

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 23-cv-01351-RMR-STV

GRCO LLC, a Missouri limited liability company,

Plaintiff,

v.

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

Defendant.

SECOND AMENDED COMPLAINT

Plaintiff, GRCO LLC, by and through undersigned counsel, submits the following Second Amended Complaint (“Complaint”) against Defendant, Granby Ranch Metropolitan District (“GRMD”), and allege as follows:

Introduction

1. Plaintiff, a property owner and taxpayer within GRMD, brings this action for declaratory and injunctive relief to challenge GRMD’s illegal exaction and imposition of capital facilities fees from Plaintiff and illegal use of the fees collected by GRMD.

2. Specifically, GRMD has collected from Plaintiff, and has indicated its intent to continue to collect, capital facilities fees that are required, by the authorizing resolution, to be used solely to finance local improvements that benefit the properties that pay the fees. But the fees imposed upon Plaintiff were not collected or used by GRMD for that purpose.

3. GRMD collected Capital Facilities Fees from Plaintiff between 2021 and 2023 and deposited those fees into its general fund, making these fees available for payment of

GRMD's administrative expenses, including funding the litigation costs it has incurred, and continues to incur, in its on-going lawsuit against Headwaters Metropolitan District ("Headwaters"), Plaintiff's affiliate (GR Terra LLC), and other defendants.

4. After this lawsuit was filed, GRMD passed a resolution purporting to pledge the capital facilities fees collected since May of 2018 toward payment of its bonded indebtedness. This belated measure does not cure the fact that GRMD forced Plaintiff to pay fees for an improper and unauthorized purpose.

5. In any event, GRMD's collection and use of Capital Facilities Fees from Plaintiff suffers from other fatal defects, including GRMD's improper imposition of fees on property that was excluded from its boundaries and on lots that do not benefit from any improvements funded by GRMD. Moreover, GRMD's collection of capital facility fees from Plaintiff violates C.R.S. § 32-1-1001(1)(j) and Colorado law because there is no reasonable relationship between the amount of the fees paid by Plaintiff and the cost of any services, programs, or facilities provided by GRMD.

6. Further, GRMD's collection of the capital facilities fee as a condition for issuance of Plaintiff's building permits violates Plaintiff's rights under the Fifth Amendment to the U.S. Constitution. GRMD has exacted from Plaintiff \$150,120 in capital facilities fees in exchange for 24 building permits; those payments were necessary for Plaintiff to develop its lots, avoid interest and penalties for late payment, and to avoid foreclosure of the lien imposed for the fees. These capital facilities fees lack an essential nexus to a legitimate government purpose and are not roughly proportional to the impact on Plaintiff's development and use of its property.

GRMD did not engage in the requisite individualized assessment of the impact of GRCO's proposed development before collecting the Capital Facilities Fees from Plaintiff.

7. In addition, or in the alternative, the capital facilities fees constitute unconstitutional special assessments. GRMD's collection of the fees from Plaintiff to fund general administrative expenses violates Plaintiff's due process rights because that use provides no special benefit to Plaintiff's lots, much less a benefit at least equal to the amount of the assessment levied against them.

8. Plaintiff seeks declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202 and damages under 42 U.S.C. § 1983 as more specifically set forth below.

The Parties

9. Plaintiff GRCO LLC ("Plaintiff") is a Missouri Limited Liability company that is registered to do business in the State of Colorado. Since May 5, 2021, Plaintiff has owned the real property in the Granby Ranch development in Grand County, Colorado legally described on Exhibit 1, ("Property"), some of which is located within the current boundaries of GRMD. Plaintiff pays, and has paid, capital facility fees imposed by GRMD. In addition, GRMD pays real property taxes to GRMD and bears a share of the taxes imposed by GRMD to pay off its outstanding bonds.

10. Defendant GRMD is a Metropolitan District organized and existing pursuant to the Colorado Special District Act, C.R.S. § 32-1-101 *et seq.* GRMD is a quasi-municipal corporation and political subdivision of the State of Colorado.

Jurisdiction and Venue

11. This Court has jurisdiction to hear this case pursuant to 28 U.S.C. § 1332(a), because there is complete diversity of citizenship and the amount in controversy exceeds the sum of \$75,000 exclusive of interest and costs, in that:

- a. GRCO is a Missouri limited liability company with its principal place of business in Missouri. GRCO has two members who hold 100% of the membership interests in GRCO: the PDG Irrevocable Trust dated February 24, 2012, and the RBG, Jr. Irrevocable Trust dated February 22, 2012. Both these trusts are traditional trusts that embody fiduciary relationships and facilitate a donative transfer; they are not business trusts. The trustee of each trust is the legal owner of the trust property, charged with the fiduciary obligation to manage and distribute trust property as set forth therein. A trust is not an entity that can be sued under Missouri law. *Mayer v. Lindenwood Female College*, 453 S.W.3d 307, 314 (Mo. App. 2014).
- b. Robert B. Glarner, Jr. is the trustee of the PDG Irrevocable Trust dated February 24, 2012, and P. David Glarner is the Trustee of the RBG, Jr. Irrevocable Trust dated February 22, 2012. Robert B. Glarner, Jr. and P. David Glarner are domiciled in the State of Missouri. Thus, GRCO and all members of GRCO are citizens of the State of Missouri.
- c. GRMD is a political subdivision of the State of Colorado with its principal place of business in Colorado. Thus, GRMD is a citizen of the State of Colorado.

d. The amount in controversy in this action exceeds \$75,000 because, among other claims, Plaintiff seeks declaratory and injunctive relief challenging its payment of capital facilities fees. Specifically, Plaintiff challenges and seeks reimbursement of \$125,100 already paid to GRMD and seeks to enjoin GRMD's collection of future capital facilities fees on other property owned by Plaintiff.

