

JEFFERSON COUNTY DISTRICT COURT, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED: July 30, 2019 10:48 AM FILING ID: B7CAC5A3319C4 CASE NUMBER: 2019CV31172
<p>Plaintiff: STREAM REALTY ACQUISITION, LLC, a Texas limited liability company,</p> <p>v.</p> <p>Defendant: GREEN MOUNTAIN WATER AND SANITATION DISTRICT, a quasi-municipal corporation and subdivision of the State of Colorado.</p>	COURT USE ONLY
Attorneys for Plaintiff: Frank W. Visciano, #7274 Charles E. Fuller, #43923 Senn Visciano Canges P.C. 1700 Lincoln Street, Suite 4300 Denver, CO 80203 Telephone: (303) 298-1122 Facsimile: (303) 296-9101 FVisciano@sennlaw.com ; CFuller@sennlaw.com ;	Case Number: 2018CV031475 Division/Courtroom: 275
COMPLAINT	

Plaintiff Stream Realty Acquisition, LLC (“**Stream**”), for its Complaint against Defendant Green Mountain Water and Sanitation District (“**Green Mountain**”), alleges the following:

A. INTRODUCTION

1. Stream is a real estate development company that for well over two years has implemented plans to develop property in Jefferson County, Colorado it has had under contract to purchase, since November 2017 from Three Dinos, LLC, a Colorado limited liability company (“**Three Dinos**”). Three Dinos and Stream first entered into a contract to purchase the subject property on May 15, 2017. That contract was reinstated by the parties by a Contract to Buy and

Sell Real Estate (Land) dated November 1, 2017, which thereafter was amended by Amendments dated January 3, 23, and 30, 2018, February 6 and 12, 2018, September 26, 2018, March 28, 2019, and May 3, 2019 (all collectively, “**Stream/Three Dinos Contract**”). The property to be purchased by Stream consists of approximately 61.07 acres in Jefferson County, Colorado, as more particularly described in the Stream/Three Dinos Contract (“**Stream Property**”).

2. The Stream Property is part of the Green Tree Metropolitan District (“**Green Tree**”).

3. Big Sky Metropolitan District No. 1 (“**Big Sky**”), is a metropolitan district validly organized and existing pursuant to the Special District Act, and is a quasi-municipal corporation and political subdivision of the State of Colorado. Big Sky entered into with Green Mountain an intergovernmental agreement under which Green Mountain agreed to provide extraterritorial sanitary sewer service by receiving wastewater generated by properties within Big Sky from Big Sky’s extraterritorial customers, and transmitting that wastewater to Metro Wastewater for treatment and disposal. This agreement was consistent with an earlier intergovernmental agreement Green Mountain entered into to provide such services to properties located in a “Future Development Area”, which included properties owned by Three Dinos, including the Stream Property.

4. In furtherance of its prior agreements and promises to provide sanitary sewer services to Big Sky and thus Three Dinos and Stream as its property purchaser, Green Mountain, in September 2015, issued a “will serve” letter, stating it was willing to provide sanitary sewer service to Big Sky. Another such “will serve” letter was delivered by Green Mountain in

November 2016 to Green Tree Metropolitan Districts Nos. 1 and 2, which serve the Three Dinos property to be purchased by Stream.

5. Beginning in 2019, and despite its previous agreements and promises, Green Mountain, acting through its new Board of Directors in a thinly-veiled effort to thwart development, took certain actions, culminating in the enactment of a resolution on April 9, 2019, purporting to declare as “invalid . . . since inception” its agreement to provide the sanitary sewer services to Big Sky, including the Stream Property.

6. Stream brings this action to enforce, as a third party beneficiary, its rights arising under Green Mountain’s valid agreements and promises to provide sanitary sewer services to the properties including the Stream Property, and to recover Stream’s substantial, continuing, and increasing damages resulting from Green Mountain’s attempted repudiation and breach, without legal cause, justification, or excuse, of its agreements and promises, on which Stream has reasonably relied for over two years.

