

DISTRICT COURT, COUNTY OF JEFFERSON
STATE OF COLORADO

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Court Address: 100 Jefferson County Parkway,
Golden, Colorado 80419
Telephone: 303-271-6215

Plaintiffs: SOLTERRA LLC, a Colorado limited
liability company

v.

Defendant: FOSSIL RIDGE METROPOLITAN
DISTRICT NO. 1, a quasi-municipal
corporation and political subdivision of
the State of Colorado;

FOSSIL RIDGE METROPOLITAN
DISTRICT NO. 2, a quasi-municipal
corporation and political subdivision of
the State of Colorado; and

FOSSIL RIDGE METROPOLITAN
DISTRICT NO. 3, a quasi-municipal
corporation and political subdivision of
the State of Colorado.

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Case No. 2022 CV _____

Division: _____

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COMPLAINT AND JURY DEMAND

Plaintiff Solterra LLC (“Plaintiff” or “Solterra”), by and through its attorneys, Kutak Rock LLP, hereby states and alleges the following claims against Defendants Fossil Ridge Metropolitan District No. 1, Fossil Ridge Metropolitan District No. 2, and Fossil Ridge Metropolitan District No. 3 (collectively “Defendants”) as follows:

PARTIES

1. Plaintiff Solterra LLC (“Plaintiff” or “Solterra”) was organized as a Colorado limited liability company in 2005 under the name Carma Lakewood LLC. Carma Lakewood LLC changed its name to Solterra LLC in 2011. Solterra’s primary place of business is at 6465 S. Greenwood Plaza Boulevard, Suite 700, Centennial, Colorado 80111. Solterra is the developer of the development alleged in further detail herein.

2. Fossil Ridge Metropolitan District No. 1 (“FRMD No. 1”) is a quasi-municipal corporation and political subdivision of the State of Colorado. FRMD No. 1 is located within Jefferson County, Colorado.

3. Fossil Ridge Metropolitan District No. 2 (“FRMD No. 2”) is a quasi-municipal corporation and political subdivision of the State of Colorado. FRMD No. 2 is located within Jefferson County, Colorado.

4. Fossil Ridge Metropolitan District No. 3 (“FRMD No. 3”) is a quasi-municipal corporation and political subdivision of the State of Colorado. FRMD No. 3 is located within Jefferson County, Colorado.

5. FRMD No. 1, FRMD No. 2, and FRMD No. 3 are collectively referred to herein as the “FRMD” or as “Defendants.”

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to COLO. CONST. art. VI, § 9(1).

7. This Court has personal jurisdiction over the Defendants because, among other reasons, the Defendants are organized in Colorado, transact business in Colorado, own property in Colorado, and have their principal operations in Colorado.

8. Venue is proper in this Court pursuant to C.R.C.P. 98(c)(1) and 98(c)(4) because each of the Defendants is located within Jefferson County, Colorado and this is an action upon a contract that was performed, at least in part, in Jefferson County, Colorado.

GENERAL ALLEGATIONS

A. Organization of FRMD and Approval of Service Plan.

9. FRMD No. 1, FRMD No. 2, and FRMD No. 3 were each organized pursuant to Title 32 of the Colorado Revised Statutes (the “Special District Act”). The organization of each district was approved by an election of eligible electors held on November 1, 2005. Orders creating each of the districts were entered by the Jefferson County District Court in September and October 2006, and those orders were recorded with the Jefferson County Clerk and Recorder on October 10, 2006.

10. The real property within FRMD encompasses approximately 390 acres within the City of Lakewood, Colorado (“City”), and the general boundaries of the districts are State Highway C-470 on the west, West Yale Avenue on the south, and West Alameda Parkway on the north.

11. The initial service plan for FRMD was conditionally approved by the City in August 2005, which plan was subsequently amended.

