DISTRICT COURT, GRAND COUNTY, COLORADO Court Address: 307 Moffat Ave., Hot Sulphur Springs, CO 80451	DATE FILED July 12, 2024 10:53 AM FILING ID: F656F09AA70C8 CASE NUMBER: 2021CV30008
Plaintiff: GRANBY RANCH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado v. **Defendants:** HEADWATERS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado; GRAY JAY VENTURES, LLC.; REDWOOD CAPITAL FINANCE CO., LLC, GRANBY PRENTICE, LLC; AND GR TERRA LLC.	▲COURT USE ONLY▲
Attorneys for Plaintiff: David K. TeSelle, Reg. No. 29648 Lisa R. Marks, Reg. No. 31683 D. Dean Batchelder, Reg. No. 38425 Patrick M. Sweet, Reg. No. 51130 Burg Simpson Eldredge Hersh & Jardine, P.C. 40 Inverness Drive East Englewood, CO 80112 Phone No.: (303) 792-5595 Email: dteselle@burgsimpson.com lmarks@burgsimpson.com dbatchelder@burgsimpson.com psweet@burgsimpson.com	Case Number: 2021CV30008 Div.: 1
GRMD'S MOTION FOR PARTIAL SUMMARY JUDGMENT	

Plaintiff, Granby Ranch Metropolitan District ("GRMD"), by and through its attorneys, Burg Simpson Eldredge Hersh & Jardine, P.C., respectfully submits its Motion for Partial Summary Judgment, and states, as follows:

CERTIFICATE OF C.R.C.P. 121(c) §1-15(8) CONFERRAL

Counsel for GRMD conferred with counsel for Defendant / Counterclaim Plaintiff Headwaters Metropolitan District ("Headwaters") regarding this Motion and is authorized to state that this Motion is opposed.

I. INTRODUCTION

There is no basis to enter a monetary award in favor of Headwaters on its breach of contract counterclaim and GRMD is entitled to judgment in its favor on this issue. Headwaters has twisted the contract at issue to claim that GRMD owes it hundreds of thousands of dollars in attorney's fees, yet there has been no breach of the agreement, no damages have been caused by any breach that might be found to exist, and there is no basis for a monetary award against GRMD under the agreement. Earlier in this action, when forced to actually articulate a basis for its numerous claims for damages, rather than do so, Headwaters voluntarily dismissed four of its six counterclaims and withdrew its claim for damages and attorney's fees on a fifth, leaving a single counterclaim as its basis for claimed award.

As to this single remaining claim—Headwaters' first counterclaim alleging a breach of the parties' Exclusion Agreement—there is no basis for a monetary award and judgment should enter in GRMD's favor. Headwaters testified that its only claim for damages is one for attorney's fees. Headwaters has not disclosed any claimed damages other than attorney's fees. Headwaters has only ever claimed attorney's fees, yet there is no basis to enter such an award under the Agreement, Headwaters knows it cannot claim attorney's fees, and GRMD respectfully requests that this Court

confirm this plain fact and bar Headwaters from claiming damages by entering judgment in GRMD's favor on this element of Headwaters' first counterclaim.[1]

II. LEGAL STANDARD

Summary judgment is appropriate when a party can show, through the pleadings, affidavits, depositions and admissions on file, that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. C.R.C.P. 56(c). Summary judgment is designed to permit the parties to "pierce the formal allegations of the pleadings and save the time and expense connected with trial when, as a matter of law, based on undisputed facts, one party could not prevail." *Peterson v. Halsted*, 829 P.2d 373, 375 (Colo. 1992).

Once the party moving for summary judgment demonstrates that there is an absence of evidence in the record to support the non-moving party's case, the burden shifts to the non-moving party to establish that there is a triable issue of fact. *Civil Serv. Comm'n v. Pinder*, 812 P.2d 645, 649 (Colo. 1991). To survive a properly supported summary judgment motion, the non-moving party cannot rest on mere allegations or demands but "must provide specific facts demonstrating

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[1] To be clear, Headwaters is not entitled to a monetary award, whether that is denominated as damages (as measured by attorney's fees) or attorney's fees labeled as costs. While Colorado law may characterize attorney's fees in different manners (whether as damages or as costs), GRMD's argument is that Headwaters' only claim is for attorney's fees and there is no basis to award them regardless of how they are characterized.

Further, GRMD disputes Headwaters' Counterclaim One completely. GRMD maintains, for example: there has been no breach of the Exclusion Agreement; any breach that might be found to exist was not material; any breach that might be found to exist did not cause Headwaters any damages; there is no basis to award damages; there is no basis to enter an award other than damages. That GRMD's motion here is narrowly tailored is not a waiver of other arguments, defenses, or affirmative defenses that GRMD has made or might make.

a genuine issue for trial." *Rocky Mountain Expl., Inc. v. Davis Graham & Stubbs LLP*, 420 P.3d 223, 229 (Colo. 2018).

III. STATEMENT OF UNDISPUTED FACTS

The following facts are, for the purposes of this Motion only, undisputed.

1. Headwaters filed six counterclaims against GRMD in its November 3, 2022, response to GRMD's Third Amended Complaint. A true and correct copy, less exhibits thereto, is provided in the attached Declaration of D. Dean Batchelder in Support of GRMD' Motion for Partial Summary Judgment ("Declaration"), as **Exhibit 1** thereto (Headwaters' "Answer and Counterclaims").

2. Headwaters has voluntarily dismissed its Counterclaims 2, 3, 5, and 6. Order dated December 10, 2023.

3. Headwaters has withdrawn its claim for damages under its Counterclaim 4. *Id*.

4. Headwaters' first counterclaim ("Counterclaim One") asserted that by bringing this action, GRMD was in breach of the parties' Exclusion Agreement. *Id*., ¶¶ 111-32.

5. No other conduct was asserted to be a breach of the Exclusion Agreement. *Id*.

6. In Counterclaim One, Headwaters claimed damages and attorney's fees for the alleged breach of the Exclusion Agreement. *Id*., ¶ 132.

7. Headwaters attached the Exclusion Agreement to its Answer and Counterclaims. A true and correct copy of the Exclusion Agreement Headwaters attached to its Answer and Counterclaim is provided in the Declaration as **Exhibit 2** thereto.

8. The stated purpose of the Exclusion Agreement is to exclude certain property from the district, including primarily roadways, to facilitate the continued development of the district. *Id*., at Recitals §§V, W, X; Article I (1.1); Article II (2.1).

9. Headwaters' Counterclaim One is the sole remaining claim where damages or attorney's fees are claimed. Order dated December 10, 2023.

10. To date, counsel is unaware that Headwaters has provided a C.R.C.P. 26(a)(1)(C) damages calculation.

11. To date, counsel is unaware that Headwaters has provided any identification of any claimed damages other than attorney's fees. A true and correct copy of Headwaters' Initial Disclosures made pursuant to C.R.C.P. 26(a)(1) is provided in the Declaration as **Exhibit 3** thereto.

12. Headwaters' Initial Disclosures failed to identify any claimed damages other than attorney's fees. *Id.* at 7.

13. At its March 1, 2023, deposition, Headwaters testified that its damages claim was limited to its claim for attorney's fees. A true and correct copy of relevant portions of Headwaters C.R.C.P. 30(b)(6) deposition transcript is provided in the Declaration as **Exhibit 4** thereto.

14. Specifically, Headwaters testified:

> Q. My understanding is that one of the legal firms that Headwaters Metropolitan District retained to defend against the claims in this litigation was Husch Blackwell; is that right?
> A That's correct.
> Q And Headwaters is seeking damages under the counterclaims for the Husch Blackwell legal fees, correct?
> A That's correct.
>
> . . .
>
> Q ***Has Headwaters Metropolitan District suffered any damages other than attorney fees in connection with those counterclaims***?

A I refer to legal -- from my standpoint, I refer to legal on that. ***As of now it's legal fees.***

. . .

Q ***Sitting here today, you haven't been able to identify any other claims for damages other than or categories of damages other than that category of legal fees; is that right?***

A ***As of today yes yeah.***

Id., at 207:6-14; 234:20-25; 235:17-21 (emphasis added).

15. Following this testimony, Headwaters did not identify or disclose damages it is claiming other than attorney's fees.

16. Discovery in this matter is closed.

IV. ARGUMENT

A. A contractual attorney's fees provision must expressly and unambiguously provide clear notice that attorney's fees may be awarded.

Colorado follows the American Rule, requiring an express statutory, rule, or contractual basis to award attorney's fees. "In the absence of a statute or private contract to the contrary, attorney fees and costs generally are not recoverable by the prevailing party in a breach of contract case." *Bunnett v. Smallwood*, 793 P.2d 157, 160 (Colo. 1990) (collecting cases); *Allstate Ins. Co. v. Huizar*, 52 P.3d 816, 818 (Colo. 2002) (same); *S. Colo. Orthopaedic Clinic Sports Med. & Arthritis Surgeons, P.C. v. Weinstein*, 2014 COA 171, ¶ 10 ("Colorado courts follow the American rule, which requires parties to a lawsuit to pay their own legal expenses.").

Absent other authority permitting an award of attorney's fees, the parties must ***expressly and unambiguously agree*** to an award of attorney's fees. *See, e.g., Bunnett*, 793 P.2d at 162-63; *Cont'l W. Ins. Co. v. Heritage Estates Mut. Hous. Ass'n*, 77 P.3d 911, 913 (Colo. App. 2003) ("[T]he parties may agree otherwise by express provision in their contract."). The terms of such

an agreement must be "plain" and "unambiguous" and must "expressly provide[]" for an award of attorney's fees. *Bunnett,* at 162-63.

While no "formulaic language" is required in a fee-shifting provision, it must "clearly inform" the parties that breach exposes them to a potential fee award. *Morris v. Belfor USA Grp.*, 201 P.3d 1253, 1260 (Colo. App. 2008). The issue for the trial court is one of contract interpretation. *Id*., at 1259 ("Whether a contract provides for an award of attorney fees is a question of interpretation that we review de novo. It is axiomatic that a contract should be interpreted according to the plain and ordinary meaning of its terms." (citations and quotation marks omitted)); *Gattis v. McNutt (In re Estate of Gattis)*, 2013 COA 145, ¶¶ 35-36.

B. Headwaters has limited its claim for damages to attorney's fees.

Headwaters' Counterclaim One asserted that, by bringing the current action, GRMD breached the April 21, 2010, Exclusion Agreement. Headwaters has limited its claimed damages to its attorney's fees incurred in litigating this matter. While Headwaters has not provided a C.R.C.P. 26(a)(1)(C) damages calculation, it disclosed that it claims attorney's fees as damages. And, at its deposition, Headwaters testified that its claims for damages was limited to the attorney's fees incurred in litigating this action.

Q ***Has Headwaters Metropolitan District suffered any damages other than attorney fees in connection with those counterclaims***?
A I refer to legal -- from my standpoint, I refer to legal on that. ***As of now it's legal fees.***

. . .

Q ***Sitting here today, you haven't been able to identify any other claims for damages other than or categories of damages other than that category of legal fees; is that right?***
A ***As of today yes yeah.***

Exhibit 4, at 234:20-25; 235:17-21 (emphasis added).[2]

Since its deposition, Headwaters has not identified any claimed damages other than attorney's fees. In sum: Headwaters testified its claimed damages were limited to attorney's fees, it has not disclosed any damages other than attorney's fees, and the time to do so has long since passed. Headwaters claim therefore is one for attorney's fees.

C. There is no basis to award attorney's fees under the Exclusion Agreement.

Headwaters' Counterclaim One asserts a breach of the Exclusion Agreement but this agreement does not contain an express, unambiguous fee-shifting provision that clearly informs GRMD that attorney's fees may be awarded. The provision Headwaters relies on is a reservation of rights, not a fee-shifting provision, and is not a basis upon which fees may be awarded.[3]

Turning to the Agreement itself, it contains Article VIII which is a two-and-a-half-page conflict resolution section. Exhibit 2, at Article VIII. Very generally, in the event of an alleged event of default (which is defined in the Agreement in detail), Article VIII sets out a specific

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[2] The Court, in its June 4, 2024, Order noted that Headwaters' deposition testimony only supported the conclusion that Headwaters sought attorney's fees *at that time*. Order at 5. True, that is what Headwaters testified to. However, to counsel's knowledge, Headwaters has never come forward with other claims for damages. It has not disclosed other categories of damages. It has not calculated other categories of damages. While the testimony may have been intentionally open ended, no other disclosures were made and the time for Headwaters to have done so has passed. Headwaters is limited to the disclosures it has made and the Court should address GRMD's contention. Further and notwithstanding this, GRMD is entitled to confirmation that the contractual provision at issue is *not* a valid and enforceable fee-shifting provision and the Court should address its arguments here.

[3] The Agreement contains a number of general provisions related to litigation, including a controlling law provision (selecting Colorado law) and a choice of law provision (again selecting Colorado law), a forum selection clause, and a consent to personal jurisdiction provision. Exhibit 2, at §§ 9.7, 9.17. Despite the fact that if the Agreement were to include a fee-shifting provision, it would be expected to appear here, Article IX does not contain one.

procedure involving a "Resolution Committee," which is formed in a specific manner, and which is convened and tasked with meeting, reviewing the dispute, and provide a written decision to the parties. *Id.*, at § 8.4. The Resolution Committee's decision may then be appealed to the Grand County District Court. *Id.*, at § 8.5.

Article VIII generally and Section 8.5 specifically reserve a number of rights to the parties notwithstanding this dispute resolution procedure. *Id.*, at §§ 8.2 (delay or omission of the exercise of any right does not impair or waive any right); 8.2.1 (waiver of one event cannot be extended to any other event; all rights may be exercised with or without notice); 8.5.1 (in addition to remedies generally available, a party may make specific requests for relief); 8.5.2 (reservation of rights to enforce rights generally, discussed below); 8.5.3 (unless otherwise prohibited, no recovery affects the rights of the parties); 8.5.4 (parties maintain their rights notwithstanding abandoning or discontinuing an action to determine them and notwithstanding receiving an adverse ruling regarding their rights).[4]

As a general matter then, the Agreement addresses, in significant detail, the ways in which the parties have retained various rights they might otherwise claim to have notwithstanding the dispute resolution procedure detailed in the Agreement.

In that context, Section 8.5.2 of the Agreement provides:

> The Parties may protect and enforce their rights under this Agreement by such suit, action, or special proceedings as they shall deem appropriate, including without limitation any proceedings for specific performance of any covenant or agreement contained herein, for the enforcement of any other appropriate legal or equitable remedy, or for the recovery of damages caused by breach of this Agreement,

[4] For the avoidance of doubt, GRMD does not hereby agree that any of these provisions are enforceable or should be enforced. Rather, GRMD notes that they form the context of the provision at issue and must be taken into account in interpreting that provision.

> including attorney's fees and all other costs and expenses incurred in enforcing this Agreement.

Id.

In keeping with the language of the surrounding provisions, this is a reservation of rights. It is not a fee-shifting provision. The parties "*may*" take a range of actions to "*protect and enforce their rights*" including "*without limitation*" seeking specific performance, legal, equitable, or damages relief "*as they shall deem appropriate*." *Id.* (emphasis added). In short, the parties can take a range of actions and can seek a range of types of relief. That the Agreement says they can assert a claim does not mean they are entitled to that claim—it must be otherwise justified. This is not an independent grant of rights. For example, it does not make specific performance appropriate, it does not make injunctive relief appropriate, it does not mean that there is an enforceable arbitration agreement. And, it does not mean that attorney's fees are to be awarded. Does the Agreement or its dispute resolution procedure operate to bar a party from seeking specific relief? No. Does Section 8.5.2 independently grant the parties the right to assert specific relief? No.

That this is not a fee-shifting provision is underscored by applying straightforward principles of contract interpretation. The court's primary task in interpreting a contract is to determine the parties' intent and it is to do so primarily from the plain meaning of the language of their agreement. *See, e.g., Strohe v. MEP Eng'g, Inc.*, 2021 COA 125, ¶ 12. The entire agreement and the surrounding provisions are critical to interpreting the meaning of the disputed language. *Roberts v. Adams*, 47 P.3d 690, 694 (Colo. App. 2001) (court will look to harmonize all provisions of the agreement); *Lafarge N. Am., Inc. v. K.E.C.I. Colo., Inc.*, 250 P.3d 682, 685-86 (Colo. App. 2010) ("we look to the language of the provision at issue, giving the words and phrases used therein their plain and ordinary meanings, and to any other related provisions so as to interpret the contract

in a way that harmonizes and gives effect to all its provisions."); *see also E-470 Pub. Highway Auth. v. Jagow*, 30 P.3d 798, 801 (Colo. App. 2001) (contract must be interpreted in light of subject matter and purpose).

The language at issue appears in § 8.5 which addresses the various rights the parties retain notwithstanding the dispute resolution provisions of the Agreement. Section 8.5.2, which appears in and must be interpreted in the context of § 8.5, is a reservation, not a grant, of rights. The parties "may" enforce their rights through various types of actions. The parties "may" seek various types of relief. The provision provides examples of the types of actions they may choose to pursue "without limitation." The provision says they can do so "as they shall deem appropriate." The provision is no more than a laundry list of actions the parties might take and reserves whatever rights they might have to take those actions. It reserves rights. It does not grant them. The parties do not here agree to arbitration, for example. This is not an enforceable arbitration agreement. Could they seek to or agree to resolve disputes through arbitration? Yes, they could. Does this provision create an enforceable right to do so? No, it does not.

Supporting this reading is the fact that language typical of an enforceable fee-shifting provision is absent here. There is no language expressly agreeing to pay attorney's fees. There is no language stating the prevailing party is entitled its attorney's fees. There is no language regarding an award of attorney's fees. The language is discretionary ("may"), not mandatory ("shall" or "is" or "will"). The only thing the provision does do is mention attorney's fees.

The fact that the provision mentions, among a litany of other options the parties might claim to have, attorney's fees does not singlehandedly transform it into an enforceable fee-shifting provision. While Colorado law does not require specific language in a fee-shifting provision, it

does require that it be clear, unambiguous, express language that clearly informs the parties that attorney's fees may be awarded. *Bunnett*, 793 P.2d at 162-63; *Cont'l W. Ins. Co.*, 77 P.3d at 913; *Morris*, 201 P.3d at 1260.

This language does not do that. Again, building on the above argument from principles of contract interpretation, this provision does not meet the specific requirements of an enforceable fee-shifting provision. There is no clear agreement to shift fees. There is no statement that fees will be awarded. There is no prevailing party language. There is no mandatory language. What there is, is language stating the parties may decide to bring a range of actions and they may decide to bring a range of claims but there is no agreement that any specific action, claim, or award is agreed to. That is what is required to make a fee-shifting provision enforceable in Colorado and that is not what this provision does.

Cases where Colorado's appellate courts have held that contractual fee-shifting provisions exist and are enforceable, or where the parties did not dispute that there was in fact a fee-shifting provision, rely on clear and express language that is simply not present here. *See, e.g., Morris,* 201 P.3d at 1259-60 ("If defendant consults with an attorney for collection or otherwise, then . . . *plaintiffs agree to pay all costs incurred by defendant; including reasonable attorney's fees*." (emphasis added, alterations incorporated, remaining alteration added)); *Bedard v. Martin*, 100 P.3d 584, 593 (Colo. App. 2004) ("in the event of any litigation or arbitration arising out of this contract, *the court shall award to the prevailing party all reasonable costs and expense [sic], including attorney fees*." (emphasis added)); *Wheeler v. T.L. Roofing, Inc.*, 74 P.3d 499, 501 (Colo. App. 2003) ("In the event of a breach of this agreement by either party, *the breaching party shall pay all reasonable attorney's fees*, collection fees and costs of the other party incident to any action

brought to enforce this agreement." (emphasis added)); *Grynberg v. Agri Tech, Inc.*, 985 P.2d 59, 64 (Colo. App. 1999) ("the party prevailing . . . *shall be entitled*, in addition to any such other relief as may be granted, *to a reasonable attorney fee* in such litigation." (emphasis added)).

In *Klun v. Klun*, 2019 CO 46, the Colorado Supreme Court considered a similar, but critically different, fee-shifting provision. *Id*., ¶ 20

> Nothing in this Agreement will be construed so as to impair any legal or equitable right of either Party hereto to enforce any of the terms of this Agreement by any means, including without limitation, an action for damages or a suit to obtain specific performance of any or all of the terms of this Agreement. *In the event of such action, the prevailing Party shall be awarded all costs of the action, including reasonable attorneys' fees, in addition to any other relief to which such Party may be entitled.*

Id. (emphasis added). On the facts there, it determined that this was an enforceable fee-shifting provision. *Id*.

These examples—and they are provided as context for the Court's consideration rather than as binding precedent—demonstrate examples of clear, express, an unambiguous fee-shifting provisions: they state there is an agreement to shift fees or to pay fees; they state there shall be an award of fees; they use mandatory language regarding the agreement or award; they note that the prevailing party is entitled to fees.[5] Even the example from *Klun*, which is initially similar in form to Section 8.5.2 includes a clear statement regarding an award of attorney's fees. A clear statement that is simply not present in Section 8.5.2.