B. PARTIES, JURISDICTION, AND VENUE

7. Plaintiff Stream is a Texas limited liability company with its principal place of business in Dallas, Texas, and with offices in Denver, Colorado.

8. Defendant Green Mountain was organized in 1951 and is a quasi-municipal corporation and political subdivision of the State of Colorado, governed by Title 32 of the Colorado Revised Statutes, C.R.S. §§32-1-101, *et seq.* (“**Special District Act**”). Green Mountain’s principal offices are located at 13919 West Utah Avenue, Lakewood CO 80225.

9. This Court has jurisdiction over this action and Defendant Green Mountain pursuant to C.R.S. §§13-1-124, *et seq.*, as it is a political subdivision of Colorado.

10. Venue is proper pursuant to C.R.S. 98(c) because Green Mountain is located and conducts business in Jefferson County, Colorado.

C. GENERAL ALLEGATIONS

11. The Service Plan for the Big Sky Big Sky Metropolitan Districts Nos. 1-7 (“Big Sky Districts”) was approved by the Lakewood City Council in September 2014 (“**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.” “Public Improvements” are defined in 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, which defines a “metropolitan district” as a special district that provides two or more municipal services, including sanitation, and a “sanitation district” is one that provides for storm and/or sanitary sewers, treatment and disposal works and facilities, “and all necessary or proper equipment and appurtenances incident thereto.” *See* C.R.S. §32-1-103.

12. Big Sky was formed as a mechanism to finance and construct public infrastructure, including a sanitary sewer collection system.

13. Neither Big Sky nor Green Mountain treats wastewater. Each is 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 authorizes Green Mountain to provide extra-territorial service, and that

Act and the Big Sky Service Plan authorize Big Sky to collect wastewater from properties located outside of its boundaries.

14. Green Mountain collects wastewater from properties located within its boundaries and from customers located outside its boundaries. The wastewater is transmitted to facilities owned and operated by the Metropolitan Denver Wastewater Reclamation District No. 1, now known as Metro Wastewater (“**Metro**”) under a 1983 Special Connector's Sewage Treatment and Disposal Agreement (“**Special Connector’s Agreement**”).

15. Solterra is the largest single subdivision within Lakewood and is adjacent to Big Sky. Green Mountain collects wastewater generated by properties within the Solterra subdivision, located outside its boundaries, under a November 2014 “Amended and Restated Intergovernmental Agreement for Extra-Territorial Sewer Service” (“**Green Mountain/Fossil Ridge IGA**”), between Green Mountain and Fossil Ridge Metropolitan District No. 1 (“**Fossil Ridge No. 1**”), a special district formed by employees and agents of Brookfield Residential Properties (“**Brookfield**”) to develop public infrastructure within the Solterra subdivision. The original Intergovernmental Agreement for Extra-Territorial Sewer Service was entered into between Fossil Ridge No. 1 and Green Mountain in January 2008.

16. The Green Mountain/Fossil Ridge IGA contemplated Green Mountain providing sanitary sewer service to a “Service Area” that was outside the boundaries of Green Mountain and encompassing the entire Solterra subdivision. This Service Area was depicted on the map attached as Exhibit A to the Green Mountain/Fossil Ridge IGA.

17. Big Sky and Solterra are located within a geographic area known as the “Rooney Valley”, to which Lakewood does not provide sanitary sewer service. Big Sky and

Solterra are within the service area of Metro, and Green Mountain is permitted to serve them under the Special Connector's Agreement.

18. In January 2008 the Lakewood City Council directed its City manager and engineer to request that Metro include the Rooney Valley not located within Lakewood to be included in the Metro service area. This request encompassed the property now owned by Three Dinos, Lakewood's request was approved by Metro.

19. In 2005 Green Mountain's Board of Directors commissioned a feasibility study regarding its provision of sanitary sewer service to the Rooney Valley, including the Solterra development property and the entire area later included within Big Sky Metropolitan Districts Nos. 1-7. The resulting January 2006 feasibility study concluded that "[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."

