

DISTRICT COURT, GRAND COUNTY, COLORADO Court Address: Grand County Combined Courts 307 Moffat Ave Hot Sulphur Springs, CO 80451 Telephone No.: (970) 725-3357	DATE FILED: November 25, 2022 9:59 PM FILING ID: 118562E6CA787 CASE NUMBER: 2021CV30008
Plaintiff: GRANBY RANCH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado, v. Defendants: HEADWATERS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado; GRAY JAY VENTURES, LLC.; REDWOOD CAPITAL FINANCE CO., LLC, GRANBY PRENTICE, LLC; and GR TERRA, LLC.	<p style="text-align: center;">▲COURT USE ONLY▲</p> Case No.: 2021CV030008 Div.: Rm.:
ATTORNEYS FOR PLAINTIFFS: David K. TeSelle, Reg. No. 29648 Brian K. Matise, Reg. No. 33755 Erica N. Garcia, Reg. No. 56450 Burg Simpson Eldredge Hersh & Jardine, P.C. 40 Inverness Drive East Englewood, Colorado 80112 Telephone: (303) 792-5595 Facsimile: (303) 708-0527 E-Mail: dteselle@burgsimpson.com E-Mail: bmatise@burgsimpson.com E-Mail: egarcia@burgsimpson.com	
PLAINTIFF GRANBY RANCH METROPOLITAN DISTRICT'S ANSWER TO GR TERRA'S COUNTERCLAIMS	

Plaintiff Granby Ranch Metropolitan District (“GRMD”) through its undersigned counsel, submits the following answer to GR Terra’s Counterclaims, and in support thereof states as follows:

REPLY TO INTRODUCTION

1. GRMD has standing to enforce claims under the Second Amended and Restated Lease Purchase Agreement (“LPA”) because it is a third-party beneficiary of the LPA. In its

January 28, 2022 Order (“Order”) this Court held that GRMD is a third-party beneficiary to the LPA. This was a final order regarding an issue of subject-matter jurisdiction and constitutes the law of case on the question of GRMD’s third-party beneficiary status.

2. Plaintiff denies.

3. Plaintiff denies. The LPA is a covenant running with the land that is not extinguished through foreclosure. In the Order, this court found that the Plaintiff properly stated a claim that the LPA is a covenant running with the land because the Leased Premises touch and concern the land. The intention of the parties, Headwaters and GRMD, to make the LPA a covenant running with the land is expressly stated in the agreement.

4. Plaintiff denies.

REPLY TO PARTIES, VENUE AND JURISDICTION

5. Plaintiff admits.

6. Plaintiff admits.

7. Plaintiff admits.

8. Plaintiff admits.

9. Plaintiff admits.

REPLY TO GENERAL ALLEGATIONS

Creation of the Special Districts and Master IGA

10. Plaintiff admits the allegations in paragraph 10, with the exception of whether SolVista Corp. had transferred “all” of the property it then owned and included within the Service Areas of the Service Plans to Granby Realty Holdings, LLC (“GRH”). Plaintiff is without sufficient knowledge or information to form a belief as to whether “all” of the property was transferred and hence that allegation is denied. Plaintiff admits that the areas comprising the golf

course and ski resort were transferred to GRH and that those areas were within the Service Areas of the Service Plans.

11. Plaintiff admits.

12. Plaintiff admits.

13. Plaintiff admits.

14. The allegations of paragraph 14 are characterizations of the referenced Headwaters and GRMD Service Plans. Those documents speak for themselves, and Plaintiff denies any characterization of the Service Plans inconsistent with the terms thereof.

15. The allegations of paragraph 15 contain accurately quoted but partial provisions and characterizations of the referenced Headwaters and GRMD Service Plans. Those documents speak for themselves, and Plaintiff denies any characterization of the Service Plan inconsistent with the terms thereof. Upon information and belief, Plaintiff admits that Headwaters has not been consolidated or dissolved.

16. Plaintiff is without sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 16 and accordingly the same are denied in full.

17. The allegations of paragraph 17 are characterizations of the referenced Headwaters and GRMD Service Plans. Those documents speak for themselves, and Plaintiff denies any characterization of the Service Plans inconsistent with the terms thereof.

18. The allegations of paragraph 18 are characterizations of the referenced 2003 Master IGA. That document speaks for itself, and Plaintiff denies any characterization of the 2003 Master IGA inconsistent with the terms thereof.

