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CASE NUMBER: 2021CV30008

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

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

v.

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

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Case No. 2021CV30008

Division 1

DEFENDANT GR TERRA LLC'S MOTION TO CONTINUE OR STAY RESPONSE TO MOTION FOR PARTIAL SUMMARY JUDGMENT PENDING DISCOVERY PURSUANT TO C.R.C.P. 56(F), REQUEST FOR EXPEDITED BRIEFING SCHEDULE, AND ALTERNATIVE REQUEST FOR ADDITIONAL TIME TO RESPOND IF MOTION IS DENIED

Defendant GR Terra LLC ("Defendant" or "GR Terra"), by and through counsel, submits the following Motion to Continue or Stay its time to respond to Plaintiff's motion for summary judgment on Counts I, II and III of GR Terra's Counterclaims to allow sufficient discovery to respond to the arguments asserted in Plaintiffs' Motion. In addition, GR Terra requests an

expedited briefing schedule on this Motion, pursuant to C.R.C.P. 121§1-15(4). In the alternative, if the Court denies GR Terra's motion, GR Terra requests an additional fourteen days from the date of denial to file its response to the motion for summary judgment. In support thereof, GR Terra states as follows:

Certificate of Compliance: Pursuant to C.R.C.P. 121 §1-15(8), the undersigned counsel has conferred with Plaintiff's counsel regarding the relief requested in this Motion. Plaintiff's counsel indicates that Plaintiff objects to the requested relief. The undersigned has also requested an additional 21 days to respond to the pending motion to allow the Court to address this motion for continuance. Plaintiffs' counsel has indicated that it intends to oppose the requested relief.

Plaintiff did agree to file its response to this Motion within seven days. However, that does not afford sufficient time for the Court the rule and for GR Terra to respond to the summary judgment is denied.

Factual Summary

1. Plaintiff Granby Ranch Metropolitan District ("GRMD" or "Plaintiff") commenced this action against GR Terra and four other Defendants seeking injunctive relief and damages based upon GRMD's alleged rights under certain agreements (many now terminated) involving portions of the Granby Ranch development. GR Terra is the current owner of the property that comprises the portion of the Granby Ranch development related to GRMD's action (the "Property").

2. GRMD's Second Amended Complaint asserts that under the complex relationships created under a series of agreements and related documents, dating back to 2003,

GRMD is a third-party beneficiary of a Second Amended and Restated Lease Purchase Agreement dated December 31, 2012 ("LPA") entered between Defendant Headwaters Metropolitan District ("Headwaters") and the then owner of the Granby Ranch development, Granby Ranch Holdings ("GRH"). Among other claims, GRMD asserts that it has accumulated over $6 million in "equity" in the Property based upon rental payments made by Headwaters to GRH under the LPA. Second Amended Complaint, ¶ 42.

3. The Second Amended Petition asserted eight claims against the Defendants. All Defendants filed motions to dismiss. Following extensive briefing by all parties, this Court entered its orders on January 8, 2022, granting in part and denying in part the motions to dismiss.

4. Following this Court's dismissal orders, the following claims remain pending: Count I – Breach of the LPA Against Gray Jay Ventures seeking, *inter alia*, damages to recover GRMD's alleged equity in the Granby Ranch property and specific performance ordering reinstatement of all existing agreements with GRMD and ordering Gray Jay to uphold the provisions of the LPA; Count II – Breach of the Master IGA[1] and Second Granby IGA against Headwaters seeking damages to recover GRMD's alleged equity in the Property; Count IV – Breach of the LPA against Defendant Granby Prentice seeking damages to recover GRMD's alleged equity in the Property; Count V – Breach of the LPA against Headwaters seeking to recover GRMD's alleged equity in the Property; and, Count VIII – Declaratory Relief against Gray Jay Ventures and GR Terra determining that the LPA was not terminated by the 2020 foreclosure of a prior deed of trust on the Granby Ranch Property or by notice to termination sent from Defendant Gray Jay Ventures to Defendant Headwaters in November of 2020.

[1] All defined agreements herein shall have the meaning ascribed in the parties' pleadings.