12. This Court also has jurisdiction over this action under 28 U.S.C. § 1331, which confers original jurisdiction on federal district courts to hear suits alleging the violation of rights and privileges under the U. S. Constitution.

13. This Court has supplemental jurisdiction over pendent state law claims in that such claims herein arise from a common nucleus of operative fact.

14. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) because GRMD resides in this District, conducts business in this District and is subject to the Court's personal jurisdiction with respect to the claims in this civil action. In addition, venue is proper under 28 U.S.C. § 1391(b)(2) because the acts or omissions giving rise to Plaintiff's claims occurred in this District and the real property subject to the challenged fees is located in this District.

General Allegations

Creation of the GRMD and Its Service Plans

15. In 2003, Sol Vista Corp., the owner and private developer of Granby Ranch, an approximately 5,000 acre planned mixed use development in Grand County ("Granby Ranch"), sought the organization of GRMD and the Headwaters Metropolitan District ("Headwaters") to facilitate the Granby Ranch development.

16. In 2003, the Town of Granby (“Town”) approved Service Plans for Headwaters (formerly Sol Vista Metropolitan District 1) and GRMD (formerly Sol Vista Metropolitan District No. 2). GRMD’s Service Plan is attached hereto as Exhibit 2.

17. At the time they were formed, Headwaters and GRMD collectively encompassed approximately 3,570 of the total 5,000-acre Granby Ranch development; the vast majority of that land was located in GRMD.

18. Headwaters’ “Service Area” consisted of the entire development, including all property within GRMD’s boundaries. Ex. 2, § I(3).

19. The Headwaters and GRMD Service Plans originally contemplated a dual district structure; Headwaters, the “Service District” was authorized to provide the services and facilities described in its Service Plan within its Service Area,” Ex. 2, § III, and GRMD, the “Tax District” was authorized to finance and pay for the public improvements needed within the Service Area. Ex. 2, Art. III.

20. The Service Plan for GRMD further provided: “Until the Service District [Headwaters] is consolidated or dissolved in accordance with the District IGA [Master IGA set forth below], **only the Service District [Headwaters] will have the authority to provide services and complete public improvements within the Service Area.**” Ex. 2, Art. III (emphasis added). Headwaters has not been consolidated or dissolved, and the Master IGA referenced in the Service Plan has been terminated by agreement of Headwaters and GRMD.

21. The Town of Granby approved a First Amendment to GRMD’s Service Plan on June 27, 2006, and a Second Amendment to GRMD’s Service Plan on October 11, 2016, copies

of which are respectively attached as Exhibits 3 & 4. Neither amendment gives GRMD authority to provide services or complete public improvements within its boundaries.

2005 Facilities Fee Resolution

22. By 2005, Sol Vista Corp. had transferred all the property it then owned, including the property within the Service Areas of the Headwaters and GRMD to Granby Realty Holdings LLC (“GRH”) which included, but was not limited to, Plaintiff’s Property.

23. C.R.S § 32-1-1001(1)(j) provides that special districts may “fix and from time to time increase or decrease fees, rates, tolls, penalties, or charges for services, programs, or facilities furnished by the special district; ... [and] The board may pledge such revenue for the payment of any indebtedness of the special district.”

24. Citing their authority under C.R.S. § 32-1-1001(1)(j), on May 26, 2005, the Boards of Directors of Headwaters and GRMD approved a joint resolution to establish a capital facilities fee (“2005 Facilities Fee Resolution”), a copy of which is attached hereto as Exhibit 5.

25. The 2005 Facilities Fee Resolution established a fee of \$6,255 (“Capital Facilities Fee”) to be paid by the owner of each lot or parcel of land within the boundaries of GRMD; the fee was to be paid to Headwaters on or before the date of issuance of a building permit by the Town of Granby for construction of any buildings on the lot.

26. The 2005 Facilities Fee Resolution provided that “[i]mposition of the fee is ***solely for the purpose of financing the acquisition, reimbursement, construction, replacement, maintenance and repair of Improvements, which may include, without limitation, issuance of bonds or reimbursement of amounts advanced by other parties.***” Ex. 5, § 2 (emphasis added).

Town Facilities Fee Agreement

27. The Town of Granby, Headwaters, and GRMD entered an Intergovernmental Agreement Concerning the Facilitation of Payment of Capital Facilities Fees dated April 11, 2006 (“Town Facilities Fee Agreement”), a copy of which is attached hereto as Exhibit 6.

28. The Town Facilities Fee Agreement acknowledged that GRMD intended to issue certain bonds, including Limited Tax General Obligation Bonds, Series 2006 (“2006 Bonds”), which bonds would be payable from and secured by certain ad valorem property taxes as well as the Capital Facility Fees imposed under the 2005 Facility Fee Resolution.

29. The purpose of the Town Facility Fee Agreement was for the Town to assist in ensuring payment of the Capital Facilities Fee imposed under the 2005 Facility Fee Resolution, and the amendment to that Resolution then contemplated in connection with GRMD’s proposed issuance of the 2006 Bonds; under the Town Facility Fee Agreement, the Town agreed not to approve building permits until it received acknowledgment from GRMD that the applicant had paid the required Capital Facility Fee.

