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DISTRICT COURT, GRAND COUNTY, COLORADO 307 Moffat Avenue Hot Sulphur Springs, Colorado 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	▲ COURT USE ONLY ▲
Mark Champoux, #40480 Kyler Burgi, #46479 DAVIS GRAHAM & STUBBS LLP 1550 17th Street, Suite 500 Denver, Colorado 80202 Telephone: 303.892.9400 Facsimile: 303.893.1379 E-mail: mark.champoux@dgslaw.com kyler.burgi@dgslaw.com *Attorneys for Defendants Gray Jay Ventures, LLC and Granby Prentice, LLC*	Case No.: 2021CV30008 Div: 1

DEFENDANTS GRAY JAY VENTURES, LLC'S AND GRANBY PRENTICE, LLC'S ANSWER TO SECOND AMENDED COMPLAINT

Defendants Gray Jay Ventures, LLC ("Gray Jay") and Granby Prentice, LLC ("Granby Prentice" and, together with Gray Jay, "Defendants") submit this answer, affirmative defenses, and jury demand to the claims remaining in Plaintiff Granby Ranch Metropolitan District's ("Plaintiff" or "GRMD") Second Amended Complaint ("Complaint") following this Court's Order Granting in Part Gray Jay Ventures, LLC, Granby Prentice, LLC, and GR Terra LLC's Motion to Dismiss Second Amended Complaint (Jan. 28, 2022) (the "Order").

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff GRMD is a Metropolitan District validly organized and existing pursuant to the Colorado Special District Act, Section 32-1-101 et seq., C.R.S. Under Section 32-1-305 (7), C.R.S., the Plaintiff is a quasi-municipal corporation and political subdivision of the state of Colorado with all the powers thereof.

ANSWER: Defendants admit the allegations in the first sentence of paragraph 1. The remainder of the allegations in paragraph 1 are legal conclusions to which no response is required. To the extent further response is required, Defendants deny these allegations.

2. Defendant Headwaters is a Metropolitan District validly organized and existing pursuant to the Colorado Special District Act, Section 32-1-101 et seq., C.R.S. Under Section 32-1-305 (7), C.R.S., the Defendant is a quasi-municipal corporation and political subdivision of the state of Colorado with all the powers thereof.

ANSWER: Defendants admit the allegations in the first sentence of paragraph 2. The remainder of the allegations in paragraph 2 are legal conclusions to which no response is required. To the extent further response is required, Defendants deny these allegations.

3. Defendant Gray Jay Ventures[1] is a Delaware Limited Liability Company in good standing with its principal place of business located at 10100 Santa Monica Blvd., Suite 1000, Los Angeles, CA 90067. Defendant s registered agent address is 7700 E. Arapahoe Rd. Ste 220, Centennial, CO 80221.

ANSWER: Defendants admit the allegations in paragraph 3.

4. Defendant Redwood Capital is a Delaware Limited Liability Company with it[s] principal place of business located at 10100 Santa Monica Blvd., Suite 1000, Los Angeles, CA 90067. Defendant's registered agent is National Registered Agents, Inc. whose mailing address is 1209 Orange Street, Wilmington, DE 19801. According to the records of the California Secretary of State, Redwood Capital was authorized to do business in the State of California but was "cancelled." There is no evidence that Redwood Capital was ever authorized to do business in Colorado.

ANSWER: Defendants deny the allegations in paragraph 4 and further state that all claims against Redwood Capital have been dismissed with prejudice. Order Granting the Motion to Dismiss of Redwood Capital Finance., LLC by Granby Prentice, LLC, its Successor by Contract and Indemnitor (Jan. 28, 2022) (the "Redwood Order").

[1] Gray Jay Ventures was originally GP Granby Holdings, LLC and as such many of the documents referenced in this Second Amended Complaint may contain references to GP Granby Holdings, LLC since that was the name of the entity at the time the transactions at issue took place. On June 2, 2021 GP Granby Holdings, LLC changed its name to Gray Jay Ventures, LLC.

5. Defendant Granby Prentice is a Delaware Limited Liability Company. Its registered agent is National Registered Agents, Inc. whose mailing address is 1209 Orange Street, Wilmington, DE 19801. There is no evidence that as of the date of this Amended Complaint, Granby Prentice is authorized to do business in Colorado.

ANSWER: Defendants admit the allegations of paragraph 5.

6. Defendant GR Terra is a Missouri Limited Liability Company. Its registered agent is Georgia Noriyuki located at 365 E. Agate Ave, Unit A, Granby, CO 80446 and whose mailing address is PO Box 949, Granby, CO 80446.

ANSWER: Defendants are without sufficient knowledge and information to form a belief as to the allegations of paragraph 6 and therefore deny same.

7. This Court is the proper venue for this action pursuant to C.R.C.P. 98(c) because Headwaters and GPGH (the "Districts") are located entirely within the County of Grand, State of Colorado, and the Leased Premises are located entirely within the County of Grand, State of Colorado.

ANSWER: Defendants admits that Headwaters and *GRMD* are located within Grand County, Colorado as is the leased premises referred to in the 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

8. Granby Realty Holdings ("GRH"), Headwaters, and GRMD are all separate but related entities. GRH was the petitioner that sought the organization of both Headwaters and GRMD. Sol Vista Corporation was the prior name of GRH.

ANSWER: Defendants admit that GRH, Headwaters, and GRMD are separate entities, but deny that they are related entities. Defendants are without sufficient knowledge and information to form a belief as to the remaining allegations of paragraph 8 and therefore deny same.

9. Headwaters came into existence pursuant to a Service Plan approved by the Town of Granby and dated March of 2003. Headwaters was originally called Sol Vista Metropolitan District No. 1; its name was changed to Headwaters on October 23, 2004. Headwaters is the "developer district", covers a geographical area of approximately 7 acres, and the sole developed properties within its boundaries are a single residential condominium unit originally owned by Marise Cipriani, a principal manager of Sol Vista Corporation ("Sol Vista") and an undeveloped parcel of land which serves as a "directional parcel" for Headwaters.

ANSWER: Defendants state that the Service Plan referenced in paragraph 9 speaks for itself and deny any characterization of that document inconsistent with the terms thereof.

Defendants are without sufficient knowledge and information to form a belief as to the remaining allegations of paragraph 9 and therefore deny same.

10. GRMD (originally called Sol Vista Metropolitan District No. 2) was organized at the same time as Headwaters through a separate Service Plan. Its name was changed to Granby Ranch Metropolitan District, also on October 23, 2004. The two service plans are attached as **Exhibits 1 and 2**. Both Service Plans contemplated that multiple districts may be organized whose boundaries would include the residential areas of Granby Ranch and major amenities including a golf course, fishing access rights, and a ski area. GRMD is the "homeowner district" or the "taxing district" and covers a geographical area of approximately 3,563 acres.

ANSWER: Defendants state that the Service Plans referenced in paragraph 10 and attached to the Complaint as Exhibits 1 and 2 speak for themselves and deny any characterization of those documents inconsistent with the terms thereof. Defendants are without sufficient knowledge and information to form a belief as to the remaining allegations in paragraph 10 and therefore deny same.

11. When the two Districts were first organized, the property was owned entirely by a private development company, Sol Vista. (This entity later became the developer, "GRH."). Owners of taxable real and personal property, the holders of certain option contracts, and residents within both Headwaters and GRMD are "eligible electors" who may vote in district elections. Corporate entities and partnerships may not vote. The Districts were organized by Sol Vista so that Headwaters, which would have only developer-affiliated directors, would be the control or service district, and GRMD would pay taxes and fees to finance district services. Sol Vista conveyed property interests in small tracts of land, either through outright conveyance or options to purchase. This would qualify the transferees to vote in Headwaters and GRMD elections pursuant to C.R.S. 32-1-103(5)(a), C.R.S., and to petition for the organization of the district and submit a proposed service plan. Using this method, Headwaters would always be controlled by the Developer, which would lose control of GRMD as residents acquired lots, built homes, and took an interest in the affairs of the District.