5. The remaining defendants (all defendants other than Redwood Capital, which was entirely dismissed as a defendant) filed timely answers and affirmative defenses to the Second Amended Petition. The affirmative defenses continued to challenge GRMD's status as a third-party beneficiary of the LPA and its standing to bring claims for breach of that agreement. In addition, the defendants asserted numerous defenses to the remaining claims, including, procedural challenges to GRMD's attempted enforcement of the LPA, challenges to the validity of the provisions of the LPA GRMD seeks to enforce, and defenses that GRMD had terminated, waived, and relinquished any rights it may have under the LPA through several other agreements not referenced in the Second Amended Petition or attached thereto.

6. Defendant Headwaters filed four counterclaims against GRMD, asserting, *inter alia*, that GRMD's actions – including its prosecution of the claims in this lawsuit – are in breach of four other contracts between those parties wherein GRMD has waived and relinquished any rights to the amenity fees that constituted the alleged "equity" paid under the LPA and any right to bring claims against Headwaters for breach of the Master IGA or Second Granby IGA.

7. Defendant GR Terra also filed four counterclaims against GRMD. Count I seeks declaratory relief to declare that the LPA was terminated through the foreclosure, or alternatively through Gray Jay's notice of termination, or alternatively through Headwaters' failure to appropriate funds for the payment of rent. Count II asserts that even if the LPA and option to purchase therein constitute covenants running with the land and were not otherwise terminated, then the Court should declare that any such restrictive covenants no longer serve the intended benefit and that same are terminated and canceled from the Property. Count III asserts a claim for quiet title, asking the Court to quiet title of the property to it free and clear of the LPA and

any restrictive covenants therein. Count IV asserts a slander of title claim based upon GRMD's filing of its notice of lis pendens in conjunction with its claims in this lawsuit.

8. On March 4, 2022, Plaintiff filed its replies to the Counterclaims, and the case first became "at issue." The parties have met and conferred about the content of the case management order, but GRMD's counsel has not yet circulated a proposed order or set the case management conference. There is no trial setting.

9. The parties' mandatory disclosures are not due until April 1, 2022, but the parties have all acknowledged that while they will use good faith efforts to identify documents by that date, they may not be able to identify and produce all relevant documents at that time given the expansive scope of the issues in the case and the extended timeframe covered in the claims.

10. On March 14, 2022, Plaintiff filed a motion for summary judgment seeking judgment in its favor on Counts I, II and III of GR Terra's Counterclaims. Absent the relief requested herein, GR Terra's response is due April 4, 2022.

11. Defendant GR Terra seeks an extension of time or a stay of the briefing schedule to conduct discovery before responding to the Motion for Summary Judgment.

12. The Motion raises factual issues that GR Terra cannot fully address without the benefit of discovery. Moreover, the Motion, even if granted, will not fully resolve the case or eliminate the need for discovery. The Motion for Summary Judgment is directed to only three of the twelve claims now pending in the lawsuit. Those three claims are not dispositive of the issues raised in the litigation – claims that raise overlapping legal and factual issues. There is no reason to force GR Terra to respond to GRMD's premature motion for summary judgment – without the benefit of necessary discovery – at this early stage in the litigation.

GRMD's Motion Raises Factual Issues And
GR Terra Is Entitled To Conduct Discovery To Oppose The Motion.

13. C.R.C.P. 56(f) provides that:

> Should it appear from the affidavits of a party opposing the motion [for summary judgment] that the opposing party cannot for reasons stated present by affidavit facts essential to justify its opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

14. As the Colorado Supreme Court recognizes, it is an abuse of discretion for a trial court to refuse to grant a reasonable continuance under C.R.C.P. 56(f) to permit use of the discovery procedures provided by the rules when such discovery may preclude summary judgment in whole or part. *Miller v. First Nat'l Bank*, 399 P.2d 99, 101 (Colo. 1965). The rule is patterned on the corollary federal rule, which is designed to "safeguard against a precipitous and premature grant of summary judgment." *See* 10A *C. Wright, A. Miller & Kane*, Federal Practice & Procedure 2740 (2d ed. 1098).

