

DISTRICT COURT, GRAND COUNTY, COLORADO 307 Moffat Avenue Hot Sulphur Springs, CO 80451	DATE FILED: November 3, 2022 4:55 PM FILING ID: BE23DDF1B662F CASE NUMBER: 2021CV30008
<p>Plaintiff: GRANBY RANCH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado,</p> <p>v.</p> <p>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.</p>	
<p><i>Attorneys for Headwaters Metropolitan District and GR Terra LLC:</i> Jamie H. Steiner, #49304 JoAnn T. Sandifer (<i>Admitted Pro Hac Vice</i>) Husch Blackwell LLP 1801 Wewatta St., Suite 1000 Denver, CO 80202 Phone: 303-749-7200 Fax: 303-749-7272 E-mail: jamie.steiner@huschblackwell.com joann.sandifer@huschblackwell.com</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p>Case No. 2021CV30008</p> <p>Division 1</p>
<p>GR TERRA LLC’S ANSWER, AFFIRMATIVE DEFENSES TO PLAINTIFF’S THIRD AMENDED COMPLAINT, JURY DEMAND AND COUNTERCLAIMS</p>	

Defendant GR Terra LLC (“Defendant” or “GR Terra”) submits this answer, affirmative defenses, jury demand and counterclaims to Plaintiff Granby Ranch Metropolitan District’s Third Amended Complaint (“Amended Complaint”).

PARTIES, JURISDICTION, AND VENUE

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

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

2. Admit.

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

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

5. Admit.

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

GENERAL ALLEGATIONS

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

8. Defendant states that the Service Plan referenced in paragraph 8 speaks for itself and denies any characterization of that document inconsistent with the terms thereof. Defendant is without sufficient knowledge and information to form a belief as to the balance of the allegations in paragraph 8 and therefore denies same.

9. Defendant states that the Service Plans referenced in paragraph 9 and attached to the Amended Complaint as Exhibits 1 and 2 speak for themselves and denies any characterization of those documents inconsistent with the terms thereof. Defendant is without sufficient knowledge and information to form a belief as to the balance of the allegations in paragraph 9 and therefore denies same.

10. Defendant states that it is unable to respond to the first sentence of paragraph 10 as the term “property” is not defined. Defendant is without sufficient knowledge and information to form a belief as to the allegations in the second sentence of paragraph 10 and therefore denies same. Defendant states that the remainder of the allegations of paragraph 10 are either characterizations of documents that speak for themselves or legal conclusions, to which no response is required. To the extent a response is required to these allegations, Defendant denies same.

11. Defendant denies the allegations of paragraph 11.

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

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

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

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

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

17. Defendant admits that, to the best of its current knowledge and understanding, the referenced parties entered the Granby IGA attached to the Amended Complaint as Exhibit 5. Defendant further states that the Granby IGA was superseded and replaced in its entirety on November 8, 2016, and was of no force or effect after that date.

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

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

20. Defendant admits that, to the best of its current knowledge and understanding, the document attached to the Amended Complaint as Exhibit 6 is the LPA referenced in paragraph 20. Defendant denies the allegations of the first and third sentences of paragraph 20.

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

22. Defendant denies the allegations of paragraph 22 and footnote 3 thereto. Defendant further states that the allegations of paragraph 22 are characterizations of the LPA attached to the Amended Complaint as Exhibit 6. That document speaks for itself, and Defendant denies any characterization of the LPA inconsistent with the terms thereof.

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

24. The first sentence of paragraph 24 is a legal conclusion to which no response is required, and to the extent a response is required, Defendant denies that conclusion. Defendant denies the remainder of the allegations of paragraph 24 and denies any characterization of referenced documents that are inconsistent with the terms thereof.

25. Defendant denies the allegations of paragraph 25.

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

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

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

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

30. Defendant admits that, to the best of its current knowledge and information, the referenced parties entered the Second Granby IGA attached to the Amended Complaint as Exhibit 7. Defendant denies the remainder of the allegations of paragraph 30.