20. The Green Mountain/Fossil Ridge IGA further contemplated service to a "**Future Development Area**," which included the entirety of the Big Sky Districts, the Lightner area (contemplated for inclusion within a Big Sky District under the Big Sky Service Plan), and three parcels located to the west of the Big Sky Districts along State Highway C-470, labeled on the map as "Rooney". The "Rooney" parcels are owned by Three Dinos; the Lighteners FDN parcel is owned by Cardel Homes ("**Cardel**"); and the CDN property is owned by CDN Red Rocks, LP ("**CDN**"). The Solterra parcel has been substantially built out as single family and multi-family residential unit by the developer, Brookfield.

21. When the Green Mountain/Fossil Ridge IGA was entered into, Fossil Ridge No. 1 was controlled by a board of directors composed of Brookfield's employees and agents.

22. Paragraph 2.6 of the Green Mountain/Fossil Ridge IGA states in pertinent part:

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. [Emphasis added.]

23. Fossil Ridge No. 1 financed and constructed a sanitary sewer system in accordance with the Green Mountain/Fossil Ridge IGA sufficiently large to accommodate wastewater flows from the Future Development Area, including the Three Dinos, Cardel, and CDN properties.

24. Following discussions with Big Sky about receiving sanitary sewer service, Green Mountain issued, on September 8, 2015, a “will serve” letter (copy is **Exhibit 1** hereto), stating that Green Mountain was willing to provide sanitary sewer service to Big Sky.

25. Following receipt of the “will serve” letter, and pursuant to an August 31, 2015 “Memorandum of Understanding Regarding Costs Associated with Extra-Territorial Service Request” (“**MOU**”), 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. Big Sky has paid all of Green Mountain's costs associated with obtaining sanitary sewer service from Green Mountain.

26. In January 2015 Fossil Ridge No. 1 took the position that it should be reimbursed under the Green Mountain/Fossil Ridge 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. Big Sky and Green Mountain took the position that Fossil Ridge No. 1's demand was contrary to paragraph 2.6 of the Green Mountain/Fossil Ridge IGA. Green Mountain required that the dispute with Fossil Ridge No. 1 be resolved before it would enter into an extraterritorial service agreement with Big Sky.

27. In September 2017 Green Mountain and Big Sky filed suit against Fossil Ridge No. 1, Case No. 2017CV031368, Jefferson County District Court (the “**Fossil Ridge Litigation**”), seeking a declaratory judgment that no money would be owed to reimburse Fossil Ridge No. 1 for water system improvements, and a determination of the amount to be owed by Big Sky to Fossil Ridge No. 1 for oversizing the Fossil Ridge Sanitary Sewer System to accommodate wastewater flows from the Future Development Area, including the Three Dinos, Cardel, and CDN properties. Under a Joint Interest Agreement, Big Sky paid Green Mountain's legal fees and costs in the Fossil Ridge Litigation.

28. The Board of Directors of Fossil Ridge No. 1 resigned on June 30, 2017. The Board of Directors of the Fossil Ridge Metropolitan District No. 3 (“**Fossil Ridge No. 3**”) then filed motions with the Jefferson County District Court seeking the appointment of a new Board of Directors for Fossil Ridge No. 1. Fossil Ridge No. 3 was under the control of a Board of Directors composed of homeowners within their District. Fossil Ridge No. 1 controlled the provision of public services within Solterra. The Fossil Ridge No. 3 homeowners argued that these public services needed to be managed by a Board of Directors composed of homeowner representatives.

29. The Jefferson County District Court 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 its next Board election in May 2018.

30. As part of the resolution of the Fossil Ridge Litigation, Big Sky, Fossil Ridge, and CDN entered into an “Intergovernmental Agreement Regarding Reimbursement for Rooney Valley Sanitary Sewer System Improvements” (“**Big Sky/Fossil Ridge IGA**”), which became a part of the Declaratory Judgment and Decree entered by the Jefferson County District Court on April 5, 2018.

