DISTRICT COURT, GRAND COUNTY, COLORADO 307 Moffat Avenue Hot Sulphur Springs, CO 80451	DATE FILED May 12, 2025 6:21 PM FILING ID: D0B04971B609D 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.	
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

MOTION OF HEADWATERS METROPOLITAN DISTRICT FOR AWARD OF DAMAGES ON COUNT I OF ITS COUNTERCLAIM AGAINST DEFENDANT GRANBY RANCH METROPOLITAN DISTRICT IN THE AMOUNT OF ITS ATTORNEYS' FEES AND COSTS SUBMITTED HEREWITH

Defendant/Counterclaim Plaintiff Headwaters Metropolitan District ("Headwaters"), by and through the undersigned counsel, hereby moves this Court to award damages in favor of

Headwaters on its claim for breach of the 2010 Exclusion Agreement[1] set forth in Count I of its Counterclaims Against Granby Ranch Metropolitan District ("GRMD"). In accordance with this Court's order dated March 28, 2025, Headwaters submits this Motion and accompanying materials and asks this Court to award it total damages in the amount of $931,894.62, representing $891,596.50 in attorneys' fees and $40,298.12 in costs incurred by Headwaters to enforce its rights under the Exclusion Agreement.

In support of this Motion, Headwaters submits the Declarations of Roxanne Hoover, Robert B. Glarner, Jr., and Jamie Steiner, as well as the Affidavit of independent expert John Palmeri.

INTRODUCTION

Section 8.5.2 of the 2010 Exclusion Agreement executed by GRMD and Headwaters provides:

> **The Parties may protect and enforce their rights under this Agreement by such suit, action, or special proceeding as they shall deem appropriate, including without limitation** any proceeding 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 the Agreement, including attorney's fees and all other costs and expenses incurred in enforcing this Agreement**.

See Order dated March 3, 2025, at 17 (quoting Exclusion Agreement) (emphasis added). This Court has found that GRMD breached the Exclusion Agreement by filing and vigorously pursuing its claims in this litigation, and it has found that Headwaters is entitled to recover its attorneys'

[1] All the documents referred to herein have been specifically identified in Headwaters' prior filings and this Court's orders.

fees and costs incurred in this litigation as damages for that breach. The only remaining issue in this case is the amount of those damages.

Headwaters was created for, and continues to exist for, the sole purpose of facilitating development of Granby Ranch. After the prior developer's inability to complete the planned improvements, foreclosure, and sale of the majority of Granby Ranch, GR Terra and its affiliated entity, GRCO, purchased Granby Ranch and began to invest millions of dollars into rebuilding dilapidated roads and other infrastructure throughout the community, improving and expanding the ski and golf amenities, and constructing new homes (and attendant new infrastructure) on undeveloped sites. GRMD's lawsuit was a direct threat to these efforts.

In addition to seeking $6 million in damages, GRMD asserted (i) a right to ultimate ownership and control of the ski and golf amenities purchased by GR Terra to operate and market as an amenity for the homeowners and (ii) a right to force Headwaters to operate the ski and golf facilities as a tenant under the LPA, though Headwaters had no funds to do so. The relief sought in these claims would have wreaked havoc on the viability and success of Granby Ranch. As this Court found, the filing of the lawsuit alone substantially interfered with and inhibited development of Granby Ranch.

Headwaters had no choice but to vigorously defend against these claims. That is exactly what it did—in conjunction with GR Terra and in furtherance of their shared goal of protecting Granby Ranch—and those efforts were universally successful. But, as this Court knows, it was a protracted, complex, and expensive battle. All the fees and costs incurred by Headwaters in this litigation were necessary to "protect and enforce [Headwaters'] rights under this [Exclusion] Agreement," and specifically, to ensure that GRMD "shall not interfere with or restrict future

construction or development with the Granby Ranch development." Thus, they represent the appropriate measure of Headwaters' damages for breach of the Exclusion Agreement.

Headwaters submits that the fees and costs it seeks as damages are not only justified, but extremely conservative, for several reasons:

First, because Headwaters and GR Terra had common objectives in the litigation and overlapping claims against them, **Husch Blackwell split most of the time it incurred in defense of the claims between the two entities**, with a few exceptions where a particular task related only to a claim by or against one of the entities. All the other work related to defense of both entities, including tasks such as factual investigation, document review, depositions, and research, analysis and briefing common legal issues. *See* Declaration of Jamie Steiner, ¶ 14. attached hereto as Exhibit 1. All that same work would have been required if Husch Blackwell had represented only Headwaters in the case. *Id*. Yet for those and similar tasks, Husch Blackwell's time was evenly split between the two entities. *Id.* The same is true with respect to litigation costs. *Id*. As a result, Headwaters was only responsible for about half of the overall defense costs incurred to represent its interests in this case.