ANSWER: Defendants state that they are unable to respond to the allegations in the first sentence of paragraph 11 as the term "property" is not defined and therefore deny same. Defendants are without sufficient knowledge and information to form a belief as to the allegations in the second sentence of paragraph 11 and therefore deny same. Defendants state that the remainder of the allegations of paragraph 11 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, Defendants deny same.

12. Currently, the Headwaters Board is comprised of five members, none of whom reside within the boundaries of that district. The GRMD Board is comprised of five members all of whom are homeowners within that district.

ANSWER: Defendants are without sufficient knowledge and information to form a belief as to the allegations in paragraph 12 and therefore deny same.

13. The Granby Ranch Metropolitan Districts Nos. 2-8 were formed under a Service Plan approved by the Town of Granby on September 25, 2007. A copy of this Consolidated Service Plan is attached as **Exhibit 3**.

ANSWER: Defendants state that the Consolidated Service Plan referenced in paragraph 13 and attached to the Complaint as Exhibit 3 speaks for itself and deny any characterization of that document inconsistent with the terms thereof.

14. As the Service District, the Developer-controlled Headwaters ran the affairs of GRMD. Under the "Master Intergovernmental Agreement ("Master IGA"), attached to the Headwaters Service Plan, Headwaters was to establish "manage and control the financing" of infrastructure, budget monies for public purposes, adopt uniform rules and regulations for administrative and operational purposes, and establish all necessary service charges including "development fees" for the Taxing District (eventually GRMD and Granby Ranch Metropolitan Districts Nos. 2-8). Headwaters was to own and operate the infrastructure until it was transferred to the Town of Granby or another public agency. Headwaters was also responsible for the construction of the infrastructure and to arrange for the financing of it. *See* Master IGA, Sections 4.2 and 4.3. As section 4.4 of the Master IGA succinctly put the point, "the Service District shall manage and administer all business affairs of the Districts."

ANSWER: Defendants state that they are unable to respond to the allegations in the first sentence of paragraph 14 as the term "affairs" is ambiguous and the timeframe referenced is not defined and therefore deny same. The remainder of the allegations are characterizations of the Master IGA referenced in paragraph 14, and that document speaks for itself. Defendants deny any characterization of the Master IGA inconsistent with the terms thereof and also state that, upon information and belief, the Master IGA was terminated as of June 1, 2006 and was of and of no force or effect after that date.

15. The responsibilities of the Taxing District were to impose the required mill levy to pay debt obligations incurred by the Districts, including Headwaters pursuant to Section 5.1 of the Master IGA; to adopt, impose, collect, and remit to Headwaters as the Service District such rates, fees, tolls and charges as are established by the Service District[] to fund its administrative and operating expenses pursuant to Section 5.2 of the Master IGA; and pursuant to Section 5.4 of the Master IGA, upon the dissolution of the Headwaters, GRMD was to accept responsibility for the operation and maintenance of any infrastructure located within the Taxing District.

ANSWER: The allegations of paragraph 15 are characterizations of the Master IGA referenced in paragraph 15, and that document speaks for itself. Defendants deny any characterization of the Master IGA inconsistent with the terms thereof and state that, upon information and belief, the Master IGA was terminated as of June 1, 2006 and was of no force or effect after that date.

16. On May 26, 2005 Headwaters and GRMD passed a Joint Resolution to Establish an Amenity Fee ("Fee Resolution")[2]. This Fee Resolution established that Headwaters would impose and collect an Amenity Fee in coordination with Granby Ranch with respect to each lot or parcel of land within GRMD's boundaries. This Amenity Fee was to provide "a source of funding to pay for the costs incurred by the Districts for the financing, acquisition, construction, installation, and/or replacement of the Amenities, which are generally attributable to the persons subject to such charges, and such fees and charges are necessary to provide for the prosperity and general welfare of the Districts and their inhabitants and for the orderly and uniform administration of the Districts' affairs." *See* Recitals of Fee Resolution. A copy of the Fee Resolution is attached as **Exhibit 4**.

ANSWER: The allegations of paragraph 16 and footnote 2 are characterizations of the Fee Resolution attached to the Complaint as Exhibit 4. That document speaks for itself, and Defendants deny any characterization of the Fee Resolution inconsistent with the terms thereof. Defendants further state that the Fee Resolution was superseded in its entirety on July 17, 2013 and was of no force or effect after that date.

17. The Amenities were defined in the Fee Resolution as "certain recreational amenities benefiting the property within the Districts, which include a golf course, ski area, river park and related improvements, trails, and other recreation improvements, facilities, appurtenances, rights-of-way and other amenities as shall from time to time be acquired, constructed and/or operated by the Districts." *See* Recitals of Fee Resolution.

ANSWER: The allegations of paragraph 17 are characterizations of the Fee Resolution attached to the Complaint as Exhibit 4. That document speaks for itself, and Defendants deny any characterization of the Fee Resolution inconsistent with the terms thereof. Defendants further state that the Fee Resolution was superseded in its entirety on July 17, 2013 and was of no force or effect after that date.

18. On February 26, 2008, the Town of Granby, Headwaters, GRMD, and the Granby Ranch Metropolitan Districts Nos. 2-8 entered into an Intergovernmental Agreement (the "Granby IGA") which is attached as **Exhibit 5**.

ANSWER: The allegations of paragraph 18 are characterizations of the Granby IGA attached to the Complaint as Exhibit 5. That document speaks for itself, and Defendants deny any characterization of the Fee Resolution inconsistent with the terms thereof.

19. Section 5 of the Granby IGA provided that "In addition to the types of park and recreation services and facilities referenced to or reflected in the Service Plans, including the exhibits thereto, the Districts will be authorized to acquire, construct, own, operate and maintain

[2] The Fee Resolution was amended on September 6, 2006 and was amended and restated on July 17, 2013. The Amendments to the Fee do not change the amount of the fee and the agreement, the rights and obligations remain a covenant running with the land and is to be binding to the parties and to their successors.

the ski area and lifts, ski lodge, golf courses and appurtenant clubhouse and maintenance facilities, fishing or river park facilities and programs, and parks, trails and open space for various recreational purposes as more fully described in Exhibit A, attached to the Granby IGA and incorporated herein by reference, collectively called the "**Amenities**", which included a "Fishing Camp" on the Fraser River, the 18-hole Headwaters Golf Course, the SolVista Ski Basin, and parks, trails, and recreation areas within the Granby Ranch property."

ANSWER: The allegations of paragraph 19 are characterizations of the Granby IGA attached to the Complaint as Exhibit 5. That document speaks for itself, and Defendants deny any characterization of the Granby IGA inconsistent with the terms thereof. Defendants also state that, upon information and belief, the Granby IGA was superseded and replaced in its entirety on November 8, 2016 and was of no force or effect after that date.

20. Importantly, the term "Districts" was defined on page 1 of the Granby Ranch IGA and included Headwaters, GRMD, and the Granby Ranch Districts Nos. 2-8. All of these entities were collectively given the power to acquire the Amenities. In order to defray the costs of this acquisition, the Districts were authorized to impose and collect a one-time, front end Amenities Fee, in an amount not to exceed $10,000.00 per lot or equivalent dwelling unit. *See* Granby IGA, Section 5(c). *See* Fee Resolution. Under this agreement, the Districts would provide preferred access to the Amenities for Town residents which was to be at a higher level for the Town residents than the general public, but not higher than for residents of the Districts. The Granby IGA noted that the Amenities were not items required by the Town ordinances or other authorities to be dedicated or conveyed to the Town. The Granby IGA does provide that property interests and assets needed for the Amenities that would be acquired from the Developer shall be acquired at prices that do not exceed fair market value as established by a qualified appraiser. *See* Granby IGA Section 5(b).