15. As set forth above, GR Terra's first counterclaim asserts three alternative reasons why this Court should declare that the LPA has been terminated; each of those reasons turns upon facts and circumstances that occurred before GR Terra purchased the property and therefore GR Terra cannot provide personal affidavits with respect to those facts and needs to conduct discovery to fully respond to GRMD's Motion.

16. For instance, GR Terra's counterclaims assert that the LPA was properly terminated under § 10 thereof, which allows the landlord to terminate "if Tenant ever ceases to operate the Amenities on the Leased Premises for 30 days or longer." *See* Ex. 6 to Second Amended Petition. (Plaintiffs Second Amended Complaint seeks the converse - an adjudication

that this notice did not terminate the LPA). There is no dispute that in November of 2011, Gray Jay, the owner of the Property and landlord under the LPA at the time, notified Headwaters that, even if the LPA was not terminated by the foreclosure, Gray Jay was electing to terminate the LPA under § 10 based upon Headwaters' failure to operate the Amenities for more than thirty days. *See* ¶ 40 of the Second Amended Petition and ¶ 87 of GR Terra's Counterclaims).

17. In its summary judgment motion, GRMD tries to argue that, as a matter of law, the LPA was not properly terminated by this notice based upon Headwaters' 2021 Budget Resolutions, which allegedly report revenues and expenditures of funds related to the golf course "for 2020." That document, which contains only information relating to revenues and expenditures for all the entire year of 2020, does not and cannot conclusively prove that Headwaters operated the golf course without a 30-day interruption during 2020.

18. GRMD's own admissions, as set forth in GR Terra's counterclaims, contradict its claims on summary judgment and demonstrate the need for discovery on this important issue. In April of 2021 two Headwaters board members received an email from Matt Girard, president of GRMD, requesting that Headwaters "consider terminating the management agreement immediately in that [the manager] has ceased to operate the golf Amenity as required under the Agreement, as any reasonable person would interpret the fact that that [the manager] having no staff working and no intention to hire staff to work on opening the golf course is [sic], for all practical purposes, ceasing operation and have already done so for a period of 30 days." *See* Exhibit K to GR Terra's counterclaims and Exhibit 1 hereto.

19. As this e-mail makes clear, at a minimum, there are factual disputes as to whether Headwaters ceased operations of the Amenities during 2020 so as to justify Gray Jay's

termination of the LPA; GR Terra is entitled to discover and present all relevant facts to the Court with its response to summary judgment.

20. Neither GR Terra nor Gray Jay owned the Property at the time of the alleged cessation of operations. To defend the summary judgment motion, GR Terra is entitled to seek discovery from the owner of the Property or its representatives at the time of the alleged cessation and possibly the operator of the amenities at the time or its representatives. None of those entities are parties to this lawsuit. In addition, GR Terra is entitled to ascertain what other communications or documents GRMD or its board members may have on this issue, such as the admission in Exhibit K that supports Gray Jay's termination of the LPA. GR Terra is entitled to obtain relevant documents and depositions from these parties.

21. In addition, GRMD seeks summary judgement on Count II of GR Terra's Counterclaims. Count II asserts that even if the LPA and the option to purchase therein constitute restrictive covenants that were not terminated via any of the three means described in Count I of the Counterclaims, then this Court should exercise its equitable power to remove or cancel the covenants because they no longer serve the purpose for which they were imposed and are no longer beneficial to those claiming under them.

22. In support of this claim, GR Terra alleges that to the extent GRMD asserts that the LPA created restrictive covenants on the land based upon the prior relationships and agreements between GRMD and Headwaters, those parties expressly terminated and severed those relationships, agreed that they would operate independently of one another, and that GRMD waived and released any rights or claims it might have based upon the parties' relationships, including any claim to require Headwaters to purchase the Leased Premises. *See* ¶ 124 of GR

Terra's Counterclaims. These allegations are based, in part, upon seven different agreements entered after execution of the LPA, all referenced in paragraphs 61-85 of GR Terra's Counterclaims.