12. The governing service plan for FRMD is the Second Amended and Restated Service Plan for Fossil Ridge Metropolitan District No. 1, Fossil Ridge Metropolitan District No. 2, Fossil Ridge Metropolitan District No. 3, approved by the City on August 27, 2007 (the “Service Plan.”)

13. A true and correct copy of the Service Plan is attached hereto as Exhibit A.

14. The Service Plan generally describes development within FRMD and the public improvements contemplated within the development, including both onsite improvements and regional improvements. Onsite improvements included water, sanitation, storm sewer, streets and roads, walkways, curb and gutter, parks, open space, common areas, and a community recreational center. Regional improvements included offsite sanitation, regional water, and work on major roads, namely South Indiana Street, Alameda Parkway, South McIntyre Boulevard, and Yale Avenue.

15. The Service Plan expressly authorized FRMD “to provide for the planning, design, acquisition, construction, installation, relocation, and/or redevelopment of the Public Improvements and the provision of District Activities from its legally available revenues and by and through the proceeds of both Revenue Debt and General Obligation Debt to be issued by the Districts, as authorized by this 2007 Amended Service Plan.” (Service Plan, pp. 17-18.)

16. The Service Plan distinguished between the Service District, which is FRMD No. 1, and the Financing Districts, which were FRMD No. 2 and FRMD No. 3.

17. The Service Plan also recognized the need for loans from Solterra to fund public improvements until homes were built, and in that regard, the Service Plan authorized FRMD to

issue General Obligation debt or Revenue Debt to repay the developer. The Service Plan specifically provides as follows:

“Appropriate Developer Loan Agreements between the Service District and the Developer will provide the means to fund Public Improvements that are needed before homes or other buildings could be completed, and enables the Developer to be reimbursed for such costs as assessed valuation increases and Debt is able to be issued to repay such obligation. **At the time at which sufficient assessed valuation is developed within the Financing Districts, the Financing Districts will issue General Obligation Debt and/or Revenue Debt sufficient to repay the Developer under the Developer Loan Agreements for further construction of the Public Improvements, as necessary.** In no event shall any such General Obligation Debt be issued in excess of the General Obligation Debt Limitation. Issuance of General Obligation Debt by Financing Districts shall be phased according to development and associated increases in the assessed valuation within each of the Financing Districts, respectively.

(Service Plan, p. 9 (emphasis added).)

18. The Service Plan set a debt limit for FRMD of \$70,000,000 that could be either General Obligation Debt or Revenue Debt.

B. Development within FRMD.

19. Plaintiff Solterra is the developer of the property within FRMD.

20. The development within FRMD is a planned residential community commonly referred to as “Solterra,” which currently has approximately 1,200 single family detached homes and single family attached homes (townhomes). The development includes internal streets, parks, and other common areas as well as a community area known as the “Retreat,” which has a pool, fitness area, patio areas, outdoor fireplace, amphitheater, and clubhouse with large entertaining room, kitchen with appliances, bar, and dining room.

21. There are undeveloped lots within FRMD where approximately 110 single family homes (attached and detached) are to be built. Solterra owns the undeveloped lots, and an affiliate of Solterra is the only active home builder within FRMD.

22. FRMD has a current population of approximately 2,700.

23. The approximate assessed value of the property within FRMD as of 2022 is \$72,288,906.

24. Development is expected to be completed in 2026.

C. Reimbursement Agreement.

25. On May 13, 2008, FRMD No. 1 entered into an agreement with Solterra entitled Reimbursement of Developer Loan and Public Infrastructure Acquisition Agreement (the “Reimbursement Agreement”). The Reimbursement Agreement was contemplated and authorized by the Service Plan.

26. A true and correct copy of the Reimbursement Agreement is attached hereto as Exhibit B.

27. FRMD No. 2 and FRMD No. 3 were organized at the same time as FRMD No. 1 and were designated as the Financing Districts under the Service Plan. The Reimbursement Agreement and the Service Plan provide that FRMD Nos. 1, 2, and 3 are to cooperate and coordinate the financing, construction, operation, and maintenance of the Public Infrastructure with FRMD No. 1 acting as the administrative entity and FRMD Nos. 2 and 3 acting as “the funding sources for such activities.”