31. The Big Sky/Fossil Ridge IGA provided in pertinent part that:

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 Three 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; and

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.

32. The Declaratory Judgment and Decree entered on April 5, 2018 removed the last legal obstacle for Green Mountain to fulfill its repeated promises to provide sanitary sewer service to Big Sky and the Future Development Area, which included the Stream Property.

33. On May 8, 2018 an “Intergovernmental Agreement for Extra-Territorial Sewer Service” was entered into by Big Sky and Green Mountain (“**Big Sky/Green Mountain IGA**”, copy is Exhibit 2 hereto), which was approved by Green Mountain’s Board of Directors on May 8, 2018, and by Big Sky’s Board of Directors on May 14, 2018.

34. The Big Sky/Green Mountain IGA is 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, including the Stream Property, to have access to Green Mountain's sanitary sewer system to transmit wastewater for treatment by Metro. Under the Big Sky/Green Mountain IGA, Green Mountain would receive tap fee income in excess of \$6 million, subject to certain rebates to Big Sky for a period to reimburse it for financing certain improvements to be owned by Green Mountain.

35. The Big Sky/Green Mountain IGA unequivocally provides: “**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.**” (Emphasis added.) The map attached as Exhibit A to the Big Sky/Green Mountain

IGA clearly depicts the Big Sky Service Area to include the properties owned by Cardel, CDN, and Three Dinos, and hence the Stream Property.

36. Pursuant to the MOU and the Joint Interest Agreement between Big Sky and Green Mountain, and in reliance on the repeated promises by Green Mountain to provide sanitary sewer service to the Big Sky Service Area, Big Sky has (among other things) paid Big Sky's and Green Mountain's legal fees, accounting fees, engineering fees, and administrative costs, in furtherance of the Big Sky/Green Mountain IGA.

37. Between the execution of the Big Sky/Green Mountain IGA in May 2018 and the Green Mountain Board of Directors' meeting on June 12, 2018, Big Sky and Green Mountain worked to implement the approved IGA, with Big Sky's engineers providing plans for a lift station and other improvements to be constructed at its expense to allow transmission of wastewater generated from properties in the Big Sky Service Area into Green Mountain's system.

38. On May 8, 2018, three new directors, Alex Plotkin, Jeff Baker, and Adrienne Hanagan (the "New Directors") were elected to the Green Mountain Board. The New Directors took office on June 12, 2018, and proceeded to attempt to repudiate the policy of Green Mountain, in effect at least since at least the mid-2000's, of acting as a water and sanitation utility provider to all customers within the Green Mountain service area as approved by Metro who were willing and able to pay for service, including related infrastructure costs, whether the customers were within or outside Green Mountain's boundaries.

39. Without legal basis, the New Directors intend to use their control of access to the Green Mountain sanitation system to prevent the development of the properties owned by

Three Dinos, including the Stream Property (among others). This strategy eventually culminated in Green Mountain's repudiation of its obligations under the Big Sky/Green Mountain IGA.

40. Green Mountain delivered “will serve” letters to Big Sky in September 2015, to the Green Tree Metropolitan Districts Nos. 1 and 2 in November 2016, and to Cardel in March 2017. The “will serve” letter to Cardel contemplated that Cardel would make use of the Big Sky lift station and Green Mountain's willingness to serve Cardel was subject to the willingness to serve letter issued to Big Sky. The “will serve” letter to the Green Tree Districts, which serve the Three Dinos properties including the Stream Property, stated 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 on Green Tree reimbursing Big Sky for required oversizing of the Big Sky Sanitary Sewer System.

41. In a Request for Proposal dated August 15, 2018 (“**RFP**”), Green Mountain stated that its special counsel would be asked to opine on (among other things) the validity of the Big Sky/Green Mountain IGA, the exposure to Green Mountain if any party sought to invalidate the IGA, and any affirmative defenses in the event of a lawsuit against Green Mountain. The RFP indicated that the Green Mountain Board of Directors would ask special counsel to opine about possible litigation if “one party” stopped all further engineering work regarding “the IGA’s.”