23. Though GRMD seeks summary judgment on this claim, its motion wholly ignores the factual issues raised by GR Terra's claim. These allegations of changed circumstances, waiver, release, termination, and abandonment raise issues of fact that turn upon both the language of the successive agreements and all the facts and circumstances surrounding same as well as any other act or conduct of GRMD or Headwaters manifesting an intent to relinquish alleged rights or covenants under the LPA. *See Zavislak v. Shipman*, 362 P.2d 1053, 1088 (Colo. 1961) (modifying restrictive covenant based upon evidence of changed circumstances demonstrating that and the enforcement of a restrictive covenant would impose an oppressive burden without any substantial benefit); *Moore & Assocs. Realty, Inc. v. Arrowhead at Vail*, 892 P. 2d 367, 372 (Colo. App. 1994) (waiver of an express provision in an agreement may be implied if party engages in conduct that manifests an intent to relinquish rights or privileges or acts inconsistently with its assertion of a right and as such presents an issue of fact.).

24. Again, GRMD's motion is premature because GR Terra is entitled to undertake the necessary discovery to develop its claim that the covenants contained in the LPA no longer serve the purpose for which they were imposed; toward this end, GR Terra plans to conduct discovery relating to the facts and circumstances surrounding execution of the LPA and the seven subsequent documents supporting GR Terra's claim, discovery relating to meeting minutes, communications and other relevant documents and depositions of all of the board members of GRMD during the relevant timeframe.

25. Similarly, GRMD seeks summary judgment on GR Terra's claim that the LPA was terminated through foreclosure of the Property in August of 2020 by the holder of a 2005 deed of trust. GRMD's motion for summary judgment on this claim is based upon this Court's order denying GR Terra's motion to dismiss. GRMD submits no additional facts in support of its motion, relying solely upon the Court's order and the terms of the recorded LPA.

26. GR Terra intends to oppose GRMD's summary judgment argument on this claim on two grounds (i) that the operative provision of the LPA – the purchase option – is not a covenant running with the land and (ii) even if it is such a covenant, that covenant was terminated in the foreclosure. Both issues raise facts and circumstances that are proper subjects of discovery.

27. Contrary, to GRMD's suggestions in its Motion, this Court has not decided either issue. With respect to the first, the Court merely determined that "Plaintiff has properly *alleged* that the parties intended for the LPA to touch and concern the land." Order, p. 18 (emphasis added). A finding that a party has alleged sufficient grounds to state a claim does not equate to a binding determination of fact or law for purposes of a dispositive motion.

28. Under Colorado law, to create a covenant running with the land, the parties must intend to create such a covenant, the covenant must touch and concern the land, and there must be privity of estate between the original covenanting parties at the time of the covenant's creation. *In re Extraction Oil & Gas Inc*., 627 B.R. 199, 221 (Bankr. D. Del. 2020). Each covenant alleged to run with the land must meet these requirements, and just because one covenant runs with the land does not mean that all covenants in an agreement do. *Id*. Here, this Court did not undertake a covenant-by-covenant analysis of the provisions of the LPA or make a

definitive holding that particular covenants run with the land. Even if it had, any such holding is interlocutory and subject to reconsideration as the litigation progresses.

29. With respect to the second issue, this Court simply stated that "a covenant running with the land is not *necessarily* extinguished by a foreclosure." Motion, p. 14 (citing Order on GR Terra's Motion to Dismiss ("Dismissal Order," p. 18) (emphasis added). Again, the Court merely determined that Plaintiff stated a claim for relief, but it did not definitely decide that particular provisions in the LPA, including the option to purchase, survived the foreclosure.[2]

30. All the relevant documents and circumstances relating to these issues were not before the Court on the motion to dismiss. Given the complex nature of the relationship and agreements set forth in the LPA and documents referenced therein, it is possible that the Court may find the LPA ambiguous on the issues of whether various provisions – including the option to purchase – gave rise to restrictive covenants, thus permitting the introduction of extrinsic evidence to determine the parties' intent. *See Willows Water Dist. v. Mission Viejo Co*., 854 P.2d 1246, 1251-52 (Colo. 1993) (where agreement is ambiguous parole evidence is both necessary and admissible to ascertain the intent of the original parties to the agreement because "evidence