31. Defendant is unable to respond to the allegations in the first sentence of paragraph 31 as the term “control” and “homeowner-controlled” are vague and ambiguous; to the extent a response to those allegations is required, Defendant denies same. Defendant admits that based upon its current knowledge and understanding, Headwaters, GRMD and Granby Ranch Metropolitan Districts Nos. 2 through 8 agreed to terminate the Master IGA pursuant to the Termination of Intergovernmental Agreement attached to the Amended Complaint as Exhibit G and admits that in Recital G of that Termination Agreement, the parties indicated their intent that GRMD and Headwaters should operate independently of one another. Defendant denies all allegations of paragraph 31 not expressly admitted herein.

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

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

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

35. Defendant admits that on August 14, 2020, after providing all notices required by Colorado statute, the Public Trustee held a public sale of the Leased Premises and other property subject to the Deed of Trust. Following the sale, the Public Trustee issued a Certificate of Purchase for the subject property, including the Leased Premises, to Granby Prentice. Granby Prentice assigned the Certificate of Purchase to GP Granby Holdings LLC (now known as Gray Jay Ventures, LLC). After the expiration of the redemption period, title to the property vested in GP Granby Holdings free and clear of all liens and encumbrances junior to the Deed of Trust, including the LPA. On August 27, 2020, the Public Trustee issued a Public Trustee’s Deed to GP Granby Holdings granting it title to the Leased Premises and other subject property, which deed was recorded in the land records for Grand County on August 1, 2020 at Reception No. 202000007560. Defendant is without sufficient knowledge or information to form a belief as to the balance of the allegations of paragraph 45 and therefore denies same. Defendant denies all allegations of paragraph 35 not admitted herein.

36. Defendant denies the first sentence of paragraph 36 and states that the LPA was terminated through the foreclosure (and other means). Defendant admits the allegation of the second sentence of paragraph 36. Defendant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations of paragraph 36 and therefore denies same.

37. Defendant lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 37 and therefore denies same.

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

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

40. Admit.

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

42. Defendant denies the allegations of paragraph 42.

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

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

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

46. Defendant denies the allegations of paragraph 46.

47. Defendant admits that it purchased the property *formerly* subject to the LPA on or about May 5, 2021, Defendant denies that the property was subject to the LPA at the time of its purchase because the LPA had extinguished and terminated before that time.

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

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

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

SECOND CLAIM FOR RELIEF
(Breach of Contract against Headwaters)

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

55-58. The allegations made in paragraphs 55-58 are not directed at Defendant and therefore no response is necessary. To the extent a response is deemed necessary, Defendant denies same.

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

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

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

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

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

66. Defendant admits that it purchased the property *formerly* subject to the LPA on or about May 5, 2021, Defendant denies that the property was subject to the LPA at the time of its purchase because the LPA had terminated before that time.

67. Defendant denies the allegations of paragraph 67.

68. GR Terra admits that at the time it purchased the property formerly subject to the LPA, its predecessor in title had already taken the position that the LPA was terminated in 2020. GR Terra further states that since it acquired the property formerly subject to the LPA, Headwaters has never tendered the purchase price under the LPA to it, paid rent to it under the

LPA or taken any other action to enforce any of the terms of the LPA or require action by GR Terra as landlord under the LPA. GR Terra denies all allegations of paragraph 68 not expressly admitted herein.

69. Defendant denies the allegations of paragraph 69.

70. Defendant denies the allegations of paragraph 70.

71. The allegations of paragraph 71 state legal conclusions to which no response is required; to the extent a response is required, Defendant denies the allegations of paragraph 71 and all relief requested therein.

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

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

73. Defendant denies the allegations of paragraph 73 and states that the LPA was terminated through the foreclosure.

74. Defendant denies the allegations of paragraph 74.

75. The allegations of paragraph 75 state legal conclusions to which no response is required; to the extent a response is required, Defendant denies the allegations of paragraph 90.

76. Defendant denies the allegations of paragraph 76.

77. The allegations of the first sentence of paragraph 77 state legal conclusions to which no response is required; to the extent a response is required, Defendant denies the allegations of that sentence. Defendant denies the second and third sentences of paragraph 77.

78. The allegations of paragraph 78 state legal conclusions to which no response is required; to the extent a response is required, Defendant denies the allegations of paragraph 78.

79. The allegations of paragraph 79 state legal conclusions to which no response is required; to the extent a response is required, Defendant denies the allegations of paragraph 79.