Second, as the chart submitted with the Declaration of Roxanne Hoover demonstrates, Headwaters is not requesting that this Court award all the fees it actually incurred in this litigation. *See* Hoover Declaration and Exhibit B, attached hereto as Exhibit 2. For instance, time incurred on counterclaims that were dismissed or were not successful has been excluded from the total amount requested. *See* Steiner Declaration, ¶ 17. In addition, due to the duration and complex nature of the litigation and the need to search public records and other voluminous documents to obtain information about the 20+ year history of the Granby Ranch development, several different

attorneys at Husch Blackwell were tapped to do work on the case. *See* Steiner Declaration, ¶ 16. Some of those attorneys left the firm during the pendency of the case and were replaced with others. *Id*. To be conservative, Headwaters deleted from this fee request time incurred by any attorney or legal professional that spent less than a total of 20 hours on the case (though those fees were billed and paid). *Id*.

Third, while Headwaters' legal team included attorneys from St. Louis (based upon their expertise and familiarity with the Granby Ranch development, as set forth further below), **the St. Louis attorneys did not bill any time for travel to Denver**. *See* Steiner Declaration, ¶ 15. The only travel time billed by these attorneys was for local trips—for instance, from Denver to Granby—the same fees that would have been incurred had Headwaters retained a Denver attorney. *Id*.

Fourth, § 8.5.2 of the 2010 Exclusion Agreement broadly authorizes **"**recovery of damages caused by breach of the Agreement, including attorney's fees and all other costs and expenses incurred in enforcing this Agreement." Notably, it does not require that the fees or costs sought as damages be reasonable. Instead, because they represent damages, the only requirement in the Exclusion Agreement is that they were actually incurred. Here, as established by the attached Declarations, all the fees and costs requested herein were billed to Headwaters and paid by GRCO on Headwaters' behalf, with a corresponding debt owned from Headwaters to GRCO. *See* Glarner Declaration, ¶ 5 & Ex. A (attached hereto as Exhibit 3); Hoover Declaration, ¶¶ 5 & 5-8; Steiner Declaration, ¶ 18. These sums have been "incurred." In fact, as set forth above, Headwaters incurred additional fees and costs in defense of GRMD's claims but chose to reduce the amount requested to be conservative.

In any event, Headwaters' damages request comports with the standard factors applied by the Colorado courts to assess the reasonableness of attorneys' fees and costs, as set forth below. This Motion and the supporting materials filed herewith establish that fees and costs requested in this motion are eminently reasonable.

BRIEF PROCEDURAL HISTORY OF LITIGATION

As this Court has noted on several occasions, GRMD's claims in this litigation raised complex legal and factual issues, involving "numerous agreements and fee arrangements for the development, servicing, operation, and financing of Granby Ranch, a golf/ski resort and residential subdivision located in Grand County, Colorado ('Granby Ranch')" dating back to 2003. Order dated January 28, 2022, at 2. GRMD commenced this litigation over four years ago. Its initial complaint, filed on February 23, 2001, included claims against Headwaters and GP Granby Holdings, LLC, then owner of the majority of Granby Ranch. GRMD amended its petition several times; its Second Amended Complaint, filed in July of 2021, asserted a total of eight claims, added GR Terra LLC (which had then purchased the majority of Granby Ranch) and added several other defendants associated with the prior owner of the property.

All defendants moved to dismiss GRMD's claims, and after extensive briefing, this Court entered lengthy orders granting those motion, in part, and denying them, in part. *See* Order dated January 28, 2022. GRMD then filed a Third Amended Complaint, asserting six claims. All the claims (including two claims against Headwaters) asserted that the defendants were bound by the terms of an LPA relating to the privately owned ski and golf amenities at Granby Ranch. GRMD sought damages for breach of that agreement in the amount of some $6 million (representing amenity fees paid as rent by Headwaters under the terms of the LPA) and an order requiring the

defendants (including Headwaters as alleged tenant) to perform obligations under the LPA for the benefit of GRMD. GRMD also asserted a separate count against Headwaters for breach of other contracts that GRMD claimed required Headwaters to acquire the ski and golf amenities on GRMD's behalf for ultimate transfer to GRMD.