[2] GR Terra disputes the Court's conclusion that restrictive covenants junior to the deed of trust are not necessarily extinguished by foreclosure. The authorities the Court relied upon merely established that contractual provisions in the same deed of trust being foreclosed upon are not necessarily extinguished in a foreclosure. Those cases do not alter the fundamental rule that covenants, liens or encumbrances that are *junior and subordinate* to the deed of trust are extinguished through foreclosure. *First Interstate Bank v. Tanktech, Inc*., 864 P.2d 116, 119 (Colo. 1993) (because "a property lessee is considered a lienor under Colorado law, section 38–39–106, 16A C.R.S. (1982), we conclude that upon foreclosure of a senior security interest, any subordinate leases, liens or encumbrances are extinguished once the redemption period has expired under section 38–39–110."). *Accord Town of Grand Lake v. Lanzi,* 937 P.2d 785, (Colo. App. 1997) (parking agreement that constituted a covenant appurtenant to property was extinguished by foreclosure of senior deed of trust and was not binding upon purchaser who acquired after foreclosure). But given the Court's ruling, GR Terra must be allowed to discover any related facts and circumstances that may inform the parties' intent on this issue, such as facts relating to the execution of the deed of trust and agreements in the LPA and the intent of the parties to those documents.

showing such intent is highly important."). Moreover, such extrinsic evidence may be admissible if offered to explain or supplement, but not contradict, the terms of a written agreement. *See* C.R.S.A. § 4-2-202.

31. This Court need not determine the admissibility of any parole evidence at this point because the only issue before this Court is whether GR Terra should be entitled to conduct discovery on these issues before responding to summary judgment. [3] Colorado case law is clear that the standard of relevance for purposes of discovery under C.R.C.P. 26(b)(1) is not equivalent to the standard for admissibility of evidence at trial. *Williams v. District Court*, 866 P.2d 908, 911 (Colo.1993). At these early stages of the litigation, GR Terra should be entitled to conduct discovery that, if deemed admissible by the Court, could preclude the summary judgment sought by GRMD. That discovery encompasses, without limitation, any written documents or evidence of circumstances surrounding GRMD's relinquishment of interest in the amenity fees used to make the rental payments under the LPA and GRMD's agreement that the Maser IGA would terminate in its entirety if either district failed to appropriate funds for the succeeding year. *See* the references to the Exclusion Agreement and the First Amendment to the 2006 Master IGA, both entered in 2010, referenced in ¶¶ 35- 42 of GR Terra's Counterclaims.

32. Both these agreements, as well as the LPA, were entered by parties other than GR Terra long before GR Terra purchased the property. GR Terra is entitled to conduct discovery with respect to the circumstances surrounding execution of all three documents and any communications or admissions by the parties' relating to same. For instance, GR Terra will seek

[3] GR Terra is not in this Motion taking a position with respect to the potential ambiguity of any of these documents and reserves all arguments with respect to same.

to discover the minutes of meetings of GRMD and Headwaters at which these agreements were discussed, communications between the parties relating to these agreements, and any admissions by any party with respect to the nature of the rights and obligations therein. And it will want to depose the board members and representatives of GRMD involved in the drafting and negotiation of those agreements and decisions to enter same.

33. GRMD also seeks summary judgment on GR Terra's claim that the LPA was terminated under § 10 thereof by Headwaters' failure to appropriate funds for rent payments. While GRMD does not dispute that Headwaters failed to appropriate these funds, it attacks Headwaters' compliance with the LPA when it failed to appropriate these funds based upon actions the Headwaters' board members allegedly did or did not take and based upon Headwaters' 2021 and 2022 Budget Resolutions, which GRMD admits in its motion "are difficult to interpret." Motion, p. 11.

34. Without waiving the argument that GRMD has no right to challenge Headwaters' compliance with the LPA requirements, or the landlord's ability to waive same, GRMD's motion again raises factual issues regarding Headwaters' budget process for 2021 and 2022 – facts subject to discovery in this action. More importantly, to the extent that the parties differ upon their interpretations of the relevant provisions of the LPA, GR Terra is entitled to discover facts or circumstances that may be relevant to the intent of the parties at the time that document was entered.