28. The relationship among FRMD No. 1, FRMD No. 2, and FRMD No. 3 is further set forth in a Master Intergovernmental District Facilities and Construction Agreement, dated January 8, 2008 (the “Master IGA”).

29. A true and correct copy of the Master IGA is attached hereto as Exhibit C.

30. Solterra relied on the Master IGA and the statements in the Reimbursement Agreement in entering into the Reimbursement Agreement and agreeing to advance funds for the payment of Public Infrastructure for the benefit of FRMD.

31. FRMD entered into the Reimbursement Agreement for the purpose of inducing Solterra to advance funds for construction of public infrastructure or to construct public infrastructure for the benefit of FRMD. In exchange, FRMD agreed to reimburse Solterra for all “District Eligible Costs,” which is defined to mean

“costs related to the provision of Public Infrastructure, including but not limited to any costs relating to organization of the Districts, general administration, operations, maintenance, engineering, surveying, the costs of acquiring land necessary for the Public Infrastructure, and construction and/or acquisition of the Public Infrastructure, whether such costs are funded directly to the District by the Developer, paid by the Developer for the direct benefit of the District, or whether the District acquires the same from the Developer.”

(Reimbursement Agreement, § 1.)

32. Public Infrastructure is defined in the Reimbursement Agreement to mean and include water, streets, traffic and safety controls, transportation, parks and recreation, sanitation, and other public infrastructure, improvements, and services as described in the Special District Act. (Reimbursement Agreement, Recitals.)

33. Pursuant to the Reimbursement Agreement, FRMD No. 1 agreed to repay Solterra for Prior Costs (as defined in the Reimbursement Agreement) and District Eligible Costs from the net proceeds of general obligation bonds or revenue bonds issued by FRMD No. 2 and FRMD No. 2 (“Bonds”) up to the debt limitations set forth in the Service Plan.

34. FRMD pledged the net proceeds of all Bonds for the purpose of repaying Solterra.

D. Advances by Solterra, Prior Bond Issuances by FRMD and Payments to Solterra.

35. From 2005 through present, Solterra has advanced in excess of \$80 million in funds for the payment of Public Infrastructure benefitting FRMD. Those advances constitute Prior Costs and District Eligible Costs and for which Solterra is entitled to reimbursement under the Reimbursement Agreement. To date, Solterra has received reimbursement from FRMD of only about \$36.9 million.

36. To make the prior reimbursement payments to Solterra, FRMD has issued Bonds totaling approximately \$38,130,000, leaving a balance of approximately \$31,870,000 of additional debt that FRMD can issue under the debt limit of \$70 million as provided in the Service Plan and the Reimbursement Agreement.

37. The prior reimbursements by FRMD were from the following bond issuances by FRMD No. 1 and FRMD No. 3:

- a. In 2009, FRMD No. 1 issued Tax-Supported Revenue Bonds in the Par amount of \$7,000,000 (the “2009 Bonds”). From the 2009 Bonds, Solterra received a repayment under the Reimbursement Agreement of approximately \$5,659,823. The 2009 Bonds were refunded in 2010 with no new money and no payments to Solterra.
- b. In 2014, FRMD No. 3 issued General Obligation Limited Tax Bonds (the “2014 Bonds”) in the Par Amount of \$8,715,000, which resulted in a payment to Solterra of \$8,853,965.
- c. In 2016, FRMD No. 3 issued General Obligation Tax Bonds (the “2016 Bonds”) in the Par Amount of \$12,415,000, which resulted in a payment to Solterra of \$12,591,882.
- d. In 2020, FRMD No. 3 issued Limited Tax General Obligation Refunding and Improvement Bonds (the “2020 Bonds”). The 2020 Bonds refunded the 2010 Bonds, the 2014 Bonds, and the 2016 Bonds. The 2020 Bonds also constituted new debt with a par amount of \$10 million, which resulted in a reimbursement payment to Solterra of \$9,811,962.