19. The allegations of paragraph 19 are characterizations of the referenced 2003 Master IGA. That document speaks for itself, and Plaintiff denies any characterization of the 2003 Master IGA inconsistent with the terms thereof.

20. Plaintiff admits that the ski and golf facilities at Granby Ranch were originally constructed prior to the creation of GRMD and Headwaters with private funds. Plaintiff affirmatively states that public funds have been used to support the ski and golf facilities, and public funds have been provided to the private entities that owned, improved, and/or maintained said facilities, in exchange for the option to purchase and other conditions of the LPA. The balance of the allegations in paragraph 20 are denied. In particular, Plaintiff affirmatively states that Headwaters had an obligation pursuant to the covenant of good faith and fair dealing that is part of every contract in Colorado and its obligations as a political subdivision of the state to preserve public property and contract rights in the LPA.

21. The allegations of paragraph 21 are characterizations of the referenced 2006 Master IGA. That document speaks for itself, and Plaintiff denies any characterization of the 2006 Master IGA inconsistent with the terms thereof.

22. The allegations of paragraph 22 are characterizations of the referenced 2006 Master IGA. That document speaks for itself, and Plaintiff denies any characterization of the 2006 Master IGA inconsistent with the terms thereof.

23. Plaintiff admits that Granby Ranch Metropolitan Districts Nos. 2-8 are separate legal entities from GRMD. The balance of the allegations in paragraph 23 are denied.

24. Plaintiff admits that the parties entered into the Master IGA on or about September 17, 2008. The allegations of paragraph 24 are characterizations of the referenced 2008 Master IGA.

That document speaks for itself, and Plaintiff denies any characterization of the 2008 Master IGA inconsistent with the terms thereof.

25. The allegations of paragraph 25 are characterizations of the referenced 2006 and 2008 Master IGA. That document speaks for itself, and Plaintiff denies any characterization of the 2006 and 2008 Master IGA inconsistent with the terms thereof.

**REPLY TO ALLEGATIONS REGARDING THE AMENITY FEE
AGREEMENT AND RESOLUTION**

26. The allegations of paragraph 26 are characterizations of the referenced Joint Resolution to Establish an Amenity Fee (“Joint Resolution”). That document speaks for itself, and Plaintiff denies any characterization of the Joint Resolution inconsistent with the terms thereof. Paragraph 25 also contains an incomplete paraphrase of Section 6 of the 2005 Amenity Fee Resolution, which provides that “Until such time as the purchase price for the Amenities to be purchased by Headwaters pursuant to the Lease Purchase Agreement between the Developer and Headwaters has been paid in full (and all debt used to finance or refinance such debt has been paid in full),” the revenues generated by the Amenities Fee would be used solely for the purpose of financing the acquisition, leasing, construction, and replacement of Amenities, including the issuance of bonds.

27. The allegations of paragraph 27 are characterizations of the referenced Joint Resolution. That document speaks for itself, and Plaintiff denies any characterization of the Joint Resolution inconsistent with the terms thereof.

28. The allegations of paragraph 28 are characterizations of the referenced Joint Resolution. That document speaks for itself, and Plaintiff denies any characterization of the Joint Resolution inconsistent with the terms thereof.

29. Plaintiff denies. Exhibit B is not an Amenity Fee Agreement, but rather a Capital Facilities Fee Agreement, dated June 1, 2005. The Amenity Fee and the Capital Facilities Fee are two different impositions and used for different purposes.

30. Plaintiff denies.

31. The allegations of paragraph 31 are characterizations of the referenced Joint Resolution. That document speaks for itself, and Plaintiff denies any characterization of the Joint Resolution inconsistent with the terms thereof.

32. Plaintiff denies.

33. Plaintiff denies. Recital C of Exhibit B attached to the Answer and Counterclaims does not contain the quoted language.

34. Plaintiff denies. Exhibit B does not contain the referenced language regarding third-party beneficiaries. GRMD admits that it is not a party to Exhibit B, although it denies the allegations to the extent that Headwaters is suggesting that GRMD was not a third-party beneficiary to any particular document.

35. Plaintiff denies to the extent that the covenant of good faith and fair dealing contained in said agreements required Headwaters, as a public entity, to preserve the public's contract rights.