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[5] Indeed, here, if Section 8.5.2 is determined to be a fee-shifting provision, *there is no requirement that a party even prevail on its claim to be entitled to attorney's fees*. This is an absurd reading of the contractual language, a reading which should be rejected for that reason alone—proposed constructions that generate absurd results must be rejected.

D. Headwaters' damages claim is limited to attorney's fees, there is no basis to award attorney's fees, and partial summary judgment should enter in GRMD's favor barring any claim for damages.

Therefore, there is no basis to award Headwaters damages on its Counterclaim One. While Headwaters has asserted damages as well as attorney's fees, it has never disclosed any claimed damages other than attorney's fees. It has not disclosed non-attorney's fees damages in its Rule 26(a)(1) disclosures. It testified it does not have non-attorney's fees damages. And following that testimony (where its representative hedged that counsel *might* identify non-attorney's fees damages), it never identified such claimed damages. Headwaters has chosen to limit itself to attorney's fees.

But, given the above, there is no basis to award it attorney's fees under the Exclusion Agreement. Section 8.5.2 is not a fee-shifting provision. While it might reserve to Headwaters the right to take whatever action it otherwise might be entitled to take, it does not independently provide a basis to award attorney's fees.

Because of this, GRMD is entitled to summary judgment on Headwaters' claim for damages. There is no basis to award attorney's fees under the Agreement and judgment should enter in GRMD's favor on Headwaters' claim for a monetary award on its Counterclaim One.

V. CONCLUSION

For the reasons discussed above, as to Headwaters' claim for damages on its Counterclaim One, GRMD respectfully requests that this Court enter an order granting judgment in favor of GRMD and against Headwaters, determining that Headwaters has no damages and is not entitled to a monetary award.

Respectfully submitted July 11, 2024.

BURG SIMPSON
ELDREDGE HERSH & JARDINE, P.C.

Duly signed original is on file in this office and available for inspection and/or copying upon request.

/s/ D. Dean Batchelder
David K. TeSelle, Reg. No. 29648
Lisa R. Marks, Reg. No. 31683
D. Dean Batchelder, Reg. No. 38425
Patrick M. Sweet, Reg. No. 51130

CERTIFICATE OF SERVICE

I certify that on July 11, 2024, a true and correct copy of this **GRMD'S MOTION FOR PARTIAL SUMMARY JUDGMENT** was filed and served upon all counsel of record via CCE.

Duly signed original is on file in this office and available for inspection and/or copying upon request.

/s/ D. Dean Batchelder
D. Dean Batchelder

DISTRICT COURT, GRAND COUNTY, COLORADO Court Address: 307 Moffat Ave., Hot Sulphur Springs, CO 80451	DATE FILED July 12, 2024 10:53 AM FILING ID: F656F09AA70C8 CASE NUMBER: 2021CV30008
Plaintiff: GRANBY RANCH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado v. **Defendants:** HEADWATERS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado; GRAY JAY VENTURES, LLC.; REDWOOD CAPITAL FINANCE CO., LLC, GRANBY PRENTICE, LLC; AND GR TERRA LLC.	▲COURT USE ONLY▲
Attorneys for Plaintiff: David K. TeSelle, Reg. No. 29648 Lisa R. Marks, Reg. No. 31683 D. Dean Batchelder, Reg. No. 38425 Patrick M. Sweet, Reg. No. 51130 Burg Simpson Eldredge Hersh & Jardine, P.C. 40 Inverness Drive East Englewood, CO 80112 Phone No.: (303) 792-5595 Email: dteselle@burgsimpson.com lmarks@burgsimpson.com dbatchelder@burgsimpson.com psweet@burgsimpson.com	Case Number: 2021CV30008 Div.: 1

DECLARATION OF D. DEAN BATCHELDER IN SUPPORT OF GRMD'S MOTION FOR PARTIAL SUMMARY JUDGMENT

I, D. Dean Batchelder, declare:

1. I am a licensed Colorado attorney, bar number 38425, with others I am counsel for Granby Ranch Metro District's ("GRMD") in this matter, and I have knowledge of the pleadings and papers filed and served in this matter.

2. This declaration is made in support of GRMD's Motion for Partial Summary Judgment.

3. A true and correct copy of Headwater Metropolitan District's Answer and Affirmative Defenses to Plaintiff's Third Amended Complaint, Jury Demand, and Counterclaims, filed in this matter on November 3, 2022, at CCE Filing ID: D3778A7889784, less exhibits thereto, is attached here as **Exhibit 1** ("Answer and Counterclaims").

4. A true and correct copy of the parties' Exclusion Agreement that Headwaters attached as Exhibit C to its Answer and Counterclaims and filed with this Court in this matter is attached here as **Exhibit 2**.

5. A true and correct copy of Headwaters' Initial Disclosures made pursuant to C.R.C.P. 26(a)(1) and served on April 1, 2022, in this matter is attached here as **Exhibit 3**.

6. A true and correct copy of relevant portions of the transcript from the March 1, 2023, C.R.C.P. 30(b)(6) deposition of Headwaters in this matter is attached here as **Exhibit 4**.

I declare that the foregoing is true and accurate to the best of my knowledge and belief.

Dated: July 11, 2024.

/s/ D. Dean Batchelder
D. Dean Batchelder, Reg. No. 38425

STATE OF COLORADO)
) ss.
ARAPAHOE COUNTY)

On July 11, 2024, before me the undersigned Notary Public for the State of Colorado, D. Dean Batchelder personally appeared and executed the foregoing Declaration in my presence and acknowledged to me that the statements herein are true and accurate to the best of his knowledge and belief.

In witness whereof, on this date, I have here set my hand and affixed my official seal.

My Commission Expires: 2/6/27

Notary Public

BRIDGET A. KOS
NOTARY PUBLIC - STATE OF COLORADO
Notary ID #20234004922
My Commission Expires 2/6/2027

DATE FILED
July 12, 2024 10:53 AM
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CASE NUMBER: 2021CV30008

EXHIBIT 1

Headwater Metropolitan District's Answer and Affirmative Defenses to Plaintiff's Third Amended Complaint, Jury Demand, and Counterclaims filed November 3, 2023 (without exhibits)

DATE FILED: November 3, 2022 5:05 PM
FILING ID: D3778A7889784
CASE NUMBER: 2021CV30008

DISTRICT COURT, GRAND COUNTY, COLORADO
307 Moffat Avenue
Hot Sulphur Springs, CO 80451

Plaintiff: GRANBY RANCH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado,

v.

Defendants: HEADWATERS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado; GRAY JAY VENTURES, LLC.; REDWOOD CAPITAL FINANCE CO., LLC, GRANBY PRENTICE, LLC; and GR TERRA, LLC.

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Case No. 2021CV30008

Division 1

HEADWATER METROPOLITAN DISTRICT'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S THIRD AMENDED COMPLAINT, JURY DEMAND, AND COUNTERCLAIMS

Defendant Headwaters Metropolitan District ("Defendant" or "Headwaters") submits this answer, affirmative defenses, jury demand and counterclaims to Plaintiff Granby Ranch Metropolitan District's Third Amended Complaint ("Amended Complaint").

PARTIES, JURISDICTION, AND VENUE

1. Defendant admits that GRMD was organized as a Metropolitan District pursuant to the Colorado Special District Act, Section 32-1-101 et seq., C.R.S. The remainder of the

allegations in paragraph 1 are legal conclusions to which no response is required. To the extent further response is required, Defendant denies these allegations.

2. Admit.

3. Defendant lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 3 and footnote 1and therefore denies same.

4. Defendant lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 4 and therefore denies same.

5. Defendant lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 5 and therefore denies same.

6. Defendant admits that it and GRMD are located within Grand County, Colorado as is the leased premises referred to in the Amended Complaint. The balance of the allegations of paragraph 7 are legal conclusions to which no response is required. To the extent further response is required, Defendant denies these allegations.

GENERAL ALLEGATIONS

7. Defendant admits that GRH, Headwaters and GRMD are separate entities, but denies that they are related entities. Defendant is without sufficient knowledge and information to form a belief as to the balance of the allegations in paragraph 7 and therefore denies same.

8. Defendant states that the Service Plan referenced in paragraph 8 and as subsequently amended, speaks for itself and denies any characterization of that document inconsistent with the terms thereof. Defendant admits that it was originally called SolVista Metropolitan District No. 1 and that its name was changed to Headwaters on October 23, 2004. Defendant denies the balance of the allegations in paragraph 8.

9. Defendant states that the Service Plans referenced in paragraph 9 and attached to the Amended Complaint as Exhibits 1 and 2 and as subsequently amended speak for themselves and denies any characterization of those documents inconsistent with the terms thereof. Defendant admits that GRMD was originally called SolVista Metropolitan District No. 2 and its name was changed to GRMD on October 23, 2004. Defendant denies the balance of the allegations in paragraph 9.

10. Defendant states that it is unable to respond to the first sentence of paragraph 10 as the term "property" is not defined. Defendant denies the second sentence of paragraph 10. Defendant states that the remainder of the allegations of paragraph 10 are either characterizations of documents that speak for themselves or legal conclusions, to which no response is required. To the extent a response is required to these allegations, Defendant denies same.

11. Defendant denies the allegations of paragraph 11.

12. Defendant states that the Consolidated Service Plan referenced in paragraph 12 and attached to the Amended Complaint as Exhibit 3 and as subsequently amended speaks for itself and denies any characterization of that document inconsistent with the terms thereof.

13. Defendant states that it is unable to respond to the first sentence of paragraph 13 as the term "affairs" is ambiguous and the timeframe referenced is not defined. The remainder of the allegations are characterizations of the Master IGA, and that document speaks for itself. Defendant denies any characterization of the Master IGA inconsistent with the terms thereof and also states that the Master IGA was terminated and of no force in effect as of June 1, 2006.

14. The allegations of paragraph 14 are characterizations of the Master IGA, and that document speaks for itself. Defendant denies any characterization of the Master IGA inconsistent with the terms thereof and also states that the Master IGA was terminated as of June 1, 2006, and is of no force in effect.

15. The allegations of paragraph 15 are characterizations of the Fee Resolution attached to the Amended Complaint as Exhibit 4. The Fee Resolution speaks for itself, and Defendant denies any characterization of the Fee Resolution in paragraph 16 or in footnote 2 inconsistent with the terms thereof. Defendant also states that the Fee Resolution was superseded in its entirety on July 17, 2013, and is of no force and effect.

16. The allegations of paragraph 16 are characterizations of the Fee Resolution attached to the Amended Complaint as Exhibit 4. That document speaks for itself, and Defendant denies any characterization of the Fee Resolution inconsistent with the terms thereof. Defendant also states that the Fee Resolution was superseded in its entirety on July 17, 2013, and is of no force and effect.

17. Admit. Defendant also states that the Granby IGA was superseded and replaced in its entirety on November 8, 2016, and is of no force and effect.

18. The allegations of paragraph 18 are characterizations of the Granby IGA attached to the Amended Complaint as Exhibit 5. That document speaks for itself, and Defendant denies any characterization of the Granby IGA inconsistent with the terms thereof. Defendant also states that the Granby IGA was superseded and replaced in its entirety on November 8, 2016, and is of no force and effect.

19. The allegations of paragraph 19 are characterizations of the Granby IGA attached to the Amended Complaint as Exhibit 5. That document speaks for itself, and Defendant denies any characterization of the Granby IGA inconsistent with the terms thereof. Defendant also states that the Granby IGA was superseded and replaced in its entirety on November 8, 2016, and is of no force and effect.

20. Defendant admits the allegations in the second sentence of paragraph 20. Defendant denies the allegations of the first and third sentences of paragraph 20.

21. The allegations of paragraph 21 are characterizations of the LPA attached to the Amended Complaint as Exhibit 6. That document speaks for itself, and Defendant denies any characterization of the LPA inconsistent with the terms thereof.

22. Defendant denies the allegations of paragraph 22 and the allegations of footnote 3.

23. Defendant denies the first sentence of paragraph 23. Defendant states that the remainder of the allegations of paragraph 23 are either characterizations of documents that speak for themselves or legal conclusions, to which no response is required. To the extent a response is required to these allegations, Defendant denies same and denies any characterization of the LPA inconsistent with the terms thereof.

24. The first sentence of paragraph 24 is a legal conclusion to which no response is required, and to the extent a response is required, Defendant denies that conclusion. Defendant denies the remainder of the allegations of paragraph 24.

25. Defendant denies the allegations of paragraph 25.

26. The allegations of paragraph 26 are characterizations of the LPA attached to the Amended Complaint as Exhibit 6. That document speaks for itself, and Defendant denies any characterization of the LPA inconsistent with the terms thereof.

27. Defendant lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 27 and therefore denies same. Defendant further states that all claims against Redwood Capital has been dismissed with prejudice.

28. The allegations of paragraph 28 are characterizations of the LPA attached to the Amended Complaint as Exhibit 6. That document speaks for itself, and Defendant denies any characterization of the LPA inconsistent with the terms thereof.

29. Defendant states that it is unable to respond to paragraph 29 as the term "Non-Disturbance Agreement" is ambiguous and undefined, and the allegations of paragraph 29 are characterizations of the LPA attached to the Amended Complaint as Exhibit 6. That document speaks for itself, and Defendant denies any characterization of the LPA inconsistent with the terms thereof.

30. Defendant admits the first sentence of paragraph 30. Defendant denies the remainder of the allegations of paragraph 30.

31. Defendant is unable to respond to the allegations in the first and second sentences of paragraph 31 as the terms "control" and "homeowner-controlled" are vague and ambiguous; to the extent a response to those allegations is required, Defendant denies same. Defendant admits that it, GRMD and Granby Ranch Metropolitan Districts Nos. 2 through 8 agreed to terminate the Master IGA pursuant to the Termination of Intergovernmental Agreement attached

to the Amended Complaint as Exhibit 8 and admits that in Recital G of that Termination Agreement, the parties indicated their intent that GRMD operate independently of Headwaters. Defendant denies all allegations of paragraph 31 not expressly admitted herein.

32. The allegations of paragraph 32 state legal conclusions to which no response is required; to the extent a response is required, Defendant denies same.

33. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in the last sentence of paragraph 33 and therefore denies same. The remaining allegations of paragraph 33 are characterizations of the referenced letter dated September 1, 2020. That document speaks for itself, and Defendant denies any characterization of the letter dated September 1, 2020 inconsistent with the terms thereof.

34. Defendant admits the first three sentences of paragraph 34. Defendant lacks sufficient knowledge or information to form a belief as to the allegations of the final sentence of paragraph 34 and therefore denies same.

35. Defendant admits that, on August 14, 2020, after providing all notices required by Colorado statute, the Public Trustee held a public sale of the Leased Premises and other property subject to the Deed of Trust. Following the sale, the Public Trustee issued a Certificate of Purchase for the subject property, including the Leased Premises, to Granby Prentice. Granby Prentice assigned the Certificate of Purchase to GP Granby Holdings LLC (now known as Gray Jay Ventures, LLC). After the expiration of the redemption period, title to the property vested in GP Granby Holdings free and clear of all liens and encumbrances junior to the Deed of Trust, including the LPA. On August 27, 2020, the Public Trustee issued a Public Trustee's Deed to GP Granby Holdings granting it title to the Leased Premises and other subject property, which deed was recorded in the land records for Grand County on August 1, 2020 at Reception No. 202000007560. Defendant is without sufficient knowledge or information to form a belief as to the remainder of the allegations in paragraph 35 and denies same. Defendant denies all allegations of paragraph 35 not admitted herein.

36. Defendant denies the first sentence of paragraph 36. Defendant admits the allegation of the second sentence of paragraph 36 and further states that the LPA was terminated through the foreclosure, based upon the notice of termination referenced in paragraph 40, and other means. Defendant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations of paragraph 36 and therefore denies same.

37. Defendant denies that Redwood Capital ever delivered to it the agreement referenced in paragraph 37. Defendant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations of paragraph 37 and therefore denies same.

38. Defendant acknowledges that the allegations of paragraph 38 may state Plaintiff's legal positions, but Defendant denies those conclusions and states that the LPA was terminated via the foreclosure, or alternatively, based upon the notice of termination referenced in paragraph 40 below or, alternatively, by other means in accordance with the terms of the LPA.

39. Defendant states that the allegations of paragraph 39 are characterizations of the LPA attached to the Amended Complaint as Exhibit 6. That document speaks for itself, and Defendant denies any characterization of the LPA inconsistent with the terms thereof. Defendant further states that first sentence of paragraph 39 states a legal conclusion to which no response is required; to the extent a response is required, Defendant denies same. Defendant denies the allegations of the second and third sentences of paragraph 39.

40. Admit.

41. The allegations of paragraph 41 are characterizations of the LPA. That document speaks for itself, and Defendant denies any characterization of the LPA inconsistent with the terms thereof.

42. Defendant denies the allegations of paragraph 42.

43. Defendant states that the first sentence of paragraph 43 states a legal conclusion to which no response is required; to the extent a response is required, Defendant denies same. Defendant denies the allegations of the second sentence of paragraph 43.

44. Defendant admits the first sentence of paragraph 44. Defendant denies the second, third and last sentences of paragraph 44. Defendant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations of paragraph 44 and therefore denies same.

45. Defendant admits the first and third sentences of paragraph 45. Defendant lacks sufficient knowledge and information to form a belief as to the allegations in the second sentence of paragraph 45 and therefore denies same. Defendant denies the last sentence of paragraph 45.

46. Defendant denies the allegations of paragraph 46.

47. Defendant admits that GR Terra purchased the property formerly subject to the LPA on or about May 5, 2021, but Defendant deny that the property was subject to the LPA at the time of GR Terra's purchase because the LPA had been extinguished and terminated prior to that time.

FIRST CLAIM FOR RELIEF
(Breach of Contract against Gray Jay Ventures)

48. Defendant incorporates its responses to all of the allegations contained in the foregoing paragraphs as if the responses were fully restated herein.

49-53. The allegations made in paragraphs 49-53 are not directed at Defendant and therefore no response is necessary. To the extent a response is deemed necessary, Defendant denies same.

SECOND CLAIM FOR RELIEF
(Breach of Contract against Headwaters)

54. Defendant incorporates its responses to all of the allegations contained in the foregoing paragraphs as if the responses were fully restated herein.

55. Defendant denies the allegations of paragraph 55.

56. Defendant denies the allegations of paragraph 56. Further, the Court has dismissed any claims against Headwaters under the Granby IGA.

57. Defendant admits that it had knowledge that the LPA existed. The balance of the allegations of paragraph 57 state legal conclusions to which no response is required; to the extent a response is deemed necessary, Defendant denies the same.

58. Defendant denies the allegations of paragraph 58 and denies Plaintiff's right to the requested relief. Further, the Court has dismissed any claims against Headwaters under the Granby IGA.

THIRD CLAIM FOR RELIEF
(Breach of Contract against Granby Prentice)

59. Defendant incorporates its responses to all of the allegations contained in the foregoing paragraphs as if the responses were fully restated herein.

60-64. The allegations made in paragraphs 60-64 are not directed at Defendant and therefore no response is necessary. To the extent a response is deemed necessary, Defendant denies same.

FOURTH CLAIM FOR RELIEF
(Breach of Contract Against GR Terra)

65. Defendant incorporates its responses to all of the allegations contained in the foregoing paragraphs as if the responses were fully restated herein.

66-71. The allegations made in paragraphs 66-71 are not directed at Defendant and therefore no response is necessary. To the extent a response is deemed necessary, Defendant denies same.

FIFTH CLAIM FOR RELIEF
(Declaratory Judgment against Gray Jay Ventures and GR Terra)

72. Defendant incorporates its responses to all of the allegations contained in the foregoing paragraphs as if the responses were fully restated herein.

73-80. The allegations made in paragraphs 73-80 are not directed at Defendant and therefore no response is necessary. To the extent a response is deemed necessary, Defendant denies same.

SIXTH CLAIM FOR RELIEF
(Declaratory Judgment and Injunctive Relief: Covenant Running with the Land against Headwaters, GR Terra, Gray Jay Ventures, and Granby Prentice)

81. Defendant incorporates its responses to all of the allegations contained in the foregoing paragraphs as if the responses were fully restated herein.

82. The allegations of paragraph 82 state legal conclusions to which no response is required; to the extent a response is required, Defendant denies the allegations of paragraph 82.

83. The allegations of paragraph 83 state legal conclusions to which no response is required; to the extent a response is required, Defendant denies the allegations of paragraph 83.

84. Defendant denies the allegations of paragraph 84.

85. The allegations of paragraph 85 state legal conclusions to which no response is required; to the extent a response is required, Defendant denies the allegations of paragraph 85.