30. The Town Facilities Fee Agreement stated that “Capital Facilities Fee funds may ***only be used by the Districts for costs of the Facilities***, including payment of the bonds, as more particularly provided in the Original Fee Resolution or any amendment or restatement thereof.” Ex. 6, § 2 (emphasis added).

Amended and Restated Facilities Fee Resolution

31. On June 7, 2006, Headwaters and GRMD approved an Amended and Restated Joint Resolution to Establish a Capital Facilities Fee (“2006 Facilities Fee Resolution.”), a copy of which is attached hereto as Exhibit 7.

32. The 2006 Facilities Fee Resolution states that:

“development is presently underway in Granby Ranch and there is an immediate need to commence the provision of infrastructure to serve such development, as contemplated by the Service Plan (such infrastructure, as more particularly described in the Districts’ Service Plans, referred to herein as the “Improvements.”)”

Ex. 7, (Fourth Whereas Clause). The term “Improvements” as used herein shall have the meaning set forth in the 2006 Facilities Fee Resolution.

33. The Districts’ Service Plans authorize Headwaters to provide, and GRMD to finance, various services and facilities including infrastructure improvements falling under the categories of streets roads and drainage, traffic and safety protection, parks and recreation, sanitation, water, transportation mosquito control, and defined miscellaneous services relating to television, electronic and cable facilities. *See* GRMD Service Plan, Ex. 2, Art. III.

34. The 2006 Facilities Fee Resolution states that GRMD had determined to issue the 2006 Bonds to provide for the funding of the Improvements, which 2006 Bonds would be secured, in part, by the Capital Facilities Fees collected under the 2006 Facilities Fee Resolution.

35. The 2006 Facilities Fee Resolution states that in connection with the issuance of the 2006 Bonds, “the Districts desire to amend and restate the Original Fee Resolution to clarify certain provisions thereof, to record certain findings made with respect to the Capital Facilities Fees and to make other changes as they have determined are necessary to facilitate issuance of the Series 2006 Bonds.”

36. The 2006 Capital Facilities Fee Resolution established a one-time fee of \$6,255, (“Capital Facilities Fee”), commencing on June 1, 2005, “for all property within Granby Ranch’s boundaries” Ex. 7, ¶ 1.

37. The Capital Facilities Fee imposed under the 2006 Facilities Fee Resolution becomes due and owing on the date a building permit is issued for any individual lot, unless an earlier date is specified in a prepayment contract. Ex. 7, ¶ 29.

38. The 2006 Facilities Fee Resolution provides that all payments will be made directly to GRMD. Ex. 7, ¶¶ 5 & 7.

39. Under the 2006 Facilities Fee Resolution, the Capital Facilities Fee constitutes a lien “against the affected property”; a property owner’s failure to pay the fee results in interest from the due date and authorizes an action to collect or foreclose on the lien. Ex. 7, ¶¶ 4 & 5.

40. Paragraph 6 of the 2006 Facilities Fee Resolution states,

The Districts hereby covenant, for the benefit of the owners of property within [GRMD], that all proceeds of Capital Facilities Fees imposed hereunder will be used *solely for the purpose of financing the acquisition, reimbursement, construction, replacement, maintenance and repair of the Improvements*, including, but not limited to, the paying debt service on, and other costs related to, the Series 2006 Bonds and any obligations refunding such Series 2006 Bonds and reimbursement of amounts advanced by other parties.

Ex. 7, ¶ 6 (emphasis added).

41. When the 2006 Facilities Fee Resolution was approved, on June 7, 2006, GRMD’s boundaries included approximately 948 acres according to GRMD’s boundary map.

42. Plaintiff’s Property includes portions of undeveloped land that are located within the area subjected to the Capital Facilities Fees in the 2006 Facilities Fee Resolution.

43. On June 7, 2006, the Districts prepared a Memorandum of Resolution Concerning the Imposition of Capital Facilities (“Memorandum”) purportedly reflecting the terms of the 2006 Facilities Fees Resolution and lien referenced therein, which Memorandum was recorded in

the Grand County land records on March 5, 2007. A copy of the Memorandum is attached hereto as Exhibit 8.

44. The Memorandum states “that the properties listed on Exhibit A attached hereto remain subject to the Capital Facilities Fees established by the [2006 Facilities Fee Resolution] adopted by the Districts.” Ex. 8. Exhibit A purport to contain a legal description of GRMD’s boundaries as they then-existed accompanied by parcel maps.

2006 Bonds

45. The 2006 Bonds were purportedly issued on or about July 5, 2006. Pursuant to the Bond Indenture for same, the Capital Facilities Fees were pledged to repayment of the 2006 Bonds.

46. The 2006 Bonds proceeds were used to finance a portion of the costs incurred to construct some of the roads and water and sewer infrastructure that serve a portion of the Granby Ranch development.

47. The infrastructure and improvements funded with the 2006 Bonds had limited useful lives. By 2022, those improvements had reached the end of their useful lives and provided no benefit to lots developed after that time.

Exclusions From GRMD Boundaries

48. Pursuant to C.R.S. § 32-1-501, the boundaries of a special district may be altered to exclude real property, upon the filing of a property owner petition, approval of the district’s board (following a public hearing), and court order.

49. Through this the statutory exclusion process, and with the approval of GRMD and the district court, GRMD’s boundaries were reduced several times between 2005 and 2013. By

2013, GRMD's boundaries included only 226 acres per GRMD's boundary map. The boundaries have not changed since that time.

50. Plaintiff owns property that was excluded from GRMD's boundaries prior to 2013, including but not limited to 238 Night Hawk Court, 262 Night Hawk Court, 281 Night Hawk Court, and 286 Night Hawk Court (collectively "Non-GRMD Lots").