80. Defendant denies the allegation of paragraph 80 and Plaintiff's right to the relief requested therein.

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

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

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

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

84. Defendant denies the allegations of paragraph 84.

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

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

General Denial

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

Affirmative Defenses

1. The Amended Complaint fails to state a claim upon which relief may be granted.
2. GRMD lacks standing to bring its claims for breach of contract and declaratory relief against GR Terra based on the Second Amended and Restated Lease Purchase Agreement ("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, to seek a declaratory judgment regarding its validity and existence, or to seek damages for alleged breach of the LPA.
3. To the extent that GRMD was a third-party beneficiary to the LPA at the time that document was executed in 2012 (which Defendant disputes), GRMD waived and relinquished those rights through various agreements it entered subsequent to 2012, including, without limitation: the Exclusion Agreement dated April 21, 2010 by and between GRMD, Headwaters, and Granby Realty Holdings, Inc. ("GRH"); the Letter Agreement dated August 22, 2016 by and between GRMD, Headwaters, GRMD No. 8 and GRH, as amended in 2017 and 2018; the 2016 Second Amendment to the GRMD Service Plan and 2016 Amendment to the Service Plan for

Headwaters; the November 17, 2017 Termination of Intergovernmental Agreement by and between GRMD, GRMD Nos. 2-8 and Headwaters; and the Waiver and Release Agreement entered in April of 2018 by and between GRMD, GRMD No. 8, Headwaters and GRH (all of the foregoing agreements are more fully described in GR Terra's Counterclaims). Therefore, GRMD does not have standing to seek to enforce the LPA, to seek a declaratory judgment regarding its validity and existence, or to seek damages for alleged breach of the LPA.

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

5. GRMD's claims for breach of contract and for declaratory relief against GR Terra fail to state a claim for relief because the LPA was extinguished by the 2020 foreclosure. The LPA was recorded after and junior to the deed of trust foreclosed upon and there are no facts to prove that any subordination, non-disturbance and attornment agreement was ever tendered, executed, or recorded, therefore the LPA was extinguished pursuant to C.R.S. § 38-38-501 via foreclosure before GR Terra acquired title to the Leases Premises.

6. GRMD's claims for breach of contract and for declaratory relief against GR Terra fail because even if the LPA survived the foreclosure and Gray Jay succeeded to the rights of landlord thereunder, on November 11, 2020, Gray Jay notified Headwaters in accordance of the terms of the LPA that if the LPA was not terminated by way of foreclosure, Gray Jay was electing to terminate the LPA pursuant to section 10 thereof based upon Headwaters' failure to operate the Amenities for more than thirty days. If not previously terminated, the LPA was terminated by that notice.

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

8. GRMD is estopped and/or otherwise barred from bringing its breach of contract claim against GR Terra in that GRMD waived and relinquished any right to compel enforcement of the LPA through various agreements it entered subsequent to 2012, including, without limitation: the Exclusion Agreement dated April 21, 2010 by and between GRMD, Headwaters, and GRH; the Letter Agreement dated August 22, 2016 by and between GRMD, Headwaters, GRMD No. 8 and GRH, as amended in 2017 and 2018; the 2016 Second Amendment to the

GRMD Service Plan and 2016 Amendment to the Service Plan for Headwaters; the November 17, 2017 Termination of Intergovernmental Agreement by and between GRMD, GRMD Nos. 2-8 and Headwaters; and the Waiver and Release Agreement entered in April of 2018 by and between GRMD, GRMD No. 8, Headwaters and GRH (all of the foregoing agreements are more fully described in GR Terra's Counterclaims).

9. GRMD's breach of contract claim against GR Terra fails because Headwaters never tried to exercise the option to purchase the Leased Premises under the LPA, tendered the Purchase Price thereunder, or in any way demanded that GR Terra perform any acts as landlord under the LPA, necessary preconditions to any obligation on the part of GR Terra to accept the Purchase Price, transfer the Leased Premises, or otherwise act as landlord under the LPA. In addition, GRMD had not identified any particular obligation under the LPA that GR Terra failed to carry out, and GRMD cannot establish that Headwaters had the ability or funds 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 or funds to do so now if the LPA is deemed in existence.

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

11. GRMD's breach of contract claim against GR Terra and request for damages is barred by the terms of the LPA which limit remedies for the Landlord's default to equitable relief or termination of the LPA and preclude recoupment of rental payments and recovery of consequential damages.