ANSWER: The allegations of paragraph 20 are characterizations of the Granby IGA attached to the Complaint as Exhibit 5. That document speaks for itself, and Defendants deny any characterization of the Granby IGA inconsistent with the terms thereof. Defendants also state that, upon information and belief, the Granby IGA was superseded and replaced in its entirety on November 8, 2016 and was of no force or effect after that date.

21. On December 31, 2012, GRH and Headwaters entered into the Second Amended and Restated Lease Purchase Agreement ("LPA") for purposes of Headwaters purchasing the Amenities. A true and correct copy of the LPA is attached to this complaint as **Exhibit 6** and incorporated herein by this reference. The LPA was the consummation of the vision in the Granby IGA that the Amenities would be under public ownership.

ANSWER: Defendants admit that, to the best of their current knowledge and understanding, the document attached to the Complaint as Exhibit 6 is the LPA referenced in paragraph 21. Defendants deny the allegations in the first and third sentences of paragraph 21.

22. In Recital B., the LPA notes that "in order to pay rental payments with respect to the Leased Premises and to pay the purchase price of the Leased Premises," Headwaters had

"previously adopted, with the Granby Ranch Metropolitan District, a Joint Resolution to Establish an Amenity Fee....The Fee Resolution was entered into on May 26, 2005 by the Board of Directors of Headwaters and GRMD.

ANSWER: The allegations of paragraph 22 are characterizations of the LPA attached to the Complaint as Exhibit 6. That document speaks for itself, and Defendants deny any characterization of the LPA inconsistent with the terms thereof.

23. In Section 23 of the LPA, Headwaters and the developer, GRH, agreed that the "Purchase Price" for the Amenities would be the lesser of the Adjusted Appraisal Value of the Leased Premises subject to increases for the value of capital improvements adjusted for inflation and all Amenity Fees collectable by Headwaters under the Amenity Fee Agreements[3] and the Fee Resolution. The Amenities would also pass to the Tenant on December 31, 2062 if the Lease had not been terminated in accordance with Section 2(a), and (b) or (c) of the LPA.

ANSWER: Defendants deny the allegations of paragraph 23 and footnote 3 thereto. Defendants further state that the allegations of paragraph 23 are characterizations of the LPA attached to the Complaint as Exhibit 6. That document speaks for itself, and Defendants deny any characterization of the LPA inconsistent with the terms thereof.

24. "Rental Payments" under the LPA were restricted to "any Amenity Fee imposed pursuant to the Fee Resolution and the Fee Agreement." The Parties acknowledged that "due to the nature of the due dates of the Amenity Fees, as set forth in the Fee Resolution and the Fee Agreement, the amount of Amenity Fees received by the Tenant (Headwaters) may fluctuate greatly from month to month and year to year." *See* LPA, section 3. The plain language of the LPA leads to the conclusion that if no Amenity Fees were collected in a given year, the Rent would be zero.

ANSWER: The allegations of paragraph 24 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, Defendants deny such allegations and deny any characterization of the LPA inconsistent with the terms thereof.

25. GRMD is a third-party beneficiary under the LPA because it was expressly intended to be benefited under the LPA. GRMD imposed an Amenities Fee that was used to finance the purchase, and it was authorized under the Granby IGA to make the purchase along with Headwaters and the Granby Ranch Metropolitan Districts Nos. 2-8. GRMD also contains the overwhelming majority of the "taxpayers, residents, occupants, visitors and invitees" described in the LPA as using the Leased Premises.

[3] Although not mentioned in the LPA, Headwaters entered into an "Amenity Fee Agreement" with GRH on June 1, 2005, and Headwaters subsequently entered into and "Amenity Fee Agreement" with Aspen Meadows Condominiums, LLC on July 5, 2005. These agreements are collectively referred to as the "Amenity Fee Agreements" in various documents and also within this Amended Complaint.

ANSWER: The first sentence of paragraph 25 states a legal conclusion to which no response is required and, to the extent a response is required, Defendants deny such allegations. Defendants deny the remainder of the allegations of paragraph 25 and deny any characterization of documents referenced therein that are inconsistent with the terms thereof.

26. The Fee Resolution required GRMD to collect an Amenity Fee from property owners within the Granby Ranch development which was to be remitted to Headwaters to then apply to payments due under to the LPA. Such a fee would not be able to be collected were it not for the LPA between GRH and Headwaters since Headwaters is collecting the Amenity Fee through GRMD and pursuant to GRMD's legislative authority pursuant to C.R.S. 32-1-1001(j)(I).

ANSWER: Defendants deny the allegations of paragraph 26.

27. In Section 13 of the LPA, "Title and Possession," GRH represented to Headwaters that it had the full right to enter into the LPA and to perform its obligations under the LPA, including without limitation the sale of the Leased Premises in accordance with Section 23, without the consent or approval of any other party. These other parties expressly included "the lenders indicated as beneficiaries to the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing from Granby Realty Holdings, LLC, a Colorado limited liability company to the Public Trustee of Grand County for the use of Redwood Capital Finance Company, LLC, a Delaware limited liability company, recorded June 2, 2005 at Reception No. 2005-005679, as amended."

ANSWER: The allegations of paragraph 27 are characterizations of the LPA attached to the Complaint as Exhibit 6. That document speaks for itself, and Defendants deny any characterization of the LPA inconsistent with the terms thereof.

28. Section 13(b) of the LPA provides, in part, "The Parties acknowledge that the Leased Premises are currently subject to the Deed of Trust, which is prior and superior to this Lease, and that, in connection with the Prior Lease, Landlord shall cause to be delivered to Tenant a Subordination, Non-Disturbance and Attornment Agreement, to be executed by Redwood Capital Finance." Section 13 (b) further provides,

> Landlord and Tenant hereby acknowledge that, in connection with the execution of this Lease, Landlord has delivered to Tenant, an agreement executed by the Lender either subordinating this Lease to the deed of trust held by the Lender but obligating the Lender and any successor thereto to be bound by this Lease and by all of Tenant's rights hereunder (to the extent such Lender should succeed to the interest of Landlord and/or acquire title or right of possession of the Leased Premises), including but not limited to the rights of Tenant conferred by Sections 2 and 23 hereof. Such agreement provides that, notwithstanding any other agreement with the Landlord, the Lender's consent shall not be required to permit the acquisition of the Leased Premises by the Tenant in accordance with the terms hereof.

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

29. According to Section 26, the Non-Disturbance Agreement shall provide, among other things, that upon such lenders' succession of interest it shall be bound as Landlord to the provisions of the LPA, including Headwater's right to acquire the Leased Premise pursuant to Section 23.

ANSWER: Defendants state that they are unable to respond to paragraph 26 as it is ambiguous as to meaning of the term "Non-Disturbance Agreement." The remainder of the allegations of paragraph 29 are characterizations of the LPA attached to the Complaint as Exhibit 6. That document speaks for itself, and Defendants deny any characterization of the LPA inconsistent with the terms thereof.

30. On November 8, 2016, the Town of Granby, Headwaters, GRMD, and the Granby Ranch Metropolitan Districts Nos. 2-8 entered into an Amended and Restated Intergovernmental Agreement replacing the Granby IGA (the "Second Granby IGA"), which is attached to this Amended Complaint as **Exhibit 7**. In this Second Granby IGA, Section 5 a., the parties re-affirmed the authority of "the Districts" to acquire the ski area and lifts, ski lodge, golf courses and appurtenant clubhouses and maintenance facilities. Exhibit A to the Second Granby IGA lists the same Amenities that could be acquired by the Districts as the original Granby IGA.