42. On January 8, 2019, the New Directors voted to approve a motion instructing Green Mountain’s special counsel 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 instructed Green Mountain’s 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. The New Directors characterized this action as a “suspension” of the Big Sky/Green Mountain IGA. These actions by Green Mountain were without cause, legal justification, or excuse.

43. From September 2018 through March 2019, a group of activists from Solterra and elsewhere in Lakewood engaged in a lobbying campaign intended to have Lakewood City Council cause Green Mountain to repudiate its contractual obligations under the Big Sky/Green Mountain IGA. These activists were in communication with the New Directors. The leader of these lobbying efforts was John Henderson (“**Henderson**”), a Solterra resident who had expressed hostility to development in Rooney Valley.

44. Before the Lakewood City Council and the Green Mountain Board, Henderson, acting as its consultant, made a number of statements that were false or materially misleading. Henderson has inaccurately argued before the Lakewood City Council and on his blog site that the Big Sky/Green Mountain IGA violated the Big Sky Service Plan and constituted a “material modification” of the Service Plan as that term is defined in C.R.S. § 32-1-207. At a public meeting of the Jefferson County Commissioners and on his blog site,

Henderson has stated that the owners of the Three Dinos properties should donate their property around the C-470 interchange for use as open space. Henderson and others on the Green Mountain Board intend to misappropriate Stream's right to develop the Stream Property for commercial/industrial use and profit, and instead cause the Stream Property to be devoted to the public without just compensation.

45. On January 23, 2019, the Lakewood City Attorney delivered a public executive summary of an opinion letter he had issued to City 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."

46. On January 25, 2019, Green Mountain's special counsel wrote a letter to 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." Green Mountain's special counsel further stated that he found the executive summary to be a "reasonable analysis", and stated that he did "not disagree with the opinions expressed in that document." The special counsel was later ordered by the Green Mountain New Directors to retract this letter, and he subsequently was terminated as special counsel.

47. On April 11, 2019, Big Sky published and served a notice on the City of Lakewood and all "interested persons" pursuant to C.R.S. §32-1-207(3)(b). 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.

48. C.R.S. §32-1-207(3)(b) 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. The City of Lakewood declined to file an injunctive action before the 45-day deadline expired.

49. At its Board meeting on April 9, 2019, Green Mountain’s Board of Directors enacted a resolution (a copy is Exhibit 3 hereto), 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.”

50. As a result of numerous communications and interactions with representatives of Stream, Green Mountain has been advised, and has known since 2017, that Stream was intending to purchase and develop the Stream property; that Stream is and was intended to be a third party beneficiary of Green Mountain’s agreements and letters, described herein, to provide sanitary sewer service to the Stream Property, among others; that Stream was undertaking substantial efforts and incurring considerable expense in doing so; and that Stream was relying on Green Mountain’s agreements and promises to provide services to the Stream Property.

51. Stream’s plans for the development of the Stream Property, which plans are or should be known to Green Mountain, include the construction of five buildings with a total of approximately 700,000 square feet, with a future sixth building of approximately 60,000

square feet once the visitor's center is moved from its current location on the Property, and will include commercial offices and light industrial facilities to house target tenants (among others) in the aerospace industry, sports equipment manufacturers, breweries and distilleries.

52. As evidence of its agreements and promises to provide sanitary sewer service to the Stream Property, Green Mountain in 2017–2018 negotiated with Stream the estimated sewer tap fees Green Mountain would charge, and Stream would pay to Green Mountain, for sanitary sewer service to the Stream Property.

53. The uncertainty caused by Green Mountain's 2019 attempts to invalidate or repudiate its agreements and promises to provide sanitary sewer service to the Stream Property (among others) has resulted in substantial and continuing damage to Stream.

54. Because of Green Mountain's threat to thwart the provision of such service, Stream has been delayed in its efforts to obtain from Jefferson County final approval of the recorded Plat and its Site Development Plan for the Stream Property, which in turn has delayed the anticipated closing of the purchase, and Stream's development for profit, of the Stream Property.