The parties undertook extensive discovery. As the current owner of Granby Ranch and alleged tenant to the LPA, the lawsuit had the most serious implications for GR Terra and Headwaters, so those entities took the lead in defending against GRMD's claims. That defense involved extensive research and investigation into the history of Granby Ranch and the complex and evolving relationship between GRMD, Headwaters, and the developer from 2003 to the present.

GRMD, Headwaters and GR Terra produced a total of over **20,000 pages of documents** in discovery, which does not include documents produced by the other defendants. **Twenty-one depositions were taken, including eleven noticed by GRMD**. GRMD even noticed a deposition of a former Headwaters' board member, requiring counsel to travel to a remote location in Idaho. Both parties engaged expert witnesses, who prepared written reports and sat for depositions. In all, discovery continued for over 14 months (the parties provided their initial disclosures on January 4, 2022, and the last deposition was not taken until March 8, 2023).

Defendants Headwaters and GR Terra then filed a joint renewed motion to dismiss all GRMD's claims for lack of standing. Headwaters and GR Terra also filed motions for summary judgment, asserting several alternative grounds for judgment in their favor on GRMD's claims. GRMD in turned filed a motion for summary judgment on three of GR Terra's counterclaims and GR Terra filed a cross-motion for summary judgment on those three counterclaims. Because of

the interrelated nature of the issues, Headwaters' summary judgment motion incorporated portions of GR Terra's summary judgment arguments and vice versa. All parties submitted extensive briefing, numerous documents, and affidavits in support of their respective motions.

On January 30, 2023, this Court entered its orders disposing of all GRMD's claims, including a 24-page single-spaced order granting Headwaters' and GR Terra's renewed motion to dismiss GRMD's claims on the ground that GRMD lacked standing to enforce the LPA and a 21-page single-spaced order denying GRMD's motion for summary judgment on GR Terra's first three counterclaims and granting GR Terra's cross-motion for summary judgment on those claims, finding that, for the alternative reasons set forth therein, the LPA had terminated or been extinguished by the 2020 foreclosure or by Headwaters' failure to appropriate rent under the LPA.

GRMD thereafter filed a motion for judgment as a matter of law on the remaining counterclaims asserted by GRMD and Headwaters. After extensive briefing, the Court denied that motion.

Headwater and GR Terra then moved for summary judgment on their remaining counterclaims,[2] which GRMD opposed. Again, the parties submitted extensive briefing, affidavits, and supporting documents on those motions. Again, this Court ruled against GRMD, finding that GRMD's vigorous pursuit of its lawsuit for more than three years was a breach of Section 6.3 of the Exclusion Agreement, which provided that GRMD "shall not interfere with or restrict future construction or development with the Granby Ranch development." *See* Order dated March 3, 2025, at 15. Specifically, the Court found evidence that the "litigation and related lis pendens have inhibited construction and financing, deterred home buyers from purchasing

[2] The parties stipulated to dismissal of several of the counterclaims.

residences, and diverted funds for litigation expenses that otherwise could have been invested in the development." *Id*. This Court further found held that "[t]he Exclusion Agreement authorizes Headwaters' recovery of attorneys' fees and costs as damages for GRMD's alleged breach of the Exclusion Agreement." *Id*. at 16. The court rejected GRMD's argument that the fees and costs incurred by Headwaters are not the legitimate consequence of GRMD's breach. *Id*. at 18.

As set forth below and in the supporting documents filed herewith, Headwaters seeks an award of damages based upon its reasonable attorneys' fees and costs incurred in this case, in the total amount of $931,894.62.

ARGUMENT

For purposes of determining damages for GRMD's breach of the Exclusion Agreement, the parties agreed to follow the procedure for requesting attorneys' fees and costs outlined in Colo. R. Civ. P. 121, § 1-22(2). The determination of the amount of attorney fees and costs is committed to the sound discretion of the trial court and will be reversed only if the amount is not supported by the evidence. *Spring Creek Ranchers Ass'n v. McNichols*, 165 P.3d 244, 246 (Colo. 2007); *Accord Stuart v. N. Shore Water & Sanitation Dist.*, 211 P.3d 59, 63 (Colo. App. 2009) (determination of the reasonableness of attorneys' fees is a factual question for the trial court and will not be disturbed unless it is patently erroneous and unsupported by the evidence); *Tallitsch v. Child Support Servs., Inc.*, 926 P.2d 143, 147 (Colo. App. 1996) (same). Section 1-22(2) does not require that any particular type of supporting documentation accompany the motion. *See Nesbitt v. Scott*, 457 P.3d 134, 138 (Colo. App. 2019).