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

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

14. GRMD's breach of contract claim and request for damages against GR Terra based on alleged "equity" from the payment of Amenity Fees as rent under the LPA fails because GRMD terminated and waived any rights it had to Amenity Fees collected under the 2005 or 2013 Amenity Fee Resolution and/or the 2005 or 2013 Amenity Fee Agreement and released any

claim to same in an agreement that Granby Realty Holdings LLC, Headwaters and GRMD entered on April 21, 2010, called the “Exclusion Agreement.” Under provision 3.2.1 of the Exclusion Agreement, where it “acknowledged and agreed” that the Amenity Fees paid under the 2005 Fee Resolution were payable solely to Headwaters and that GRMD had “no right, title or interest thereto” and agreed to fully cooperate to give effect to the intent and purpose of that Agreement.

15. GRMD’s breach of contract claim against GR Terra fails because to the extent the LPA is construed to impose an obligation on Headwaters to appropriate funds in any lease year for the payment of rent or for the payment of the purchase price for acquisition of the Amenities, the LPA is void under C.R.S. § 29-1-110, which prohibits local governments from spending or contracting to spend “any money, or incur any liability, or enter into any contract which, by its terms, involves the expenditures of money in excess of amounts appropriated” and under Colo. Const. Art. XI, § 6, which renders such obligations an illegal debt of a government body.

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

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

18. GRMD’s breach of contract claim and request for damages against GR Terra based on alleged “equity” from the payment of Amenity Fees as rent under the LPA is barred, waived and released under the terms of the agreement dated April of 2018 between GRH (GR Terra’s successor in interest”), Headwaters, GRMD, and Granby Ranch Metropolitan District No. 8 (“Waiver and Release Agreement”) and the GRMD’s broad release and waiver of liability granted therein.

19. GRMD’s claim for breach of contract against GR Terra is barred in whole or in part by one or more of the doctrines of laches, estoppel, waiver, acquiescence, or ratification.

20. GRMD’s contract claim is barred by the applicable statute of limitations.

21. GRMD’s claim for breach of contract against GR Terra is barred in whole or in part by its failure to mitigate its damages, if any.

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

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

24. GRMD's alleged damages for breach of contract, if any, are barred as speculative and are not caused by the alleged breach of conduct by GR Terra.

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

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

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

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

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

Jury Demand

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

Prayer for Relief

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

Counterclaims

GR Terra LLC (“GR Terra”) by and through the undersigned counsel, and for its Counterclaims against Granby Ranch Metropolitan District (“GRMD”) states as follows:

Introduction

1. These claims are filed in response to GRMD’s lawsuit attempting to enforce alleged contract rights against GR Terra, successor to the landlord under the lease purchase agreement (“LPA”) that gives rise to GRMD’s claims. GRMD asserts that it has standing to enforce these claims because it is a third-party beneficiary of the LPA due to its relationship and contractual agreements with Headwaters Metropolitan District (“Headwaters”) the former tenant under the LPA.

2. But GRMD’s claims are based upon a selective, inaccurate, and blatantly misleading recitation of the relevant facts. The relevant facts, documents and surrounding circumstances establish that the parties to the LPA never intended for GRMD to be a third-party beneficiary or if they did (which GR Terra disputes) GRMD relinquished any such rights through express termination of the agreements that GRMD relies upon for its claim of third-party beneficiary status and GRMD’s repeated acknowledgements and agreements that the prior relationship between the two Districts has been severed and terminated.

3. Moreover, if GRMD had the ability to enforce the LPA, the facts and governing law establish that the LPA was extinguished through the 2020 foreclosure or alternatively has terminated under one or more termination provisions therein. And even if not so terminated, any restrictive covenants in the LPA should be canceled by this Court based upon the changed circumstances since that document was executed.

4. GR Terra therefore respectfully requests that this Court declare the LPA extinguished and quiet title to the property in GR Terra free and clear of the LPA and any restrictive covenants therein.

Parties, Venue and Jurisdiction

5. Counterclaim Plaintiff GR Terra is a Missouri limited liability company that is registered to do business in the State of Colorado.

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

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

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

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

General Allegations

Creation of the Special Districts and Master IGA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Amenity Fee Agreement and Resolution

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

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

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

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

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

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

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

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

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

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

The Granby IGA

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

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

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

The Exclusion Agreement and First Amendment to 2006 Master IGA

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

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

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

41. Section 3.2.1 of the Exclusion Agreement further states:

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

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

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

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

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

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

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

The Lease Purchase Agreement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 28(c).