86. Defendant denies the allegation of paragraph 86 and Plaintiff's right to the relief requested therein.

General Denial

Headwaters denies each allegation of the Amended Complaint that is not specifically admitted herein, including any factual allegations in the paragraph titled WHEREFORE to which a response is deemed necessary.

Affirmative Defenses

1. The Amended Complaint fails to state a claim upon which relief may be granted.

2. The Amended Complaint fails because GRMD lacks standing to bring its claims against Headwaters. Neither the terms of the Second Amended and Restated Lease Purchase Agreement ("LPA") nor the surrounding circumstances establish in clear terms or by necessary implication that the owner of the Leased Premises (GRH) and Headwaters intended to confer a direct benefit on GRMD when they entered the LPA giving Headwaters the right to lease the Leased Premises and an option to purchase during the 50-year lease term. Because Headwaters' breach of contract claim in essence seeks to force Headwaters to exercise rights under the LPA, it lacks standing to bring that claim.

3. To the extent that GRMD was a third-party beneficiary to the LPA at the time that document was executed in 2012 (which Defendant disputes), GRMD waived and relinquished those rights through various agreements it entered subsequent to 2012, including, without limitation: the Exclusion Agreement dated April 21, 2010 by and between GRMD, Headwaters, and Granby Realty Holdings, Inc. ("GRH"); the Letter Agreement dated August 22, 2016 by and between GRMD, Headwaters, GRMD No. 8 and GRH, as amended in 2017 and 2018; the 2016 Second Amendment to the GRMD Service Plan and 2016 Amendment to the Service Plan for Headwaters; the November 17, 2017 Termination of Intergovernmental Agreement by and between GRMD, GRMD Nos. 2-8 and Headwaters; and the Waiver and Release Agreement entered in April of 2018 by and between GRMD, GRMD No. 8, Headwaters and GRH (all of the foregoing agreements are more fully described in GR Terra's Counterclaims). Therefore, GRMD does not have standing to seek to enforce the LPA, to seek a declaratory judgment regarding its validity and existence, or to seek damages for alleged breach of the LPA.

4. GRMD lacks standing to bring its claims for breach of contract and declaratory relief because it asserts no facts that constitute injury-in-fact to GRMD; GRMD did not pay any of the Amenity Fees that allegedly constitute "equity" under the LPA and that give rise to GRMD's alleged damages and GRMD does not use the amenities that are the subject of the LPA.

5. To the extent that GRMD seeks to bring claims on behalf of GRMD Nos. 2-8 or asserts rights or obligations to those entities, these claims fail for lack of standing in that GRMD has pleaded no facts to establish that those entities have assigned or otherwise transferred any claims to GRMD.

6. GRMD's breach of contract claim against Headwaters fails because none of the contracts relied upon by GRMD impose any obligation upon Headwaters to acquire the Leased Premises on behalf of GRMD and to the extent any of those contracts ever so required (which Headwaters disputes) the contracts have been terminated and amended such that there is no current obligation upon Headwaters to acquire the Leased Premises on GRMD's behalf or to acquire the Leases Premises at all.

7. GRMD is estopped and/or otherwise barred from bringing its breach of contract claim against Headwaters GR Terra in that GRMD waived and relinquished any right to compel enforcement of the LPA through various agreements it entered subsequent to 2012, including, without limitation: the Exclusion Agreement dated April 21, 2010 by and between GRMD, Headwaters, and Granby Realty Holdings, Inc. ("GRH"); the Letter Agreement dated August 22, 2016 by and between GRMD, Headwaters, GRMD No. 8 and GRH, as amended in 2017 and 2018; the 2016 Second Amendment to the GRMD Service Plan and 2016 Amendment to the Service Plan for Headwaters; the November 17, 2017 Termination of Intergovernmental Agreement by and between GRMD, GRMD Nos. 2-8 and Headwaters; and the Waiver and Release Agreement entered in April of 2018 by and between GRMD, GRMD No. 8, Headwaters and GRH (all of the foregoing agreements are more fully described in GR Terra's Counterclaims).

8. GRMD's breach of contract claim and request for damages against Headwaters based on alleged "equity" from the payment of Amenity Fees as rent under the LPA fails because GRMD terminated and waived any rights it had to Amenity Fees collected under the Amenity Fee Resolution and/or Amenity Fee Agreement and released any claim to same in an agreement that Granby Realty Holdings LLC, Headwaters and GRMD entered on April 21, 2010, called the "Exclusion Agreement." Under provision 3.2.1 of the Exclusion Agreement, where it "acknowledged and agreed" that the Amenity Fees paid under the 2005 Fee Resolution were payable solely to Headwaters and that GRMD had "no right, title or interest thereto."

9. GRMD's breach of contract claim and request for damages against Headwaters based on alleged "equity" from the payment of Amenity Fees as rent under the LPA fails because GRMD terminated and waived any rights it had to Amenity Fees collected under the 2005 or 2013 Amenity Fee Resolution and/or the 2005 or 2013 Amenity Fee Agreement and released any claim to same in an agreement that Granby Realty Holdings LLC, Headwaters and GRMD entered on April 21, 2010, called the "Exclusion Agreement." Under provision 3.2.1 of the Exclusion Agreement, where it "acknowledged and agreed" that the Amenity Fees paid under the 2005 Fee Resolution were payable solely to Headwaters and that GRMD had "no right, title or interest thereto" and agreed to fully cooperate to give effect to the intent and purpose of that Agreement.

10. GRMD's breach of the 2003 Master IGA claim against Headwaters fails because the 2003 Master IGA was expressly terminated by the 2006 Master IGA, section 10.5 stating: "the 2003 IGA is hereby terminated as of the date of this Agreement and shall be of no further force or effect."

11. GRMD's breach of contract claim against Headwaters is barred by failure of GRMD or other parties to satisfy necessary condition precedent in the LPA and/or 2003 Master IGA and 2016 Granby IGA.

12. GRMD's breach of contract claim and request for damages against Headwaters based on alleged "equity" from the payment of Amenity Fees as rent under the LPA are barred, waived and released under the terms of the agreement dated April of 2018 between GRH, Headwaters, GRMD, and Granby Ranch Metropolitan District No. 8 ("Waiver and Release Agreement") and the GRMD's broad release and waiver of liability granted to Headwaters therein.

13. GRMD's claims for breach of contract and for declaratory relief against Headwaters fail to state a claim for relief because the LPA was extinguished by foreclosure. The LPA was recorded after and junior to the Deed of Trust and there are no facts to prove that any subordination, non-disturbance and attornment agreement was ever tendered, executed, or recorded, therefore the LPA was extinguished pursuant to C.R.S. § 38-38-501 via the 2020 foreclosure.

14. GRMD's claims for breach of contract and for declaratory relief against Headwaters fail because even if the LPA survived the foreclosure and Gray Jay succeeded to the

rights of landlord thereunder, on November 11, 2020, Gray Jay notified Headwaters in accordance of the terms of the LPA that if the LPA was not terminated by way of foreclosure, Gray Jay was electing to terminate the LPA pursuant to section 10 thereof based upon Headwaters' failure to operate the Amenities for more than thirty days. If not previously terminated, the LPA was terminated by that notice.

15. GRMD's claims for breach of contract and for declaratory relief against Headwaters fail because even if the LPA was not terminated by the foreclosure or by Gray Jay's exercise of its option to terminate as set forth above, the LPA was terminated by Headwaters' failure to appropriate Amenity Fees for payment of rent for calendar years 2021, 2022 and 2023. Under Section 2(a) of the LPA, the LPA automatically terminated by its own terms upon Headwaters' failure to appropriate Amenity Fees to be paid pursuant to the terms of the Lease, an appropriation requirement mandated by C.R.S. § 29-1-110 and Colo. Const. Art. XI, § 6; therefore, the LPA terminated as of January 1, 2021 and/or as of the ensuing calendar years for which Headwaters failed to appropriate funds for payment of rent under the LPA.

16. To the extent GRMD's claims for declaratory relief seeks to compel Headwaters to perform obligations under the LPA, that claim is barred by the Colorado Governmental Immunity Act ("CGIA"), Colo. Rev. Stat. § 24-10-102 *et. seq*. in that a governmental entity cannot be compelled to specifically perform a contract.

17. GRMD's claim for breach of the LPA against Headwaters and request for damages fails because GRMD's rights are limited by the terms of the contract in that a third-party beneficiary cannot have greater rights than the parties to the contract and (i) the LPA allows for termination thereof based upon various circumstances, including foreclosure, default, or Headwaters' failure to appropriate rental payments; (ii) the LPA did not require Headwaters to acquire the Leased Premises prior to 2062; (iii) the LPA precludes any recoupment of the rental payments by Headwaters and precludes recovery of consequential damages; and (iv) rental paid under the LPA does not constitute equity toward the purchase price of the Amenities.

18. GRMD's claim for breach of the LPA against Headwaters and request for damages is barred by the terms of the LPA which limit remedies for default and preclude recoupment of rental payments and recovery of consequential damages.

19. GRMD's claim for breach of the LPA against Headwaters is barred by GRMD's failure to adhere to mandatory contractual obligations and remedies in the LPA, including but not limited to, satisfaction of the default and notice provisions of the LPA before filing suit (including but not limited to LPA Section 24(b).

20. GRMD's breach of contract claim against Headwaters fails because the LPA and the purchase option therein are void under the statute of frauds in that the purchase option did not contain a sufficiently definite purchase price.

21. GRMD's breach of contract claim against Headwaters fails because to the extent the LPA is construed to impose an obligation on Headwaters to appropriate funds in any lease

year for the payment of rent or for the payment of the purchase price for acquisition of the Amenities, the LPA is void under C.R.S. § 29-1-110, which prohibits local governments from spending or contracting to spend "any money, or incur any liability, or enter into any contract which, by its terms, involves the expenditures of money in excess of amounts appropriated" and under Colo. Const. Art. XI, § 6, which renders such obligations an illegal debt of a government body.

22. GRMD is estopped and/or otherwise barred from bringing its breach of contract claim against Headwaters based upon its own conduct, including but not limited to its failure to tender any funds towards the purchase of the Leased Premises, its failure to acquire the Amenities under the Second Granby IGA (as defined in GR Terra's Counterclaims), its failure to demand that Headwaters perform under the LPA or take action to protect any rights under the LPA prior to the foreclosure and sale of the Leased Premises, and GRMD's own failure to take any action to protect any alleged rights under the LPA prior to the foreclosure and sale of the property subject to the LPA.

23. GRMD's breach of contract claim against Headwaters is barred under the doctrine of impossibility. Even if Headwaters had wanted to purchase the Leased Premises before the LPA was terminated, sufficient Amenity Fees had not been collected for it to acquire the Leased Premises under the terms of the LPA and Headwaters did not have sufficient funds to pay the Purchase Price from funds other than Amenity Fees and did not have the Landlord's consent to pay the Purchase Price from funds other than the Amenity Fees or the availability of any such funds. Moreover, Headwaters does not have sufficient funds to operate the Amenities and carry out the obligations of the Tenant under the terms of the LPA.

24. GRMD's breach of contract claim against Headwaters fails because following the 2020 foreclosure, the owner of the Leased Premises treated the LPA as terminated and never demanded that Headwaters perform any obligations as Tenant under the LPA, a necessary precondition to any alleged breach of contract on the part of Headwaters under the LPA.

25. GRMD is estopped and/or otherwise barred from bringing its breach of contract claim against Headwaters due to its own breach of the Second Granby IGA and its own failure to acquire the Leased Premises or to tender any funds towards the purchase of the Leased Premises.

26. GRMD is estopped and/or otherwise barred from bringing its breach of contract claim against Headwaters due to its own breach of its Service Plan, as amended in 2016, or alternatively, its attempt to materially modify the terms of its Service Plan to reinstate the roles and obligations of GRMD as the "Tax District" and Headwaters as the "Service District" without approval of the Town of Granby as required by C.R.S. § 32-1-207(2)(a).

27. GRMD is estopped and/or otherwise barred from bringing its breach of contract claim against Headwaters because, to the extent Headwaters has any liability under the 2016 Granby IGA, GRMD is jointly and severally liable for Headwaters' obligations and Headwaters is therefore entitled to an offset from GRMD for the full amount of any such liability imposed upon Headwaters under the 2016 Granby IGA.

28. GRMD's breach of contract claim is barred by the applicable statute of limitations because its breach of contract claim arose on December 31, 2012 when the LPA was executed in that the LPA – the only contract between Headwaters and the owner of the Leased Premises – did not obligate Headwaters to acquire the Leased Premises.

29. GRMD's alleged damages for breach of contract, if any, are speculative and not caused by the alleged breach of contracts by Headwaters.

30. To the extent GRMD obtains an award of damages against Headwaters in this case, collection of any damages is limited to the procedure set forth in C.R.S. § 13-60-101.

31. GRMD's damages alleged for breach of contract, if any, are barred by the doctrine of superseding or intervening causes.

32. GRMD's damages alleged for breach of contract, if any, are barred in whole or in part by its failure to mitigate their damages, if any.

33. GRMD's damages alleged for breach of contract, if any, are caused by the acts or omissions of third parties.

34. GRMD's claims are barred in whole or in part by one or more of the doctrines of latches, estoppel, waiver, acquiescence, or ratification.

35. Headwaters expressly reserves the right to rely upon affirmative defenses asserted by other defendants and to assert additional affirmative defenses that may become known through ongoing investigation and discovery.

Jury Demand

Headwaters hereby demands a jury trial, pursuant to C.R.C.P. 38, on all issues so triable.

Prayer for Relief

WHEREFORE, Headwaters respectfully requests that the Plaintiff's claims be dismissed with prejudice, Plaintiff takes nothing, Judgment be entered in Headwater's favor on Plaintiff's claims, Headwaters be awarded attorneys' fees and costs in defending against Plaintiff's claims, and such other and further relief as the Court deems just and proper.

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Counterclaims

Headwaters Metropolitan District ("Headwaters"), by and through the undersigned counsel, and for its Counterclaims against Granby Ranch Metropolitan District ("GRMD") states as follows:

Introduction

1. These claims are filed in response to GRMD's lawsuit attempting to enforce alleged contract rights against Headwaters. As GRMD's complaint recognizes, these two public bodies – and the developer and owner of the Granby Ranch Development – entered a series of agreements originally designed to facilitate the development.

2. But GRMD's claims are based upon a selective, inaccurate, and blatantly misleading recitation of the relevant facts. Headwaters disputes that GRMD ever had the right to enforce the alleged contractual obligations it seeks to impose on Headwaters in this lawsuit, but even if it did, those claims are now squarely defeated by GRMD's express termination of the Master IGA (and all versions thereof), amendment of its service plan, GRMD's repeated acknowledgements and agreements that the prior relationship between the two Districts had been severed and terminated, and GRMD's contractual relinquishment of the precise claims it now tries to assert against Headwaters.

3. GRMD ignores the crucial and dramatic change in the relationships and agreements between GRMD and Headwaters over the years. It is GRMD, not Headwaters, who has breached the agreements between these two parties by filing this lawsuit. GRMD's claims are not only frivolous when viewed in light of all relevant facts, they constitute a breach of material provisions of at least three separate agreements between the parties as well as GRMD's own Service Plan. Headwaters therefore seeks relief from this Court in the form of an order of specific performance, damages, and attorneys' fees.

Parties, Venue and Jurisdiction

4. Counterclaim Plaintiff Headwaters is a Metropolitan District organized and existing pursuant to the Colorado Special District Act, § 32-1-101 et seq., C.R.S.

5. Counterclaim Defendant GRMD is a Metropolitan District organized and existing pursuant to the Colorado Special District Act, § 32-1-101 et seq., C.R.S.

6. The Court possesses personal jurisdiction over Counterclaim Defendant because it filed the litigation in this venue, among other reasons.

7. The Court possesses subject matter jurisdiction over the issues raised herein pursuant to Article 6, Section 9 of the Constitution of the State of Colorado.

8. Venue is proper in this Court pursuant to C.R.C.P. 98(c) because Headwaters and GRMD are located within the County of Grand, State of Colorado and the real property that is the subject of this lawsuit is located entirely within the County of Grand, State of Colorado.

General Allegations

Creation of the Special Districts and Master IGA

9. In 2003, SolVista Corp. was the owner and private developer of Granby Ranch, an approximately 5,000 acre planned mixed use development in Grand County. In accordance with an Annexation and Development Agreement, dated March 5, 2003, entered into by SolVista Corp. and the Town of Granby ("Town"), the Town approved Service Plans in July 2003, relating to the development of Granby Ranch. The Service Plans attached as **Exhibits 1 and 2** to the Amended Complaint, encompassed approximately 3570 of the total 5000-acre development. By 2005, SolVista Corp. had transferred all of the property it then owned, including that within the Service Areas of the Service Plans, to Granby Realty Holdings LLC ("GRH") which included, but was not limited to, the areas comprising the golf course and ski resort, and related amenities.

10. In 2005, GRH obtained financing for the development from Redwood Capital Finance Co., LLC ("Redwood"). GRH granted Redwood a deed of trust to secure repayment of that debt (the "Deed of Trust"). The Deed of Trust encumbered the golf course and ski resort along with the other property transferred to GRH from SolVista Corp. The Deed of Trust was recorded with the Grand County Clerk and Recorder on June 2, 2005.

11. Headwaters was organized to coordinate the acquisition, financing, and construction of public improvements, including streets and roadways, safety protection systems, water improvements, sanitary sewer and storm drainage, and park and recreation facilities, benefitting Granby Ranch (collectively, the "Facilities") and for the management, operation and maintenance of improvements not conveyed to the Town.

12. GRMD was organized contemporaneously with Headwaters, in order to provide the funding for the Facilities and other purposes as set forth in its Service Plan.

13. The Service Plans for Headwaters and GRMD set forth the relationship between Headwaters and GRMD and provided that Headwaters was to construct, manage, own, operate and maintain the Facilities and provide services to Granby Ranch, and GRMD was to produce tax and other revenue sufficient to pay all costs related to the construction, financing, acquisition, operation, and maintenance of the Facilities. The Service Plans are attached to the Amended Complaint as **Exhibits 1 & 2.**[1]

[1] Exhibits attached to the Amended Complaint are referenced by the numerical exhibit numbers used in the Amended Complaint and are incorporated herein by reference. Counterclaim

14. The Service Plan for GRMD further provided: "Until the Service District [Headwaters] is consolidated or dissolved in accordance with the District IGA [Master IGA set forth below], only the Service District will have the authority to provide services and complete public improvements within the Service Area." Art. III. Headwaters has not been consolidated or dissolved.

15. While GRMD originally included approximately 3,563 acres within its boundaries when it was formed, its size was reduced in 2005 to approximately 869 acres. In 2010, its size was further reduced to 225.37 acres.

16. In order to assure the orderly provision of the Facilities and essential services to Granby Ranch, and to assure the economic administration of the Districts' fiscal affairs, the Service Plans contemplated the necessity for a master intergovernmental agreement to fully implement the provisions of the Service Plans.

17. The 2003 Master Intergovernmental Agreement ("2003 Master IGA") between Headwaters and GRMD, attached to the Service Plans as Exhibit F, stated that Headwaters would serve as the "Service District" and would manage and control the financing of infrastructure, budget monies for public purposes, construct and finance infrastructure, and establish necessary service charges and development fees for the "Taxing District."

18. The 2003 Master IGA stated that GRMD would serve as the "Taxing District" and would impose the required mill levy to pay debt obligations of the districts and offset the expenses of construction, operation and maintenance of the public improvements.

19. The ski and golf facilities at Granby Ranch were constructed prior to the creation of GRMD and Headwaters with private funds and have, since construction, been held in private ownership. These facilities are not public facilities that were constructed by Headwaters pursuant to the 2003 Master IGA. Nothing in the GRMD or Headwaters' Service Plans or the 2003 Master IGA required Headwaters to acquire the ski and golf facilities on its own behalf or on behalf of GRMD.

20. On June 1, 2006, GRMD and Headwaters entered a new District Facilities Construction and Service Agreement ("2006 Master IGA"), which among other things, expressly terminated the 2003 Master IGA. A copy of the 2006 Master IGA is attached hereto as **Exhibit A**.

21. Pursuant to the 2006 Master IGA, the Districts agreed that Headwaters would own, operate, construct, and maintain the Facilities benefiting Headwaters and GRMD and that GRMD would pay all costs related to the construction, financing, acquisition, operation and maintenance of the Facilities.

Plaintiff's new exhibits are referenced by letters and are attached hereto and incorporated herein by this reference.

22. Granby Ranch Metropolitan District Nos. 2-8 ("GRMD Nos. 2-8") are separate and distinct metropolitan districts from GRMD that were organized to more fully accommodate phasing of the Granby Ranch project and to provide greater flexibility for the potential uses of property within the development.

23. On September 17, 2008, GRMD, Headwaters, and GRMD Nos. 2-8 entered a "First Amended and Restated District Facilities Construction and Service Agreement ("2008 Master IGA"), which among other things, expressly terminated the 2006 Master IGA.