ANSWER: The allegations of paragraph 30 are characterizations of the Second Granby IGA attached to the Complaint as Exhibit 7. That document speaks for itself, and Defendants deny any characterization of the Second Granby IGA inconsistent with the terms thereof.

31. In November of 2016, Headwaters and GRMD Districts Nos. 2-8 remained under the control of the developer GRH, but GRMD was under homeowner and lot owner control. GRMD and its homeowner-controlled Board were dissatisfied with the state of the infrastructure developed by Headwaters as the Service District, particularly the roads within Granby Ranch. Because of this dispute, the parties agreed to terminate the prior master IGAs under which the Granby Ranch districts would finance the roads and other related infrastructure within Granby Ranch and Headwaters would construct and operate that infrastructure. *See* "Termination of Intergovernmental Agreement" between GRMD, Granby Ranch Metropolitan Districts Nos. 2 through 8, and Headwaters, dated November 17, 2017 (the "Termination IGA"). In Recital G. of the Termination IGA, the parties indicated their intent that GRMD should operate independently of Headwaters. A copy of the Termination IGA is attached to this Amended Complaint as **Exhibit 8**.

ANSWER: Defendants are unable to respond to the allegations in the first sentence of paragraph 31 as the terms "control" and "homeowner-controlled" are vague and ambiguous. To the extent a response is required, Defendants deny such allegations. Defendants are without sufficient knowledge and information to form a belief as to the allegations in the second and third sentences of paragraph 31 and therefore deny same. Defendants admit that, to the best of their

current knowledge and understanding, the document attached to the Complaint as Exhibit 8 is the Termination IGA referenced in paragraph 31. Defendants deny any remaining allegations of paragraph 31.

32. However, the Second Granby IGA was not terminated nor was the authority that the Town of Granby had given to "the Districts" to purchase the Amenities ever taken away. The LPA was entered into in 2012 pursuant to the authority granted by the original Granby IGA, which was dated in 2008, and that authority was reaffirmed in the Second Granby IGA in 2016.

ANSWER: The allegations of paragraph 32 state legal conclusions to which no response is required and, to the extent a response is required, Defendants deny such allegations.

33. According to a letter dated September 1, 2020, from Christopher L. Richardson, counsel to defendant Gray Jay Ventures, to Mr. Clint Waldron, counsel to Headwaters, the interest in the 2005 Redwood Capital Deed of Trust was somehow transferred to an entity called Granby Prentice, LLC. Mr. Richardson described Redwood Capital as the "predecessor in interest" to Granby Prentice. According to the website maintained by the California Secretary of State, the business address of Granby Prentice is identical to that of the Redwood Capital Finance Company, LLC, 10100 Santa Monica Boulevard, Los Angeles, California, 90067.

ANSWER: The allegations in the first two sentences of paragraph 33 are characterizations of the referenced September 1, 2020 letter. That document speaks for itself and Defendants deny any characterization of that letter inconsistent with the terms thereof. Defendants deny the allegations in the last sentence of paragraph 33 and further state that all claims against Redwood Capital have been dismissed with prejudice. *See* Redwood Order.

34. Upon information and belief, GRH purportedly defaulted on the loan obligation secured by the 2005 Redwood Capital Deed of Trust. Subsequently, Granby Prentice initiated a foreclosure by filing a Notice of Election and Demand on March 24, 2020 as to the 2005 Redwood Capital Deed of Trust. The LPA had previously been recorded in the real property records of Grand County on January 3, 2020 at Reception No. 2020000067. At the time the foreclosure was initiated, Granby Prentice had both actual and constructive knowledge that its predecessor in interest, Redwood Capital, had agreed to be bound by the LPA including the right of Headwaters to purchase the Amenities.

ANSWER: Defendants admit the allegations in the first three sentences of paragraph 34. Defendants deny the allegations in the fourth sentence of paragraph 34.

35. On August 14, 2020, the Public Trustee held a public sale of the Leased Premises under the LPA. Granby Prentice's bid of $25,000,000 was the highest and only bid. The Public Trustee issued a Certificate of Purchase for the subject property, including the Leased Premises, to Granby Prentice. Granby Prentice assigned this Certificate of Purchase to the defendant GPGH. Gray Jay Ventures has both actual and constructive knowledge that its predecessor in interest, Redwood Capital had agreed to be bound by the LPA including the right of Headwaters to purchase the Amenities.

ANSWER: Defendants admit the allegations in the first four sentences of paragraph 35 and further state that GP Granby Holdings, LLC changed its name to Gray Jay Ventures, LLC. Defendants deny the allegations in the fifth sentence of paragraph 35.

36. Following the foreclosure, Gray Jay Ventures became the successor in interest to the LPA and was bound to assume the role of the Landlord under the LPA and to honor the right of the Granby Ranch Metropolitan Districts Nos. 2-8 to purchase the Amenities/Leased Premises under section 23 of the LPA. Gray Jay Ventures asserts that it was not a successor in interest to the LPA because the LPA was terminated by way of the foreclosure. Perhaps unsurprisingly, Gray Jay Ventures has the same Los Angeles business address as Redwood Capital and Granby Prentice.

ANSWER: Defendants deny the allegations in the first sentence of paragraph 36 and state that the LPA was extinguished by operation of Colorado statute (and other means). Defendants admit that Gray Jay is not a successor in interest to the LPA and further state that the LPA was extinguished by operation of Colorado statute (and other means), but deny all remaining allegations in the second sentence of paragraph 36. Defendants deny the allegations in the third sentence of paragraph 36.

37. From the time of Mr. Richardson's correspondence of September 1, 2020 through the filings of the motions to dismiss by Headwaters and Gray Jay Ventures, Gray Jay Ventures has taken the position that the LPA was wiped out by the public trustee foreclosure. At no time has it been noted that Redwood Capital delivered an agreement to Headwaters at the time the LPA was entered into stating that Redwood Capital would be bound by the terms of the LPA, including the right of Headwaters to purchase the Amenities and related property.

ANSWER: Granby Prentice is without sufficient knowledge and information to form a belief as to the allegations of paragraph 37 and therefore denies same. Gray Jay admits that the LPA was extinguished by operation of Colorado statute (and other means) and further states that the pleadings filed by Gray Jay in this case speak for themselves. Gray Jay denies the remaining allegations in the first sentence of paragraph 37. Gray Jay is without sufficient knowledge and information to form a belief as to the allegations in the second sentence of paragraph 37 and therefore denies same.

38. Plaintiff maintains both that Gray Jay Ventures is expressly bound to the terms of the LPA as a successor in interest and that the LPA was not terminated by way of public trustee foreclosure because the LPA is an installment land contract which must be foreclosed on as a mortgage through the Courts. As such, the LPA is still binding.

ANSWER: Defendants acknowledge that the allegations of paragraph 38 may state Plaintiff's legal positions, but Defendants deny in all respects that such positions are correct and further state that the LPA has been extinguished by operation of Colorado statute (and other means).

39. Even assuming that the LPA was terminated by way of foreclosure, in the LPA, the parties also acknowledged that the Leased Premises were subject to the Redwood Capital Deed of

Trust, and that GRH would cause a Subordination, Non-Disturbance and Attornment Agreement to be delivered to Headwaters. However, the parties also exchanged "an agreement executed by the Lender either subordinating this Lease to the deed of trust held by the Lender but obligating the Lender and any successor thereto to be bound by this Lease and by all of Tenant's rights hereunder (to the extent that such Lender should succeed to the interest of Landlord and/or acquire title or right of possession of the Leased Premises) including but not limited to the rights of Tenant conferred by Sections 2 and 23 hereof. Such agreement provides that, notwithstanding any other agreement with the Landlord, the Lender's consent shall not be required to permit the acquisition of the Leased Premises by the Tenant in accordance with the terms hereof."