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

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

No Non-Disturbance and Attornment Agreement

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

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

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

The 2013 Fee Agreement

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

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

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

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

68. On August 22, 2016, GRMD, Headwaters, GRMD No. 8 and GRH entered into a Letter Agreement (“Letter Agreement”) to, whereby, among other things, GRH agreed to cancel or release any right to payment on GRMD bond issued in 2010 in the amount of \$11.1 million held solely by GRH, GRH assumed certain obligations with respect to refunding of GRMD’s 2006 bonds, and the parties agreed to ***“eliminate any obligations between the parties other than GRMD’s funding of road operations, maintenance and minor repairs;”*** and ***“terminate any financial obligations other than road operation, maintenance and minor repairs between GRMD and Headwaters.”*** A copy of the Letter Agreement is attached hereto as **Exhibit G.** (emphasis added).

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

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

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

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

§ II(B) (emphasis added).

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

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

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

§ III(1) (emphasis added).

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

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

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

77. The Master IGA Termination further provided that Headwaters, GRMD, and Granby Ranch Metropolitan Districts Nos. 2-8 have “fully satisfied their obligations under the Master IGAs and are released from any further obligations thereunder” §4, and stated that:

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

§ 5.

The Second Granby IGA.

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

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

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

81. The parties stipulated that the Second Granby IGA “constitutes the entire agreement among the Parties and supersedes all prior written or oral agreements, negotiations, or representations and understandings of the Parties with respect to the subject matter contained herein.”

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

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

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

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

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

2018 Waiver and Release Agreement

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

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

89. Pursuant to the Waiver and Release Agreement, the parties broadly released each other and their successor and assigns “from an against any and all claims, demands, obligations, duties, liabilities, damages, costs, and remedies therefor of every kind, description, character or nature whatsoever now or in the future, whether known or unknown, raised or which could have been raised, which may otherwise exist or which may arise in relation to ...the Master IGA, ... or any other matter related to the formation, administration, and operation of the District (the “Claims”) existing as of the Release Date. § 1.

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

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

Granby Ranch Foreclosure.

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

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

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

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

96. In the spring of 2020, Granby Prentice, then holder of the Deed of Trust, initiated nonjudicial foreclosure proceedings pursuant to C.R.S. § 38-38-101, *et seq.* Following issuance

of an order authorizing sale and the August 14, 2020 sale by the Public Trustee, Granby Prentice submitted the highest bid and was issued a Certificate of Purchase for the property that included the Leased Premises. *Id.* Granby Prentice then assigned the Certificate of Purchase to GP Granby Holdings LLC, now known as Gray Jay Ventures, LLC (“Gray Jay”).

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

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

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

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

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

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

Headwaters Never Exercised Its Option to Purchase

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

104. GRMD never tried to acquire the Leased Premises from GR Terra and has never tried to tender the Purchase Price specified therein to GR Terra.

Plaintiff's Claims In the Lawsuit

105. In direct contravention and derogation of the relationship and agreements between Headwaters and GRMD, as modified and terminated over the years, GRMD filed this lawsuit in February 2021, as amended in May of 2021, and again in July of 2021, asserting, among other things, that GR Terra has breached the LPA and seeking damages for same and asking the Court to declare that the LPA continues to encumber GR Terra's property.

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

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

108. In response to GRMD's claims, Headwaters has been required to retain legal counsel and to expend significant resources and attorneys' fees to defend these unfounded and frivolous claims, including those now dismissed by this Court.

Count I

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

109. The allegations of paragraphs 1 through 108 of these Counterclaims are incorporated by this reference as if fully set forth herein.

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

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

112. Headwaters, the tenant under the LPA, was provided all required notices of the non-judicial foreclosure sale, and Headwaters did not exercise its statutory cure or redemption rights. Thus, Gray Jay, as the party holding the Certificate of Purchase upon expiration of the

redemption periods, took title to the property formerly subject to the Leased Premises free and clear of the LPA and the purchase option therein.

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

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

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

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

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

118. GR Terra has no adequate remedy at law.

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

120. WHEREFORE, GR Terra respectfully requests that this Court enter judgment in its favor and against GRMD as follows:

- A. Declaring that the LPA was terminated in it entirely through foreclosure of the Leased Premises, or alternatively, through Gray Jay's notice of termination, or

alternatively, due to Headwaters' failure to appropriate funds for rental payments for the 2021 calendar year or the ensuing calendar years.