24. As set forth below, the parties to the 2006 and 2008 Master IGAs terminated both of those agreements in November of 2017.

The Amenity Fee Agreement and Resolution

25. Headwaters and GRMD approved a Joint Resolution to Establish an Amenity Fee, effective May 26, 2005 ("2005 Fee Resolution"), providing that Headwaters would impose and collect a one-time amenity fee upon property in both Headwaters and GRMD to be paid to Headwaters upon the initial transfer of a lot or residential unit. The fee was imposed for the purpose of financing the acquisition, leasing, construction, and replacement of amenities, including the issuance of bonds. A copy of the 2005 Fee Resolution is attached as **Exhibit 4** to the Amended Complaint.

26. The term "Amenities" was broadly defined in the 2005 Fee Resolution as "certain recreational amenities benefitting the Districts, which include a golf course, ski area, river park and related improvements, trails, and other recreational improvements, facilities, appurtenances, rights-of-way and other amenities as shall from time to time be acquired, constructed, and/or operated by the Districts."

27. Under the 2005 Joint Resolution, residential dwelling units for which an Amenity Fee had been paid were entitled to certain priority access to amenities and discounts for use of the amenities as set forth therein and subject to the availability of the Amenities from time to time.

28. Separate and apart from the 2005 Resolution, on June 1, 2005, Headwaters entered an Amenity Fee Agreement with GRH where the parties agreed to the imposition of an amenity fee to be collected by Headwaters on a one-time basis upon the sale of a lot or parcel of land within *all* of the approximately 4,937 acres of property then owned by GRH, including the approximately 3,563 acres of property then within the boundaries of GRMD. A copy of the 2005 Fee Agreement is attached hereto as **Exhibit B.**

29. The stated purpose of the fee under the 2005 Fee Agreement was the acquisition, financing, leasing, construction, replacement, operation, maintenance and repair of certain improvements benefiting the property owned by GRH, including the golf course, ski area, and other recreational improvements, referred to therein as the "Amenities."

30. The Amenities were broadly defined in the same manner as set forth in the 2005 Fee Resolution and that agreement provided similar priority access to eligible property owners subject to the availability of Amenities from time to time.

31. Pursuant to the 2005 Fee Agreement, GRH agreed to subject *all of its property* to the amenity fees and granted certain minimum use and enjoyment of the Amenities to subsequent owners and purchasers of homes in the development.

32. The 2005 Fee Agreement provides that "[n]othing contained herein obligates the Developer to convey, lease, or otherwise contract for any specific Amenities." Recital C.

33. GRMD was not a party to the 2005 Fee Agreement. The 2005 Fee Agreement inured to the benefit of the parties thereto and their success and assigns, and it did not identify any third-party beneficiaries.

34. No provision of the 2005 Fee Resolution or the 2005 Fee Agreement required Headwaters to acquire the ski and golf facilities on its own behalf or on behalf of GRMD.

The Granby IGA

35. In accordance with the Service Plans, on December 9, 2003, GRMD, Headwaters and the Town entered into an Intergovernmental Agreement, which was subsequently amended by a First Amendment to Intergovernmental Agreement dated May 20, 2005, and a Second Amendment to Intergovernmental Agreement dated April 11, 2006 (collectively, the "2003 Granby IGA").

36. On February 26, 2008, GRMD, Headwaters, the Town, and GRMD Nos. 2-8 entered into an intergovernmental agreement ("Granby IGA"). A copy of the Granby IGA is attached as **Exhibit 5** to the Amended Complaint. The Granby IGA superseded and replaced the 2003 Granby IGA in its entirety.

37. The Granby IGA provided that GRMD, Headwaters and GRMD Nos. 2-8 "will be authorized to acquire, construct, own, operate and maintain the ski area and lifts, ski lodge, golf courses . . . . as more fully described on Exhibit A, attached hereto and incorporated by references, collectively called the 'Amenities.'" That agreement acknowledged that the Amenities are not required to be dedicated or conveyed by the Developer for public use, authorized the imposition of an amenities fee upon dwelling units in the District to defray the costs of "acquisition, construction and installation of the Amenities," and provided Granby residents with preferred access and discounts to the Amenities. ¶ 5(b) – (f).

The Exclusion Agreement and First Amendment to 2006 Master IGA

38. On April 21, 2010, GRH, Headwaters and GRMD entered an Exclusion Agreement ("Exclusion Agreement") to, among other things, document the terms and conditions

under which GRMD would exclude certain property from its boundaries. A copy of the Exclusion Agreement is attached hereto as **Exhibit C.**

39. The Exclusion Agreement provides that unless otherwise agreed to by Headwaters, the Amenity Fee established under the 2005 Fee Resolution would remain in full force and effect, that the excluded property would remain liable for payment of same, and that Headwaters would continue to impose and collect the Amenity Fee pursuant to the terms of the Amenity Fee Resolution. § 3.2.

40. Section 3.2.1 of the Exclusion Agreement further states:

> GRMD acknowledges and agrees that the Amenity Fees are payable to HWMD [Headwaters] and GRMD has no right, title or interest thereto. Accordingly, any Amenity Fees received by GRMD shall be paid over to HWMD by GRMD as soon as practical, and GRMD agrees to execute any necessary documents to assign all right, title, and interest in any Amenity Fee to HWMD.

41. Pursuant to the Exclusion Agreement, GRH, GRMD and Headwaters repudiated the 2008 Master IGA and reinstated the 2006 Master IGA. § 4.1.

42. The Exclusion Agreement provides that the obligations of Headwaters and GRMD under the 2006 Master IGA are subject to annual budgeting and appropriations and that financial obligations of a district payable after the current year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the applicable rules, regulations, and resolutions of the district and applicable law. § 4.3.1.

43. The Exclusion Agreement amended the 2006 Master IGA to provide that the failure of a District to budget and appropriate funds for the succeeding year shall terminate the 2006 Master IGA in its entirety as of December 31 of the current year and that if either district anticipated terminating the 2006 Master IGA, it should notify and confirm its intent in August and September of the year of the anticipated termination. § 4.3.2.

44. Under the Exclusion Agreement, Headwaters and GRMD agreed to fully cooperate to give effect to the intent and purposes of that Agreement and to act in good faith in the performance of that Agreement. § 9.6.

45. On the same day as the Exclusion Agreement, GRMD and Headwaters entered into a first amendment to the 2006 Master IGA to make the payment and termination provisions of that document consistent with the provisions of the Exclusion Agreement, including amendment of the 2006 Master IGA to state that the payment obligations of either district are subject to annual budgeting and appropriations, that the financial obligations of a district payable after the current year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available, providing for termination of the 2006 Master IGA if either district fails to budget and appropriate funds for the succeeding year, and providing for notice of same if

either party anticipates such termination as set forth in the Exclusion Agreement. A copy of the First Amendment to 2006 Master IGA is attached hereto as **Exhibit D**.

The Lease Purchase Agreement

46. On December 31, 2012, GRH as "Landlord" and Headwaters as "Tenant" entered into a Second Amended and Restated Lease Purchase Agreement ("LPA") for the stated purpose of giving Headwaters the right to use and an option to acquire a portion of the Granby Ranch development, including the ski area and golf course and improvements located thereon (as defined in the LPA, the "Leased Premises"). A copy of the LPA is attached to the Amended Complaint as **Exhibit 6**. GRMD was not a party to the LPA.

47. The ski area and golf area portions of the Leases Premises are referred to in the LPA (and herein) as the "Amenities," Recital C.

48. The initial term of the LPA was one year, which would automatically renew for an additional 49 one-year terms unless Headwaters' board of directors chose during any lease year not to appropriate rent in its budget for the ensuing lease year or the LPA was terminated for other reasons set forth therein. § 2.

49. For the life of the LPA, GRH remained responsible for the payment of utilities, taxes, costs of certain insurance, and maintenance, and GRH retained fee title to the Leased Premises, including improvements. §§ 5-6, 8.a.

50. Annual rent under the LPA consisted solely of an amount equal to the proceeds of all Amenity Fees collected by Headwaters each year under the 2005 Fee Resolution, the 2005 Fee Agreement and another 2005 fee agreement with a different property owner (as those agreements may be amended and restated from time to time).

51. There was no set amount of rent because, as the parties acknowledged in the LPA, "the amount of Amenity Fees received by the Tenant may fluctuate greatly from month to month and year to year." § 3.b.

52. Headwaters did not retain any Amenity Fees to fund operation of the Amenities or other district expenses. § 3.a. Nor was Headwaters required to remit a minimum amount of Amenity Fees per year; rather, the LPA was not to be construed as indebtedness of Headwaters or a pledge of Headwaters' credit. § 3.a, c.

53. All Rental Payments Headwaters made to GRH under the LPA were "absolute and unconditional in all events" and not subject to recoupment, counterclaims, or other defenses. § 3.a.

54. The LPA had multiple termination provisions. Termination of the LPA was automatic upon the earliest of any of the following events: a) the expiration of the Original Term or any Renewal Term due to the failure of Headwaters to appropriate Amenity Fees

to be paid pursuant to the terms of the LPA to continue leasing the Leased Premises for the ensuing Renewal Term; b) default by Headwaters and GRH's election to terminate the LPA; c) all Amenity Fees collectable under the Amenity Fee Agreements and the Fee Resolution have been collected in full; d) payment of the Purchase Price as defined in the LPA exclusively from Amenity Fees; e) with the Landlords' prior written consent, payment of the Purchase Price from sources other than Amenity Fees; or f) December 31, 2062. § 2.

55. In addition, the LPA provided that "if Tenant ever ceases to operate the Amenities on the Leased Premises for 30 days or longer, . . . Landlord may, in its sole discretion and after at least 10 days advance notice to Tenant . . . elect to terminate this Lease . . . ." § 10.

56. Section 23 of the LPA stated that Headwaters would acquire the Leased Premises for the defined Purchase Price on December 31, 2062 if the Lease was not terminated before that date. § 23.

57. The LPA stated that the Purchase Price of the Leased Premises would be the lesser of (i) the Adjusted Appraisal Value as more fully specific therein and (ii) "all Amenity Fees collectable by Tenant under the Amenity Fee Agreements and the Fee Resolution." § 23(b). Amounts previously paid as rental under the LPA were not credited against or deducted from the Purchase Price due and owning in the event Headwaters exercised its option to purchase prior to December 31, 2062.

58. The LPA contained a merger/integration provision stating that:

> This instrument shall merge all undertakings, representations, understandings, and agreements whether oral or written, between the Parties with respect to the Leased Premises and the provisions of this Lease and shall constitute the entire Lease unless otherwise hereafter modified by both Parties in writing.

§ 28(c).

59. The LPA granted the Landlord and Headwaters the right to modify the LPA in writing at any time, and no party other than GRH and Headwaters had any right to notices under the LPA, including notices of default or termination. §§ 20, 28 (e).

60. The LPA was not recorded in the Grand County real estate records upon its execution in December of 2012. It was first recorded in the real estate records some seven years later, in January of 2020, by Matt Girard, an individual that had no affiliation with Headwaters or GRH and no interest in the Leased Premises.

No Non-Disturbance and Attornment Agreement

61. The LPA acknowledges that the Leased Premises were, at the time of execution of the LPA, subject to the Deed of Trust "which is prior and superior to this Lease." § 13(b).

62. While the LPA provided that the GRH would cause to be delivered to Headwaters a Subordination, Non-Disturbance, and Attornment Agreement, to be executed by the Redwood as lender, no such executed agreement was ever delivered to Headwaters.

63. No document was ever recorded with the Grand County real estate records wherein Redwood (or any successors in interest) ever agreed to be bound by the terms of the LPA or to recognize same upon default and foreclosure.

The 2013 Fee Agreement

64. In July of 2013, GRH and Headwaters entered into an Amended and Restated Amenity Fee Agreement ("2013 Fee Agreement") that superseded and replaced the 2005 Fee Agreement. A copy of the 2013 Fee Agreement is attached hereto as **Exhibit E**. In that agreement, GRH again agreed to subject *all of its property*, which included the property within the GRMD boundaries, to the one-time amenity fee payable as set forth therein.

65. The 2013 Fee Agreement imposed a one-time amenity fee to be collected by Headwaters and set forth the rights of eligible property owners to priority access to the Amenities as determined by Headwaters from time to time in its sole and absolute discretion. The 2013 Fee Agreement contained a broad definition of "Amenities" similar to that set forth in the 2005 Fee Agreement, provided that the developer had no obligation to convey, lease, or otherwise contract for any specific Amenities, Recital C, and it stated that this agreement "creates no third-party beneficiary rights in favor of any person not a Party to this Agreement unless the Parties mutually agree otherwise in writing, except that Granby Ranch Metropolitan District Nos. 3-7 shall be a third party beneficiary if any of the Property is included within its respective boundaries." § 21(d).

66. Separately and independently, in July of 2013, Headwaters and GRMD passed an Amended and Restated Joint Resolution to establish an amenity fee ("2013 Fee Resolution."). The 2013 Fee Resolution superseded and replaced the 2005 Fee Resolution. The 2013 Fee Resolution approved an amenity fee to be paid to Headwaters on approximately 9.16 acres of property then within Headwaters and approximately 212.15 acres of property then within GRMD. A copy of the 2013 Fee Resolution is attached hereto as **Exhibit F.** That Fee Resolution contained a broad definition of "Amenities" similar to that set forth in the 2004 Fee Resolution and set forth the priority access available to eligible property owners as determined by Headwaters' board of directors from time to time in its sole and absolute discretion.

Amendment of the Service Plans and Termination of the Master IGA.

67. On August 22, 2016, GRMD, Headwaters, GRMD No. 8 and GRH entered into a Letter Agreement ("Letter Agreement") to, whereby, among other things, GRH agreed to cancel or release any right to payment on GRMD bond issued in 2010 in the amount of $11.1 million held solely by GRH, GRH assumed certain obligations with respect to refunding of GRMD's 2006 bonds, and the parties agreed to ***"eliminate any obligations between the parties other than GRMD's funding of road operations, maintenance and minor repairs;" and "terminate any***

financial obligations other than road operation, maintenance and minor repairs between GRMD and Headwaters." A copy of the Letter Agreement is attached hereto as **Exhibit G.** (emphasis added).

68. The 2016 Letter Agreement was modified by the parties in 2017 and 2018 to account for delays in the refunding of the 2006 bonds; the above-quoted provision was not modified in those amendments other than to note that the parties had satisfied this obligation and terminated their obligation to one another in 2017.

69. In furtherance of the Letter Agreement, on October 11, 2016, a second amendment to the Service Plan for GRMD was approved by the Town to, among other things, "clarify that the relationship between GRMD and Headwaters as otherwise set forth in the Service Plan is terminated and rendered null and void." A copy of the 2016 Amendment to GRMD Service Plan is attached hereto as **Exhibit H.**

70. The 2016 Amendment to the GRMD Service Plan stated:

> The Original Service Plan is amended as a whole to clarify that the District IGA between GRMD and HMD will be terminated [and] GRMD will provide all its own operation and maintenance functions …. [and] any obligation of GRMD, other than as set forth in the road maintenance and snow removal agreement, to provide funds to HMD [Headwaters], or any delegation of power or delegation of approval or disapproval authority to HMD of any acts of the District, are repealed and rendered null and void ***with the intent that any role or relationship of GRMD as a "Tax District" and HMD as a "Service District" is terminated.***

§ II(B) (emphasis added).

71. On November 8, 2016, an amendment to the Service Plan for Headwaters was approved by the Town Board of Trustees for the express purpose of modifying the relationship between Headwaters and GRMD. A copy of the 2016 Amendment to Headwaters Service Plan is attached hereto as **Exhibit I**.

72. Specifically, Headwaters' Service Plan was amended "to clarify" that the IGA between GRMD and Headwaters would be terminated and that GRMD would thereafter provide all of its own operation and maintenance functions. § III(1). That section further stated:

> The Service Plan is further amended to clarify that any obligation of Granby Ranch Metropolitan District, other than as set forth in the road maintenance and snow removal agreement, to provide funds to the District, or any delegation of power or delegation of approval or disapproval authority to the District of any acts of Granby Ranch Metropolitan District, are repealed and rendered null and void ***with the intent that any role or relationship of the District (as the Service District) and Granby Ranch Metropolitan District (as the Tax District) is terminated.***

§ III(1) (emphasis added).

73. As contemplated in the Letter Agreement and the amendments to the Service Plans of Headwaters and GRMD, on November 17, 2017, GRMD, GRMD Nos. 2-8, entered a Termination of Intergovernmental Agreement ("Master IGA Termination"). A copy of the Master IGA Termination is attached to the Amended Complaint as **Exhibit 8**.

74. The Master IGA Termination stated that both the 2006 Master IGA and 2008 Master IGA were terminated and of no further force and effect. §§ 2-3.

75. The Master IGA Termination provided that "the Parties intend for certain of the Granby Ranch Districts, specifically GRMD, to operate independently from Headwaters," and that "[d]ue to the amended service plans and the intention of certain of the Parties to operate independently from each other, there is no further need for the Master IGAs." Recital H.

76. The Master IGA Termination further provided that Headwaters, GRMD, and GRMD Nos. 2-8 have "fully satisfied their obligations under the Master IGAs and are released from any further obligations thereunder" § 4, and stated that:

> To the extent permitted by law, each District hereby waives the right to recover from and generally, unconditionally, fully and irrevocably releases, waives, acquits and forever discharges each of the other Districts, their officers and directors (collectively "Released Parties"), from and against any and all costs, losses, claims, liabilities, expenses, demands, debts, controversies, actions or causes of action, agreements, and promises, including reasonable attorneys' fees (including appeals) (collectively, "Claims"), which has been raised or could have been raised, whether arising before, on or after the date hereof.

§ 5.

The Second Granby IGA.

77. On November 8, 2016, the Town, Headwaters, GRMD, and the GRMD Nos. 2-8 entered into an Amended and Restated Intergovernmental Agreement (the "Second Granby IGA"). A copy of the Second Granby IGA is attached to the Amended Complaint as **Exhibit 7**.

78. The Second Granby IGA superseded and replaced the Granby IGA in its entirety.

79. The Second Granby IGA provides that GRMD, Headwaters and GRMD Nos. 2-8 "will be authorized to acquire, construct, own, operate and maintain the ski area and lifts, ski lodge, golf courses . . . . as more fully described on Exhibit A, attached hereto and incorporated by references, collectively called the 'Amenities.'" Ex. 5, ¶ 5(a). No Exhibit A was attached to or included in the executed version of the Second Granby IGA.

80. The parties stipulated that the Second Granby IGA "constitutes the entire agreement among the Parties and supersedes all prior written or oral agreements, negotiations, or

representations and understandings of the Parties with respect to the subject matter contained herein."

81. The Second Granby IGA acknowledges the potential authority of Headwaters, GRMD, and the GRMD Nos. 2-8 to acquire the Amenities, ¶ 5(a), but imposed no obligation on Headwaters to acquire the Amenities. Nor did it provide any right for Headwaters to acquire the Amenities in that the then owner of the Amenities (GRH) was not a party to the Second Granby IGA.

82. The Second Granby IGA affirms that the Amenities are not required to be dedicated or conveyed by the Developer for public use, authorizes the imposition of an amenities fee upon dwelling units in the district to defray the costs of "acquisition, construction and installation of the Amenities," and provides Granby residents with preferred access and discounts to the Amenities.

83. The Second Granby IGA provides that GRMD, Headwaters and GRMD Nos. 2-8 "shall be jointly and severally liable for each obligation of the Districts set forth herein."

84. The parties further stipulated that the Second Granby IGA "is not intended to, and shall not be deemed to confer any rights upon any persons or entities not named as parties, nor to limit in any ways the powers and responsibilities of the Town, the Districts, or any other entity not a party hereto."

85. Nothing in the Second Granby IGA requires Headwaters to acquire the ski and golf facilities on its own behalf or on behalf of GRMD.

2018 Waiver and Release Agreement

86. In April of 2018, in consideration of the agreements in the 2016 Letter Agreement and other agreements made to resolve disputes between them, GRH, Headwaters, GRMD, and GRMD No. 8 entered into an agreement entitled Agreement Re Waiver and Release of Claims ("Waiver and Release Agreement"). A copy of the Waiver and Release Agreement is attached hereto as **Exhibit J**.

87. The Waiver and Release Agreement acknowledges that due to the status of development within GRMD and the amendment of the services plans, the Master IGAs "are no longer necessary." Recital S.

88. Pursuant to the Waiver and Release Agreement, the parties broadly released each other and their successor and assigns "from and against any and all claims, demands, obligations, duties, liabilities, damages, costs, and remedies therefor of every kind, description, character or nature whatsoever now or in the future, whether known or unknown, raised or which could have been raised, which may otherwise exist or which may arise in relation to ….the Master IGA, …

or any other matter related to the formation, administration, and operation of the District (the "Claims") existing as of the Release Date. § 1.