ANSWER: The allegations of paragraph 39 are characterizations of the LPA attached to the Complaint as Exhibit 6. That document speaks for itself, and Defendants deny any characterization of the LPA inconsistent with the terms thereof. Defendants further state that the allegations in the first sentence of paragraph 39 state a legal conclusion to which no response is required and, to the extent a response is required, Defendants deny same.

40. On November 11, 2020, Gray Jay Ventures notified Headwaters that even assuming the LPA was not terminated by way of foreclosure that Headwaters ceased to operate the Amenities for in excess of 30 days, and thus, pursuant to Section 10 of the LPA, Gray Jay Ventures was electing to terminate the LPA.

ANSWER: Granby Prentice is without sufficient knowledge and information to form a belief as to the allegations of paragraph 40. The allegations of paragraph 40 are characterizations of the referenced November 11, 2020 notice. That document speaks for itself and Gray Jay denies any characterization of that notice inconsistent with the terms thereof.

41. Section 10 of the LPA provides, in part, "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 (which notice may be given within 10 days after the Tenant ceases operation of the Amenities), elect to terminate this lease . . . ."

ANSWER: The allegations of paragraph 41 are characterizations of the LPA attached to the Complaint as Exhibit 6. That document speaks for itself, and Defendants deny any characterization of the LPA inconsistent with the terms thereof.

42. The termination of the LPA will prevent GRMD from collecting fees pursuant to the LPA and will lose approximately $6.05 million dollars in equity already paid (out of a purchase price of $18 million) subject to the LPA from fees collected from its residents and members and terminate the right of the Districts to acquire the Amenities.

ANSWER: Defendants deny the allegations of paragraph 42 and further deny that GRMD is entitled to any such relief.

43. Notice was not properly given by Gray Jay Ventures as required under Section 10.

ANSWER: Defendants state that paragraph 43 states a legal conclusion to which no response is required and, to the extent a response is required, Defendants deny same.

44. 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 on May 28, 2020 that it would no longer operate the Amenities after May 30, 2020. At that same board meeting, the Headwaters board resolved to award Granby Prentice Amenities/Ridgeline ("GPA/Ridgeline") the management contract for the Leased Premise subject to receipt and execution of a mutually acceptable management agreement. GRMD is not aware of a final written agreement ever being entered into between GPA/Ridgeline and Headwaters. During all relevant periods of time, Headwaters continued to operate the Amenities, under contract with those private entities.

ANSWER: Based upon their current knowledge and understanding, Defendants admit the allegations in the first sentence of paragraph 44, but deny any implication that GRA was operating the Amenities on the Leased Premises at the time of such notice. Defendants deny the allegations in the second and third sentences of paragraph 44. Defendants are without sufficient knowledge and information to form a belief as to the allegations in the fourth sentence of paragraph 44. Defendants deny the allegations in the fifth sentence of paragraph 44.

45. On or about May 30, 2020 the Headwaters board voted and approved Touchstone Golf ("Touchstone") as the new operating entity for the golf amenities. On or about September 2, 2020 Gray Jay Ventures informed Granby Ranch homeowners that it had contracted with Touchstone to operate the golf amenities and with Ridgeline to operate the ski amenities. The governor ordered all ski resorts to close effective March 15 and the ski amenities remained closed through December 10, 2020. Upon information and belief, during these periods of mandatory regulatory closing, Headwaters continued to perform routine maintenance and to operate the Amenities to the extent permitted by law.

ANSWER: Defendants are without sufficient knowledge and information to form a belief as to the allegations in the first sentence of paragraph 45 and therefore deny same. Granby Prentice is without sufficient knowledge and information to form a belief as to the allegations in the second sentence of paragraph 45 and therefore denies same. Gray Jay admits that it contracted with Touchstone to operate the golf amenities and Ridgeline to operate the ski amenities effective upon Gray Jay acquiring title to such amenities and admits that it informed certain property owners within Granby Ranch of the same, but denies all other allegations in the second sentence of paragraph 45. Based on their current knowledge and understanding, Defendants admit the allegations in the third sentence of paragraph 45. Defendants deny the allegations in the fourth sentence of paragraph 45.

46. As such, there was never a 30-day period in which Headwaters failed to operate the amenities. Although new management companies were operating the Amenities, they were appointed by Headwaters and thus, Headwaters, despite having a new board, was still managing the Amenities through its appointed contractors.

ANSWER: Defendants deny the allegations of paragraph 46.

47. GR Terra purchased the property subject to the LPA from Gray Jay Ventures on or about May 5, 2021.

ANSWER: Defendants admit that GR Terra purchased the property *formerly* subject to the LPA on or about May 5, 2021, but Defendants deny that the property was subject to the LPA at the time of GR Terra's purchase because the LPA was extinguished by operation of Colorado statute and (and other means).

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

48. The allegations set forth in paragraphs 1 through 47 of this Complaint are incorporated by this reference as though fully set forth herein.

ANSWER: Defendants incorporate by reference their answers to paragraphs 1 through 47 of the Complaint.

49. Gray Jay Ventures, as a successor in interest to Redwood Capital, is bound by the LPA, including the terms set forth under Section 13 and 26 of the LPA. Assuming that the Subordination, Non-Disturbance, and Attornment Agreement referenced in Section 13 of the LPA was executed and delivered, as described in the LPA, Gray Jay Ventures was obligated to act as Landlord and accept the purchase provisions of Section 23.

ANSWER: The allegations in paragraph 49 state legal conclusions to which no response is required and, to the extent a response is required, Gray Jay denies same. This claim is not asserted against Granby Prentice and therefore no response by Granby Prentice is required. To the extent a response is required, Granby Prentice denies the allegations in paragraph 49.

50. By asserting that the LPA was terminated, Gray Jay Ventures has refused to be bound as Landlord to Headwaters and has refused accept the purchase provisions of Section 23 of the LPA. Gray Jay Ventures has thus breach[ed] its duties to GRMD as a third-party beneficiary to the LPA.

ANSWER: The allegations in paragraph 50 state legal conclusions to which no response is required and, to the extent a response is required, Gray Jay denies same. This claim is not asserted against Granby Prentice and therefore no response by Granby Prentice is required. To the extent a response is required, Granby Prentice denies the allegations in paragraph 50.

51. As established by the Amenity Fee Resolution, and other circumstances, GRMD is a third-party beneficiary to the LPA.

ANSWER: The allegations in paragraph 51 state legal conclusions to which no response is required and, to the extent a response is required, Gray Jay denies same. This claim is not

asserted against Granby Prentice and therefore no response by Granby Prentice is required. To the extent a response is required, Granby Prentice denies the allegations in paragraph 51.

52. WHEREFORE, Plaintiff requests that this Court enter judgment in its favor and against Gray Jay Ventures as follows:

i. For general damages, in the monetary amount to be determined at trial, which will allow GRMD to recover any equity paid into the LPA by GRMD since 2006, and including an award of attorney's fees incurred in bringing and maintaining this action;

ii. For a decree of specific performance ordering that Gray Jay Ventures reinstate all existing agreements with GRMD;

iii. For a decree of specific performance ordering that Gray Jay Ventures uphold the provisions of the LPA;

iv. For GRMD's cost of suit;

v. For such other and further relief as this Court may deem just.

ANSWER: Gray Jay admits that GRMD is seeking the stated relief, but denies that GRMD is entitled to such relief and denies any remaining allegations of paragraph 52. This claim is not asserted against Granby Prentice and therefore no response by Granby Prentice is required. To the extent a response is required, Granby Prentice denies the allegations in paragraph 52.

SECOND CLAIM FOR RELIEF
(Breach of Contract against Headwaters)

53. The allegations set forth in paragraphs 1 through 52 of this Complaint are incorporated by this reference as though fully set forth herein.

ANSWER: Defendants incorporate by reference their answers to paragraphs 1 through 52 of the Complaint.