GRMD 2018 Bonds

51. In 2018, GRMD issued \$11,970,000 in limited tax general obligation refunding bonds, the proceeds of which were used to refund, retire and pay in full the 2006 Bonds ("2018 Bonds"). Under the bond indenture between GRMD and UMB Bank dated May 3, 2018, certain revenues were pledged for repayment of the 2018 bonds ("2018 Bond Indenture"). A copy of the 2018 Bond Indenture is attached hereto as Exhibit 9.

52. The 2018 Indenture defines "Pledged Revenues" to include:

(a) the "Required Mill Levy," described as the ad valorem mill levy imposed upon all taxable property of GRMD;

(b) . . . the SolVista Tax Revenue, described as all amounts received by GRMD pursuant to the SolVista Funding Agreement;

(c) the portion of the Specific Ownership Tax (i.e., specific ownership taxes collected by the county and remitted to the District pursuant to § 42-3-107, C.R.S., or any successor statute) which is collected as a result of imposition of the Required Mill Levy; and

(d) any other legally available moneys which the District determines, in its absolute discretion, *to transfer to the Trustee for application as Pledged Revenue*. (emphasis added)

53. Under § 3.05 of the 2018 Bond Indenture, GRMD was obligated to "transfer all amounts compromising Pledged Revenue to the Trustee as soon as may be practicable after the receipt thereof." Ex. 9.

54. Pursuant to C.R.S. § 32-1-503, the District could have pledged the Capital Facilities Fees for repayment of the 2018 Bond as it did with respect to the 2006 Bonds, but chose not to do so.

55. Because the 2018 Bonds refunded, retired, and paid in full the outstanding indebtedness owed on the 2006 Bonds completely paying off the 2006 bondholders, the 2018 Bonds created new bonded indebtedness, with new collateral, new terms, and new bondholders.

56. Because the Non-GRMD Lots were excluded from GRMD's boundaries before the 2018 Bonds were issued, the Non-GRMD Lots could not be obligated to make payments of Capital Facilities Fees for purposes of payment of the 2018 Bonds.

GRMD's Collection and Use of Capital Facilities Fees

57. GRMD has not undertaken the acquisition, construction, replacement, maintenance or repair of any Improvements or any other infrastructure. Nor has it provided funding for the maintenance or repair of any such Improvements or any other infrastructure from and after 2019. Though GRMD entered an Intergovernmental Agreement with Headwaters relating to Road Maintenance and Snow Removal in 2018, it has since taken the position that this agreement was terminated because GRMD did not appropriate funds for payments under the agreement after 2019.

58. GRMD admittedly has no plans to undertake the construction, maintenance or repair of any Improvements or to undertake any capital improvement projects; nor does it have the authority to do so under its Service Plan.

59. GRMD provides no facilities or services; its sole function is financing the payment of the 2018 Bonds through imposition and collection of an ad valorem tax authorized for that specific purpose.

60. Through 2018, GRMD budgeted for and deposited the Capital Facilities Fees collected by it into its Debt Service Fund to be used for debt service on the 2006 Bonds.

61. In a deposition taken on November 30, 2022, GRMD's manager testified that since 2019 all Capital Facilities Fees collected by GRMD have been deposited into GRMD's General Fund, which is not restricted to any particular use; those funds are available to pay GRMD's general and administrative expenses, including expenses incurred by GRMD in conjunction with its lawsuit against Headwaters and other defendants in the case styled *GRMD v. Headwaters' Metropolitan District et al*, Case No. 2021CV30008 District Court, Grand County, Colorado.

62. After Plaintiff filed its original complaint in this action challenging GRMD's illegal collection and use of these Capital Facilities Fees, GRMD passed a resolution on or about November 10, 2023, purporting to pledge all Capital Facilities Fees collected in and subsequent to May of 2018 to repayment of the District's 2018 Bonds and any refundings thereof.

63. On information and belief, the Capital Facilities Fees have not been transferred to the bond Trustee as required to pledge them for payment of the 2018 Bonds under the 2018 Bond Indenture, and therefore, the funds are not restricted to this use.

Plaintiff's Building Permits

64. Between 2021 and 2023, GRMD applied for and obtained 24 building permits for the lots located at the following addresses: (1) 925 Pawnee Lane; (2) 102 Base Camp Circle; (3)

104 Base Camp Circle; (4) 106 Base Camp Circle; (5) 108 Base Camp Circle; (6) 110 Base Camp Circle; (7) 112 Base Camp Circle; (8) 114 Base Camp Circle; (9) 116 Base Camp Circle; (10) 510 Fall Line Road; (11) 570 Fall Line Road; (12) 630 Fall Line Road; (13) 690 Fall Line Road; (14) 750 Fall Line Road; (15) 810 Fall Line Road; (16) 665 Fall Line Road; (17) 575 Fall Line Road; (18) 785 Kiowa Lane; (19) 1275 Lone Eagle Drive; (20) 1005 Pawnee Lane, (21) 870 Expedition Lane; (22) 221 Night Hawk Court; (23) 251 Night Hawk Court; and (24) 810 Fall Line Road (the “GRCO Permits”).

65. The GRCO Permits were obtained to construct 24 single-family homes.

66. Four of these permits were issued with respect to Non-GRMD Lots.

67. Plaintiff paid a total of \$150,120 in Capital Facilities Fees to GRMD for the GRCO Permits to avoid interest, penalties and foreclosure of the liens imposed to secure payment of the Capital Facility Fees.