I. Headwaters Is Entitled To Recover its Attorneys' Fees Based On The Lodestar Analysis.

The starting point for a fee award in Colorado is to calculate the "lodestar" amount, which is determined by multiplying the number of hours reasonably expended by a reasonable hourly rate. *Hensley v. Eckerhart*, 461 U.S. 424, 430 (1983); *Accord Stuart*, 211 P.3d at 63. Generally, the court should award attorneys' fees based on the prevailing market rate by private lawyers in the community. *Payan v. Nash Finch Co.*, 310 P.3d 212, 219 (Colo. App. 2012). Additionally, Colorado Rule of Professional Conduct 1.5 lists factors such as the experience, reputation, and ability of the lawyers performing the services as considerations in assessing appropriate attorneys' fees.

Paralegal fees are properly viewed as "surrogate attorney[s'] fees" and are recoverable as such. *Morris v. Belfor USA Grp., Inc.*, 201 P.3d 1253, 1263 (Colo. App. 2008). Non-paralegal litigation support efforts can also be properly recovered as fees if they were necessary and reasonable in amount, and if reliable billing systems are in place to accurately record and allocate them. *See, e.g., Newport Pac. Cap. Co. v. Waste*, 878 P.2d 136, 140–41 (Colo. App. 1994).

The court's role in reviewing the reasonableness of requested fees is to ensure that the allocation methodologies achieve "rough justice," rather than acting as a "green-eyeshade accountant[]." *Payan*, 310 P.3d at 219. The lodestar approach "is tried and true," and "carries with it a strong presumption of reasonableness." *In re Marriage of Aragon*, 444 P.3d 837, 842 (Colo. App. 2019); *Spensieri v. Farmers All. Mut. Ins. Co.*, 804 P.2d 268, 270 (Colo. App. 1990). Therefore, the Colorado appellate courts have adopted the lodestar method for determining attorney fee awards in many contexts in which a party is entitled to recover "reasonable" attorney fees. *In re Marriage of Aragon*, 444 P.3d at 842.

A. <u>The Lodestar Calculation Supports' Headwaters' Requested Fees.</u>

The lodestar calculation for the attorneys and other legal professionals who worked on this litigation is shown in the spreadsheet attached to the Declaration of Jamie Steiner as Exhibit B. As explained in that Declaration, Husch Blackwell assembled the team of attorneys best suited to handle this dispute efficiently and effectively, including Mr. Richardson, who has extensive knowledge and experience in real estate and special district law, the Granby Ranch development, and Colorado metropolitan districts, as well as Ms. Sandifer, who has broad experience handling litigation relating to real estate, land use, and municipal issues. *See* Steiner Declaration, ¶¶ 5-8, 12-13.

Beginning in the fall of 2020, Mr. Richardson and his team of real estate attorneys represented the Glarners with respect to negotiation of the purchase of Granby Ranch. *Id*., ¶ 6. As part of that process, Mr. Richardson and his team, including Ms. Sandifer, undertook extensive due diligence relating to the Granby Ranch development, including the roles of Headwaters and GRMD and the various service plans, agreements, and other transactions governing their relationship with each other and the prior developer and their rights and responsibilities vis a vis Granby Ranch. *Id*. at ¶¶ 6-8. As a result, these attorneys gained extensive information regarding the development and Colorado metro districts – information that assisted with their defense of both GR Terra and Headwaters in this case. *Id*.

Applying the hourly rates charged to Headwaters by the number of hours billed by the attorneys and legal professionals who worked on this matter (with the deductions noted above) produces a lodestar amount of $891,596.50. *See* Steiner Declaration, ¶ 19 & Ex. B. The fees and costs were billed to Headwaters on a monthly basis for services rendered from January of 2022

through April of 2025, which invoices were paid by GRCO on Headwaters' behalf. *See* Hoover Declaration, ¶ 4-8 & Exs. A – C; Glarner Declaration, ¶¶ 4-5 & Ex. A. Redacted copies of all the supporting invoices with detailed time entries have been produced to GRMD's counsel, *see* Steiner Declaration, ¶ 18. Those invoices will be produced to this Court if so desired (unredacted versions can also be produced strictly for the Court's review since they contain privileged information).