89. The release and waiver of claims relating to the Master IGA was effective upon the termination of the Master IGA and the obligations of the parties therein. § 3(c).

90. The release and waiver of claims for other matters relating to the formation, administration and operation of the Districts was effective upon refinancing of the Senior Bonds, release and discharge of the Subordinate Bonds, and Termination of the Master IGAs. § 3(e). All of those events occurred prior to 2019.

Granby Ranch Foreclosure.

91. The Governor of the State of Colorado ordered all ski resorts to close effective March 15, 2020. Granby Ranch ski amenities and all other facilities subject to the LPA were closed at that time. The ski facilities remained closed until December 10, 2020. Though golf courses were not closed by the State of Colorado, the Granby Ranch golf course did not open for use until on or after mid-June 2020. No other Granby Ranch facilities subject to the LPA were operated during the spring or summer of 2020.

92. On or about April 8, 2020, the former operating entity, Granby Ranch Amenities ("GRA") provided notice to the Headwaters board that it intended to terminate its agreement with Headwaters to manage the Leased Premises on or before October 5, 2020. GRA then provided notice in May 2020 that it would no longer operate the Amenities after May 30, 2020.

93. On or about April 21, 2020, two Headwaters board members received an email from Matt Girard, the president of GRMD, requesting that Headwaters "consider terminating the management agreement immediately per clause 6.1(iii) in that GRA has ceased to operate the golf Amenity as required under the agreement, as any reasonable person would interpret the fact that GRA having no staff working and no intention to hire staff to work on opening the golf course as, for all practical purposes, "ceasing operations", and have already done so for a period of 30 days." A copy of the April 21, 2020 Email from Matt Girard is attached hereto as **Exhibit K**.

94. Eventually, GRH defaulted on its obligations under the Deed of Trust. In January 2020, the court appointed a receiver over the property subject to the Deed of Trust, including the Leased Premises.

95. In the spring of 2020, Granby Prentice, then holder of the Deed of Trust, initiated nonjudicial foreclosure proceedings pursuant to C.R.S. § 38-38-101, *et seq.* Following issuance of an order authorizing sale and the August 14, 2020 sale by the Public Trustee, Granby Prentice submitted the highest bid and was issued a Certificate of Purchase for the property that included the Leased Premises. *Id.* Granby Prentice then assigned the Certificate of Purchase to GP Granby Holdings LLC, now known as Gray Jay Ventures, LLC ("Gray Jay").

96. Pursuant to C.R.S. § 38-38-501, on or about August 31, 2020, Gray Jay, as holder of the Certificate of Purchase upon expiration of all redemption periods, took title to Granby Ranch, including the Leased Premises. In August of 2020, the Public Trustee issued a Public Trustee's Deed to GP Granby Holdings granting it title to the Leased Premises and other subject property, which deed was recorded in the land records for Grand County on August 31, 2020 at Reception No. 202000007560.

97. The foreclosure terminated the LPA, a junior lien and encumbrance on the property subject to the Deed of Trust.

98. Gray Jay did not succeed GRH as Landlord under the LPA because, by operation of law, the foreclosure extinguished the LPA.

99. On November 11, 2020, Gray Jay notified Headwaters that, even if the LPA was not terminated by way of foreclosure, Gray Jay was electing to terminate the LPA pursuant to section 10 thereof based upon Headwaters' failure to operate the Amenities for more than thirty days. A copy of that notice is attached hereto as **Exhibit L**.

100. Based upon its belief that the LPA had been terminated and its inability to fund and fulfill the obligations of the Tenant under the LPA, Headwaters has not appropriated rental payments for payment of rent under the LPA for fiscal years 2021, 2022, or 2023.

101. On May 5, 2021, GR Terra and its affiliate, GRCO LLC, purchased the majority of the Granby Ranch development, including the property formerly comprising the Leased Premises, from Gray Jay. GR Terra and GRCO LLC have already begun to make significant investments to continue the development of Granby Ranch and enhance the Amenities.

Headwaters Never Exercised Its Option to Purchase

102. At no point during the term of the LPA did Headwaters ever attempt to or offer to purchase the Leased Premises pursuant to any provision of the LPA. It has never provided notice to the Landlord under the LPA of any intent to acquire the Leased Premises pursuant to that document; nor has it ever tendered the Purchase Price set forth in the LPA.

103. Headwaters does not currently have, and has never had, sufficient funds to purchase the Leased Premises or pay the Purchase Price, and Headwaters' Board of Directors has never budgeted nor appropriated funds for Headwaters' purchase of the Leased Premises.

104. GRMD never made demand upon Headwaters for it to acquire the Amenities prior to filing this lawsuit; nor did it ever notify Headwaters that it deemed Headwaters in breach of any contractual obligation or in default of any contract based upon Headwaters' failure to acquire the Amenities.

Plaintiff's Claims Against Headwaters

105. In direct contravention and derogation of the relationship and agreements between Headwaters and GRMD, as modified and terminated over the years, GRMD filed this lawsuit in February 2021, as amended that Headwaters breached a duty to acquire the Amenities on behalf of GRMD (Count II) and asserting that Headwaters is bound by the LPA as a covenant running with the land (Count VI).

106. GRMD's claims against Headwaters (and all other Defendants) are premised upon GRMD's assertion that it has, and is entitled to recover, some $6 million in "equity" in the property now owned by GR Terra. The claims erroneously assert that, under the LPA, Headwaters paid over $6 million dollars in Amenity Fees to the owner of the Amenities (GRH and its successors) on GRMD's behalf and that this sum represents equity of GRMD under the LPA.

107. On May 20, 2021, GRMD filed in this Court, and recorded in the land records through a filing with the County Clerk and Recorder, a "Notice of Commencement of Action" stating that the action had been commenced wherein relief is claimed affecting title to the property legally described therein in that notice, which includes property now owned by GR Terra ("Lis Pendens Notice." A copy of the Lis Pendens Notice is attached hereto as **Exhibit M**.

108. GRMD's claims for breach of the Master IGA, Service Plans, Second Granby IGA and LPA are unfounded, frivolous, in bad faith and in violation of GRMD's own agreements with Headwaters. Even if GRMD ever had the right to enforce the alleged contractual obligations it seeks to impose on Headwaters in this lawsuit (which Headwaters disputes), any such claims are now squarely defeated by GRMD's express termination of the Master IGA (and all versions thereof) and amendment of its Service Plan, GRMD's repeated acknowledgements and agreements that the prior relationship between the two Districts has been severed and terminated, and GRMD's express waiver and relinquishment of claims against Headwaters based upon the District's prior relationship and agreements.

109. Moreover, GRMD's claims to enforce the LPA are unfounded, frivolous, and in bad faith in that, whether not a covenant running with the land, the LPA was terminated by the foreclosure of the senior deed of trust or alternatively was terminated pursuant to its own terms as set forth herein.

110. In response to GRMD's claims, Headwaters has been required to retain legal counsel and to expend significant resources and attorneys' fees to defend these unfounded and frivolous claims, including those now dismissed by this Court. The litigation is ongoing and Headwaters, a public body, will be forced to continue to expend its limited resources to defend against GRMD's claims.

Count I
(Breach of the Exclusion Agreement)

111. The allegations of paragraphs 1 through 110 of these Counterclaims are incorporated by this reference as if fully set forth herein.

112. GRMD and Headwaters entered into the 2010 Exclusion Agreement, in part, to document their agreements relating to maintenance, operations and future obligations of the parties. Ex. C, § 1.1.

113. Pursuant to the Exclusion Agreement, GRMD "acknowledges and agrees" that the Amenity Fees paid under the 2005 Fee Resolution (as continued in the 2013 Fee Resolution) were payable solely to Headwaters and that GRMD had "no right, title or interest thereto" and "agrees to execute any necessary documents to assign all right, title, and interest in any Amenity Fee to HWMD [Headwaters]." Ex. C, § 3.2.1.

114. In addition, GRMD expressly agreed it would "from time to time execute and deliver such further reasonably acceptable instruments as the other Party or its counsel may reasonably request to effectuate the intent of this Agreement" and to "to fully cooperate to give effect to the intent and purposes of this Agreement." Ex. C, §§ 9.5, 9.6.

115. Pursuant to the Exclusion Agreement, GRMD also agreed that the "Property", which included the Leased Premises, "shall not be liable or have any obligations for operations of GRMD of any kind." § 3.4.

116. In Section 4.4 of the Exclusion Agreement, GRMD agreed to "convey and dedicate any public improvements for which it has ownership to HWMD [Headwaters] for ownership, operations, and maintenance," and to "execute such necessary conveyance documents to transfer and public improvements and related appurtenances to HWMD, including as necessary and appropriate, special warranty deeds, bills of sale, assignment agreements, or other conveyance documents, conveying title to the public facilities, infrastructure, any property and any appurtenances thereto owned by GRMD to HWMD."

117. In Section 6.1 of the Exclusion Agreement, GRMD agreed that "it shall not attempt to provide, independent of HWMD [Headwaters], any operation and maintenance services for the Facilities."

118. In Section 6.2 of the Exclusion Agreement, GRMD agreed to "not interfere with the operations and maintenance responsibilities of HWMD [Headwaters]."

119. In Section 6.3 of the Exclusion Agreement, GRMD agreed not to "interfere with or restrict future construction or development with the Granby Ranch development."

120. Section 8.1 of the Exclusion Agreement provides that an "Event of Default" occurs under that Agreement if any party fails to perform any of its obligations therein, including but not limited to:

8.1.1. The violation of or failure to perform any material provision of this Agreement by any Party or the failure of any representation or warranty of a Party to be true;

8.1.3. The failure to perform or observe any other covenants, agreements, or conditions in this Agreement on the party of any Party and to cure such failure in accordance with Section 8.3.

8.1.4. Any effort by any Party …. that might reasonably be believed to result in the avoidance by court order or otherwise of any Party's obligations under this Agreement."

8.1.5. Any act or omission by and Party …. That might reasonably be believed to result in the interference in the exercise of any Party's rights hereunder; and/or

8.1.6. The failure of any Party to take such action as is required by law to enable each Party to perform its obligations hereunder, …..

121. GRMD's filing and continued prosecution of its claims against Headwaters in this lawsuit based upon its alleged interest in the Amenity Fees in the form of "equity" in favor of GRMD, its demand to recover the amount of Amenity Fees paid as rent under the LPA, and its demand that Headwaters has an obligation to purchase the Amenities on behalf of GRMD directly contravene its acknowledgment and agreement in the Exclusion Agreement that GRMD has no right, title or interest in the Amenity Fees as well as is obligation to fully cooperate to give effect to the intent and purpose of that Agreement.

122. GRMD's filing and prosecution of its claims against Headwaters constitutes an event of default under all of the above cited provisions of Section 8.1 of the Exclusion Agreement in that the claims constitute: (i) a violation and failure to perform material provisions of the Exclusion Agreement and an attempt to invalidate representations and warranties made by GRMD therein; (ii) a failure to perform and observe covenants, agreements, and conditions in the Exclusion Agreement; (iii) an effort by GRMD that might reasonably be believed to result in the avoidance by court order or otherwise of GRMD's obligations under the Exclusion Agreement; (iv) an act that might reasonably be believed to result in the interference in the exercise of any party's rights under the Exclusion Agreement; and (v) the failure to take such action as is required by law to enable each party to perform its obligations under the Exclusion Agreement.

123. In addition, GRMD has failed to comply with Sections 3.4, 4.4, 6.1, 6.2, and 6.3, giving rise to additional Events of Default under the terms of the Exclusion Agreement.

124. On January 10, 2022, Headwaters gave notice of default to GRMD in accordance with the notice and default provisions of the Exclusion Agreement and provided GRMD an opportunity to cure its default by dismissing its claims with prejudice.

125. GRMD responded on January 25, 2022, denying that its actions gave rise to any breach or default under the Exclusion Agreement and refusing to take the necessary steps to cure the alleged default.

126. On January 26, 2022, Headwater sent GRMD a notice of continuing default in accordance with the Exclusion Agreement and instigated the dispute resolution process set forth in Section 8.4 of the Exclusion Agreement.

127. Both Headwaters and GRMD appointed two representatives to serve on the Dispute Resolution Committee and that Committee met on February 1, 2022; the representatives agreed at that meeting that they were unable to reach any resolution of Headwaters' claim and would not be able to render any decision on that matter.

128. At the conclusion of the meeting of the Dispute Resolution Committee, all representatives, as well as counsel for both Headwaters and GRMD, agreed that with respect to Headwaters' claimed default under the Exclusion Agreement, the parties had completed the Dispute Resolution process set forth in Section 8.4 of the Exclusion Agreement.

129. GRMD's claims for breach of the Master IGA and Second Granby IGA and damages based upon alleged equity consisting of payment of Amenities Fees are unfounded, frivolous and in bad faith in light of GRMD's agreement that it has no right, title or interest in the Amenities Fees under the Exclusion Agreement.

130. GRMD's breach of the Exclusion Agreement as set forth herein has caused, and will continue to cause, Headwaters damages, including but not limited to, the significant attorneys' fees that it has incurred and will incur to defend these claims against it.

131. Section 8.5.2 of the Exclusion Agreement allows any party to protect and enforce its rights under this Agreement by such suit or special proceedings as they may deem appropriate, including suits for specific performance of covenants and agreements contained therein and/or damages caused by the breach, including attorneys' fees and all other costs and expenses incurred in enforcing the Exclusion Agreement.

132. WHEREFORE, Headwaters requests that this Court enter judgment in its favor and against GRMD as follows:

A. Declaring that GRMD's commencement and prosecution of this Lawsuit constitutes a breach of the Exclusion Agreement and ordering GRMD to perform all of its other obligations under the Exclusion Agreement, specifically Sections 3.2.1, 3.4, 4.4, 6.1, 6.2, and 6.3.

B. For all damages caused by GRMD's breach of the Exclusion Agreement, including, without limitation, the costs and attorneys' fees incurred by Headwaters in defending the claims in this litigation, in amounts to be proved at trial.

C. For Headwaters attorneys' fees and costs incurred in enforcing the terms of the Exclusion Agreement.

D. Pre- and post-judgment interest as provided by law; and

E. Such other and further relief as the Court may deem just.

Count II
(Breach of the Letter Agreement and Master IGA Termination)

133. The allegations of paragraphs 1 through 132 of these Counterclaims are incorporated by this reference as if fully set forth herein.

134. In accordance with and as contemplated in the Letter Agreement as well the amendment to Headwaters' Service Plan, GRMD and Headwaters terminated the 2003 Master IGA in 2006 and terminated the only surviving Master IGA, the 2006 Master IGA, on November 17, 2017 via the Master IGA Termination. Though previously repudiated, that Master IGA Termination also terminated the 2008 Master IGA. Ex. 8, §§ 2-3.

135. The Master IGA Termination clearly stated the intent of the parties thereto, including GRMD, that GRMD would "operate independently from Headwaters," and that "[d]ue to the amended service plans and the intention of certain of the Parties to operate independently from each other, there is no further need for the Master IGAs." Recital H.

136. Pursuant to the Master IGA Termination, GRMD agreed that Headwaters had "fully satisfied" its obligations under the Master IGAs and it released Headwaters from any further obligations thereunder" § 4.

137. Pursuant to the Master IGA Termination, GRMD waived, released and discharged Headwaters from all Claims, broadly defined to include "any and all costs, losses, claims, liabilities, expenses, demands, debts, controversies, actions or causes of action, agreements, and promises, including reasonable attorneys' fees (including appeals) …. Which has been raised or could have been raised, whether arising before, on or after the date hereof." § 5.

138. In direct contravention of GRMD's agreements and release under the Master IGA Termination, GRMD's breach of contract claim against Headwaters alleges that Headwaters has breached the Master IGA by failing to acquire the Amenities and seeks damages for this alleged breach.

139. GRMD's claim ignores the Master IGA Termination's termination of the Master IGA and violates GRMD's agreement in the Master IGA Termination to waive, release and discharge Headwaters from any obligations, demands, losses, causes of action, etc., under the IGAs.

140. GRMD's breach of contract claim against Headwaters also alleges that Headwaters breached the Second Granby IGA by failing to acquire the Amenities and seeks damages for this alleged breach. This claim is also in violation of the broad release language in the Master IGA Termination.

141. At the time that the Master IGA Termination was executed in November of 2017, Headwaters and GRH had already entered the LPA (dated December of 2012) and GRMD was aware of that document and was thus also aware that Headwaters was not obligated to acquire the Amenities thereunder due to the numerous options for termination of the LPA without Headwaters' exercise of the option to purchase.

142. Therefore, to the extent that GRMD asserted that Headwaters was obligated under the Second Granby IGA to purchase the Amenities, GRMD's claim against Headwaters under the Second Granby IGA arose when Headwaters and GRH entered the LPA in December of 2012 and that claim could have been raised prior to the Master IGA Termination and is covered by the broad release agreement therein.

143. GRMD's breach of contract claims against Headwaters and demand that Headwaters has an obligation to purchase the Amenities on GRMD's behalf violates material terms of the Master IGA Termination, the parties' intent as set forth therein to operate independently of one another, and the broad release of claims, causes of actions, and damages agreed to by GRMD in the Master IGA Termination.

144. GRMD's claims for breach of the Master IGA and Second Granby IGA are unfounded, frivolous and in bad faith in light of GRMD's express termination of the Master IGA and its express waiver of these claims under the Master IGA Termination.

145. GRMD's breach of the Master IGA Termination as set forth herein has caused, and will continue to cause, Headwaters damages, including but not limited to, the significant attorneys' fees that it has incurred and will continue to incur to defend these claims against it.

146. WHEREFORE, Headwaters requests that this Court enter judgment in its favor and against GRMD as follows:

A. For all damages caused by GRMD's breach of the Letter Agreement and Master IGA Termination, including, without limitation, the costs and attorneys' fees incurred by Headwaters in defending the claims in this litigation, in amounts to be proven at trial.

B. Reasonable attorneys' fees and costs as provided in the parties' agreement and by law;

C. Pre- and post-judgment interest as provided by law; and

D. Such other and further relief as the Court may deem just.

Count III
(Breach of the Waiver and Release Agreement)

147. The allegations of paragraphs 1 through 146 of these Counterclaims are incorporated by this reference as if fully set forth herein.

148. In the 2018 Waiver and Release Agreement, Headwaters and GRMD acknowledged the termination of the Master IGAs, affirmed their intent to operate independently and again granted one another broad releases "from an against any and all claims, demands, obligations, duties, liabilities, damages, costs, and remedies therefor of every kind, description, character or nature whatsoever now or in the future, whether known or unknown, raised or which could have been raised, which may otherwise exist or which may arise in relation to ….the Master IGA, … or any other matter related to the formation, administration, and operation of the District (the "Claims") existing as of the Release Date." Ex. J, § 1.

149. The aforesaid release and waiver of claims relating to the Master IGA was effective in November of 2017 when the Master IGA was terminated and the release and waiver of claims relating to the administration and operation of the Districts was effective in 2019, long before GRMD filed its claims against Headwaters.

150. In direct contravention of GRMD's agreements and release under the Waiver and Release Agreement, GRMD's breach of contract claim against Headwaters alleges that Headwaters has breached the Master IGA by failing to acquire the Amenities and seeks damages for the alleged breach. GRMD's thus asserts claims arising under the Master IGA and relating to the administration and operation of the Districts.

151. GRMD's breach of contract claim against Headwaters and demand that Headwaters has an obligation to purchase the Amenities on behalf of GRMD violates GRMD's agreement in the Waiver and Release Agreement to waive, release and discharge Headwaters from any obligations, damages, remedies, etc., arising under the Master IGA or relating to the administration, and operation of the District.

152. GRMD's breach of contract claim against Headwaters also alleges that Headwaters breached the Second Granby IGA by failing to acquire the Amenities and seeks damages for the alleged breach. This claim is also in violation of the broad release language in the Waiver and Release Agreement.

153. At the time that the Waiver and Release Agreement was executed in November of 2017, Headwaters and GRH had already entered the LPA (dated December of 2012) and GRMD was aware of that document and was thus also aware that Headwaters was not obligated to acquire the Amenities thereunder due to the numerous options for termination of the LPA without Headwaters' exercise of the option to purchase.

154. Therefore, to the extent that GRMD asserted that Headwaters was obligated under the Second Granby IGA to purchase the Amenities, GRMD's claim against Headwaters under the Second Granby IGA arose when Headwaters and GRH entered the LPA in December of 2012 and that claim could have been raised prior to Waiver and Release Agreement and is covered by the broad release agreement therein.

155. GRMD's breach of contract claims against Headwaters violates material terms of the Waiver and Release Agreement, the parties' intent as set forth therein to operate independently of one another, and the broad release of claims, causes of action, and damages agreed to by GRMD in the Waiver and Release Agreement.

156. GRMD's claims for breach of the Master IGA and Second Granby IGA are unfounded, frivolous and in bad faith in light of GRMD's express termination of the Waiver and Release Agreement and its express waiver of these claims.