GRMD's Premature Motion Will Not Resolve The Litigation Or Eliminate The Need For Discovery

35. There is no reason to force GR Terra to respond to GRMD's premature motion without the benefit of necessary discovery. GRMD is the party who commenced this litigation –

litigation that seeks drastic relief. GRMD asserts a right to over $6 million dollars based upon alleged "equity" in the Property from all the remaining defendants. And it seeks to impose obligations and restrictions upon the Property now owned by GR Terra that could significantly diminish its value and inhibit GR Terra's planned development of the Property, causing GR Terra damages that far exceed the monetary damages requested.

36. As this Court's prior orders recognize, the case raises complex legal and factual issues relating to the history of the Granby Ranch development and various agreements and transactions dating back to 2003. While GRMD's complaint relies upon numerous transactions and contractual relationships between the parties and attaches hundreds of pages of documents, it does not tell the whole story. Instead, GRMD's complaint asserts a selective, inaccurate and misleading recitation of the relevant facts. Under these circumstances, the defendants are entitled to conduct full and complete discovery so that all relevant facts can be presented to this Court before any claims are resolved.

37. GRMD's motion seeks relief on just three of the twelve pending claims. Many of these claims turn upon the same or related facts and circumstances that will be the subject discovery regardless of the status of the current motion for summary judgment.

38. Notably, GRMD's motion does not seek relief on its own claims, but only on three of GR Terra's counterclaims. That is likely because even if GRMD could prevail on the relief sought in the motion and establish that the LPA survived termination (which GR Terra disputes), that still does not entitle GRMD to relief on its claims because GR Terra (and the other defendants) have raised various defenses to GRMD's right to enforce the LPA even if it exists,

including, without limitation, GRMD's standing to do so, its compliance with the terms of the LPA, the validity of the LPA, and GRMD's waiver and release of claims thereunder.

39. Therefore, resolution of GRMD's pending motion will not eliminate the need for discovery in the case or resolve the litigation. GR Terra should be entitled to full and complete discovery in accordance with the Case Management Order to be entered by this Court so that GR Terra can fully respond to the dispositive motion.

40. Counsel for GR Terra's declaration in support of this Motion is attached hereto and filed in support of the grounds set forth herein.

41. Because GR Terra's response is due April 4, 2022, GR Terra requests an expedited briefing schedule and ruling from this Court. In the event this Court denies the Motion, GR Terra requests additional time to respond to the summary judgment motion as set forth below.

Conclusion

WHEREFORE, for the reasons set forth above, Defendant GR Terra requests that its response to the Motion for Summary Judgment be continued or stayed until discovery has been completed by the parties in accordance with the Case Management Order to be entered by this Court. Defendant further requests an expedited briefing schedule on this Motion. In the alternative, if the Court denies GR Terra's motion, GR Terra requests an additional fourteen days from the date of denial to file its response to the motion for summary judgment.

Dated this 22nd day of March, 2022.

HUSCH BLACKWELL LLP

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

Attorneys for Headwaters Metropolitan District and GR Terra LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via the Colorado Courts e-filing system on March 22, 2022, addressed to the following:

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

/s/ Ann Stolfa
Paralegal

From: Matt Girard <Matt.Girard@plenarygroup.com>
Sent: Tuesday, April 21, 2020 10:07 PM
To: Randel Lewis; charff@Highlinefin.com
Subject: Granby Ranch (GR) - concerns of a resident
Attachments: Tee Box.JPG; Green Mold.JPG; Moles in Green.JPG; Electrical box 2.JPG; Golf Maintenance Empty.JPG

Gentlemen:

I'm sure you are both busy as can be with this property and all the different moving parts right now, and I'm sure the COVID-19 restrictions are not making life easier. I hope you are both well in the meantime.