REPLY TO ALLEGATIONS REGARDING THE GRANBY IGA

36. Plaintiff admits.

37. Plaintiff admits.

38. Plaintiff admits that the quoted language appears in the Granby IGA. That language may only be interpreted in light of the entire Granby IGA and related documents.

REPLY TO ALLEGATIONS REGARDING THE EXCLUSION AGREEMENT AND FIRST AMENDMENT TO 2006 MASTER IGA

39. Plaintiff admits that GRH, GRMD, and Headwaters entered into the Exclusion Agreement on April 21, 2010. That document speaks for itself, and Plaintiff denies any characterization of the document inconsistent with the terms thereof.

40. The allegations of paragraph 40 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the document inconsistent with the terms thereof.

41. Plaintiff admits that section 3.2.1 is accurately quoted in paragraph 41. The Exclusion Agreement speaks for itself, and Plaintiff denies any characterization of the document inconsistent with the terms thereof.

42. The allegations of paragraph 41 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the document inconsistent with the terms thereof. Plaintiff also denies that the “repudiation” of the 2008 Master IGA is pertinent in any way to this Lawsuit.

43. Plaintiff admits that the Exclusion Agreement contains an appropriations clause. The allegations of paragraph 43 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the document inconsistent with the terms thereof. Plaintiff also affirmatively pleads that the appropriations clause in the Exclusion Agreement does not control the terms of the Second Amended and Restated Lease Purchase Agreement (“LPA”) at issue in this Lawsuit, which contains an appropriations clause that is materially different from the one in the Exclusion Agreement.

44. The allegations of paragraph 44 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the

document inconsistent with the terms thereof. Plaintiff also is without knowledge or information sufficient to form a belief as to whether the events anticipated in paragraph 4.3.2 ever took place.

45. The allegations of paragraph 45 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the document inconsistent with the terms thereof. Plaintiff also affirmatively pleads that the quotation from section 9.6 of the Exclusion Agreement is incomplete and not a precise paraphrase.

46. Plaintiff admits that GRMD and Headwaters entered into the First Amendment of the 2006 Master IGA. The remaining allegations of paragraph 46 are characterizations of the referenced First Amendment of the 2006 Master IGA. That document speaks for itself, and Plaintiff denies any characterization of the document inconsistent with the terms thereof.

REPLY TO ALLEGATIONS REGARDING THE LEASE PURCHASE AGREEMENT

47. Plaintiff admits that GRH and Headwaters entered into the LPA. The remaining allegations of paragraph 47 are characterizations of the referenced LPA. That document speaks for itself, and Plaintiff denies any characterization of the LPA inconsistent with the terms thereof. Plaintiff admits that it was not a stated party to the LPA, although pursuant to this Court's order of January 28, 2022, it has been determined to be a third-party beneficiary of the LPA.

48. Plaintiff admits, although other recreational facilities and areas are also part of the Amenities.

49. Plaintiff admits that the initial term of the LPA was to be one year, which would automatically renew for an additional 49 one-year terms. Plaintiff denies that this renewal would take place "unless Headwaters' board of directors chose during any lease year not to appropriate rent in its budget for the ensuing lease year." Instead, the renewal would continue unless

Headwaters elected to stop paying rent to the Landlord pursuant to the detailed procedures set forth in section 3.c of the LPA. Plaintiff denies the remainder of the allegations in paragraph 49.

50. Plaintiff admits.

51. Plaintiff denies. Pursuant to paragraph 3.a of the LPA, “Tenant shall pay as rent for the Original Term and all of the Renewal Terms of this Lease, upon receipt, an amount equal to all Amenity Fees Collected by Tenant (the “Rental Payments”).

52. Plaintiff denies.

53. Plaintiff lacks sufficient knowledge or information to form a belief as to whether Headwaters retained any Amenity Fees to fund operation of the Amenities or other District expenses, and section 3.a of the LPA, cited by the Defendants, says nothing about this issue. Accordingly, the allegation is denied. The remaining allegations in paragraph 53 are specifically denied.

54. Plaintiff admits that Rental Payments made under the LPA were subject to the terms of the LPA. Plaintiff lacks sufficient knowledge or information to form a belief as to the remaining allegations of paragraph 54 and therefore denies same.