157. GRMD's breach of the Waiver and Release Agreement as set forth herein has caused, and will continue to cause, Headwaters damages, including but not limited to, the significant attorneys' fees that it will incur to defend these claims against it.

158. WHEREFORE, Headwaters requests that this Court enter judgment in its favor and against GRMD as follows:

A. For all damages caused by GRMD's breach of the Waiver and Release Agreement, including, without limitation, the costs and attorneys' fees incurred by Headwaters in defending the claims in this litigation, in amounts to be proven at trial.

B. Reasonable attorneys' fees and costs as provided in the parties' agreement and by law;

C. Pre- and post-judgment interest as provided by law; and

D. Such other and further relief as the Court may deem just.

Count IV
(Breach of GRMD's Service Plan Or Improper Modification of Same)

159. The allegations of paragraphs 1 through 158 of these Counterclaims are incorporated by this reference as if fully set forth herein.

160. The 2016 Amendment to the GRMD Service Plan, approved by GRMD's board and the Town of Granby, stated that GRMD would operate independently of Headwaters and, except as set forth in the road maintenance and snow removal agreement, ***with the intent that any role or relationship of GRMD as a "Tax District" and HMD as a "Service District" is terminated.*** § II(B) (emphasis added).

161. In direct contravention of that language, GRMD is now suing Headwaters for breach of Headwaters' alleged obligation to acquire the Amenities on GRMD's behalf.

162. GRMD's assertions in this lawsuit and claims against Headwaters are in breach of the terms of its Service Agreement.

163. Moreover, to the extent that GRMD could impose any obligation on Headwaters to operate or acquire the Amenities, then GRMD is in breach of its obligation under its original Service Plan to finance the costs of acquisition and operation of the Amenities in that GRMD has not provided any funds to Headwaters to purchase the Amenities and has not provided any funds toward operation of the Amenities.

164. GRMD's claims for breach of its Service Plan is unfounded, frivolous and in bad faith in light of GRMD's amendment to its Service Plan in 2016.

165. GRMD's breach of its Service Plan has caused, and will continue to cause, Headwaters damages, including but not limited to, the significant attorneys' fees that it will incur to defend these claims against it.

166. In the alternative, GRMD is seeking to materially modify the terms of its Service Plan to reinstate the roles and obligations of GRMD as the "Tax District" and Headwaters as the "Service District" contrary to the 2016 Amendment to the GRMD Service Plan.

167. C.R.S. § 32-1-207(2)(a) permits material modifications of a Service Plan to be made by the governing body of such special district *only by* petition to and approval by the board of county commissioners or the governing body of the municipality that has adopted a resolution of approval of the special district.

168. "Material modifications" include: "changes of a basic or essential nature, including but not limited to the following: Any addition to the types of services provided by the special district; a decrease in the level of services; a decrease in the financial ability of the district to discharge the existing or proposed indebtedness; or a decrease in the existing or projected need for organized service in the area." C.R.S. § 32-1-207(2)(a).

169. The material modifications GRMD seeks to implement in its Service Plan have not been approved by the Town of Granby as required by C.R.S. § 32-1-207(2)(a).

170. C.R.S. § 32-1-207(3)(a) permits the Court to enjoin any material departure from the Service Plan, which constitutes a material modification, upon the motion of any interested party.

171. WHEREFORE, Headwaters requests that this Court enter judgment in its favor and against GRMD as follows:

A. For all damages caused by GRMD's breach of its Service Plan, including, without limitation, the costs and attorneys' fees incurred by Headwaters in defending the claims in this litigation, in amounts to be proven at trial.

B. Reasonable attorneys' fees and costs as provided in the parties' agreement and by law;

C. Pre- and post-judgment interest as provided by law;

D. Or, in the alternative, Headwaters seeks an order from this Court to permanently enjoin GRMD's material departure from its Service Plan without the requisite approval required by C.R.S. § 32-1-07(2)(a).

E. Such other and further relief as the Court may deem just.

Count V
(Alternative Claim For Breach of the Second Granby IGA)

172. The allegations of paragraphs 1 through 171 of these Counterclaims are incorporated by this reference as if fully set forth herein.

173. While Headwaters disputes any breach by it of the Second Granby IGA and any obligation thereunder to acquire the Leases Premises, if this Court would impose any such obligation on Headwaters, then GRMD is also liable for such breach.

174. The Second Granby IGA provides that GRMD, Headwaters and GRMD Nos. 2-8 "will be authorized to acquire, construct, own, operate and maintain the ski area and lifts, ski lodge, golf courses . . . . collectively called the 'Amenities.'" Ex. 5, ¶ 5(a).

175. GRMD has never sought to acquire the Amenities and has never tendered the Purchase Price for the Leased Premises to the Landlord or Headwaters.

176. The Second Granby IGA also provides that GRMD has never sought to acquire the Amenities and has never tendered the Purchase Price for the Leased Premises to the Landlord or to Headwaters for its acquisition of the Leases Premises.

177. The Second Granby IGA also provides that GRMD, Headwaters and GRMD Nos. 2-8 "shall be jointly and severally liable for each obligation of the Districts set forth herein."

178. Therefore, to the extent Headwaters is in breach of the Second Granby IGA, GRMD is also in breach of that agreement for failing to acquire the Amenities and, in any event, GRMD is jointly and severally liable for any obligation of Headwaters under the Second Granby IGA.

179. WHEREFORE, Headwaters requests that this Court enter judgment in its favor and against GRMD as follows:

A. For all damages caused by GRMD's breach of the Second Granby IGA, including, without limitation, the costs and attorneys' fees incurred by Headwaters in defending the claims in this litigation, in amounts to be proven at trial.

B. For damages (in the nature of offset or otherwise) based upon GRMD's joint and several liability for the full amount of any liability of Headwaters under the Second Granby IGA.

C. Pre- and post-judgment interest as provided by law; and

D. Such other and further relief as the Court may deem just.

Count VI
(Declaratory Judgment – C.R.C.P. 57 and C.R.S. § 13-51-101 et. seq.)

180. The allegations of paragraphs 1 through 179 of these Counterclaims are incorporated by this reference as if fully set forth herein.

181. The LPA, including the option to purchase therein, was executed and recorded following execution and recording of the Deed of Trust. As such, the LPA was a junior lien or encumbrance on the property and the option to purchase therein was, at most, a junior sale contract.

182. Under the non-judicial foreclosure provisions in Article 38 of Title 30 of the Colorado statutes, a non-judicial foreclosure of a senior deed of trust extinguishes junior liens and land contracts.

183. Headwaters, the tenant under the LPA, was provided all required notices of the non-judicial foreclosure sale, and Headwaters did not exercise its statutory cure or redemption rights. Thus, Gray Jay, as the party holding the Certificate of Purchase upon expiration of the redemption periods, took title to the property formerly subject to the Leased Premises free and clear of the LPA and the purchase option therein.

184. The option to purchase provision of the LPA did not constitute a covenant running with the land, but even if it did, that covenant was junior to the LPA and extinguished through the foreclosure proceedings.

185. Alternatively, even if the LPA survived the foreclosure and Gray Jay succeeded to the rights of landlord thereunder, on November 11, 2020, Gray Jay notified Headwaters in accordance with the terms of the LPA, that if the LPA was not terminated by way of foreclosure,

Gray Jay was electing to terminate the LPA pursuant to section 10 thereof based upon Headwaters' failure to operate the Amenities for more than thirty days.

186. Alternatively, even if the LPA was not terminated by the foreclosure or by Gray Jay's exercise of its option to terminate as set forth above, the LPA was terminated by Headwaters' failure to appropriate Amenity Fees for payment of rent for calendar years 2021, 2022, and 2023. Under Section 2(a) of the LPA, the LPA automatically terminated by its own terms upon Headwaters' failure to appropriate Amenity Fees to be paid pursuant to the terms of the Lease; therefore, the LPA terminated as January 1, 2021 and/or as of the ensuing calendar years for which Headwaters failed to appropriate funds for payment of rent under the LPA.

187. The option to purchase provision of the LPA did not constitute a covenant running with the land, but even if it did and even if not extinguished by the foreclosure, restrictive covenants are limited by the terms thereof and subject to termination rights thereunder and the LPA was terminated under its terms based upon Gray Jay's termination notice and/or Headwaters' failure to appropriate rent payments for the 2021 calendar year or ensuing years.

188. Headwaters is a party that is interested under a written contract, or other writings constituting a contract, and it may have determined any question of construction or validity arising under the contract, and obtain a declaration of rights, status, or other legal relations thereunder, pursuant to the terms of C.R.C.P. 57 and the Uniform Declaratory Judgment Law, § 13-51-101 et. seq.

189. Headwaters has no adequate remedy at law.

190. Accordingly, Headwaters seeks a declaration that the LPA was terminated for one or more of the foregoing reasons and that no party, including GRMD, has any right to seek to enforce any provision thereof.

191. WHEREFORE, Headwaters respectfully requests that this Court enter judgment in its favor and against GRMD as follows:

A. Declaring that the LPA was terminated in its entirely through foreclosure of the Leased Premises, or alternatively, through Gray Jay's notice of termination, or alternatively, due to Headwaters' failure to appropriate funds for rental payments for the calendar year 2021 or the ensuring years.

B. Awarding reasonable attorneys' fees and costs as provided in the parties' agreement and by law;

C. Granting such other and further relief as the Court may deem just.

Dated this 3rd day of November, 2022.

HUSCH BLACKWELL LLP

s/ Jamie H. Steiner
Jamie H. Steiner, #49034
JoAnn T. Sandifer (Admitted Pro Hac Vice)

Attorneys for Headwaters Metropolitan District and GR Terra LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **HEADWATER METROPOLITAN DISTRICT'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S THIRD AMENDED COMPLAINT, AND COUNTERCLAIMS** was served via the Colorado Courts e-filing system on November 3, 2022, addressed to the following:

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DATE FILED
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CASE NUMBER: 2021CV30008

EXHIBIT 2

Exclusion Agreement attached as Exhibit C to Headwaters' Answer and Counterclaims, filed November 3, 2022.

DATE FILED: November 3, 2022 4:55 PM
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CASE NUMBER: 2021CV30008

EXCLUSION AGREEMENT

This **EXCLUSION AGREEMENT** (this "Exclusion Agreement") is entered into as of the 21st day of April, 2010 by and among **GRANBY REALTY HOLDINGS LLC**, a Colorado limited liability corporation ("GRH"), **HEADWATERS METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado ("HWMD"), and **GRANBY RANCH METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado ("GRMD"). HWMD and GRMD may be referred to individually as a "District" and collectively as the "Districts." GRH, HWMD, and GRMD may be referred to individually as a "Party" and collectively as the "Parties."

RECITALS

This Exclusion Agreement is made with respect to the following facts, all of which the Parties acknowledge are an integral part of this Exclusion Agreement.

A. The Granby Ranch development ("Granby Ranch") is an approximately 5,000 acre planned, multi-use development which provides recreational, residential, lodging, dining, commercial and other experiences and opportunities to the general public and owners of property within Granby Ranch.

B. GRH is the master developer of Granby Ranch.

C. HWMD was organized pursuant to the laws of the State of Colorado to coordinate the acquisition, financing, and construction of public improvements, including streets and roadways, safety protection systems, water improvements, sanitary sewer and storm drainage, and park and recreation facilities, benefitting Granby Ranch, (collectively, the "Facilities") and for the management, operation and maintenance of improvements not conveyed to the Town of Granby.

D. GRMD was organized pursuant to the laws of the State of Colorado, contemporaneously with HWMD, in order to provide the funding for the Facilities and ongoing operations of the Districts.

E. The Service Plans for HWMD and GRMD (collectively, the "Service Plan") set forth the relationship between HWMD and GRMD and provide that HWMD is to construct, manage, own, operate and maintain the Facilities and provide services to Granby Ranch, and GRMD is to produce tax and other revenue sufficient to pay all costs related to the construction, financing, acquisition, operation, and maintenance of the Facilities.

F. In order to assure the orderly provision of the Facilities and essential services to Granby Ranch, and to assure the economic administration of the Districts' fiscal affairs, the Service Plan disclosed and established the necessity for a master intergovernmental agreement to fully implement the provisions of the Service Plan.

G. On June 1, 2006, the Districts entered into an intergovernmental agreement titled "District Facilities Construction and Service Agreement" (the "2006 Master IGA") setting forth the dual responsibilities and nature of the functions and services to be provided by each District.

H. Pursuant to the 2006 Master IGA, the Districts agreed that HWMD would own, operate, construct, and maintain the Facilities benefiting the Districts and that GRMD would pay all costs related to the construction, financing, acquisition, operation and maintenance of the Facilities.

I. The financial obligations of GRMD under the 2006 Master IGA are contractual general obligation debt of GRMD, and GRMD is obligated to, inter alia, impose an ad valorem property tax levy for the payment of its obligations thereunder.

J. In order to comply with its obligations under the 2006 Master IGA and to pay certain costs of designing, acquiring, constructing, completing, installing, relocating, and providing public improvements benefiting Granby Ranch, GRMD has previously issued its Limited Tax General Obligation Bonds, Series 2006 in the total principal amount of $14,725,000 (the "2006 Bonds"), and is obligated, inter alia, to impose an ad valorem property tax levy for the payment of its obligations thereunder at a "gallagherized" cap of 50 mills without reduction for obligations associated with the 2006 Master IGA.

K. In order to properly allocate revenue from GRMD's debt levy in accordance with the terms of the indenture for the 2006 Bonds, GRMD and HWMD desire to amend their respective budgets.

L. The outstanding obligations of GRMD under the 2006 Master IGA as of March 31, 2010 include $913,964 in Service Costs and $11,753,178 in Capital Costs, as those terms are defined in the 2006 Master IGA.

M. As partial consideration for this Agreement, the Parties agree to an allocation of Capital Costs set forth immediately above to properties other than those in GRMD. This allocation will reduce the Capital Costs due and owing under the 2006 Maser IGA to $10,205,653.

N. In order to refund GRMD's existing debt obligations under the 2006 Master IGA, GRMD will issue its Taxable Subordinate Limited Tax General Obligation Bonds, Series 2010, in the original aggregate principal amount of $11,119,000, and will be obligated, inter alia, to impose an ad valorem property tax levy for the payment of its obligations thereunder at a "hard" cap of 50 mills.

O. Three initiated measures (the "Ballot Initiatives") have been placed on the November 2010 statewide general election ballot, and the Ballot Initiatives, if passed, may unduly restrict the ability of GRMD to refund its debt at a later date, including the present obligations of the 2006 Master IGA.

P. Granby Ranch Metropolitan District Nos. 2-8 ("GRMD Nos. 2-8") were organized in order to more fully accommodate phasing of the Granby Ranch project and to provide greater flexibility for the potential uses of property within the development.

Q. Subsequent to the organization of GRMD Nos. 2-8, the 2006 Master IGA was amended and restated by a First Amended and Restated District Facilities Construction and Services Agreement (the "2008 Master IGA") to amend and restate certain provisions of the 2006 Master IGA and add GRMD Nos. 2-8 as parties to the agreement.

R. As partial consideration for the exclusions contemplated herein and this Agreement, and in order to clarify the obligations of the parties with respect to future contractual obligation indebtedness of GRMD, HWMD and GRMD agree that GRMD will repudiate the 2008 Master IGA and thereafter be governed by the provisions of the 2006 Master IGA.

S. In addition, GRMD and HWMD agree to amend the 2006 Master IGA to make the obligations of the Districts thereunder subject to annual appropriation and to revise the termination provision to be more consistent with annually appropriated obligations.

T. At the time of the organization of GRMD Nos. 2-8, it was anticipated that future boundary adjustments would occur with respect to the boundaries of the districts serving Granby Ranch.

U. The Parties acknowledge that the best interests of the entire Granby Ranch community are served by the continued, orderly development of Granby Ranch to create a tax-base sufficient to provide cost-effective facilities and services to the community, and in order to lessen the burden on existing property owners within Granby Ranch

V. In order to take advantage of the organization of GRMD Nos. 2-8, to properly phase development within Granby Ranch, and to not unduly burden GRMD with debt for future facilities, GRH has filed a petition for exclusion of certain of its property (the "GRH Property") from the boundaries of GRMD with the GRMD Board.

W. In order to assure that the roadways serving Granby Ranch remain open and available for the intended uses, including access to properties within GRMD, and the application of uniform rules applied throughout the Granby Ranch community, HWMD has filed a petition for exclusion of its roadways (the "HWMD Property") from the boundaries of GRMD with the GRMD Board.

X. In order to assure the greatest likelihood of continued development within Granby Ranch, GRMD recognizes the necessity of excluding the GRH Property and the HWMD Property (collectively, the "Property") from GRMD.

Y. As partial consideration for the exclusion, GRH agrees to exclusion of the GRH Property after the issuance of the 2010 Bonds. The GRH Property will therefore remain liable for its proportionate share of the principal and interest on the 2006 Bonds as well as the 2010 Bonds.

Z. As provided in the Service Plan, upon due organization of GRMD and HWMD the Districts executed an intergovernmental agreement with the Town of Granby (the "Town"), dated December 9, 2003 (as amended, the "Town IGA"), which Town IGA imposes, inter alia, certain obligations on the Districts with respect to the maintenance of streets, and contemplates that in order to provide for the payment of such obligations (as more particularly defined therein, the "Cure Amount"), the Districts would, if necessary, impose an operations fee.

AA. In order to provide for the ongoing operations and maintenances of the Facilities, GRMD and HWMD adopted a Joint Resolution of the Boards of Directors of Headwaters Metropolitan District and Granby Ranch Metropolitan District Concerning the Imposition of District Fees (as may be amended from time to time, the "Operations Fee Resolution"), pursuant to which the Districts authorized the imposition of a monthly "Operations Fee" to be imposed as set forth in the Operations Fee Resolution.

BB. The Parties desire to set forth their understanding with regards to the implementation of the Operations Fee Resolution.

CC. GRH and HWMD have entered into a 2006 Funding and Reimbursement Agreement ("2006 Funding Agreement") whereby GRH agreed to advance funds to HWMD for operations and maintenance costs until certain thresholds were met ("Funding Threshold").

DD. As the "Funding Threshold" has been met, the Parties desire to set forth their understanding regarding the funding of general administrative costs (e.g. insurance, legal fees, accountants' fees, auditing costs, etc.) and operation and maintenance costs associated with owning and maintaining the Facilities (collectively, the "O&M Costs").

EE. As questions have arisen concerning the proper method of implementing the "Gallagherization" concept set forth in the Service Plan and respective bond documents, the parties desire to set forth the Gallagherization methodology to be used with respect to both the 2006 Bonds and the 2010 Bonds.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and promises set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I
PURPOSE

1.1 Purpose. The purpose of this Agreement is to document the terms and conditions under which GRMD will exclude the Property from the boundaries of District; together with the maintenance, operations, and future obligations of each of the Parties.

1.2 Effective Date. The Effective Date for purposes of this Agreement shall be April 21, 2010.

ARTICLE II
EXCLUSIONOF THE PROPERTY/ DEBT OBLIGATIONS

2.1 Property to be Excluded. GRMD agrees, pursuant to the terms and conditions herein, and upon making the determinations required by Section 32-1-501 *et seq.,* C.R.S, to adopt an Order and Resolution excluding the Property from the boundaries of GRMD, pursuant to Section 32-1-501, *et seq.,* C.R.S, and to process the exclusion with the District Court in and for Grand County, Colorado.

2.2. Continued Obligation for Outstanding Debt. The Property, once excluded, shall remain liable for its proportionate share of the principal and interest on any outstanding bonded indebtedness of the District existing immediately prior to the effective date of the exclusion order. The indebtedness for which the Property shall remain proportionately liable is set forth as follows:

a. Granby Ranch Metropolitan District, Limited Tax General Obligation Bonds, Series 2006, in the principal amount of $14,725,000, dated June, 1, 2006, with a final maturity date of December 1, 2036.

b. Granby Ranch Metropolitan District, Limited Tax General Obligation Subordinate Bonds, Series 2010, in the principal amount of $11,119,000, dated April 21, 2010, with a final maturity date of December 15, 2049.

2.3 Contractual Obligation Indebtedness. The contractual obligation indebtedness for which the Property shall remain liable is $0.00.

2.4 Future Debt. The Property shall not be liable for any indebtedness issued after the effective date of the Court's order for exclusion.

2.5 Future Inclusions. Within six (6) months of the Effective Date, GRH shall file a petition for inclusion with one of the GRMD Nos. 2-8 or GRMD requesting the GRH Property be included within the boundaries of such district.

ARTICLE III
FEES, RATES, TOLLS, AND CHARGES

3.1 Capital Facilities Fees. The Property shall remain liable for payment of the District's Capital Facilities Fee imposed pursuant to the Amended and Restated Joint Resolution of the Board of Directors of Headwaters Metropolitan District and Granby Ranch Metropolitan District to Establish a Capital Facilities Fee, adopted on June 7, 2006, ("Capital Facility Fee Resolution").