The time spent by each legal professional was both reasonable and necessary to handle the complexity and scope of the claims at issue. *See generally* Steiner Declaration, ¶ 23. *See also* Affidavit of independent expert John Palmeri, ¶¶ 22-25. The fees were charged for various essential activities, such as investigating the claims (including the 20-year history of Granby Ranch and the numerous agreements governing the relationship between Headwaters, GRMD, and the developer over the years), responding to Plaintiff's complaints, drafting and responding to written discovery, taking and defending some 21 depositions, reviewing voluminous document productions, researching key legal issues, drafting extensive motions (including the dispositive motions leading to this Court's orders in favor of Headwaters) and other court filings, and communicating with experts and opposing counsel. *See* Steiner Declatation, ¶¶ 20, 23, 25. All these efforts were reasonable, necessary, and properly billable. *See generally*, Palmeri Affidavit, attached hereto as Exhibit 4. And all these efforts were integral to obtaining the successful results in favor of Headwaters.

The rates of Defendants' attorneys and paralegals are likewise reasonable. As explained in the Declatation of Jamie Steiner and Affidavit of independent expert John Palmeri, the rates charged are customary for professionals of similar skill and experience in the Denver market. *See* Steiner Declaration, ¶¶ 21-22, 25 & Ex. C, and Palmeri Affidavit, ¶¶ 22-23; *see also Lippoldt v.*

Cole, 468 F.3d 1204, 1224–25 (10th Cir. 2006). Given the scope and complexity of the matter, it was reasonable for Headwaters to retain a large firm with the expertise to handle its defense, so the Denver market is the most relevant comparison. *See* Steiner Declaration ¶ 21 & n.1. GRMD has been represented by counsel based in Denver throughout the litigation. *Id*. In short, the rates requested by Defendants' legal professionals in this matter, and the time expended in connection with the litigation, are reasonable in the Colorado market based on the attorneys' experience, skill, and specialization in disputes of this nature. Accordingly, the Court should find that Headwaters is entitled to damages representing the lodestar amount of $891,596.50.

B. Other Relevant Considerations Support A Fee Award Based On The Amount.

The determination of the lodestar amount does not necessarily end the inquiry into the ultimate fee award. After calculating the lodestar amount, the court has discretion to make an upward or downward adjustment based on the relevant factors set forth in in Colo. RPC 1.5(a). *In re Marriage of Aragon*, 444 P.3d at 842. No one factor is determinative. *Spensieri*, 804 P.2d at 271. Many of these factors will be reflected in the lodestar amount, and no adjustments should be made if the lodestar amount already reflects these considerations. *Id*.

As applied here, those factors do not support any reduction of the lodestar amount in this case. Instead, they confirm that the lodestar calculation represents the minimum amount that Headwaters is entitled to recover as damages.

Factor 1: Time and Labor Required, Novelty and Difficulty, and Skill Requisite

Courts assess the amount of time and effort the attorney must invest in the case, including the hours spent on research, drafting, and other legal tasks. Colo. RPC 1.5(a)(1); *see also* Colo. RPC 1.5, cmt. 14. They also evaluate the complexity and uniqueness of the legal issues presented.

Colo. RPC 1.5(a)(1). More complex and novel issues, such as complex litigation requiring specialized litigation skills and cases requiring heightened analysis of factual and legal issues, typically justify higher fees due to the increased difficulty and the need for specialized knowledge. *See, e.g., Matter of Painter's Estate*, 567 P.2d 820, 823 (Colo. App. 1977). Lastly, the required level of expertise and proficiency needed to handle the case effectively is also considered, including the attorneys' experience, reputations, and ability to manage the legal issues competently. *See id.* at 822.

As this Court has recognized, GRMD's claims raised complex issues that required heightened factual and legal analysis regarding the Granby Ranch development and the complex roles of the two metropolitan districts created to further that development as well as their evolving relationship and functions over the years. The case required attorneys with expertise and experience dealing with complex real estate transactions, special districts, and litigation involving similar public bodies, as well as Colorado practice and procedure. *See* Palmeri Affidavit, ¶¶ 24-25. As Mr. Palmeri concludes, the issues were unique and difficult; it was not a "run of the mill" case. *Id*. at ¶ 25. And, as he further states, the "results were crucial" for Husch Blackwell's clients because '[t]his case went to the heart of the real estate development for Headwaters, as well as the interested parties in Granby Ranch." *Id*. Husch Blackwell put together a team of attorneys to handle this matter with expertise in all those areas. *See* Steiner Declatation, ¶¶ 4-13. This factor supports recovery of the lodestar amount.

Factor 2: Likelihood that Acceptance of Particular Employment will Preclude Other Employment by Lawyer

When evaluating factor two, which considers the likelihood that the acceptance of particular employment will preclude other employment by the lawyer, courts generally consider

whether it is apparent to the client that the lawyer's acceptance of their case will limit the lawyer's ability to take on other cases. *See* Colo. RPC 1.5(a)(2). Thus, if a lawyer's engagement in a particular case is likely to prevent them from accepting other work, and this is apparent to the client, it may justify a higher fee due to the exclusivity and potential loss of other income opportunities for the lawyer.