- B. Awarding reasonable attorneys' fees and costs as provided in the parties' agreement and by law;
- C. Granting such other and further relief as the Court may deem just.

Count II

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

121. The allegations of paragraphs 1 through 120 of these Counterclaims are incorporated by this reference as if fully set forth herein.

122. In the alternative to the relief sought above, GR Terra asserts that if the LPA and the option to purchase therein constitute covenants running with the land, then this Court should exercise its equitable power to declare that those covenants are removed and canceled from the property.

123. This court, sitting in equity has the power and authority to remove or cancel restrictive covenants as clouds on title; such power may be exercised when, as here, it is shown that the restrictive covenants no longer serve the purpose for which they were imposed and are no longer beneficial to those claiming under them.

124. As set forth above, even if GRMD could claim that the LPA created restrictive covenants to its benefit based upon the prior relationship and agreements between GRMD and Headwaters, those parties expressly terminated and severed that relationship, agreed that they would operate independently of one another, and GRMD granted Headwaters broad waivers and releases of any claims it might have based upon their prior relationships, including any claim that could require Headwaters to purchase the Leased Premises on its behalf.

125. For the reasons set forth herein any such restrictions could no longer serve any benefit to GRMD. Headwaters itself is not asserting any restrictive covenants in its favor under the LPA or seeking any rights to acquire the Leased Premises. There is no reason under these circumstances for GRMD's continued assertion of restrictive covenants in its favor, particularly when GRMD is not even a party to the LPA.

126. Moreover, any such restrictive covenants could serve no benefit to GRMD in that Headwaters is not obligated, if it ever was, to acquire the Leased Premises at all, much less to purchase on GRMD's behalf, and Headwaters has no ability or funds to acquire the Leased Premises under the LPA or otherwise.

127. GR Terra has no adequate remedy at law.

128. Accordingly, GR Terra seeks a declaration from this Court that, to the extent the LPA created restrictive covenants, those covenants are terminated, removed and canceled from the property.

129. WHEREFORE, GR Terra respectfully requests that this Court enter judgment in its favor and against GRMD as follows:

- A. Declaring that the LPA and any restrictive covenants therein are terminated, removed and canceled from the property.
- B. Awarding reasonable attorneys' fees and costs as provided in the parties' agreement and by law;
- C. Granting such other and further relief as the Court may deem just.

Count III
(Quiet Title Action –C.R.C.P. § 105(a)).

130. The allegations of paragraphs 1 through 129 of these Counterclaims are incorporated by this reference as if fully set forth herein.

131. GR Terra is the fee owner of the property that contains the land and improvements designated as the Leased Premises under the LPA, such Leased Premises are legally described in the LPA, attached as **Exhibit 6** to the Amended Complaint. GR Terra is in possession of the Leased Premises.

132. GRMD is asserting that the LPA continues to encumber GR Terra's property and asserts that it has rights in and to the property described as the Leased Premises.

133. GR Terra asserts that the LPA was terminated through foreclosure of the Leased Premises, or alternatively, through Gray Jay's notice of termination, or alternatively, due to Headwaters' failure to appropriate funds for rental payments for the 2021 calendar year or the or for the ensuing years.

134. In addition, GR Terra is asserting that to the extent the LPA was not terminated, any restrictive covenants in favor of GRMD should be removed based upon changed circumstances.

135. Pursuant to C.R.C.P. 105, et. seq., GR Terra is filing this action to obtain a complete adjudication of the rights of all parties with respect to the Leased Premises and damages caused by GRMD's unlawful assertion of rights in the Leased Premises.

136. WHEREFORE, GR Terra respectfully requests that this Court enter judgment in its favor and against GRMD and quieting title of the property that formerly comprised the Leased Premises in GR Terra free and clear of the LPA as follows:

- A. Declaring that the LPA was terminated through foreclosure of the Leased Premises, or alternatively, through Gray Jay’s notice of termination, or alternatively, due to Headwaters’ failure to appropriate funds for rental payments for the 2021 calendar year or the ensuing years.
- B. Declaring that the LPA and any restrictive covenants therein are terminated, removed and canceled from the property.
- C. Declaring that title to the property is quieted in GR Terra free and clear of the LPA and any restrictive covenants therein, including any covenants in favor of GRMD, and declaring that GRMD has no rights to or interests in the property formerly comprising the Leased Premises for the reasons set forth above.
- D. Ordering GRMD to pay damages to GR Terra incurred by reason of GRMD’s wrongful assertions of rights in and to the property that formerly comprised the Leased Premises;
- E. Ordering GRMD to pay GR Terra’s reasonable attorneys’ fees and costs as provided in the parties’ agreement and by law;
- F. Grant such other and further relief as the Court may deem just.