54. Under the Master IGA, Granby Ranch IGA and the Second Granby IGA, Headwaters had a duty to manage the affairs of GRMD and Granby Ranch Metropolitan Districts Nos. 2-8, which included acquiring the Amenities on behalf of the GRMD.

ANSWER: This claim is not asserted against Defendants and therefore no response by Defendants is required. To the extent a response is required, Defendants deny the allegations in paragraph 54.

55. In failing to do so, Headwaters breached its contractual duties to GRMD.

ANSWER: This claim is not asserted against Defendants and therefore no response by Defendants is required. To the extent a response is required, Defendants deny the allegations in paragraph 55.

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

i. For general damages, in the monetary amount to be determined at trial, which will allow GRMD to recover any equity paid into the LPA by GRMD since 2006, and including an award of attorney's fees incurred in bringing and maintaining this action;

ii. For GRMD's cost of suit;

iii. For such other and further relief as this Court may deem just.

ANSWER: This claim is not asserted against Defendants and therefore no response by Defendants is required. To the extent a response is required, Defendants deny the allegations in paragraph 56.

THIRD CLAIM FOR RELIEF
(Breach of Contract against Redwood Capital)

57. The allegations set forth in paragraphs 1 through 56 of this Complaint are incorporated by this reference as though fully set forth herein.

ANSWER: Defendants incorporate by reference their answers to paragraphs 1 through 56 of the Complaint.

58. Pursuant to Section 13 of the LPA, Redwood Capital agreed to execute a Subordination, Non-disturbance and Attornment Agreement.

ANSWER: This claim is not asserted against Defendants (and has been dismissed with prejudice pursuant to the Redwood Order) and therefore no response by Defendants is required. To the extent a response is required, Defendants deny the allegations in paragraph 58.

59. Assuming that this agreement was in fact executed and delivered, Redwood Capital agreed to be bound by the LPA and all of Headwater's rights under the LPA, including the purchase provisions of Section 23, and to act as Landlord if it acquired title to the Leased Premises.

ANSWER: This claim is not asserted against Defendants (and has been dismissed with prejudice pursuant to the Redwood Order) and therefore no response by Defendants is required. To the extent a response is required, Defendants deny the allegations in paragraph 59.

60. Redwood Capital refused to acknowledge the existence of the LPA and thus failed to act as a Landlord to and recognize the rights of Headwaters under the LPA. Thus, Redwood Capital breached its duties to GRMD as a third-party beneficiary of the LPA.

ANSWER: This claim is not asserted against Defendants (and has been dismissed with prejudice pursuant to the Redwood Order) and therefore no response by Defendants is required. To the extent a response is required, Defendants deny the allegations in paragraph 60.

61. WHEREFORE, Plaintiff requests that this Court enter judgment in its favor and against Redwood Capital as follows:

i. For general damages, in the monetary amount to be determined at trial, which will allow GRMD to recover any equity paid into the LPA by GRMD since 2006, and including an award of attorney's fees incurred in bringing and maintaining this action;

ii. For GRMD's cost of suit;

iii. For such other and further relief as this Court may deem just.

ANSWER: This claim is not asserted against Defendants (and has been dismissed with prejudice pursuant to the Redwood Order) and therefore no response by Defendants is required. To the extent a response is required, Defendants deny the allegations in paragraph 61.

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

62. The allegations set forth in paragraphs 1 through 61 of this Complaint are incorporated by this reference as though fully set forth herein.

ANSWER: Defendants incorporate by reference their answers to paragraphs 1 through 61 of the Complaint.

63. On March 24, 2020 Granby Prentice initiated foreclosure proceedings under the 2005 Redwood Capital Deed of Trust.

ANSWER: Granby Prentice admits the allegations of paragraph 63. This claim is not asserted against Gray Jay and therefore no response by Gray Jay is required. To the extent a response is required, Gray Jay admits the allegations in paragraph 63.

64. At that time, Granby Prentice had both actual and constructive knowledge that its predecessor in interest, Redwood, had agreed to be bound by the LPA, including the purchase provisions of Section 23, and to act as Landlord if it acquired title to the Leased Premises.

ANSWER: The allegations in paragraph 64 state legal conclusions to which no response is required and, to the extent a response is required, Granby Prentice denies same. This claim is not asserted against Gray Jay and therefore no response by Gray Jay is required. To the extent a response is required, Gray Jay denies the allegations in paragraph 64.

65. When Granby Prentice failed to recognize the LPA, specifically its refusal to act as landlord and to accept the purchase provisions of Section 23, it breached its duties to GRMD as a third-party beneficiary of the LPA.

ANSWER: The allegations in paragraph 65 state legal conclusions to which no response is required and, to the extent a response is required, Granby Prentice denies same. This claim is not asserted against Gray Jay and therefore no response by Gray Jay is required. To the extent a response is required, Gray Jay denies the allegations in paragraph 65.

66. WHEREFORE, Plaintiff requests that this Court enter judgment in its favor and against Granby Prentice as follows:

i. For general damages, in the monetary amount to be determined at trial, which will allow GRMD to recover any equity paid into the LPA by GRMD since 2006, and including an award of attorney's fees incurred in bringing and maintaining this action;

ii. For GRMD's cost of suit;

iii. For such other and further relief as this Court may deem just.

ANSWER: Granby Prentice admits that GRMD is seeking the stated relief, but denies that GRMD is entitled to such relief and denies any remaining allegations of paragraph 66. This claim is not asserted against Gray Jay and therefore no response by Gray Jay is required. To the extent a response is required, Gray Jay denies the allegations in paragraph 66.

FIFTH CLAIM FOR RELIF
(Breach of Contract Against GR Terra)

67. The allegations set forth in paragraphs 1 through 66 of this Complaint are incorporated by this reference as though fully set forth herein.

ANSWER: Defendants incorporate by reference their answers to paragraphs 1 through 66 of the Complaint.

68. On May 5, 2021 GR Terra purchased the property subject to the LPA from Gray Jay Ventures, who conveyed the property to GR Terra via special warranty deed.

ANSWER: This claim is not asserted against Defendants and therefore no response by Defendants is required. To the extent a response is required, Defendants admit that GR Terra purchased the property *formerly* subject to the LPA on or about May 5, 2021, but Defendants deny that the property was subject to the LPA at the time of GR Terra's purchase because the LPA was extinguished by operation of Colorado statute and (and other means). Defendants deny all remaining allegations of paragraph 68.

69. As a successor in interest to Gray Jay Ventures and Redwood Capital GR Terra is subject to the provisions of the LPA, including the terms set forth under Section 13 and 26 of the LPA.

ANSWER: This claim is not asserted against Defendants and therefore no response by Defendants is required. To the extent a response is required, Defendants deny the allegations in paragraph 69.

70. Since acquiring the Leased Premises, GR Terra failed to recognize the LPA and has refused to act as landlord and to accept the purchase provisions of Section 23.

ANSWER: This claim is not asserted against Defendants and therefore no response by Defendants is required. To the extent a response is required, Defendants deny the allegations in paragraph 70.

71. In doing so, GR Terra has breached its duties to GRMD as a third-party beneficiary of the LPA.

ANSWER: This claim is not asserted against Defendants and therefore no response by Defendants is required. To the extent a response is required, Defendants deny the allegations in paragraph 71.

72. WHEREFORE, Plaintiff requests that this Court enter judgment in its favor and against GR Terra as follows:

i. For general damages, in the monetary amount to be determined at trial, which will allow GRMD to recover any equity paid into the LPA by GRMD since 2006, and including an award of attorney's fees incurred in bringing and maintaining this action;

ii. For GRMD's cost of suit;

iii. For such other and further relief as this Court may deem just.

ANSWER: This claim is not asserted against Defendants and therefore no response by Defendants is required. To the extent a response is required, Defendants deny the allegations in paragraph 72.