Husch Blackwell's representation of this case over the past four years required intense time commitment, particularly during discovery and summary judgment briefing. *See* Steiner Declaration, ¶¶ 16, 19 & Ex. B; Palmeri Affidavit, ¶¶ 12, 25. The attorneys working on the case necessarily could not devote their time to other matters while engaged in this work for Headwaters. This factor supports recovery of the lodestar amount.

Factor 3: Fee Customarily Charged in Locality for Similar Legal Services

Generally, courts evaluate an attorney's customary fee by considering the prevailing market rate by private lawyers in the community, which involves assessing the customary practice in the legal community regarding fees in similar actions. *Crow v. Penrose-St. Francis Healthcare Sys.*, 262 P.3d 991, 998 (Colo. App. 2011); *see also Payan*, 310 P.3d at 221. Courts may also consider expert testimony regarding local billing rates and compare them to the rates charged in the case at hand. *Lenn v. Coleman*, No. 24CA0244, 2025 WL 802759, at *5 (Colo. App. Mar. 13, 2025).

As set forth above and supported by the Declarations of Jamie Steiner and the Expert Affidavit of John Palmeri, the rates charged by Husch Blackwell are consistent with customary rates in Denver for attorneys with similar experience and expertise. *See* Steiner Declaration, ¶¶ 21-

22, 25 & Ex. C, and Palmeri Affidavit, ¶¶ 22-23. This factor supports recovery of the lodestar amount.

Factor 4: Amount Involved and Results Obtained

Overall, the results obtained are a key factor in determining the reasonableness of attorneys' fees, and courts have considerable discretion in making these determinations. *Langseth v. Cnty. of Elbert*, 916 P.2d 655, 657–58 (Colo. App. 1996). These considerations include the amount of damages recovered, the amount in controversy, and the amount of damages sought. *Tallitsch*, 926 P.2d at 148. Additionally, courts may consider whether the litigation achieved some public goal or had public importance, which can influence the fee award. *See Payan*, 310 P.3d at 222–23.

Headwaters prevailed on all GRMD's claims against it, claims seeking $6 million in damages, injunctive relief to force Headwaters to operate the ski and golf amenities though it lacked any funds to do so, and ultimate ownership and control of those valuable amenities. As set forth above, the requested relief had serious implications, not just for Headwaters but for the continued success of the Granby Ranch community. Headwaters was more than justified in retaining counsel to vigorously defend against GRMD's claims and to prosecute its claim based on GRMD's interference with the development and its breach of the Exclusion Agreement. The result protected Headwaters' interests, as well as the interests of all the Granby Ranch homeowners. This factor supports recovery of the Lodestar amount.

Factor 5: Time Limitations Imposed by Client or by Circumstances

For this factor, courts look at whether the client or the circumstances imposed any time limits that would necessitate expedited work or additional resources. *See* Colo. RPC 1.5. The

intense discovery schedule and extensive briefing often required expedited work by counsel, again supporting award of the lodestar amount.

Factor 6: Nature and Length of Professional Relationship with Client

The history of the attorney-client relationship can significantly impact the reasonableness of the fee charged. Here, it was most efficient for Headwaters to retain the same firm representing GR Terra, considering the overlapping claims against them and their shared goals in the litigation.

Husch Blackwell has extensive experience working with the principles of GR Terra, Robert and David Glarner. The Glarners are developers based in St. Louis, Missouri. *See* Steiner Declaration, ¶ 4. Husch Blackwell, and in particular, David Richardson, have served as the Glarner's primary real estate attorneys since 2008, handling all their significant real estate transactions and legal work. *Id*. Ms. Sandifer has represented the Glarners on several litigation matters over the past five years. *Id.*, ¶ 13. Therefore, this factor supports recovery of the lodestar amount.

Factor 7: Experience, Reputation, and Ability of Lawyers Performing Services

When evaluating this factor, courts generally consider several aspects, such as the lawyer's reputation for honesty, integrity, and professionalism, which can include testimonials or evidence of the lawyer's character and reputation within the legal community. *See People v. Stern*, 522 P.3d 762, 786 (Colo. O.P.D.J. 2022). The Husch Blackwell attorneys working on this litigation have excellent credentials and reputations within the legal community where they practice. *See* Steiner Declaration, ¶¶ 5, 7 & 11. See also Palmeri Affidavit, ¶ 23. This factor supports recovery of the lodestar amount.