68. GRMD collected those Capital Facilities Fees from Plaintiff for the purpose of depositing them into GRMD’s General Fund and did deposit into GRMD’s General Fund, making them available for payment of GRMD’s administrative and legal expenses.

69. To the best of Plaintiff’s information and belief, GRMD cannot account for how the funds paid by Plaintiff were used. The fees paid by Plaintiff were not used for payment of the 2018 Bonds.

70. Many of the lots for which Capital Facilities Fees were paid between 2021 and 2023 are for building permits in Newly Developed subdivisions, including, without limitation, 510 Fall Line Road, 570 Fall Line Road, 575 Fall Line Road, 630 Fall Line Road, 665 Fall Line Road, 690 Fall Line Road, 750 Fall Line Road, 810 Fall Line Road, 520 Expedition Lane, 580

Expedition Lane, 640 Expedition Lane, 700 Expedition Lane, 760 Expedition Lane, 820 Expedition Lane, 870 Expedition Lane, 221 Night Hawk Court, 238 Night Hawk Court, 251 Night Hawk Court, 262 Night Hawk Court, 281 Night Hawk Court, and 286 Night Hawk Court (“Newly Developed Lots”).

71. The Newly Developed Lots either do not benefit from any Improvements that were partially funded with the 2006 Bonds or, alternatively, any benefit is *de minimis*. GRMD has not provided or funded any infrastructure or other Improvements that serve the Newly Developed Lots, and the Improvements funded with the 2006 Bonds have exceeded their useful lives. All the new Improvements serving the Newly Developed Lots have been privately funded.

72. Plaintiff owns other undeveloped property, which it intends to develop, that will be subject to the payment of a Capital Facilities Fee under the 2006 Facilities Fee Resolution and/or the Memorandum as a condition for the issuance of additional building permits.

Count I

Declaratory and Injunctive Relief for Violation of the 2006 Facilities Resolution

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

74. The 2005 and 2006 Facilities Fee Resolutions require the fees collected thereon be used *solely* for the purpose of financing the acquisition, reimbursement, construction, replacement, maintenance and repair of Improvements, including allowed debt service.

75. GRMD does not own, operate or maintain any Improvements within the District, and it has not budgeted any funds for the acquisition, construction, replacement, maintenance or

repair of Improvements. Moreover, since 2019, GRMD has not used the Capital Facility Fees for any allowed debt service.

76. GRMD's collection and use of the Capital Facilities Fees from Plaintiff for deposit into its General fund was in violation of the resolutions authorizing same, rendering GRMD's collection and retention of those fees unauthorized and illegal.

77. After GRMD chose to omit the Capital Facilities Fees from Pledged Revenue for purposes of repaying the 2018 Bonds, GRMD had no proper purpose for collecting the Capital Facilities Fees.

78. GRMD's resolution adopted in November of 2023 does not cure its illegal collection and deposit of Plaintiff's Capital Facilities Fees into GRMD's General Fund because (1) GRMD had no right to collect Capital Facilities Fees for the purpose of depositing them into its General Fund for payment of administrative expenses; (2) the fees collected from Plaintiff were available for GRMD's improper use for general administrative expenses and GRMD cannot account for the specific use of the Fees paid by Plaintiff during those years; (3) GRMD cannot retroactively pledge revenues for bond repayments that were not properly pledged as such at the time they were collected by GRMD; (4) GRMD has not properly pledged any Capital Facilities Fees to the payment of debt on the 2018 Bonds pursuant to the terms of the 2018 Bond Indenture; and (5) GRMD has not paid any Capital Facilities Fees toward payment of its bonded indebtedness since 2018.

79. Even if a sum equivalent to the amount of Capital Facilities Fees paid by Plaintiff is used for debt service on GRMD's 2018 Bonds, that debt did not finance any Improvements that benefit *at least* 21 of the lots for which a fee was paid, *i.e.*, the Newly Developed Lots.

80. Plaintiff is a property owner within GRMD who paid Capital Facilities Fees to GRMD between 2021 and 2023 and is subject to future Capital Facilities Fees to GRMD under the positions GRMD has taken with respect to its rights to collect same.

81. Plaintiff has no adequate remedy at law with respect to continuing violations of the 2005 and 2006 Facilities Fee Resolutions and is entitled to declaratory and injunctive relief.

82. In addition, GRMD has benefitted and been unjustly enriched by collecting and holding the Capital Facilities Fees paid by Plaintiff for unauthorized purposes.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in their favor and against GRMD as follows:

- A. Declaring that GRMD's collection and use of the Capital Facilities Fees collected from Plaintiff was illegal and in violation of the 2006 Facilities Fee Resolution and enjoining further collection of any Capital Facilities Fees that are not properly pledged to the payment of GRMD's 2018 Bonds and used for payment of that bonded indebtedness;
- B. Declaring that GRMD has no right to use Capital Facilities Fees for the purpose of debt payment with respect to Plaintiff's Newly Developed Lots and enjoining future collection of Capital Facilities Fees in subdivisions that do not benefit from Improvements funded by GRMD's 2006 Bonds;
- C. Ordering that GRMD reimburse to Plaintiff all Capital Facilities Fees paid by Plaintiff from through the date of judgment in this case;

- D. Awarding reasonable attorneys' fees and costs as provided in any applicable agreement and by law; and
- E. Granting such other and further relief as this Court deems proper, including such further and additional orders from time to time as may be required in aid of this Court's decree.

Count II

Declaratory and Injunctive Relief for Violation of C.R.S. § 32-1-503

83. The allegations of paragraphs 1 through 82 of this Complaint are incorporated by this reference as though fully set forth herein.