As it relates to the property itself, I just wanted to pass along a couple items for your information and consideration:

1 – *General property deterioration* – The Governor's statewide COVID-19 restrictions have obviously had and continue to have an impact to the ski resort & lodge being able to be open to the public. At the same time, there is no reason that GRA staff (as required under their management agreement with Headwaters) should not be taking care of the property and hence taking care of the asset itself, and maintaining it's value. To cite a specific example, the Governor's order allows golf courses to be open, and therefore staff are allowed to be taking care of golf courses. For comparison purposes, other courses in Grand County have had maintenance crews working them for approximately a month already, and at least one plans to open this weekend. This definitely does not appear to be happening at the GR golf course, as you can see from the first 5 photos attached (1) – Tee Box for "family hole" #2; (2) – Mold on green for Hole #16; (3) – Vole infestation on green for Hole #17; and (4) - irrigation box damage near "family hole" #1 just south of parking lot, and these are only a small number of examples of similar deterioration throughout the golf course. All of these pictures are from today, April 21st. The bottom line is that this golf course is clearly in an overall state of serious deterioration. I would highly recommend you make an in-person visit soon (it is going to be 50+ degrees at GR this weekend) to the property, and see the status of such deterioration first hand. It is clear that changes need to be made and serious steps taken soon to keep the deterioration from getting even worse, and further hurting the value of the property.

2 – *Granby Ranch Amenities (GRA) management contract abandonment* – As clearly indicated by the above referenced photos, there has been and continues to be essentially no staff taking care of the golf course, and likely the balance of the property as well. GRA's efforts on the property itself related to either maintenance or opening of the Amenities (such as golf specifically) are addressed in the Management Agreement that Headwaters has with Granby Ranch Amenities (GRA). There are various places in this agreement where GRA has clearly not performed their required tasks associated with taking care of and properly "operating" the Amenities. In fact, it appears as though they have for all practical purposes abandoned the agreement as proven by the fact that they have zero maintenance or operations staff related to the golf operation and prepping for an opening of the golf course, for example. See photo (5) attached which shows an empty parking lot and zero staff at the golf maintenance facility today, and it was mid-50 degrees today, with this photo also taken today, April 21st. This golf course has typically opened in mid-May (Memorial Day at latest, weather pending) in recent years, while this course is obviously an abandoned golf course with no intention or ability of GRA to open anytime soon. I would therefore request that the Headwaters board consider terminating the management agreement immediately per clause 6.1(iii) in that GRA has ceased to operate the golf Amenity as required under the agreement, as any reasonable person would interpret the fact that GRA having no staff working and no intention to hire staff to work on opening the golf course as, for all practical purposes, "ceasing operations", and have already done so for a period of 30 days.

EXHIBIT 1

6. DURATION AND TERMINATION

6.1 TERM. Except as provided in this Section 6.1, this Agreement shall be coterminous with the Lease. During the term of the Lease, District may not terminate the Manager except in the following instances: the Manager (i) files a petition or application seeki reorganization, arrangement under federal bankruptcy law, or other debtor relief under the laws of Colorado, (ii) is the subject of such a petition or application which is not contested by Manager, or otherwise dismissed or discharged, within 90 days or (iii) ceases to operate the Amenities for a period of more than 30 days for any reason other than force majeure or by agreement of the Parties. The Manager may terminate this Agreement at any time with 180 da written notice to District. Any successor manager of the Amenities shall be jointly selected by the Landlord and the District.

(NOTE: I am not sending this request to the other Headwaters board members (Dustin & Lance) as they are clearly conflicted since their employment is directly associated with GRA or GRH, which are described as affiliated companies in the opening paragraph of the management agreement itself, which means neither of them as Headwaters board members should be commenting or voting on formal Headwaters board matters related to the existing GRA agreement)

LEASED PREMISES MANAGEMENT AGREEMENT

This **LEASED PREMISES MANAGEMENT AGREEMENT** ("**Agreement**") is made and entered into as of the 31st day of December, 2012, by and among **HEADWATERS METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado ("**District**"); **GRANBY RANCH AMENITIES, LLC**, a Colorado limited liability company ("**Manager**") and together with District, the "**Parties**" and each a "**Party**"); and, as to Sections 4.1, 4.2 and 4.3 only, Granby Realty Holdings LLC, a Colorado limited liability company and affiliate of Manager ("**Granby Realty**").

Thank you in advance for your time and consideration of this information. Any feedback you may be able to provide would be appreciated.