Factor 8: Fixed or Contingent Fees

Finally, the nature of the fee arrangement supports recovery of the lodestar amount. Pursuant to the terms of the engagement letter attached to Ms. Steiner's Declaration, Husch Blackwell billed Headwaters on an hourly basis, and all the amounts claimed in this motion (and more) have been paid to Husch Blackwell. *See* Hoover Declaration, ¶¶ 4-6 & Exs. A – C.

C. Conclusion Regarding Requested Attorneys' Fees.

Based upon Colorado law, consideration of all relevant factors, and the supporting materials submitted herewith, this Court should exercise its broad discretion to award Headwaters recovery of its attorneys' fees in the amount of $891,596.50 as a component of its damages for breach of the Exclusion Agreement.

II. Headwaters Is Entitled To Recover Its Requested Costs

Colo. R. Civ. P. 54(d) states that "reasonable costs shall be allowed as of course to the prevailing party considering any relevant factors which may include the needs and complexity of the case and the amount in controversy." *Cuevas v. Pub. Serv. Co. of Colorado*, 537 P.3d 418, 430 (Colo. App. 2023). Absent a specific prohibition in a statute, a trial court has the discretion to award any reasonable costs requested. *Roget v. Grand Pontiac, Inc.*, 5 P.3d 341, 348 (Colo. App. 1999). When the costs requested are incurred for trial preparation purposes and are not commingled with the general costs of conducting business or the costs of other litigation, they are not overhead and may, in the court's discretion, be recovered as costs. *Id.*; *see also Valentine v. Mountain States Mut. Cas. Co.*, 252 P.3d 1182, 1195 (Colo. App. 2011) ("The district court's considerable discretion in awarding costs encompasses all actual and reasonable expenses incurred

in relation to matters which in the court's view would expedite the trial and which would give the court and the parties a clear conception of the points in issue." (internal quotation marks omitted)).

As summarized on the spreadsheets attached to Ms. Hoover's Declaration as Exhibit B and Ms. Steiner's Declaration as Exhibits A & B, Headwaters is requesting a total of $40,298.12, consisting of docket fees, deposition and court reporter fees, litigation technology fees, travel expenses, and expert fees. Again, these fees have been specifically itemized on the monthly invoices provided to GRMD's counsel, which can be made available to this Court if requested. **As with attorneys' fees, all the costs incurred defending against GRMD's claims were split evenly between GR Terra and Headwaters, so the requested costs represent just half of the actual fees incurred to defend these entities.** *See* Steiner Declaration, ¶ 14. Recovery of these costs is reasonable and appropriate. *See* Palmeri Affidavit, ¶¶ 28-31.

All those fees were reasonable and necessary to Husch Blackwell's defense of GRMD's claims against Headwaters and are properly recoverable under Colorado law.

A. Docket and Court Fees

Docket fees and any other fees or taxes required by statute to be paid to the clerk of the court are explicitly recoverable as costs under C.R.S. § 13-16-122(1)(a). They also include jury fees; sheriffs' fees; witness fees; fees for exemplification and copies of papers; and fees for service of process. *See* C.R.S. § 13-16-122(1)(b–c, e–f, i). The court has affirmed that a prevailing party may recover reasonable and necessary costs incurred in defending litigation, which have included court filing fees, among other expenses. *See Parker v. USAA*, 216 P.3d 7, 14–15 (Colo. App. 2007); *Miller v. Hancock*, 410 P.3d 819, 830–34 (Colo. App. 2017).

B. Court Reporter Fees, Deposition Costs, and Transcripts

Court reporter fees and transcript costs are specifically mentioned as recoverable under C.R.S. § 13-16-122(1)(d). *See also In re Estate of Fritzler*, 413 P.3d 163, 169 (Colo. App. 2017). Similarly, deposition costs, including court reporter fees, are recoverable if the deposition and its general content were reasonably necessary for the development of the case. *Danko v. Conyers*, 432 P.3d 958, 972 (Colo. App. 2018); *Kennedy v. King Soopers Inc.*, 148 P.3d 385, 389 (Colo. App. 2006). This case involved numerous depositions, including 11 noticed by GRMD.

C. Litigation Technology Fees

Costs related to litigation technology can be awarded at the court's discretion if they are deemed useful for expediting the trial and clarifying points in issue. *See, e.g., Valentine*, 252 P.3d at 1195–96. Document coding expenses have also been recognized as recoverable costs. *Id* at 1196. As set forth in Headwaters' engagement letter, Husch Blackwell charges a monthly fee to maintain the electronic database with the parties' document productions. *See* Hoover Declaration, Ex. A, pp. 3-4. In this case, over 20,000 pages of documents were produced. An electronic database was essential to store, code, search and identify relevant documents for defense of the case.