84. The 2006 Facilities Fee Resolution only authorizes the collection of Capital Facilities Fees on "all property within [GRMD's] boundaries" at the time the fee is imposed. Nevertheless, to obtain building permits on Non-GRMD Lots, Plaintiff has been forced to pay Capital Facilities Fees to GRMD.

85. After the Non-GRMD Lots were excluded from the boundaries of GRMD, the plain language of the 2006 Facilities Fee Resolution no longer authorized collection of Capital Facilities Fees with respect to these Non-GRMD Lots.

86. Moreover, C.R.S. § 32-1-503 provides that, "[i]n no event shall excluded territory of a special district become obligated for the payment of any bonded *indebtedness created after the date of the court's exclusion order.*" (emphasis added).

87. The 2018 Bonds paid in full, retired, and refunded the entirety of the outstanding indebtedness owed on the 2006 Bonds and created new bonded indebtedness after the Non-GRMD Lots were excluded from GRMD's boundaries.

88. Thus, pursuant to C.R.S. § 32-1-503, the Non-GRMD Lots cannot be subjected to payment of Capital Facilities Fees.

89. Nevertheless, GRMD required Plaintiff pay Capital Facilities Fees for the four Non-GRMD Lots to obtain building permits thereon.

90. Further, GRMD contends Plaintiff is subject to future Capital Facilities Fees to GRMD for other properties that are not within GRMD's boundaries, but subject to the Memorandum.

91. On or about February 8, 2024, Plaintiff, through counsel, requested that GRMD terminate the Memorandum as to properties no longer in GRMD's boundaries. GRMD refused this demand.

92. Plaintiff has no adequate remedy at law with respect to continuing violations of C.R.S. § 32-1-503 and Colorado law and is entitled to declaratory and injunctive relief.

93. In addition, GRMD has benefitted and been unjustly enriched by collecting and holding the Capital Facilities Fees paid by Plaintiff for unauthorized purposes.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in their favor and against GRMD as follows:

- A. Declaring that GRMD's collection and use of the Capital Facilities Fees on the Non-GRMD Lots violates the 2006 Facilities Fee Resolution and C.R.S. § 32-1-503, enjoining further collection of any Capital Facilities Fees on properties no longer within GRMD's boundaries, and ordering GRMD to terminate or release

the Memorandum and associated lien with respect to properties no longer with GRMD's boundaries;

- B. Ordering that GRMD reimburse to Plaintiff all Capital Facilities Fees paid by Plaintiff on Plaintiff's property no longer within GRMD's boundaries from 2021 through the date of judgment in this case;
- C. Awarding reasonable attorneys' fees and costs as provided in any applicable agreement and by law; and
- D. Granting such other and further relief as this Court deems proper, including such further and additional orders from time to time as may be required in aid of this Court's decree.

Count III

Declaratory and Injunctive Relief for Violation of C.R.S. § 32-1-1001(1)(j)

94. The allegations of paragraphs 1 through 93 of this Complaint are incorporated by this reference as though fully set forth herein.

95. C.R.S. § 32-1-1001(1)(j) authorizes a special district to "fix and from time to time to increase or decrease fees, rates, tolls, penalties, or charges *for* services, programs, or facilities furnished by the special district." (emphasis added). A fee imposed under this provision is not imposed to defray the general expenses of government, but rather to defray the cost of a particular governmental service.

96. A fee imposed under C.R.S. § 32-1-1001(1)(j) must be used "for" a particular service, program or facility provided by the district, and there must be a reasonable relationship between the amount of the fee and the cost of that service, program or facility; the fee must be

reasonably designed to offset the overall cost of services, program or facility for which the fee was imposed.

97. Pursuant to the 2006 Facilities Fee Resolution, the Capital Facilities Fees were imposed to defray the costs of acquisition, reimbursement, construction, replacement, maintenance and repair of Improvements in the District.

98. GRMD does not own, operate or maintain any Improvements within the District, and it has not budgeted any funds for the acquisition, construction, replacement, maintenance or repair of Improvements. The Capital Facilities Fees are not properly pledged to repayment of the 2018 Bonds under the 2018 Bond Indenture and, since 2019, GRMD has not paid any Capital Facility Fees toward any allowed debt service.

99. There is no reasonable relationship between the amount of the Capital Facility Fees paid by Plaintiff in that GRMD deposited those funds into its General Fund for payment of administrative expenses as opposed to funding any the cost of any service, program or facility provided to Plaintiff or properly pledging to repayment of debt prior to collection.

100. Moreover, even if a sum equivalent to the Capital Facilities Fees paid by Plaintiff is used for payment of the 2018 Bonds, the Newly Developed Lots do not benefit from any service, program, or facility funded with the Capital Facilities Fees, in particular, Improvements funded in whole or part by GRMD's 2006 Bonds. Therefore, GRMD could not establish any reasonable relationship between the fees paid in conjunction with those lots (or future fees sought with respect to similarly situated property) and the cost of any service, program or facility provided by GRMD.

101. Plaintiff is a property owner within GRMD who paid Capital Facilities Fees to GRMD between 2021 and 2023 and is subject to future Capital Facilities Fees to GRMD under the terms of the 2006 Facilities Fee Resolution.

102. Plaintiff has no adequate remedy at law with respect to continuing violations of C.R.S. § 32-1-503 and Colorado law and is entitled to declaratory and injunctive relief.