38. From these prior bond issuances, the amount paid to Solterra was approximately \$36,917,633 of the more than \$80 million in District Eligible Costs funded by Solterra.

39. The total amount of revenue bonds and general obligation bonds issued by FRMD (not including refunding bonds) to date is \$38,130,000. The additional amount of debt that FRMD is allowed to issue under the debt limitation is \$31,870,000.

E. Solterra's Demands for Payment.

40. Starting in 2017 after the residents of FRMD assumed control of the FRMD, Solterra made repeated demands on FRMD to satisfy its reimbursement obligations under the Reimbursement Agreement. The demands, included, but were not limited to:

- a. A letter dated November 7, 2019 from Solterra to the Boards of FRMD, demanding reimbursement of approximately \$42 million that was owed at that time. (A true and correct copy of the November 7, 2019 letter is attached hereto as Exhibit D.) In response to this and other less formal demands, FRMD issued the 2020 Bonds as described in Paragraph 37 (d) above, which resulted in a partial payment to Solterra.
- b. A letter dated December 16, 2021 from counsel for Solterra to counsel for FRMD demanding reimbursement of approximately \$32 million that was owed at that time. (A true and correct copy of the December 16, 2021 letter is attached hereto as Exhibit E.)

41. In addition, to these formal demands, Solterra had meetings and discussions directly with board members of FRMD regarding the reimbursement obligation. Counsel for Solterra also had multiple email and telephone communications with counsel for FRMD requesting that FRMD satisfy the reimbursement obligations under the Reimbursement Agreement.

F. FRMD Admits Its Obligation to Repay Solterra Under the Reimbursement Agreement.

42. FRMD has repeatedly admitted and acknowledged the obligation to repay Solterra under the Reimbursement Agreement, the amounts owed to Solterra, and the obligations of FRMD Nos. 2 and 3 to finance the reimbursements. By way of example, in the Official Statement for the 2020 Bonds (the "2020 Official Statement"), FRMD makes the following admissions:

- a. "The Indenture defines the 'Improvement Project' as the repayment of certain obligations of District No. 1 under the Reimbursement Agreement with the Developer (as defined therein). The 'Reimbursement Agreement' is defined in the Indenture as the Reimbursement of Developer Loan and Public Infrastructure Acquisition Agreement dated as of May 13, 2008 by and between District No. 1 and the Developer, **pursuant to which District No. 1 evidenced an intent to repay the Developer for certain amounts**

advanced to District No. 1 for both capital improvement purposes and operations purposes. . . .” (2020 Official Statement, p. 39.)

- b. After issuing the 2020 Bonds, FRMD caused \$9,811,962 to be paid to Solterra (the Developer) as repayment of advances under the Reimbursement Agreement.
- c. At pages 48 to 50 of the 2020 Official Statement, FRMD summarizes the Reimbursement Agreement and its obligations to repay Solterra for amounts Solterra advanced or paid to construct Public Improvements within FRMD or for the benefit of FRMD.
- d. “As of December 31, 2019, the Developer has submitted to District No. 1, \$57,422,430 in costs, which the Developer believes qualifies as District Eligible Costs and **which have not been reimbursed under the Reimbursement Agreement** by District No. 1 through bond proceeds. Applying the 6% interest provided under the Reimbursement Agreement, the outstanding interest is \$10,386,393, for a combined total of \$67,808,823. The Districts and their consultants continue to evaluate District No. 1’s reimbursement obligation pursuant to the Reimbursement Agreement. As set forth in greater detail below, the Districts have already issued \$28,130,000 in General Obligation Bonds that qualify as General Obligation Debt under the Service Plan. When the amount of previously issued General Obligation Debt is added to \$10,000,000 (the par amount of the [2020 Bonds] issued to fund the Improvement Project), and that combined amount is subtracted from the \$70,000,000, the maximum potential amount owed to the Developer is \$31,870,000, which can be paid with the proceeds from additional General Obligation Bonds or Revenue Bonds funded through the District Capital Fees, or any combination thereof.” (2020 Official Statement, p. 50.)
- e. The Audited Financials of FRMD No. 1 for the year ending December 31, 2019, list as long-term obligations “Developer Advances” totaling \$67,808,823, which includes principle and interest for both capital improvements and operations.
- f. The Audited Financials for FRMD for 2020 continue to show a long-term liability for unreimbursed advances made by Solterra to FRMD for District Eligible Expenses in an amount of \$61,478,702, which far exceeds the \$31,870,000 that remains under the debt limitation.