SIXTH CLAIM FOR RELIEF
(Tortious Interference with Contract against Gray Jay Ventures, Granby Prentice, and Redwood Capital)

73. The allegations set forth in paragraphs 1 through 72 of this Complaint are incorporated by this reference as though fully set forth herein.

ANSWER: Defendants incorporate by reference their answers to paragraphs 1 through 72 of the Complaint.

74. To prove tortious interference with contract under Colorado law, a plaintiff must show the existence of a valid contract; the defendant knew or reasonably should have known of the contract; the defendant intended to induce a breach of the contract; action by the defendant that induced a breach of the contract; the defendant's interference was improper; and the defendant's interference caused damages.

ANSWER: This claim has been dismissed with prejudice pursuant to the Order and no response is therefore required. To the extent a response is required, Defendants deny the allegations of paragraph 74.

75. Gray Jay Ventures, Granby Prentice, and Redwood Capital were aware of both the LPA and the Fee Agreement. Gray Jay Ventures, Granby Prentice, and Redwood Capital were aware of the Section 10 termination requirement under the LPA and that the failure of Headwaters to operate the Amenities would trigger termination under Section 10.

ANSWER: This claim has been dismissed with prejudice pursuant to the Order and no response is therefore required. To the extent a response is required, Defendants deny the allegations of paragraph 75.

76. Gray Jay Ventures intentionally tried to prevent Headwaters from operating the Amenities and hired another company to operate the Amenities.

ANSWER: This claim has been dismissed with prejudice pursuant to the Order and no response is therefore required. To the extent a response is required, Defendants deny the allegations of paragraph 76.

77. Gray Jay Ventures' actions triggered termination under Section 10 which caused GRMD to suffer damages as a third-party beneficiary of the LPA.

ANSWER: This claim has been dismissed with prejudice pursuant to the Order and no response is therefore required. To the extent a response is required, Defendants deny the allegations of paragraph 77.

78. WHEREFORE, Plaintiff requests that this Court enter judgment in its favor and against Gray Jay Ventures as follows:

i. For general damages, in the monetary amount to be determined at trial, which will allow GRMD to recover any equity paid into the LPA by GRMD since 2006, and including an award of attorney's fees incurred in bringing and maintaining this action;

ii. For a decree of specific perform ordering that Gray Jay Ventures reinstate all existing agreements with GRMD;

iii. For a decree of specific performance ordering that Gray Jay Ventures uphold the provisions of the LPA;

iv. For GRMD's cost of suit;

v. For such other and further relief as this Court may deem just.

ANSWER: This claim has been dismissed with prejudice pursuant to the Order and no response is therefore required. To the extent a response is required, Defendants deny the allegations of paragraph 78.

SEVENTH CLAIM FOR RELIEF
(Breach of the Covenant of Good Faith and Fair Dealing against Headwaters and Gray Jay Ventures, as Landlord under the LPA)

79. The allegations set forth in paragraphs 1 through 78 of this Complaint are incorporated by this reference as though fully set forth herein.

ANSWER: Defendants incorporate by reference their answers to paragraphs 1 through 78 of the Complaint.

80. Under Colorado law, every contract contains an implied duty of good faith and fair dealing. This covenant is contained in contracts entered into by political subdivisions of the state of Colorado such as GRMD and Headwaters and private entities such as Gray Jay Ventures.

ANSWER: This claim has been dismissed with prejudice pursuant to the Order and no response is therefore required. To the extent a response is required, Defendants deny the allegations of paragraph 80.

81. The good faith performance doctrine attaches to contracts to effectuate the intentions of the parties and to honor their reasonable expectations.

ANSWER: This claim has been dismissed with prejudice pursuant to the Order and no response is therefore required. To the extent a response is required, Defendants deny the allegations of paragraph 81.

82. A violation of the duty of good faith and fair dealing gives rise to a claim for breach of contract.

ANSWER: This claim has been dismissed with prejudice pursuant to the Order and no response is therefore required. To the extent a response is required, Defendants deny the allegations of paragraph 82.

83. Headwaters failed to uphold its duty of good faith and fair dealing under the LPA and the Fee Agreement when it failed to assert its rights against GPHH including its right to acquire the Leased Premises on behalf of GRMD.

ANSWER: This claim has been dismissed with prejudice pursuant to the Order and no response is therefore required. To the extent a response is required, Defendants deny the allegations of paragraph 83.

84. Gray Jay Ventures failed to uphold its duty of good faith and fair dealing when it refused to act as Landlord under the LPA and honor the right of Headwaters to acquire the Leased Premises on behalf of GRMD.

ANSWER: This claim has been dismissed with prejudice pursuant to the Order and no response is therefore required. To the extent a response is required, Defendants deny the allegations of paragraph 84.

85. Headwaters failed to uphold its duty of good faith and fair dealing under Section 10 of the LPA when it participated in the conspiracy to make it appear as if it were not operating the amenities when in fact it was.

ANSWER: This claim has been dismissed with prejudice pursuant to the Order and no response is therefore required. To the extent a response is required, Defendants deny the allegations of paragraph 85.

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

i. For general damages, in the monetary amount to be determined at trial, which will allow GRMD to recover any equity paid into the LPA by GRMD since 2006, and including an award of attorney's fees incurred in bringing and maintaining this action;

ii. For GRMD's cost of suit;

iii. For such other and further relief as this Court may deem just.

ANSWER: This claim has been dismissed with prejudice pursuant to the Order and no response is therefore required. To the extent a response is required, Defendants deny the allegations of paragraph 86.

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

87. The allegations set forth in paragraphs 1 through 86 of this Complaint are incorporated by this reference as though fully set forth herein.

ANSWER: Defendants incorporate by reference their answers to paragraphs 1 through 87 of the Complaint.

88. Granby Prentice was a successor in interest to Gray Jay Ventures and subsequently GR Terra and thus Gray Jay Ventures and GR Terra are bound to the LPA. Foreclosure has no

effect on the contractual obligations under the LPA because as successors in interest, Gray Jay Ventures and GR Terra are bound to the terms of the LPA.

ANSWER: The allegations in paragraph 51 state legal conclusions to which no response is required and, to the extent a response is required, Gray Jay denies same. This claim is not asserted against Granby Prentice and therefore no response by Granby Prentice is required. To the extent a response is required, Granby Prentice denies the allegations in paragraph 88.

89. Alternatively, the LPA was not terminated through the public trustee foreclosure because it was an installment land contract. As such, the LPA created a security interest benefitting GR Terra and Gray Jay Ventures' predecessor in interest, Redwood Capital, and Gray Jay Ventures and GR Terra, to the extent Gray Jay Ventures, and now GR Terra, are the legal successor in interest to the LPA.

ANSWER: The allegations in paragraph 89 state legal conclusions to which no response is required and, to the extent a response is required, Gray Jay denies same. This claim is not asserted against Granby Prentice and therefore no response by Granby Prentice is required. To the extent a response is required, Granby Prentice denies the allegations in paragraph 89.

90. An installment land contract is characterized by the following elements: (1) the owner's agreement to sell and the buyer's agreement to buy; (2) the promise of the buyer that he will make payments, usually over a long period of time and in installments, and that buyer will keep the premises insured and maintain them; (3) the seller's promise that he will deliver a deed when the payments have been completed; and (4) an agreement that, in the event of default by the buyer in making the payments or performing the other covenants contained in the instrument, the seller may declare the contract at an end and retain the payments made as liquidated damages.

ANSWER: The allegations in paragraph 90 state legal conclusions to which no response is required and, to the extent a response is required, Gray Jay denies same. This claim is not asserted against Granby Prentice and therefore no response by Granby Prentice is required. To the extent a response is required, Granby Prentice denies the allegations in paragraph 90.