Count IV

(Breach of GRMD’s Service Plan Or Improper Modification of Same)

137. The allegations of paragraphs 1 through 136 of these Counterclaims are incorporated by this reference as if fully set forth herein.

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

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

140. GRMD’s assertions in this lawsuit and claims against Headwaters are in breach of the terms of its Service Agreement, causing damages to GR Terra as the current owner of the Amenities and as a property owner and taxpayer of GRMD.

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

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

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

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

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

146. GR Terra as the current owner of the Amenities and a property owner and taxpayer in GRMD, is an interested party with the right to bring claims for breach of the Service Plan and injunctive relief.

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

- A. For all damages caused by GRMD’s breach of its Service Plan, in amounts to be proven at trial.
- B. Reasonable attorneys’ fees and costs as provided in the parties’ agreement and by law;
- C. Pre- and post-judgment interest as provided by law;
- D. Or, in the alternative, GR Terra requests that this Court permanently enjoin GRMD’s material departure from its Service Plan without the requisite approval required by C.R.S. § 32-1-07(2)(a).
- E. Such other and further relief as the Court may deem just.

Count V
(Breach of the Waiver and Release Agreement)

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

149. In the 2016 Letter Agreement, as amended, GRH agreed (among other things) to cancel or otherwise release any right to payment on GRMD's bonds issued in 2010 in the amount of \$11.1 million dollars held solely by GRH, in conjunction with and to facilitate GRMD's refunding of its 2006 Bonds.

150. In consideration for the promises and agreements in the Letter Agreement and the covenants and agreements in the 2018 Waiver and Release Agreement, GRH, Headwaters, GRMD, and GRMD No. 8, granted one another and "their respective successors" broad releases "from an against any and all claims, demands, obligations, duties, liabilities, damages, costs, and remedies therefor of every kind, description, character or nature whatsoever now or in the future, whether known or unknown, raised or which could have been raised, which may otherwise exist or which may arise in relation tothe Master IGA, ... or any other matter related to the formation, administration, and operation of the District (the "Claims") existing as of the Release Date." Ex. J, § 1.

151. GR Terra is the successor in interest to GRH and the releases granted in the Waiver and Release Agreement therefore inure to and are enforceable by GR Terra.

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

153. GRMD's claim asserting that GR Terra has breached the LPA by failing to convey the Amenities to Headwaters or otherwise assume the role of landlord under the LPA with Headwaters relates to the administration and operation of the Districts.

154. In addition, GRMD's claim that it is a third-party beneficiary with the right to enforce the LPA against GR Terra and to seek damages from GR Terra for breach is based upon alleged rights under the Master IGA, Service Plans, and other agreements that relate to the administration and operation of the Districts. GRMD's assertion of those third-party beneficiary rights and attempt to enforce same against GR Terra also constitutes a breach of the Waiver and Release Agreement.

155. GRMD's claims are unfounded, frivolous and in bad faith in light of GRMD's express termination of the Waiver and Release Agreement and its express waiver of these claims.

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

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

- A. For all damages caused by GRMD's breach of the Waiver and Release Agreement, including, without limitation, the costs and attorneys' fees incurred by GR Terra in defending the claims in this litigation, in amounts to be proven at trial.
- B. Reasonable attorneys' fees and costs as provided in the parties' agreement and by law;
- C. Pre- and post-judgment interest as provided by law; and
- D. Such other and further relief as the Court may deem just.

Dated this 3rd day of November, 2022.

HUSCH BLACKWELL LLP

s/ Jamie H. Steiner _____

Jamie H. Steiner, #49034

JoAnn T. Sandifer (Admitted Pro Hac Vice)

*Attorneys for Headwaters Metropolitan
District and GR Terra LLC*

CERTIFICATE OF SERVICE

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

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