43. Based on the statements and admissions by FRMD, FRMD No. 1 is obligated to repay Solterra at least \$31,870,000 for advances made for District Eligible Expenses and FRMD Nos. 2 and 3 are obligated to issue new debt to finance the repayment.

G. FRMD No. 2 and 3 Have Absolute, Irrevocable, and Unconditional Obligation to Finance the Reimbursement of Solterra.

44. The Master IGA provides that FRMD No. 2 and FRMD No. 3 have an obligation to finance capital improvements and operations for the benefit of the FRMD and that such obligation is “absolute, irrevocable, and unconditional.” (Master IGA, § 3.8.)

45. The Master IGA further provides that Solterra had a right to rely on the financing and payment obligations set forth in the Master IGA when entering into the Reimbursement Agreement.

46. Solterra did rely on the commitments by FRMD No. 2 and FRMD No. 3 to issue Bonds for purpose of reimbursing Solterra. FRMD No. 2 and FRMD No. 3 have received enormous benefit from Solterra’s payment of Public Improvements/Public Infrastructure and yet have failed and refused to issue Bonds to the detriment of Solterra, resulting in unjust enrichment by FRMD No. 2 and FRMD No. 3.

H. Solterra Has Paid Excess Maintenance Fees for Benefit of FRMD.

47. Under the Reimbursement Agreement, the Repayment Obligation (as defined in the Reimbursement Agreement) arises in two ways.

48. First, the Repayment Obligation arises immediately for funds advanced to FRMD No. 1 for the purpose of funding District Eligible Costs. Under this scenario, Solterra had no obligation to construct, maintain, or warranty the Public Infrastructure for which the funds were used. Despite that, FRMD have failed and refused to take possession of and maintain such improvements, forcing Solterra to service and maintain the improvements.

49. Second, in those instances where Solterra directly paid for the construction of Public Infrastructure, the Repayment Obligation arises in accordance with the Infrastructure Acquisition Procedures set forth in Exhibit A to the Reimbursement Agreement. FRMD has unfairly and unreasonably delayed acceptance of Public Infrastructure for which Solterra paid, causing Solterra to service and maintain the improvements for several years and well beyond the one-year warranty period established in the Infrastructure Acquisition Procedures.

I. Solterra Is Entitled to Recover Its Attorneys’ Fees and Costs to Enforce the Reimbursement Agreement.

50. The Reimbursement Agreement provides that “If a Party must commence legal action to enforce its rights and remedies under this Agreement, the prevailing Party shall be paid, in addition to any other relief, its costs and expenses, including reasonable attorneys’ fees, of such action or enforcement.”

FIRST CLAIM FOR RELIEF

**(BREACH OF REIMBURSEMENT AGREEMENT AGAINST FRMD
NO. 1 FOR FAILURE TO REPAY SOLTERRA)**

51. Solterra incorporates the allegations of 1 through 50, inclusive, as if fully set forth herein.

52. The Reimbursement Agreement is a binding enforceable agreement, which entitles Solterra to receive repayment for District Eligible Expenses for which it advanced funds to FRMD No. 1 or for which it directly paid the costs of the Public Infrastructure.

