sky MOU, the Green Mountain/Big Sky IGA, the Green Mountain/Fossil Ridge IGA, the Green Mountain/Big Sky/CDN Joint Interest Agreement, and the Fossil Ridge/Big Sky IGA.

251. As a third-party beneficiary, CDN is thus entitled to enforce the Fossil Ridge Decree, the Big Sky “will serve” letter, the Green Mountain/Big Sky MOU, the Green Mountain/Big Sky IGA, and the Green Mountain/Fossil Ridge IGA, and seek damages and specific



performance for Green Mountain's misrepresentations to the Jefferson County District Court and breaches of all these agreements.

**TENTH CLAIM FOR RELIEF  
(Mandamus)**

252. Plaintiff incorporates the allegations contained in this Complaint.

253. In the alternative, CDN has a clear right to the relief it seeks from Green Mountain for the district to provide sanitary sewer services. CDN has a vested right from Lakewood to develop its property with commercial and residential development, which requires the provision of sanitary sewer services.

254. Green Mountain stated in the Green Mountain/Big Sky IGA, the Big Sky "will serve" letter, the Green Mountain/Big Sky MOU, the Green Mountain/Big Sky/CDN Joint Interest Agreement, the Green Mountain/Fossil Ridge IGA, and its representations made to the Jefferson County District Court in the Fossil Ridge Litigation that it would provide sanitary sewer services to CDN's property.

255. Green Mountain has a clear duty to perform the act requested, a duty which it has repeatedly reaffirmed in the above agreements and legal proceedings.

256. As a public utility, it has an obligation to provide these services to CDN.

257. Provision of the services is an administrative act that is ministerial in nature and Green Mountain lacks discretion to refuse to provide the sanitary sewer services it has repeatedly affirmed it was required to provide and would provide.

258. Green Mountain does not have the authority to make zoning decisions as it purports to do by its refusal to provide sanitary sewer services.

259. If the Court finds that there is no other remedy, then it should order Green Mountain to provide these services and award CDN its damages related to Green Mountain's failure to provide them. C.R.C.P. 106(a)(2).

**LEAVE TO AMEND**

260. Plaintiff respectfully requests leave to amend this Complaint to add or delete any claims, relief requested (including any right to exemplary damages), or parties after discovery reveals facts regarding the same, after the exchange of initial C.R.C.P. 26 disclosures, after the expiration of the Colorado Governmental Immunity Act's 90-day notice, and upon sufficient proof.

## **RELIEF REQUESTED**

Wherefore, Plaintiff respectfully requests the following relief:

- A. Judgment in favor of Plaintiff and against Defendant on all claims;
- B. Actual and compensatory damages as proven;
- C. CDN's transaction costs caused by Green Mountain's refusal to honor its prior agreement to provide sanitary sewer services to the CDN Property;
- D. Declaratory relief as proven;
- E. An award of just compensation for the damages to CDN's vested rights suffered by Green Mountain's taking of the property;
- F. An order by the Court that Green Mountain cannot abandon sanitary sewer services to CDN's property and an award of damages to CDN suffered by Green Mountain's abandonment;
- G. An award of just compensation for the damages to CDN's vested rights suffered by Green Mountain's taking of the property and an order by the Court of specific performance requiring Green Mountain to provide sanitary sewer service to CDN;
- H. CDN's damages caused by Green Mountain's breach of its promise to provide sanitary sewer service, including but not limited to the attorney and engineering fees advanced by CDN for Green Mountain's benefit and CDN's damages for being unable to sell the Property, as well as an order of preliminary and permanent injunctive relief enforcing Green Mountain's promise to provide sanitary sewer service to the Big Sky Service Area;
- I. Actual and compensatory damages for the deprivation of CDN's vested right in the property;
- J. A declaration that the April 9, 2019 Resolution was unconstitutional, null, void, and without legal effect;
- K. Actual and compensatory damages and/or specific performance for Green Mountain's breach of the Fossil Ridge Decree, the Big Sky "will serve" letter, the Green Mountain/Big Sky MOU, the Green Mountain/Big Sky IGA, the Green Mountain/Fossil Ridge IGA, and the Green Mountain/Big Sky/CDN Joint Interest Agreement;

- L. An order by the Court that Green Mountain must provide sanitary sewer services to CDN's property and an award of damages to CDN caused by Green Mountain's failure to provide those services;
- M. Attorneys' fees and costs according to law;
- N. Interest pursuant to law; and
- O. Such other and further relief as the Court deems fit.

Respectfully submitted this 25th day of July, 2019.

**FOX ROTHSCHILD LLP**

*s/ Marsha M. Piccone*

Marsha M. Piccone, #15268

Caleb Durling, #39253

1225 17th Street, Suite 2200

Denver, CO 80202

*Attorneys for Plaintiff*

Plaintiff's address:

1199 W. Hastings St., Suite 200

Vancouver, BC V6E 3T5 Canada