D. Attorney Travel Expenses

While C.R.S. § 13-16-122 does not explicitly list travel expenses as permissible costs, a prevailing party can recover travel expenses incurred by counsel if the costs were reasonable and necessarily incurred. In *Valentine*, the court affirmed the award of air travel and hotel expenses for counsel. 252 P.3d at 1193–94. Similarly, in *Madison Capital Co., LLC v. Star Acquisition VIII*, 214 P.3d 557, 561 (Colo. App. 2009), the court found that travel expenses for out-of-town

counsel were reasonable and necessary. *Id.* at 561–62. And in *Carruthers v. Carrier Access Corp.*, the court of appeals affirmed the trial court's award of counsel's reasonable travel expenses for airfare and hotel accommodations. 251 P.3d 1199, 1212 (Colo. App. 2010).

As previously explained, Headwaters hired Husch Blackwell to represent it in this case based upon those attorneys' experience in relevant legal issues and to advance efficiency by sharing counsel with GR Terra. The primary attorneys on this case, JoAnn Sandifer and David Richardson, are based in St. Louis. While both JoAnn Sandifer and David Richardson traveled to Colorado for depositions, **Husch Blackwell only charged Headwaters for travel expenses for Ms. Sandifer and did not charge any such expenses for Mr. Richardson.** *See* Steiner Declaration, ¶ 15. **And it did not charge for any meals associated with that travel**. *See* cost breakdown on Exhibit B to the Steiner Declaration. The requested travel costs consist only of the reasonable airline, transportation, and lodging charges incurred for Ms. Sandifer's travel for discovery and depositions. *Id.*

E. Expert Fees

The Colorado courts generally recognize that the reasonable and necessary costs of an expert witness are recoverable costs. *See, e.g., Valentine*, 252 P.3d at 1189. Here, Headwaters and GR Terra retained attorney Richard Lyons to rebut GRMD's claims (and those of GRMD's expert) regarding the legality of the use of the amenities fees paid by Headwaters as rent under the LPA and the permissible roles of metropolitan and special districts. *See* Steiner Declaration, ¶ 24. Mr. Lyons' engagement letter setting forth the hourly rate billed for his time was previously produced to GRMD's counsel and is attached to Ms. Steiner's Declaration as Exhibit D. Mr. Lyons produced a report, prepared for a deposition, and was deposed by GRMD's counsel. Had

summary judgment not been granted, Mr. Lyons would have testified at trial. The fees charged to Headwaters for these tasks were reasonable and necessary to its defense.

F. Conclusion Regarding Requested Costs**.**

Based upon Colorado law and the supporting materials submitted herewith, this Court should exercise its broad discretion to award Headwaters recovery of its costs in the amount of $40,298.12 as a component of its damages for breach of the Exclusion Agreement.

CONCLUSION

For the foregoing reasons, Headwaters respectfully requests that the Court award it total damages on Count I of its Counterclaim for Breach of the Exclusion Agreement in the amount of $931,894.62, representing $891,596.50 in reasonable and necessary attorneys' fees and $40,298.12 in reasonable and necessary litigation costs.

Dated: May 12, 2025

HUSCH BLACKWELL LLP

/s/ Jamie H. Steiner
Jamie H. Steiner, #49304
JoAnn T. Sandifer (Admitted Pro Hac Vice)
Attorneys for Defendants Headwaters Metropolitan District and GR Terra LLC

CERTIFICATE OF SERVICE

I hereby certify that May 12, 2025 a true and correct copy of the foregoing **MOTION OF HEADWATERS METROPOLITAN DISTRICT FOR AWARD OF DAMAGES ON COUNT I OF ITS COUNTERCLAIM AGAINST DEFENDANT GRANBY RANCH METROPOLITAN DISTRICT IN THE AMOUNT OF ITS ATTORNEYS' FEES AND COSTS SUBMITTED HEREWITH** was served via the Colorado Courts e-filing system addressed to the following:

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Please note that the Exhibits to Headwaters Metropolitan District's May 12, 2025, Motion for Award of Damages on Count I of Its Counterclaim against Defendant Granby Ranch Metropolitan District in the Amount of Its Attorneys' Fees and Costs have been removed given Headwaters' claim that certain of the Exhibits contain confidential information.