53. Solterra has funded Public Infrastructure for which it has not received reimbursement. The amount of District Eligible Costs funded by Solterra for which it has not been reimbursed is in excess of \$42 million, not including accrued and unpaid interest.

54. The assessed value of the property within FRMD is sufficient to support the issuance of additional debt up to the remaining debt limit of \$31,870,000.

55. Despite repeated requests from Solterra, FRMD has failed and refused to issue new debt to repay Solterra.

56. FRMD No. 1 has breached the Reimbursement Agreement for failing to repay Solterra, and Solterra has been damaged as a direct result of that breach.

57. Solterra is entitled to an award of damages in an amount proved at trial, but not less than \$31,870,000.

58. Solterra also is entitled to recover prejudgment interest, post-judgment interest, and costs of suit, including attorneys' fees.

WHEREFORE, Solterra, prays that the Court enter judgment in its favor and against FRMD No. 1 on this First Claim for Relief and that it be awarded the following relief:

- a. An order of judgment against FRMD No. 1 and in favor of Solterra;
- b. An award of money damages in an amount to be proved at trial, including prejudgment and post-judgment interest;
- c. A mandatory injunction that FRMD No. 1 cause debt to be issued by FRMD Nos. 2 and 3 to repay Solterra;
- d. An award of attorneys' fees and costs; and
- e. Such other and further relief as the Court deems just and proper under the circumstances.

SECOND CLAIM FOR RELIEF
**(DECLARATORY RELIEF REGARDING REIMBURSEMENT OBLIGATION
AGAINST FRMD)**

59. Solterra incorporates the allegations of 1 through 58, inclusive, as if fully set forth herein.

60. As set forth herein, an actual case or controversy exists as to the parties' rights and obligations regarding Solterra's request for repayment of amounts it advanced for the payment of Public Infrastructure, which constitute District Eligible Costs under the Reimbursement Agreement.

61. Solterra asserts that FRMD No. 1 has a legal obligation to repay Solterra for District Eligible Costs.

62. Solterra also asserts that FRMD No. 1 has a legal obligation to cause FRMD Nos. 2 and 3 to issue general obligation or revenue bonds to finance the repayment of Solterra for District Eligible Costs, and that FRMD Nos. 2 and 3 have a legal obligation to issue general obligation or revenue bonds to finance reimbursement of Solterra.

63. FRMD have failed and refused to pay to Solterra unreimbursed District Eligible Costs funded by Solterra and have failed and refused to issue Bonds to finance the reimbursement of Solterra.

64. Solterra is entitled to judicial declarations pursuant to C.R.C.P. 57 and C.R.S. §§ 13-51-101 *et seq.* as follows:

- a. Solterra is entitled to reimbursement of District Eligible Costs not previously reimbursed;
- b. FRMD No. 1 is obligated to reimburse Solterra for unreimbursed District Eligible Costs up to the remaining debt limitation;
- c. FRMD No. 1 is obligated to cause FRMD Nos. 2 and 3 to issue general obligation or revenue bonds to finance the reimbursement of Solterra, up to the remaining debt limitation;
- d. FRMD Nos. 2 and 3 are obligated to issue general obligation or revenue bonds to finance the reimbursement of Solterra up to the remaining debt limitation;
- e. Solterra is entitled to recover prejudgment and post-judgment interest on the unreimbursed District Eligible Costs it funded; and

- f. Solterra is entitled to recover its costs and expenses, including attorneys' fees related to the enforcement of the reimbursement obligation.