3.2 Amenity Fees. Unless otherwise agreed by HWMD, the Parties agree that the "Amenity Fee" established pursuant to the Joint Resolution of the Boards of Directors of Headwaters Metropolitan District and Granby Ranch Metropolitan District to Establish an Amenity Fee, duly adopted May 26, 2005 (as amended, the "Amenity Fee Resolution") shall

remain in full force in effect, that the Property shall remain liable for payment of Amenities Fees, and HWMD shall continue to impose and collect the Amenity Fee pursuant to the terms of the Amenity Fee Resolution.

3.2.1 Assignment and Receipt. GRMD acknowledges and agrees that the Amenity Fees are payable to HWMD and GRMD has no right, title or interest thereto. Accordingly, any Amenity Fees received by GRMD shall be paid over to HWMD by GRMD as soon as practical, and GRMD agrees to execute any necessary documents to assign all right, title, and interest in any Amenity Fee to HWMD.

3.3 Operations Fee. GRMD shall, subject to the consent of HWMD, impose the Operations Fee in an amount sufficient to fund the deficiency in the Improvement Operating Budgets and Cure Amounts, in accordance with the Operations Fee Resolution. GRMD and HWMD agree that the adopted 2010 budget for HWMD constituted and incorporated the Improvement Operating Budgets as part thereof and shall constitute the Improvement Operating Budgets to be used for determination of the Monthly Rate to be imposed and collected during the 2010 fiscal year, if any. As at the time of the adoption of the HWMD and GRMD 2010 budgets it was not anticipated that an Operations Fee would be imposed, the December 20 deadline for providing written notice of the imposition of the fee to all homeowners is hereby extended to June 1, 2010, applicable to the 2010 fiscal year only.

3.3.1 The Property shall not be liable for the Operations Fee and the Districts shall record an amendment to the Memorandum of Resolution Concerning the Imposition of District Fees, recorded in the real property records of Grand, County, Colorado at reception #2007002391 (the "Fee Memorandum") stating that the Fees, as that term is defined in the Fee Memorandum, no longer constitute a valid, perpetual lien against the Property.

3.4 Operations and Maintenance Levy. The Property shall not be liable for any property tax levied by GRMD for operating costs of GRMD after the effective date of the Court's order for exclusion and, in addition, shall not be liable or have any obligations for operations of GRMD of any kind.

3.5 Imposition of other Fees, Rates, Tolls or Charges. Other than the Capital Facility Fee and the Amenity Fee, GRMD acknowledges and agrees that it has no right or authority to impose, and shall not otherwise attempt to impose, establish, or assess, any new or additional fee, rate, toll, or charge, against any portion of the Property, and that the Capital Facility Fee and Amenity Fee shall be limited to increases in accordance with the terms of the respective implementing resolution (collectively, the "Implementing Resolutions"). Neither GRMD nor HWMD shall repeal, modify, or amend the Implementing Resolutions without the written consent of the other party. In accordance herewith, the Property shall not be liable for any service charge, tap fees, or other rates, fees, tolls or charges imposed pursuant to Section 32-1-503, C.R.S., to supplement the proceeds of tax levies for any indebtedness of GRMD and the interest thereon.

ARTICLE IV
MASTER INTERGOVERNMENTAL AGREEMENT

4.1 Repudiation of 2008 Master IGA. GRMD hereby confirms its repudiation of the 2008 Master IGA, acknowledges and agrees that the 2006 Master IGA is of full force and effect, and covenants to comply with its commitments and obligations thereunder.

4.1.1 Consent to Repudiation. HWMD hereby consents to GRMD's repudiation of the 2008 Master IGA and affirms that the 2006 Master IGA is of full force and effect.

4.2 Contractual Obligations. The Parties agree that as of March 31, 2010, the obligations owing from GRMD to HWMD under the 2006 Master IGA include $913,964 in Service Costs and $11,753,178 in Capital Costs. As partial consideration for this Agreement, the Parties agree to an allocation of Capital Costs to properties other than those in GRMD. This allocation reduces the Capital Costs due and owing under the 2006 Maser IGA to $10,205,653. The Parties agree that upon issuance of the 2010 Bonds in the aggregate principal amount of $11,119,000, all debt obligations of GRMD to HWMD under the 2006 Master IGA are hereby deemed paid in full.

4.3 Amendment to 2006 Master IGA. HWMD and GRMD agree to amend the 2006 Master IGA as follows:

4.3.1 Liability of the Districts. Notwithstanding any provision in the 2006 Master IGA to the contrary, no provision, covenant, or agreement contained in the 2006 Master IGA, nor any obligation imposed upon HWMD or GRMD thereunder, shall constitute or create indebtedness of either District within the meaning of any Colorado constitutional provision or statutory limitation. No provision of the 2006 Master IGA shall be construed or interpreted as a delegation of governmental powers, or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever, or statutory debt limitation, including, without limitation, Article X, Section 20 or Article XI, Section 6 of the Constitution of the State of Colorado. Each District's obligations under the 2006 Master IGA shall exist subject to annual budgeting and appropriations. All payment obligations of either District are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the District's current fiscal period. Financial obligations of a District payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the applicable rules, regulations, and resolutions of the District and any other applicable law.

4.3.2 Termination. The termination provision contained in Section 8.2 (g) of the 2006 Master IGA is hereby amended to provide that failure of a District to budget and appropriate funds for the succeeding year shall terminate the 2006 Master IGA in its entirety as of December 31 of the current year. In order to allow the Districts adequate time to prepare budgets for the ensuing fiscal year, if either District anticipates terminating the 2006 Master IGA, the terminating District shall, on or before August 1, notify the other District, in writing, of its intent to terminate the 2006 Master IGA. On or before September 1, the terminating District

shall send written confirmation of its intent to terminate to the non-terminating District, and said confirmation shall constitute adequate notice of termination.

4.4 Conveyance of Improvements. GRMD shall convey and dedicate any public improvements for which it has ownership to HWMD for ownership, operations, and maintenance. GRMD shall execute such necessary conveyance documents to transfer and public improvements and related appurtenances to HWMD, including as necessary and appropriate, special warranty deeds, bills of sale, assignment agreements, or other conveyance documents, conveying title to the public facilities, infrastructure, any property and any appurtenances thereto owned by GRMD to HWMD.

ARTICLE V
O&M ADVANCES / BUDGET AMENDMENT/GALLAGHRIZATION

5.1 GRH Advances. The Parties acknowledge and agree that pursuant to the 2006 Funding and Reimbursement Agreement, dated April 11, 2006, the obligations of GRH to advance funds to HWMD for the purpose of funding operations and maintenance expenses of the Districts and any Cure Amounts, have been fulfilled, and therefore the obligation of GRH to make advances under said agreement is terminated and is no longer of any force or effect.

5.2 Contractual Obligation - Mill Levy Revenues. HWMD and GRMD agree that notwithstanding the fact that the Board of Directors of GRMD certified a contractual obligation levy of 9.044 mills ($162,096.97) to the Board of County Commissioners of Grand County, Colorado, to fund its contractual obligation to HWMD, the revenue from 3.414 mills of the amount so certified shall remain in the GRMD Debt Service Fund to be used towards debt service on the 2006 Bonds. GRMD shall transfer the remaining 5.630 mills ($100,915) to HWMD upon receipt from Grand County.

5.3 Budget Amendment. GRMD and HWMD shall each use good faith efforts to adopt amended budgets that recognize the provisions of this Article V.

5.4 Gallagherization. The Parties agree that with regard to the 2006 Bonds and the 2010 Bonds, the proper method of Gallagherization is that methodology demonstrated in **Exhibit A**, attached hereto and incorporated herein by this reference, which operates so that District revenues as a whole neither increase nor decrease as a result in the change of the percentage valuation of residential property.

ARTICLE VI
OPERATIONS

6.1 O&M Services. HWMD and GRMD agree that consistent with the Service Plan, the Town IGA, and the 2006 Master IGA, HWMD shall provide all general administrative services, operation and maintenance services, and Facilities for GRMD, and GRMD shall impose property taxes, fees, rates, tolls or charges and take other actions in cooperation with HWMD that may be necessary to fund the O&M Costs and allow HWMD to provide, operate and maintain the Facilities. GRMD agrees that it shall not attempt to provide, independent of HWMD, any operation and maintenance services for the Facilities.

6.2 Access to Improvements. GRMD shall not interfere with the operations and maintenance responsibilities of HWMD and shall not impair HWMD's access to any Facilities through the adoption of any rules, regulations, policies, procedures or other action reasonably interpreted by HWMD to impair HWMD's access, or access granted by HWMD to others, to any Facilities.

6.3 Future Development. Neither GRMD nor HWMD shall interfere with or restrict future construction or development with the Granby Ranch development.

ARTICLE VII
GENERAL REPRESENTATIONS AND WARRANTIES

7.1 General Representations and Warranties. To induce the Parties to enter into this Exclusion Agreement and to consummate the exclusion, each Party hereby represents and warrants to the other Parties, the following, with the understanding and intention that the other Parties are relying upon the accuracy of such representations and warranties, which representations and warranties will be deemed to be made by such Party to the other Parties as of the date of this Agreement and as of the Effective Date:

7.1.1 That it has all requisite power and authority to enter into and perform its obligations under this Agreement.

7.1.2 It has the full right, power and authority to execute and deliver, and to perform its obligations under, this Agreement without the consent, approval or license of any third party, and that this Agreement, when executed, shall constitute the valid, legal and binding obligation of the Party, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally.

7.1.3 Neither the execution, delivery of performance of this Agreement by the Party will violate any law, rule, regulation, order or the like applicable to the Party, or conflict with, or result in, a breach or default, or require the consent under, the organizational documents or any agreement, order, or instrument to which it is a Party or by which it is bound.

7.1.4 To each of the Party's actual knowledge, there is no suit, governmental investigation or other proceeding or any pending or threatened suit or proceeding that would have an adverse affect on this Agreement or any of the acts or agreements contemplated hereunder.

7.15 Neither the execution of this Agreement, the consummation of the transactions contemplated hereunder, nor the fulfillment of or by the compliance with the terms and conditions of this Agreement by any of the Parties will conflict with or result in a breach of any terms, conditions, or provisions of, or constitute a default under, or result in the imposition of any prohibited lien, charge, or encumbrance of any nature under any agreement, instrument,

indenture, or any judgment order, or decree to which any Party is a party of or by which any Party is bound.

ARTICLE VIII
EVENTS OF DEFAULT, REMEDIES, AND CONFLICT RESOLUTION

8.1 Event of Default. It shall be an "Event of Default" hereunder if any Party fails to timely perform any of its obligations herein, including, but not limited to:

8.1.1 The violation of or failure to perform any material provision of this Agreement by any Party or the failure of any representation or warranty of any Party to be true;

8.1.2 The failure to pay any payment when the same shall become due and payable as provided herein and to cure such failure in accordance with Section 8.3.

8.1.3 The failure to perform or observe any other covenants, agreements, or conditions in this Agreement on the part of any Party and to cure such failure in accordance with Section 8.3.

8.1.4 Any effort by any Party, or the failure of any Party to resist the efforts of any person, that might reasonably be believed to result in the avoidance by court order or otherwise of any Party's obligations under this Agreement;

8.1.5 Any act or omission by any Party, or the failure of any Party to resist the acts or omissions of any person, that might reasonably be believed to result in the interference in the exercise of any Party's rights hereunder; and/or

8.1.6 The failure of any Party to take such action as is required by law to enable each Party to perform its obligations hereunder, including but not limited to the failure of GRMD to appropriate revenues in any year sufficient to perform its obligations hereunder.

8.2 Delay/Waiver of Event of Default. No delay or omission of any Party to exercise any right or power accruing upon any Event of Default shall exhaust or impair any such right or power or shall be construed to be a waiver of any such Event of Default, or acquiescence therein.

8.2.1 No waiver of any Event of Default hereunder by any Party shall extend to or affect any subsequent or any other then existing Event of Default or shall impair any rights or remedies consequent thereon. All rights and remedies of the Parties provided herein may be exercised with or without notice, shall be cumulative, may be exercised separately, concurrently or repeatedly, and the exercise of any such right or remedy shall not affect or impair the exercise of any other right or remedy.

8.3 Remedies. Upon an Event of Default, the non-defaulting Party shall provide written notice to the defaulting Party, which notice shall explicitly state the Event of Default. The defaulting Party shall have fifteen (15) days to cure such Event of Default, or, to commence to cure such Event of Default if the default is of a nature that a cure cannot be cured within

fifteen (15) days. If the defaulting Party fails timely to cure such Event of Default, the Parties shall initiate the Dispute Resolution provisions of Section 8.4.

8.4 Dispute Resolution. If a Party claims that an Event of Default has occurred and is continuing and the defaulting Party has failed to cure as required in 8.3:

8.4.1 The non-defaulting Party shall provide a written "Notice of Continuing Event of Default" to the other Party explaining the dispute and at least one alternative for a solution;

8.4.2 a Resolution Committee shall be convened no later than ten (10) working days after receipt of the Notice of Continuing Event of Default;

8.4.3 Each party to the dispute shall appoint two (2) board members/representatives to the Resolution Committee and each party may utilize such staff support as that entity deems appropriate;

8.4.4 forthwith, the Resolution Committee shall meet to review such information as may be presented to the Resolution Committee, make such independent investigations, and decide the dispute by concurrence of the Resolution Committee at a meeting following reasonable notice at which all are present;

8.4.5 in its review of the dispute, the Resolution Committee shall review the facts, the technical objections, and any other materials presented to the Resolution Committee, and shall make a determination that shall resolve all of the issues concerning the dispute. The standards that the Resolution Committee shall use in the determination of any dispute shall include (i) the impact of any technical, operational or maintenance issues, (ii) the financial impact of any proposed resolution, (iii) the feasibility of any proposed resolution, and (iv) the language and intent of this Agreement and any related agreements impacting the Event of Default, and (v) whether the determination substantially hinders a party from the benefit of this Agreement, the Property or the Facilities described herein and in which it has an interest;

8.4.6 the Resolution Committee shall provide its written decision to the Parties within thirty (30) days of the convening of the Resolution Committee.

8.5 Legal Proceedings. The decision of the Resolution Committee may be appealed to the District Court in and for Grand County, Colorado and shall not be deemed a final decision by arbitration. If the Resolution Committee fails to render a decision within thirty (30) days of being convened, then the non-defaulting party may seek such other remedies as may be allowed by law. As a condition precedent to the exercise of any legal or equitable remedy by any Party for an alleged Event of Default, each Party agrees to comply with the provisions of Section 8.4.

8.5.1 In addition to remedies generally available at law or in equity, any Party may ask a court of competent jurisdiction to enter a writ of mandamus to compel any other Party to perform its duties under this Agreement, and any District may seek from a court of competent

jurisdiction temporary and/or permanent injunctions, or orders of specific performance, to compel the other to perform in accordance with the obligations set forth under this Agreement.

8.5.2 The Parties may protect and enforce their rights under this Agreement by such suit, action, or special proceedings as they shall deem appropriate, including without limitation any proceedings for specific performance of any covenant or agreement contained herein, for the enforcement of any other appropriate legal or equitable remedy, or for the recovery of damages caused by breach of this Agreement, including attorney's fees and all other costs and expenses incurred in enforcing this Agreement.

8.5.3 Except as otherwise provided by law, no recovery of any judgment by the Parties shall in any manner or to any extent affect any rights, powers, and remedies of the Parties hereunder, but such rights, powers, and remedies of the Parties shall continue unimpaired as before.

8.5.4 In case any Party shall have proceeded to enforce any right under this Agreement and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to such Party, then and in every such case the Parties shall be restored to their former positions and rights hereunder, and all rights, remedies, and powers of the Parties shall continue as if no such proceedings had been taken.

ARTICLE IX
GENERAL PROVISIONS

9.1 Negotiated Provisions. This Agreement shall not be construed more strictly against one Party than against another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being acknowledged that each Party has contributed substantially and materially to the preparation of this Agreement.

9.2 Termination Upon Mutual Agreement. This Agreement may be terminated at any time by written agreement signed by all of the parties to this Agreement.

9.3 Relationship of Parties. Nothing contained in this Agreement shall be construed as making the Parties partners, agents or joint venturers of the other. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the Parties that any person other than Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, consultant or contractor of the Parties. Absolutely no third party beneficiaries are intended by this Agreement. Any third party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

9.4 Amendment. No amendment or modification of this Agreement will be valid or binding unless reduced to writing and executed by the Parties hereto.

9.5 Further Assurances. Each Party hereto will from time to time execute and deliver such further reasonably acceptable instruments as the other Party or its counsel may reasonably request to effectuate the intent of this Agreement.

9.6 Cooperation/Good Faith. Each party shall fully cooperate to give effect to the intent and purposes of this Agreement. In the performance of this Agreement, or in considering any requested approval, acceptance, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.

9.7 Controlling Law. The parties hereto expressly agree that the terms and conditions hereof, and subsequent performance hereunder, will be construed and controlled by the laws of the State of Colorado.

9.8 Interpretation. Captions and headings used in this Agreement are for convenience of reference only and will not affect the construction of any provision of this Agreement. As used herein, the singular will include the plural, and vice versa; any gender will be deemed to include the masculine, feminine and neuter gender; and the terms "including," "include" or derivatives thereof, unless otherwise specified, shall be interpreted in as broad a sense as possible to mean "including, but not limited to," or "including, by way of example and not limitation."

9.9 Severability. If any portion of this Agreement is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion of this Agreement, which shall remain in full force and effect. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

9.10 Binding Effect. The provisions hereof will be binding upon and inure to the benefit of the heirs, successors, personal representatives and assigns of the Parties.

9.11 Waiver. No exercise or waiver, in whole or in part, of any provision of this Agreement will operate as a waiver of any right or remedy, or constitute a waiver of any other provision of this Agreement, nor shall such waiver constitute a continuing waiver, unless otherwise expressly provided herein. The waiver of any default hereunder shall not be deemed a waiver of any subsequent default hereunder.

9.12 Article X, Section 20/TABOR. The Parties understand and acknowledge that each Party is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties represent that they have or will have budgeted and appropriated sufficient funding to meet their respective obligations set forth in this Agreement. Therefore, the Parties acknowledge that the provisions of Article X, Section 20 of the Colorado Constitution are met. For any amounts not fully appropriated, the Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, all payment obligations of a Party are expressly dependent and conditioned upon the

continuing availability of funds beyond the term of the Party's current fiscal period. Financial obligations of a Party payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the applicable rules, regulations, and resolutions of the Party and any other applicable law.

9.13 Entire Agreement. This Agreement and the Exhibits attached hereto embody the entire agreement between the parties hereto with respect to the subject matter hereof and supersede any and all prior agreements and understandings, written or oral, formal or informal with respect thereto.

9.14 Assignment. No Party shall assign this Agreement or any interest hereunder in whole or in part, without the prior written consent of each of the other Parties, which consent shall not be unreasonably withheld. Any assignment attempted with the prior written consent of all Parties hereto shall be deemed void and of no force or effect. Consent to one assignment shall not be deemed to be consent to any subsequent assignment nor the waiver of any right to consent to such subsequent assignment.

9.15 Notices. All notices, demands and communications (collectively, "Notices") under this Agreement shall be delivered or sent by: (a) first class, registered or certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight carrier, addressed to the address of the intended recipient set forth below or such other address as either party may designate by notice pursuant to this Section, or (c) sent by confirmed facsimile transmission, PDF or email. Notices shall be deemed given either one business day after delivery to the overnight carrier, three days after being mailed as provided in clause (a) above, or upon confirmed delivery as provided in clause (c) above.

To HWMD:

Headwaters Metropolitan District
c/o Robertson & Marchetti, P.C.
28 Second Street, Suite 213
Edwards, CO 81632
Attn: Melissa McClendon
(P) 970-926-6060
(F) 970- 926-6040
Email: melissa@rmpccpa.com

With a copy to:

WHITE, BEAR & ANKELE
Professional Corporation
Attention: Gary R. White, Esq.
1805 Shea Center Drive, Suite 100
Highlands Ranch, Colorado 80129
(P) 303-858-1800
(F) 303-858-1801
Email: gwhite@wbapc.com

To GRMD:

Granby Ranch Metropolitan District
c/o Robertson & Marchetti, P.C.
28 Second Street, Suite 213
Edwards, CO 81632
Attn: Eric Weaver
(P) 970-926-6060
(F) 970- 926-6040
Email: eric@rmpccpa.com

With a copy to:

WHITE, BEAR & ANKELE
Professional Corporation
Attention: Gary R. White, Esq.
1805 Shea Center Drive, Suite 100
Highlands Ranch, Colorado 80129
(P) 303-858-1800
(F) 303-858-1801
Email: gwhite@wbapc.com

To GRH:

Granby Realty Holdings, LLC
PO Box 1110
Granby, Colorado 80446

With a copy to:

Holme Roberts & Owen LLP
1700 Lincoln St., Suite 4100
Denver, Colorado 80203-4541
Attn: Paul V. Timmins, Esq.
(P) 303-866-7000
(F) 303-866-0200
Email: paul.timmins@hro.com

Any Party may change its address for the purpose of this Section 9.15 by giving written notice of such change to the other Party in the manner provided in this Section.