103. In addition, GRMD has benefitted and been unjustly enriched by collecting and holding the Capital Facilities Fees paid by Plaintiff for unauthorized purposes.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in their favor and against GRMD as follows:

- A. Declaring that GRMD's collection and use of the Capital Facilities Fees collected from Plaintiff since 2021 violated C.R.S. § 32-1-1001(1)(j) and enjoining further collection of any Capital Facilities Fees that are not properly pledged to the payment of GRMD's 2018 Bonds and used for payment of that bonded indebtedness;
- B. Declaring that GRMD has no right to collect Capital Facilities Fees for the purpose of its debt payment with respect to the Newly Developed Lots which do not benefit from Improvements funded in whole or part by GRMD's 2006 Bonds and enjoining future collection of fees on lots in new subdivisions that do not benefit from those Improvements;
- C. Ordering that GRMD reimburse to Plaintiff all Capital Facilities Fees paid by Plaintiff from 2021 through the date of judgment in this case;

- D. Awarding reasonable attorneys' fees and costs as provided in any applicable agreement and by law; and
- E. Granting such other and further relief as this Court deems proper, including such further and additional orders from time to time as may be required in aid of this Court's decree.

COUNT IV

Damages Under 42 U.S.C. § 1983 for Violation of Plaintiff's Rights Under The Fifth Amendment to the United States Constitution

104. The allegations of paragraphs 1 through 103 of this Complaint are incorporated by this reference as though fully set forth herein.

105. Under the 2006 Facilities Fee Resolution, GRMD exacted \$150,120 in Capital Facilities Fees from Plaintiff as a condition for obtaining the GRCO Permits and avoidance of interest, penalties, and foreclosure of the lien imposed under the 2006 Facilities Fee Resolution.

106. GRMD imposed the Capital Facility Fees while acting under the color of state law.

107. These exactions constitute unconstitutional conditions because there is no essential nexus between a legitimate state interest, the Capital Facilities Fees, and the impact of the development on the lots for which the GRCO Permits were issued. The Capital Facilities Fees were collected by GRMD since 2021 as a pretext for depositing those funds in GRMD's general fund and using the fees to pay unrelated administrative expenses.

108. Even if a sum equivalent to the Capital Facilities Fees paid by Plaintiff is used for debt service on GRMD's outstanding bonds, those Bonds did not finance any Improvements that served the Newly Developed Lots at the time the Fees were imposed or thereafter.

109. The \$6,255 per lot (for a total of \$150,120) in Capital Facilities Fees is not roughly proportional to the impact of the proposed development for which the GRCO Permits were issued. GRMD did not engage in any individualized assessment of the impact of Plaintiff's proposed development in determining the amount or necessity of the imposed Capital Facilities Fees prior to collecting said Fees from Plaintiff.

110. Moreover, circumstances relating to the purpose and amount of the Capital Facilities Fees have changed since the fees were approved in 2006, *inter alia*, (1) the boundaries of GRMD and thus the scope of potential improvements have significantly reduced; (2) some of the contemplated Improvements were constructed and some were not (3); some of the contemplated Improvements were funded through the prior developer through subordinated debt that was forgiven by the prior developer in 2010; (4) the Improvements that were constructed with the 2006 Bonds have reached the end of their useful lives; (5) GRMD does not (and is not authorized to) construct any Improvements that benefit the property within its boundaries; (6) the Newly Developed Lots receive no or *di minimis* benefit from the improvements funded with the 2006 Bonds and the infrastructure and improvements serving the Newly Developed Lots are being funded wholly with private funds.

111. Despite these changed circumstances, GRMD did not engage in any individualized assessment of the impact of Plaintiff's proposed development or the proportionality of the impact of the Plaintiff's proposed development to the amount of the fees before enforcing and collecting the Capital Facilities Fees from Plaintiff between 2021 and 2023.

112. GRMD's exaction of Capital Facilities Fees from Plaintiff as a condition of a building permit deprived Plaintiff of its property rights in violation of the Fifth Amendment to the U.S. Constitution.

113. GRMD's enforcement of the 2006 Facilities Fee Resolution and exaction of said fees from Plaintiff constitutes a violation of 42 U.S.C. § 1983 *et. seq.*

114. Plaintiff has incurred and continues to incur attorneys' fees to protect its rights under the United States Constitution. Pursuant to 42 U.S.C. § 1988, Plaintiff is entitled to an award of attorneys' fees upon prevailing herein.

PRAYER FOR RELIEF

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

- A. Ordering that GRMD reimburse to Plaintiff the \$150,120 in Capital Facilities Fees as well as any other damages proven at trial;
- B. Awarding reasonable attorneys' fees and costs as provided in 42 U.S.C. § 1988 or other agreement or by law; and
- C. Granting such other and further relief as this Court deems proper, including such further and additional orders from time to time as may be required in aid of this Court's decree.

COUNT V

Damages for Due Process Violations under the United States and Colorado Constitutions and Damages Under 42 U.S.C. § 1983

115. The allegations of paragraphs 1 through 114 of this Complaint are incorporated by this reference as though fully set forth herein.

116. Under the 2006 Facilities Fee Resolution, GRMD exacted \$150,120 in Capital Facilities Fees from Plaintiff as a condition for obtaining the GRCO Permits and avoidance of interest, penalties, and foreclosure of the lien imposed under the 2006 Facilities Fee Resolution.

117. GRMD imposed the Capital Facility Fees while acting under the color of state law.

118. In addition to, or in alternative to, constituting illegal exactions, the Capital Facilities Fees constitute special assessments that were imposed on Plaintiff in violation of its due process rights under the Colorado and U.S. Constitutions.