WHEREFORE, Solterra, prays that the Court enter judgment in its favor and against FRMD, and each of them, on this Second Claim for Relief and that the court enter the following declarations:

- a. Solterra is entitled to reimbursement of District Eligible Costs not previously reimbursed;
- b. FRMD No. 1 is obligated to reimburse Solterra for unreimbursed District Eligible Costs up to the remaining debt limitation;
- c. FRMD No. 1 is obligated to cause FRMD Nos. 2 and 3 to issue general obligation or revenue bonds to finance the reimbursement of Solterra;
- d. FRMD Nos. 2 and 3 are obligated to issue general obligation or revenue bonds to finance the reimbursement of Solterra;
- e. Solterra is entitled to recover prejudgment and post-judgment interest on the unreimbursed District Eligible Costs it funded;
- f. Solterra is entitled to recover its costs and expenses, including attorneys' fees related to the enforcement of the reimbursement obligation; and
- g. Such other and further relief as the Court deems just and proper under the circumstances.

THIRD CLAIM FOR RELIEF
(BREACH OF REIMBURSEMENT AGREEMENT AGAINST FRMD NO. 1
REGARDING OVERPAYMENT OF MAINTENANCE)

65. Solterra incorporates the allegations of 1 through 64, inclusive, as if fully set forth herein.

66. The Reimbursement Agreement is a binding and enforceable agreement.

67. Solterra has performed its obligations under the Reimbursement Agreement and/or its performance was excused.

68. FRMD No. 1 has failed and refused to repay Solterra under the Reimbursement Agreement and also has failed to take possession of and maintain public improvements within FRMD, resulting in Solterra paying excess amounts in maintaining the Public Infrastructure of FRMD.

69. FRMD No. 1 has breached the Reimbursement Agreement by failing and refusing to take possession of and maintain the Public Infrastructure of FRMD.

70. Solterra has been damaged as a direct result of the breach and is entitled to recover its damages in an amount proved at trial.

71. Solterra also is entitled to recover prejudgment interest, post-judgment interest, and costs of suit, including attorneys' fees.

WHEREFORE, Solterra, prays that the Court enter judgment in its favor and against FRMD No. 1 on this Third Claim for Relief and that it be awarded the following relief:

- a. An order of judgment against FRMD No. 1 and in favor of Solterra;
- b. An award of money damages in an amount to be proved at trial, including prejudgment and post-judgment interest;
- c. An award of attorneys' fees and costs; and
- d. Such other and further relief as the Court deems just and proper under the circumstances.

FOURTH CLAIM FOR RELIEF
(BREACH OF THE COVENANT OF GOOD FAITH AND
FAIR DEALING AGAINST FRMD NO. 1)

72. Solterra incorporates the allegations of 1 through 71, inclusive, as if fully set forth herein.

73. The Reimbursement Agreement is a binding and enforceable agreement.

74. Solterra has performed its obligations under the Reimbursement Agreement.

75. FRMD No. 1 was obligated to take reasonable and good faith efforts to, among other things, (a) cause Solterra to be repaid for amounts advanced under the Reimbursement Agreement and (b) to take possession of and maintain the public improvements completed by Solterra.

76. FRMD No. 1 has failed to act in good faith to cause FRMD Nos. 2 and 3 to issue debt to repay amounts owed to Solterra under the Reimbursement Agreement and to accept and maintain the public improvements completed by Solterra, among other things.

77. FRMD No. 1's failure to act fairly and in good faith constitutes a breach of the covenant of good faith and fair dealing implied in the Reimbursement Agreement and has denied Solterra the benefit of the Reimbursement Agreement.

78. Solterra has been damaged by FRMD No. 1's breach of the covenant of good faith and fair dealing in an amount to be proved at trial.

79. Solterra also is entitled to recover prejudgment interest, post-judgment interest, and costs of suit, including attorneys' fees.

WHEREFORE, Solterra, prays that the Court enter judgment in its favor and against FRMD No. 1 on this Fourth Claim for Relief and that it be awarded the following relief:

- a. An order of judgment against FRMD No. 1 and in favor of Solterra;
- b. An award of money damages in an amount to be proved at trial, including prejudgment and post-judgment interest;
- c. A mandatory injunction that FRMD No. 1 cause debt to be issued by FRMD Nos. 2 and 3 to repay Solterra; and
- d. Such other and further relief as the Court deems just and proper under the circumstances.