Matt Girard

EXHIBIT 1

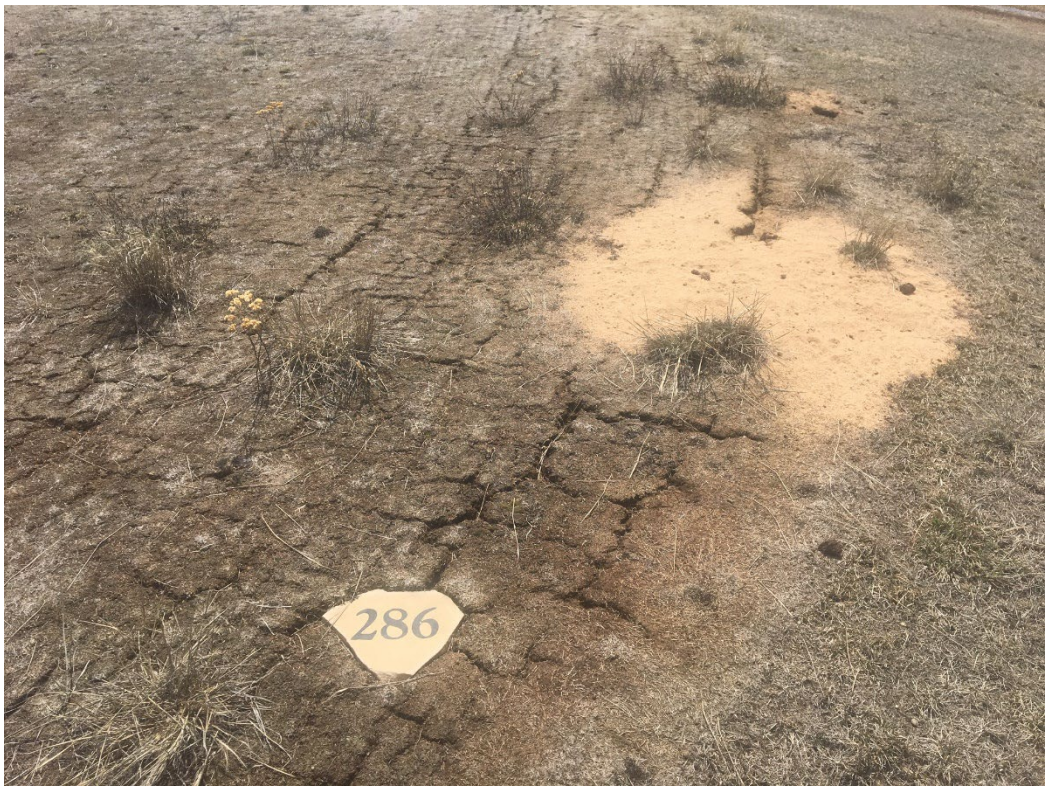

EXHIBIT 1

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DATE FILED: March 22, 2022 5:39 PM
FILING ID: B2F248B0CB1DC
CASE NUMBER: 2021CV30008

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

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

v.

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

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Case No. 2021CV30008

Division 1

DECLARATION OF JOANN T. SANDIFER IN SUPPORT OF DEFENDANT GR TERRA LLC'S MOTION TO CONTINUE OR STAY RESPONSE TO MOTION FOR PARTIAL SUMMARY JUDGMENT PENDING DISCOVERY PURSUANT TO C.R.C.P. 56(F) AND REQUEST FOR EXPEDITED BRIEFING SCHEDULE

I, JoAnn T. Sandifer, swear, state and testify as follows:

1. I am over the age of eighteen and am competent to make this Declaration. I have personal knowledge of all facts in this declaration.

2. I am counsel of record for Defendant GR Terra LLC in this matter.

3. To the best of my knowledge and belief, all the factual allegations set forth in Defendant GR Terra LLC's Motion to Continue or Stay Response to Motion for Partial Summary Judgment Pending Discovery Pursuant to C.R.C.P. 56(f) and Request for Expedited Briefing Schedule are true and correct.

I declare under penalty of perjury that the statement made in this Declaration are true and correct.

Executed this 22 day of March, 2022 in St. Louis, Missouri.

DocuSigned by:
Joann Sandifer
D1B622256BED422...

JoAnn T. Sandifer