91. The LPA meets the criteria for an installment land contract in a number of ways including but not limited to (1) GRH agreeing to sell and Headwaters agreeing to purchase the Leased Premises; (2) the LPA was to automatically renewed for 49 additional one-year terms; (3) GRH promised to deliver a deed when the payments were completed; and (4) upon default, GRH had the right "to terminate this Lease and reenter the Leased Premises;" in addition, under Section 3.a of the LPA, "the Rental Payments will be absolute and unconditional in all events and will not be subject to any set-off, defense, counterclaim or recoupment for any reason whatsoever."

ANSWER: The allegations in paragraph 91 state legal conclusions to which no response is required and, to the extent a response is required, Gray Jay denies same. This claim is not asserted against Granby Prentice and therefore no response by Granby Prentice is required. To the extent a response is required, Granby Prentice denies the allegations in paragraph 91.

92. Courts should treat an installment land contract as a mortgage based upon a number of factors, including the amount of the vendee's equity in the property, the length of the default period, the willfulness of the default, whether the vendee has made improvements, and whether the property has been adequately maintained. The parties had been performing under the LPA for over 14 years at the time of the foreclosure, including 14 years of rental payments which went towards the amount of equity in the property. Additionally, GRMD has paid out approximately $6.05 million (of the $18.9 million total due) to GRIT under the LPA since 2006.

ANSWER: The allegations of the first sentence of paragraph 92 state legal conclusions to which no response is required and, to the extent a response is required, Gray Jay denies same. Gray Jay denies the allegations in the second and third sentences of paragraph 92. This claim is not asserted against Granby Prentice and therefore no response by Granby Prentice is required. To the extent a response is required, Granby Prentice denies the allegations in paragraph 92.

93. Plaintiff is a party that is interested under a written contract, or other writings constituting a contract, and 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 Judgments Law, § 13-51-101 et seq., C.R.S.

ANSWER: The allegations in paragraph 93 state legal conclusions to which no response is required and, to the extent a response is required, Gray Jay denies same. This claim is not asserted against Granby Prentice and therefore no response by Granby Prentice is required. To the extent a response is required, Granby Prentice denies the allegations in paragraph 93.

94. WHEREFORE, Plaintiff requests a declaratory judgment of this Court including, without limitation, that:

i. The LPA is an installment land contract.

ii. That the LPA should have been treated as a mortgage and thus could only have been terminated through a judicial foreclosure.

iii. For these reasons, and because Redwood Capital, Granby Prentice, Gray Jay Ventures, and GR Terra had agreed to be bound by the LPA, the LPA was not terminated through the public trustee foreclosure.

ANSWER: Gray Jay admits that GRMD is seeking the stated relief, but denies that GRMD is entitled to such relief and denies any remaining allegations of paragraph 94. This claim is not asserted against Granby Prentice and therefore no response by Granby Prentice is required. To the extent a response is required, Granby Prentice denies the allegations in paragraph 94.

GENERAL DENIAL

Defendants deny each allegation of the 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. GRMD lacks standing to bring its claims for breach of contract and declaratory relief against Defendants based on the LPA because GRMD was not a party or successor party to the LPA and was not an intended third-party beneficiary given the terms of the LPA and the surrounding circumstances. Therefore, GRMD has no standing to seek to enforce the LPA or to seek a declaratory judgment regarding its validity and existence.

3. GRMD's claims for breach of the contract and for declaratory relief fail against Defendants fail to state a claim for relief because the LPA was extinguished by foreclosure. The LPA was junior to the Deed of Trust and there are no facts to prove that any attornment agreement was ever properly executed and recorded as necessary to bind subsequent owners, therefore the LPA was extinguished pursuant to C.R.S. § 38-38-501 via foreclosure before Gray Jay acquired title to the Leases Premises.

4. GRMD's claims for breach of the contract and for declaratory relief against Defendants 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, even assuming (without conceding) that 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.

5. GRMD's breach of contract claim against Defendants fails because GRMD has not, and cannot, plead that Headwaters ever tried to exercise the option to purchase the Leased Premises under the LPA or tendered the Purchase Price thereunder, necessary preconditions to any obligation on the part of the Landlord under the LPA to accept the Purchase Price. In addition GRMD has not, and cannot, plead that Headwaters had the ability to exercise any right to purchase the Leased Premises under the terms of the LPA at any time before the LPA was terminated or that it even has the ability to do so now if the LPA was in existence.

6. GRMD's breach of contract claims against Defendants fail because GRMD's right 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 and (ii) the LPA did not require Headwaters to acquire the Leased Premises prior to 2062; and (iii) the LPA precludes any recoupment of the rental payments by Headwaters.

7. GRMD's breach of contract claims against Defendants and requests for damages are barred by the terms of the LPA which limit remedies for the Landlord's default to specific performance.

8. GRMD's breach of contract claims against Defendants are 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 Section 24.b of the LPA).

9. GRMD's breach of contract claims against Defendants fail 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.

10. GRMD's breach of contract claims against Defendants fail because the LPA and the purchase option therein are 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" in that the LPA obligates Headwaters, a public body, to expend funds to purchase the Leased Premises without any condition for appropriation by its legislative body.

11. GRMD's breach of contract claims against Defendants fail because the LPA and the purchase option therein are void; the obligations of the LPA are illusory in that Headwaters had the option not to renew the LPA at the end of any one-year lease term and Headwaters' obligations to pay rent and to pay the Purchase Price are conditioned upon a future approval or authorization that cannot be assured at the time of the agreement.

12. GRMD is estopped and/or otherwise barred from bringing its breach of contract claims against Defendants based upon its own failure of performance under the LPA, including but not limited to its failure to tender any funds towards the purchase of the Amenities.

13. GRMD's claims for breach of contract against Defendants are barred in whole or in part by one or more of the doctrines of latches, estoppel, waiver, acquiescence, or ratification.

14. GRMD's claims for breach of contract against Defendants are barred by the applicable statute of limitations.

15. GRMD's claims for breach of contract against Defendants are barred in whole or in part by its failure to mitigate its damages, if any.

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

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

18. GRMD's alleged damages for breach of contract, if any, are barred as speculative.

19. GRMD's equitable claims are barred by the doctrine of acquiescence or ratification, waiver, laches, and/or unclean hands.

20. GRMD's equitable claims fail because GRMD has an adequate remedy at law.

21. GRMD's equitable claims fail based upon GRMD's failure to join necessary and indispensable parties.

22. GRMD's equitable claims are barred by laches.

23. Defendants expressly reserve the right to assert additional affirmative defenses that may become known through ongoing investigation and discovery.

JURY DEMAND

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

PRAYER FOR RELIEF

WHEREFORE, Defendants respectfully request that the court dismiss GRMD's claims with prejudice, enter judgment in favor of Defendants and against GRMD, award Defendants attorneys' fees and costs in defending against GRMD's claims, and grant such other relief as the Court deems just and proper.

Dated: February 11, 2022

DAVIS GRAHAM & STUBBS LLP

/s/ Kyler Burgi
Mark Champoux, Bar No. 40480
Kyler Burgi, Bar No. 46479

Attorneys for Defendants Gray Jay Ventures, LLC and Granby Prentice, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 11th day of February, 2022, service of the foregoing **DEFENDANTS GRAY JAY VENTURES, LLC'S AND GRANBY PRENTICE, LLC'S ANSWER TO SECOND AMENDED COMPLAINT** was effected on the following counsel of record via the Colorado Courts E-Filing System:

Charles E. Norton
Alicia M. Garcia
NORTON & SMITH, P.C.
1331 17th Street, Suite 500
Denver, CO 80202

Jamie H. Steiner
HUSCH BLACKWELL LLP
1801 Wewatta Street, Suite 1000
Denver, CO 80202

/s/ Tamara Stires