55. As of the date of the Complaint, and in reliance on Green Mountain's agreements and promises to provide sanitary sewer service to the Stream Property, Stream has incurred costs and expense totaling approximately \$1.431 million in furtherance of its plan to acquire and develop the Stream Property.

56. Stream's land acquisition and development costs have increased, and will continue to increase, due to Green Mountain's repudiation and breach of its agreements and promises to provide sanitary sewer service to the Stream Property (among others).

57. As a direct and proximate result of Green Mountain's attempted repudiation and breach of its agreements and promises to provide sanitary sewer service to the Stream Property, Stream will incur lost opportunity and lost profits damages which it projects, as of the date of this Complaint, to be not less than \$33 million.

58. In April, 2018 Jefferson County analyzed the potential economic impact and benefit to the County of the development by Stream of the Stream property over a 20 year period. In its report, Jefferson County estimated that the net economic fiscal benefits to the County would be approximately \$1.098 billion, and the net public revenue to the County to be approximately \$24.513 million.

FIRST CLAIM FOR RELIEF
(Declaratory Judgment)

59. Stream repeats and re-alleges Paragraphs 1 through 58, above.

60. Stream asserts, and Green Mountain disputes, that (a) Stream is a third-party beneficiary of the Big Sky/Green Mountain IGA, the November 2016 Green Tree "will serve" letter, the Green Mountain/Fossil Ridge IGA, and other inter-governmental agreements and "will serve" letters, detailed above; and (b) Green Mountain is obligated to provide sanitary sewer service to the Stream Property under those agreements, and letters referred to above, upon Stream's purchase of the Stream Property.

61. Stream is entitled to, and requests, a declaratory judgment from the Court determining, among other things, that (a) Stream is a third-party beneficiary of the Big Sky/Green Mountain IGA, the November 2016 Green Tree "will serve" letter, the Green Mountain/Fossil Ridge IGA, and other inter-governmental agreements and "will serve" letters, detailed above; and (b) Green Mountain is obligated to provide sanitary sewer service to the

Stream Property under those agreements, and letters referred to above, upon Stream's purchase of the Stream Property.

62. Green Mountain has only those powers that are expressly granted to it by statute, including under the Special District Act, or which are necessary to carry out such powers.

63. Green Mountain has acted contrary to its statutory authority, including by committing ultra vires acts and by undertaking a course of conduct that is calculated to thwart, hinder, and prevent the development of the properties including the Stream Property.

64. Stream is further entitled to, and requests, a declaratory judgment determining that Green Mountain's efforts to become involved in land use planning and efforts to hinder, thwart, or limit the development of properties including the Stream Property are beyond its statutory powers.

65. Stream reserves its right to request that the Court conduct "a speedy hearing of [this] action for a declaratory judgment and ... advance it on the calendar." *See, e.g.* C.R.C.P. Rule 57(m). *See also*, C.R.S. §§ 13-51-101, *et seq.*, Uniform Declaratory Judgments Law.

SECOND CLAIM FOR RELIEF
(For Breach of Agreements and
Implied Covenant of Good Faith and Fair Dealing)

66. Stream repeats and re-alleges Paragraphs 1 through 65, above.

67. Pursuant to the Big Sky/Green Mountain IGA, the November 2016 Green Tree "will serve" letter, the Green Mountain/Fossil Ridge IGA, and other inter-governmental agreements and "will serve" letters, detailed above, Green Mountain agreed, and is obligated, to provide sanitary sewer service to properties that would include the Future Development Area, which includes the Stream Property.

68. The Big Sky/Green Mountain IGA, the November 2016 Green Tree “will serve” letter, the Green Mountain/Fossil Ridge IGA, and other inter-governmental agreements and “will serve” letters, contain an implied duty of good faith and fair dealing, requiring the Green Mountain to perform its obligations, including to provide sanitary sewer service to properties that would include the Future Development Area, which includes the Stream Property, in good faith and in a reasonable manner.