FIFTH CLAIM FOR RELIEF
(UNJUST ENRICHMENT AGAINST FRMD NO. 2 AND FRMD NO. 3)

80. Solterra incorporates the allegations of 1 through 79, inclusive, as if fully set forth herein.

81. Solterra has funded Public Infrastructure for which it has not received reimbursement. The amount of District Eligible Costs funded by Solterra for which it has not been reimbursed is in excess of \$42 million, not including accrued and unpaid interest.

82. Solterra funded the Public Infrastructure in reliance on the irrevocable and unconditional commitments made by FRMD No. 2 and FRMD No. 3 to finance the repayment of amounts Solterra advanced for Public Infrastructure.

83. FRMD No. 2 and FRMD No. 3 have received tremendous benefit from the Public Infrastructure funded by Solterra.

84. Solterra also has completed public improvements in and around FRMD that FRMD No. 1 has failed and refused to take possession of and maintain, resulting in Solterra paying excess amounts in maintaining the Public Infrastructure of FRMD.

85. FRMD No. 2 and FRMD No. 3 have been and will continue to be unjustly enriched if they are permitted to use and enjoy the Public Infrastructure funded and maintained by Solterra without paying for the Public Infrastructure and the excess amounts paid by Solterra to maintain the Public Infrastructure.

86. Solterra is entitled to an award of damages in an amount proved at trial for the unjust enrichment of FRMD No. 2 and FRMD No. 3.

WHEREFORE, Solterra, prays that the Court enter judgment in its favor and against FRMD No. 2 and FRMD No. 3 on this Fifth Claim for Relief and that it be awarded the following relief:

- a. An order of judgment against FRMD No. 2 and FRMD No. 3 and in favor of Solterra;
- b. An award of money damages in an amount to be proved at trial, including prejudgment and post-judgment interest;
- c. A mandatory injunction that FRMD Nos. 2 and 3 issue debt to repay Solterra; and
- d. Such other and further relief as the Court deems just and proper under the circumstances.

SIXTH CLAIM FOR RELIEF
(PROMISSORY ESTOPPEL AGAINST FRMD NO. 2 AND FRMD NO. 3)

87. Solterra incorporates the allegations of 1 through 86, inclusive, as if fully set forth herein.

88. FRMD No. 2 and FRMD No. 3 made promises and representations that they would issue debt to refund Solterra for Public Infrastructure that Solterra funded.

89. Solterra relied to its detriment on the promises and representations made by FRMD No. 2 and FRMD No. 3 and funded Public Infrastructure within FRMD.

90. FRMD No. 2 and FRMD No. 3 have received tremendous benefit from the Public Infrastructure funded by Solterra.

91. Solterra has been damaged as a result of the promissory estoppel and is entitled to an award of damages in an amount proved at trial, but not less than \$31,870,000.

WHEREFORE, Solterra, prays that the Court enter judgment in its favor and against FRMD No. 2 and FRMD No. 3 on this Sixth Claim for Relief and that it be awarded the following relief:

- a. An order of judgment against FRMD No. 2 and FRMD No. 3 and in favor of Solterra;
- b. An award of money damages in an amount to be proved at trial, including prejudgment and post-judgment interest;

- c. A mandatory injunction that FRMD Nos. 2 and 3 issue debt to repay Solterra; and
- d. Such other and further relief as the Court deems just and proper under the circumstances.

JURY TRIAL

Plaintiffs request a jury for all claims to which they are entitled to trial by jury.

Respectfully submitted this 22nd day of November, 2022.

KUTAK ROCK, LLP

By: /s/Neil L. Arney
Neil L. Arney, #27860

Attorneys for Plaintiff Solterra LLC

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