9.16 Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to a Party, its respective officials, employees, contractors, or agents, or any other person acting on behalf of a Party and, in particular, governmental immunity afforded or available to the GRMD and HWMD pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

9.17 Governing Law/Venue. This Agreement and all claims or controversies arising out of or relating to this Agreement shall be governed by, and enforced in accordance with, the laws of the State of Colorado. Any suit or proceeding arising from or relating in any way to the subject matter of this Agreement shall be brought only in the District Court for and in Grand County, Colorado. Each Party hereby consents to the exclusive personal jurisdiction and venue of the Grand County District Court.

9.18 Counterparts. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the Parties.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above. This Agreement shall be deemed effective as of the Effective Date upon delivery of a fully executed copy hereof to the Parties.

GRANBY RANCH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado

Kyle Harris, President

ATTEST:

Secretary

HEADWATERS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado

Kyle Harris, President

ATTEST:

Secretary

GRANBY REALTY HOLDINGS LLC, a Colorado limited liability company

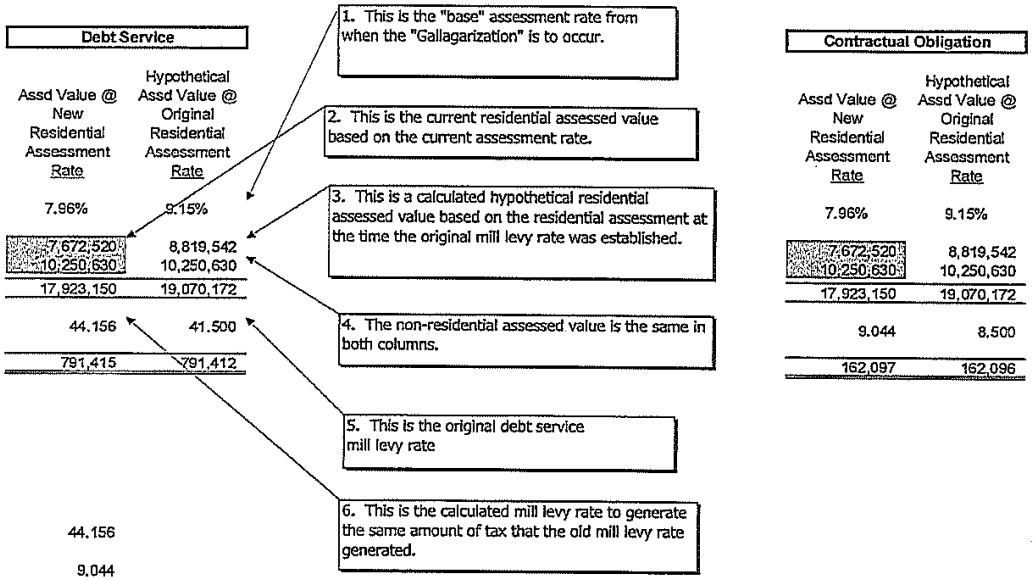
Marise Cipriani, Manager

[Signature page to Exclusion Agreement]

EXHIBIT A
TO EXCLUSION AGREEMENT

[See attached]

Granby Ranch Metro District
Calculation of "Gallagherized" Mill Levy Rate
For 2010 Budget Year - Final



Debt Service Mill Levy Rate Above	44.156
Contractual Obligations Mill Levy Rate	9.044
Total Mill Levy Rate	53.200

EXHIBIT C

DATE FILED
July 12, 2024 10:53 AM
FILING ID: F656F09AA70C8
CASE NUMBER: 2021CV30008

EXHIBIT 3

Headwaters' Initial Disclosures, served April 1, 2022.

DISTRICT COURT, GRAND COUNTY, COLORADO 307 Moffat Avenue Hot Sulphur Springs, CO 80451	
Plaintiff: GRANBY RANCH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado, v. **Defendants:** HEADWATERS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado; GRAY JAY VENTURES, LLC.; REDWOOD CAPITAL FINANCE CO., LLC, GRANBY PRENTICE, LLC; and GR TERRA, LLC.	
Attorneys for Headwaters Metropolitan District and GR Terra LLC: Jamie H. Steiner, #49304 JoAnn T. Sandifer *(Admitted Pro Hac Vice)* Husch Blackwell LLP 1801 Wewatta St., Suite 1000 Denver, CO 80202 Phone: 303-749-7200 Fax: 303-749-7272 E-mail: jamie.steiner@huschblackwell.com joann.sandifer@huschblackwell.com	▲ ***COURT USE ONLY*** ▲ Case No. 2021CV30008 Division 1

DEFENDANT HEADWATERS METROPOLITAN DISTRICT'S INITIAL DISCLOSURES

Defendant Headwaters Metropolitan District ("Headwaters"), by and through counsel, and pursuant to C.R.C.P. 26(a)(1), submits the following initial disclosures. Headwaters reserves the right to revise and supplement or correct the information provided.

A. PERSONS LIKELY TO HAVE DISCOVERABLE INFORMATION RELEVANT TO DISPUTED FACTS ALLEGED WITH PARTICULARITY IN THE PLEADINGS

By making the following disclosures, Headwaters does not waive any objection to the relevance of the testimony of any of the following persons or any other appropriate objections, including, among others, attorney-client privilege or work-product doctrine.

1. Current/former board members and representatives of Headwaters Metropolitan District c/o Husch Blackwell LLP, 1801 Wewatta St., Suite 1000, Denver, CO 80202, (303) 749-7200. Headwaters board members and representatives may have information regarding the negotiation, execution, performance, and termination of the contracts referenced in the Complaint and other pleadings, including the LPA. By agreement of counsel, counsel for Headwaters will provide the parties with the names and last known contact information of all current and former board members, which information is expressly incorporated herein.

2. Current and former board members of Granby Ranch Metropolitan District c/o Charles Norton, Norton & Smith. P.C., 1331 17th Street, Suite 500, Denver, CO 80202, (303) 292-6400. Granby Ranch Metropolitan District board members may have information regarding the negotiation, execution, performance, and termination of the contracts referenced in the Complaint and other pleadings, including the LPA. By agreement of counsel, counsel for GRMD has agreed to provide the parties with the names and last known contact information of all current and former board members, which information is expressly incorporated herein.

3. Representatives for Touchstone Golf, LLC, 11612 Bee Cave Road, Suite 150, Austin, TX 78738, 512-351-9264. Touchstone Golf, LLC operated certain of the Amenities on behalf of Headwaters, GP Granby Amenities Holdings, LLC, and GR Terra. Representatives of Touchstone Golf, LLC may have information regarding operation of the Amenities.

4. Representatives for Ridgeline Executive Group, Inc., c/o Husch Blackwell LLP, 1801 Wewatta St., Suite 1000, Denver, CO 80202, (303) 749-7200. Ridgeline Executive Group, Inc. operated certain of the Amenities on behalf of GP Granby Amenities Holdings, LLC and GR Terra. Representatives of Ridgeline Executive Group, Inc. may have information regarding operation of the Amenities.

5. Marise Cipriani, 456 Detroit Street, 201 Columbine Street, Suite 150 #6700, Denver, CO 80206 Denver, CO 80206. Ms. Cipriani was the principal and manager of GRH and GRA. Ms. Cipriani may have knowledge regarding the negotiation, execution, performance, and termination of the LPA and rental paid thereunder. She may also

have information regarding the operation of the Amenities.

6. Melissa Cipriani, 456 Detroit Street, 201 Columbine Street, Suite 150 #6700, Denver, CO 80206, Denver, CO 80206. Ms. Cipriani was the chief executive officer of GRH. Ms. Cipriani may have knowledge regarding the negotiation, execution, performance, and termination of the LPA and rental paid hereunder. She may also have information regarding the operation of the Amenities.

7. Philip Russick, c/o Davis Graham & Stubbs LLP, Attn: Kyler Burgi & Mark Champoux, 1550 17th Street, Suite 500, Denver, CO 80202, 303-892-7223. Mr. Russick is an authorized agent for Granby Prentice and Gray Jay. Mr. Russick may have information regarding the public trustee foreclosure process that resulted in the transfer of the Amenities to Gray Jay and extinguishment of the LPA with respect to the Amenities, termination of the LPA, and the operation of the Amenities.

8. Representatives of GR Terra LLC c/o Husch Blackwell LLP, 1801 Wewatta St., Suite 1000, Denver, CO 80202, (303) 749-7200. GR Terra LLC may have information about its ownership of the Granby Ranch property and amenities, facts supporting its counterclaims, and any related damages claimed by GR Terra LLC.

9. Any experts identified pursuant to C.R.C.P. 26(a)(2).

10. Any individuals listed or identified in the initial disclosures and discovery responses submitted by any other party.

11. Any individuals needed for document authentication, impeachment, or rebuttal.

B. DOCUMENTS AND THINGS THAT ARE RELEVANT TO DISPUTED FACTS ALLEGED WITH PARTICULARITY IN THE PLEADINGS

Headwaters expressly reserves the right to identify additional documents relevant to this case, including, but not limited to, all documents produced or identified by the parties in discovery, all documents which are identified as exhibits to any deposition taken in this case, and all documents necessary for impeachment or rebuttal. Headwaters further reserves the right to identify additional documents as privileged on the basis of attorney-client privilege, work-product doctrine or any other applicable privilege.

The following is a description of all documents, data compilations and tangible things in the possession, custody, or control of Headwaters that may be relevant to the disputed facts alleged with particularity in the pleadings.

1. Headwaters Final 2021 Budget

2. Headwaters Financials from 2021

3. Headwaters Meeting Minutes from 2003-2021

4. Silver Creek Metropolitan District Service Plan dated July 1999

5. SolVista Metropolitan District No. 1 [Service District] Service Plan dated March 2003

6. SolVista Metropolitan District No. 1 [Taxing District] Service Plan dated May 2003

7. Amenity Fee Agreement by and between Granby Realty Holdings LLC and Headwaters Metropolitan District dated June 1, 2005

8. Joint Resolution of Headwaters Metropolitan District and Granby Ranch Metropolitan District to Establish an Amenity Fee recorded on November 13, 2005

9. Order of Exclusion from Granby Ranch Metropolitan District filed December 19, 2005

10. Intergovernmental Funding Agreement between Granby Ranch Metropolitan District and Sol Vista Metropolitan District dated June 1, 2006

11. District Facilities Construction and Service Agreement by and between Headwaters District Metropolitan District and Granby Ranch Metropolitan District dated June 1, 2006

12. Capital Facilities Fee Agreement by and between Granby Reality Holdings LLC and Headwaters Metropolitan District dated June 1, 2006

13. Consolidated Service Plan for Granby Ranch Metropolitan District Nos. 2-8 dated September 25, 2007

14. Capital Facilities Fee Agreement by and between Granby Reality Holdings LLC and Headwaters Metropolitan District dated June 1, 2006

15. First Amendment to Service Plan of Granby Ranch Metropolitan District

16. First Amendment to Consolidated Service Plan for Granby Ranch Metropolitan District Nos. 2-8

17. Intergovernmental Agreement between the Town of Granby, Headwaters Metropolitan District and Granby Ranch Metropolitan District Nos. 1-8 dated February 26, 2008

18. Exclusion Agreement by and among Granby Realty Holdings LLC, Headwaters Metropolitan District and Granby Ranch Metropolitan District dated April 21, 2010

19. First Amendment to District Facilities Construction and Service Agreement by and between Headwaters Metropolitan District and Granby Ranch Metropolitan District dated April 21, 2010

20. Second Amended and Restated Lease Purchase Agreement by and between Granby Realty Holdings LLC and Headwaters Metropolitan District dated December 31, 2012

21. Amended and Restated Joint Resolution of the Board of Directors of Headwaters Metropolitan District and Granby Ranch Metropolitan District and Joint Resolution of the Boards of Directors of Granby Ranch Metropolitan District No. 2 and Granby Ranch Metropolitan District No. 8 to Establish an Amenity Fee approved July 17, 2013

22. Amended and Restated Amenity Fee Agreement by and between Granby Realty Holdings LLC and Headwaters Metropolitan District dated July 17, 2013

23. Letter Agreement dated August 22, 2016, and amendments

24. Second Amendment to Service Plan of Granby Ranch Metropolitan District (formerly SolVista Metropolitan District No. 2) approved on October 11, 2016

25. Amended and Restated Intergovernmental Agreement between the Town of Granby, Headwaters Metropolitan District and Granby Ranch Metropolitan District Nos. 1-8 dated November 8, 2016

26. First Amendment to Service Plan for Headwaters Metropolitan District dated November 8, 2016

27. Notice of Termination of Intergovernmental Agreement between Granby Ranch Metropolitan District Nos. 1-8 and Headwaters Metropolitan District dated November 17, 2017

28. Agreement re Waiver and Release of Claims dated April 11, 2018

29. Notices of Termination of LPA to Headwaters Metropolitan District dated November 11, 2020

30. Granby Ranch Metropolitan Districts Nos. 2-8 Board of Directors Minutes.

31. Headwaters Metropolitan District Board of Directors Minutes

32. Foreclosure Documents poduced by Defendants Gray Jay Ventures, LLC and Granby Prentice, LLC
33. Email from Matt Girard to Randel Lewis dated April 21, 2020

34. Notice Regrading Status of Second Amended and Restated Lease Purchase Agreement dated November 11, 2020

35. Notice of Commencement of Action dated May 20, 2021

36. Contracts and exhibits attached, referenced, or related to any pleadings

37. Documents produced by any party

38. Documents needed for rebuttal

To the extent that the above-referenced documents are attached to the parties' pleadings, they will not be reproduced to GRMD as part of these disclosures. By identifying and, where applicable, producing these documents, Headwaters does not waive any claims of attorney work product or attorney/client privilege pertaining to such document, nor does it waive any objections it may have as to relevance or the proper scope of discovery.

C. COMPUTATION OF DAMAGES

Headwaters is seeking all damages caused by GRMD's breach of the Master IGA Termination, Waiver and Release Agreement, and Second Granby IGA, including, without limitation, the costs and attorneys' fees incurred by Headwaters in defending the claims in this litigation, in amounts to be proven at trial.

D. INSURANCE AGREEMENTS

Headwaters does not possess any relevant insurance policies that must be disclosed in this matter pursuant to C.R.C.P. 26(a)(1)(D).

Dated this 1st day of April, 2022.

HUSCH BLACKWELL LLP
s/ Jamie H. Steiner
Jamie H. Steiner, #49034
JoAnn T. Sandifer (Admitted Pro Hac Vice)

Attorneys for Headwaters Metropolitan District and GR Terra LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via email on April 1, 2022, addressed to the following:

Charles E. Norton
Alicia M. Garcia
NORTON & SMITH, P.C.
1331 17th Street, Suite 500
Denver, CO 80202
cnorton@nortonsmithlaw.com
agarcia@nortonsmithlaw.com
Attorneys for Plaintiff

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mark.champoux@dgslaw
kyler.burgi@dgslaw.com
Attorneys for Defendant Gray Jay Ventures, LLC and Granby Prentice, LLC

/s/ Ann Stolfa
Paralegal

DATE FILED
July 12, 2024 10:53 AM
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CASE NUMBER: 2021CV30008

EXHIBIT 4

Transcript from the March 1, 2023, C.R.C.P. 30(b)(6) Deposition of Headwaters

Roxanne Hoover

Headwaters Metropolitan District 30(b)(6) Witness

Date: March 1, 2023

GRANBY RANCH

v.

HEADWATERS

2415 East Camelback Road
Suite 700
Phoenix, AZ 85016
602.358.0225

DISTRICT COURT, GRAND COUNTY, STATE OF COLORADO

Case Number: 2021CV030008

30(b)(6) DEPOSITION OF:

ROXANNE HOOVER - 03/01/2023

Plaintiff:

GRANBY RANCH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado,

v.

Defendants:

HEADWATERS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado; GRAY JAY VENTURES, LLC.; REDWOOD CAPITAL FINANCE CO., LLC, GRANBY PRENTICE, LLC; and GR TERRA LLC.

The deposition of ROXANNE HOOVER was taken by the Plaintiff on March 1, 2023 at Granby Ranch, 1000 Village Road, Granby, Colorado, commencing at the hour of 9:21 a.m., before ROSIE STAHL, Shorthand Reporter and Notary Public within and for the State of Colorado.

A P P E A R A N C E S

For the Plaintiff:

BRIAN K. MATISE, ESQ.
LISA MARKS, ESQ. (Appearing Remotely)
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For the Defendants Headwaters Metropolitan District and GR Terra LLC:

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St. Louis, MO 63105
Ph. 314-480-1718
David.richardson@huschblackwell.com

I N D E X

ROXANNE HOOVER,

Being first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. MATISE:

Q Good morning. Could you please state your full name for the record?

A Roxanne Fairchild Hoover.

Q Ms. Hoover, what is your address?

A 27 -- mailing or physical?

Q Oh, physical please.

A 2759 Mill Creek Rd, Dumont, Colorado 80436.

Q How long have you lived at that address?

A Since 2014.

Q Okay. Do you own any property in Granby Ranch Metropolitan District?

A I have an option in the Headwaters District, option to purchase.

Q Okay. Is that also -- okay. So that's in the Headwaters District but not the Granby Ranch Metro District; is that correct?

A Correct.

Q But it's in the Granby Ranch

District and any legal counsel, law firm or other entity providing legal services to Headwaters Metropolitan District that Headwaters Metropolitan District contends has incurred or will incur to defend against the claims."

My understanding is that one of the legal firms that Headwaters Metropolitan District retained to defend against the claims in this litigation was Husch Blackwell; is that right?

A That's correct.

Q And Headwaters is seeking damages under the counterclaims for the Husch Blackwell legal fees, correct?

A That's correct.

Q Okay. So have you reviewed the Husch Blackwell retainer agreement?

A I have looked at it, yes.

Q Okay. And in particular, there is an exhibit -- let me get this up here -- that was labeled at a prior deposition, Exhibit 182, that was a letter to Scot Johnson.

Do you recall that?

A Yes. I'm briefly familiar with this.

Q Okay. Do you know when Husch

she still works for them as well, to my knowledge.

Q Okay. All right. All right. Let me just check one more thing. I think we may be done here. Make sure I'm not missing anything, because I know Ms. Sandier is not going to give me another chance at you if I don't ask you all the questions today.

A Well if I get to give you a compliment, I was a little worried this morning but you are a pretty nice guy. I wasn't sure how we were going to go early this morning, but I'm not part of your crew. You were fussy with your crew.

Q I just want one -- this is a more general question. This relates to the question of damages here. You are aware that Headwaters Metropolitan District has asserted counterclaims against Granby Ranch Metropolitan District in this case; is that right?

A I am.

Q Has Headwaters Metropolitan District suffered any damages other than attorney fees in connection with those counterclaims?

A I refer to legal -- from my standpoint, I refer to legal on that. As of now it's legal fees.

Q So you are not aware of any other facts or documents of any other types of damages or forms of damages other than the legal fees; is that correct?

A Well, I believe that our legal team has submitted some other complaints, but I refer to them on what they're litigating there.

Q Do you mean complaints in different lawsuits other than this lawsuit?

A No, I meant in damages.

Q Okay.

A Potentially.

Q I understand, but, I mean, one of the topics here was any damages that HMD is claiming in this litigation, including all facts and documents supporting its claims. Sitting here today, you haven't been able to identify any other claims for damages other than or categories of damages other than that category of legal fees; is that right?

A As of today yes yeah.

Q Okay that's fine. Are you aware of whether or not Headwaters Metropolitan District has any type of agreement such as a contract or an insurance policy or some other informal agreement

DISTRICT COURT, GRAND COUNTY, COLORADO Court Address: 307 Moffat Ave., Hot Sulphur Springs, CO 80451	DATE FILED July 12, 2024 10:53 AM FILING ID: F656F09AA70C8 CASE NUMBER: 2021CV30008
Plaintiff: GRANBY RANCH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado v. **Defendants:** HEADWATERS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado; GRAY JAY VENTURES, LLC.; REDWOOD CAPITAL FINANCE CO., LLC, GRANBY PRENTICE, LLC; AND GR TERRA LLC.	▲COURT USE ONLY▲ Case Number: 2021CV30008 Div.: 1

ORDER GRANTING GRMD'S MOTION FOR PARTIAL SUMMARY JUDGMENT

THIS MATTER, having come before the Court on Plaintiff Granby Ranch Metropolitan District's Motion for Partial Summary Judgment and the Court having reviewing Motion and any response and reply thereto, and been fully advised herein, hereby:

GRANTS the Motion.

DATED: _____

BY THE COURT:

_____

DISTRICT COURT JUDGE