69. Stream is a third-party beneficiary of the above-described agreements and letters because at the time those agreements were negotiated and the letters were delivered, it was contemplated by the parties that Green Mountain would provide sanitary sewer service to properties that include the Stream Property. As such, Stream is entitled to enforce its rights and to obtain sanitary sewer service to the Stream Property.

70. Prior to the parties entering into the Big Sky/Green Mountain IGA and issuance of the November 2016 Green Tree “will serve” letter, Stream’s representatives had numerous communications and interactions with Green Mountain, in which Green Mountain was advised that Stream was to purchase and develop the Stream Property, and that Stream was undertaking substantial efforts and incurring considerable expense in doing so. Based on such communications, Green Mountain knew that Stream was relying on Green Mountain’s agreements and promises and would provide sanitary sewer service to the Stream Property upon its purchase.

71. Evidencing its intent to benefit Stream, Green Mountain during 2017–2018, negotiated with Stream the sewer tap fees Green Mountain would charge, and Stream would pay to Green Mountain, for such service to Stream.

72. Green Mountain's attempted repudiation and breach of the agreements and letters, as specified above, without legal cause, justification, or excuse, and its breach of its implied covenant of good faith and fair dealing in the performance of its obligations to provide sanitary sewer service to properties that include the Stream Property, including its refusal to proceed with efforts that would result in its provision of sanitary sewer service to the Stream Property, constitutes a material repudiation and breach of the agreements, and letters referred to above.

73. Green Mountain's breaches of these agreements are material.

74. Stream has performed its duties and obligations to the extent required under the agreements and letters referred to above, or its lack of performance was justified or otherwise excused.

75. Stream seeks orders declaring that it is a third-party beneficiary of the agreements, and letters referred to above, and requiring Green Mountain to provide sanitary sewer service to the Stream Property upon Stream's purchase of same.

76. Further, Stream has been and continues to be damaged by Green Mountain's breaches and seeks general and special damages in amounts to be proven at trial.

THIRD CLAIM FOR RELIEF
(Promissory Estoppel)

77. Stream repeats and re-alleges Paragraphs 1 through 76, above.

78. Green Mountain promised to Stream and others, among other things, that it would provide sanitary sewer services for properties that include the Stream Property. Its promise is evidenced by the fact that it negotiated tap fees with Stream in 2017–2018 in connection with planned development of the Stream Property.

79. Green Mountain expected, or reasonably should have expected, that Stream would rely on these and other such promises, and Stream did rely on them in connection with planning and development of the Stream Property upon its purchase.

80. Stream's reliance was reasonable and justified.

81. Green Mountain's promises must be enforced to avoid injustice, and Plaintiffs are seeking damages in amounts to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Stream requests that the Court grant it the following relief:

A. Declaratory judgment as set forth herein, determining that Stream is a third-party beneficiary of the agreements and letters, detailed herein, requiring Green Mountain to provide sanitary sewer service to the Stream Property, and determining that Green Mountain's April 9, 2019 Resolution was unconstitutional null, void, and without legal effect;

B. Judgment in Stream's favor and against Green Mountain for all actual, consequential, and incidental damages, including expenses incurred and lost opportunity and lost profits damages, resulting from the Green Mountain's breaches of the agreements and letters detailed herein, and caused by Green Mountain's refusal to provide sanitary sewer service to the Stream Property, in amounts to be proven at trial;

C. An award in favor of Stream and against the Green Mountain for statutory interest, attorneys' fees, and costs; and

D. Such further legal and/or equitable relief as the Court deems proper.

Dated: July 30, 2019

SENN VISCIANO CANGES P.C.

/s/ Frank W. Visciano [Orig. Sign. on File]

Frank W. Visciano, #7274

Charles E. Fuller, #43923

ATTORNEYS FOR PLAINTIFF

Address of Plaintiff

1801 Broadway, #700

Denver, CO