119. Under Colorado law, a special assessment may be imposed on property owners when the benefits from the particular improvements financed with the assessments differ from benefits enjoyed in common with other property owners. A special assessment for a local improvement must specifically benefit or enhance the value of the premises assessed in an amount at least equal to the burden imposed.

120. The Capital Facility Fees were purportedly imposed to finance local improvements that would benefit the particular lots subject to the fees as opposed to the public at large or all property then within the District.

121. Imposing a special assessment on property that does not specifically benefit from the funded improvements violates a property owner's right to due process under the United States and Colorado Constitutions.

122. GRMD's collection of Capital Facilities Fees from Plaintiff since 2021 and deposit of those Fees into the General Fund violates Plaintiff's rights to due process because the lots for which the Capital Facilities Fees were paid do not receive any special benefit from

GRMD's use of the Capital Facilities Fees, much less a benefit at least equal to the amount of the assessment levied against them.

123. Further, even if a sum equivalent to the Capital Facilities Fees paid by Plaintiff is used for debt service on GRMD's 2018 Bonds, those Bonds did not finance any Improvements that served the Newly Developed Lots at the time the Fees were imposed and therefore provide no benefit to those lots, much less a benefit at least equal to the amount of the assessment levied against them.

124. In addition, or in the alternative, the Capital Facility Fee is an unconstitutional special fee collected in violation of Plaintiff's due process rights because there is no reasonable relationship between the amount of the Capital Facility Fee paid by Plaintiff since 2021 and the cost of any service, program or facility provided to Plaintiff at that time or thereafter.

125. GRMD's enforcement of the 2006 Facilities Fee Resolution to collect the aforesaid Capital Facilities Fees constitutes a violation of 42 U.S.C. § 1983 *et. seq.*

126. Plaintiff has incurred and continues to incur attorneys' fees to protect its rights under the United States Constitution. Pursuant to 42 U.S.C. § 1988, Plaintiff is entitled to an award of attorneys' fees upon prevailing herein.

PRAYER FOR RELIEF

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

- A. Ordering that GRMD reimburse to Plaintiff the \$150,120 in Capital Facilities Fees as well as any other damages proven at trial;

- B. Awarding reasonable attorneys' fees and costs as provided in 42 U.S.C. § 1988 or other agreement or by law; and
- C. Granting such other and further relief as this Court deems proper, including such further and additional orders from time to time as may be required in aid of this Court's decree.

Count VI

Declaratory and Injunctive Relief For Continuing Due Process Violations of the United States and Colorado Constitutions and Attorneys' Fees under 42 U.S.C. § 1983

127. The allegations of paragraphs 1 through 126 of this Complaint are incorporated by this reference as though fully set forth herein.

128. GRMD imposed and collects the Capital Facility Fees while acting under the color of state law.

129. Plaintiff owns undeveloped land that GRMD asserts is subject to payment of Capital Facility Fees under the 2006 Facilities Fee Resolution. Plaintiff intends to obtain building permits to develop these lots for residential use. GRMD has indicated its intent to continue to collect Capital Facilities Fees upon the issuance of new building permits.

130. While GRMD has purported to pledge these funds to the repayment of the 2018 Bonds, it has not properly pledged the funds under the terms of the 2018 Bond Indenture or used those funds for payment on the bonds.

131. Further, even if a sum equivalent to the Capital Facilities Fees paid by Plaintiff is used for debt service on GRMD's 2018 Bonds, those Bonds did not finance any Improvements that served the Newly Developed Lots at the time the Fees were imposed and therefore provide no benefit to those lots, much less a benefit at least equal to the amount of the assessment levied

against them or reasonably related to any the cost of any service, program or facility provided to Plaintiff.

132. GRMD's assessment of additional unconstitutional Capital Facilities Fees under the 2006 Facilities Fee Resolution will recur without action by the Court.

133. There exists between the parties an actual and present controversy regarding the validity and enforceability of the Capital Facilities Fees, which constitute unconstitutional special assessments.

134. Plaintiff's continued assessment of these fees constitutes a continued violation of the Due Process Clause of Fifth Amendment to the United States Constitution, 42 U.S.C. § 1983 *et. seq*, and Section 25 of Article II of the Colorado Constitution.

135. Plaintiff has no adequate remedy at law with respect to this continuing violation of its Constitutional rights.

136. Plaintiff has incurred and continues to incur attorneys' fees to protect its rights under the United States Constitution. Pursuant to 42 U.S.C. § 1988, Plaintiff is entitled to an award of attorneys' fees upon prevailing herein.

PRAYER FOR RELIEF

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

- A. Declaring that GRMD cannot collect any Capital Facilities Fees that are not properly pledged to the payment of GRMD's 2018 Bonds and used for payment of that bonded indebtedness and enjoining said collection of fees;

- B. Declaring that GRMD cannot collect Capital Facilities Fees with respect to any lots in Newly Developed subdivisions that do not benefit from Improvements funded in whole or part by GRMD's 2006 Bonds and enjoining future collection of same;
- C. Awarding reasonable attorneys' fees and costs as provided in 42 U.S.C. § 1988 or other applicable agreement and by law; and
- D. Granting such other and further relief as this Court deems proper, including such further and additional orders from time to time as may be required in aid of this Court's decree.

Respectfully submitted this 22nd day of March, 2024.

HUSCH BLACKWELL LLP

By: /s/ JoAnn T. Sandifer

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Attorneys for Plaintiffs GRCO LLC

CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2024, I electronically filed the foregoing, **SECOND AMENDED COMPLAINT** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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