55. The allegations of paragraph 55 are characterizations of the referenced LPA. That document speaks for itself, and Plaintiff denies any characterization of the document inconsistent with the terms thereof. Plaintiff affirmatively pleads that none of the events giving rise to termination as set forth in section 2 of the LPA have taken place.

56. Plaintiff admits that the quoted language is an incomplete quote from section 10 of the LPA.

57. Plaintiff denies.

58. Plaintiff admits the first sentence but denies the second sentence.

59. Plaintiff denies. The language regarding integration appears in section 28(e) of the LPA, not 28(c) as cited by Defendant.

60. The allegations of paragraph 60 are characterizations of the referenced LPA. That document speaks for itself, and Plaintiff denies any characterization of the LPA inconsistent with the terms thereof.

61. Plaintiff admits that the LPA was recorded in the Grand County real estate records in January 2020. Plaintiff denies that the LPA was not recorded in the Grand County Real Estate Records until January 2020. The Fifth Addendum to Amended and Restated Lease Purchase Agreement was recorded on December 10, 2009 at Reception #: 2009011370.

**REPLY TO ALLEGATIONS REGARDING THE NONDISTURBANCE
AND ATTORNMENT AGREEMENT**

62. The allegations of paragraph 62 are characterizations of the referenced LPA. That document speaks for itself, and Plaintiff denies any characterization of the LPA inconsistent with the terms thereof.

63. Plaintiff lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 63 and therefore denies same.

64. Plaintiff lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 64 and therefore denies same.

REPLY TO ALLEGATIONS REGARDING THE 2013 FEE AGREEMENT

65. Plaintiff admits that GRH and Headwaters entered into an Amended and Restated Amenity Fee Agreement. The remaining allegations of paragraph 65 are characterizations of the referenced Amenity Fee Agreement. That document speaks for itself, and Plaintiff denies any characterization of the Amenity Fee Agreement inconsistent with the terms thereof.

66. The allegations of paragraph 66 are characterizations of the referenced Amenity Fee Agreement. That document speaks for itself, and Plaintiff denies any characterization of the Amenity Fee Agreement inconsistent with the terms thereof.

67. Plaintiff admits that the 2013 Fee Resolution was adopted by Headwaters, GRMD, and GRMD Nos. 2 and 8. Plaintiff lacks sufficient knowledge or information to form a belief as to the remaining allegations of paragraph 67 and therefore denies the same.

**REPLY TO ALLEGATIONS REGARDING THE AMENDMENT OF THE
SERVICE PLANS AND TERMINATION OF THE MASTER IGA**

68. Plaintiff admits that GRMD, Headwaters, GRMD No. 8 and GRH entered into a Letter Agreement on August 22, 2016. The remaining allegations of paragraph 68 are characterizations of the referenced Letter Agreement. That document speaks for itself, and Plaintiff denies any characterization of the Letter Agreement inconsistent with the terms thereof.

69. Plaintiff admits that the 2016 Letter Agreement was modified in 2017 and 2018. The remaining allegations of paragraph 69 are characterizations of the referenced modifications. That documents speak for themselves, and Plaintiff denies any characterization of the Letter Agreements inconsistent with the terms thereof.

70. Plaintiff admits that a second amendment to the GRMD Service Plan was approved by the Town on October 11, 2016. The remaining allegations of paragraph 70 are characterizations of the referenced Service Plan amendment. That document speaks for itself, and Plaintiff denies any characterization of the Service Plan amendment inconsistent with the terms thereof.

71. Plaintiff admits that paragraph 71 sets forth a partial quotation from the 2016 Amendment. The referenced Service Plan amendment speaks for itself, and Plaintiff denies any characterization of the Service Plan amendment inconsistent with the terms thereof.

72. Plaintiff admits that amendment to the GRMD Service Plan was approved by the Town Board of Trustees on November 8, 2016. The remaining allegations in paragraph 72 are denied.

73. The allegations of paragraph 73 are characterizations of the referenced Service Plan amendment. That document speaks for itself, and Plaintiff denies any characterization of the Service Plan amendment inconsistent with the terms thereof, including the bolding of some of the quoted language by Defendant.

74. Plaintiff admits.

75. The allegations of paragraph 75 are characterizations of the referenced Master IGA Termination. That document speaks for itself, and Plaintiff denies any characterization of the Master IGA Termination inconsistent with the terms thereof.

76. The allegations of paragraph 76 are characterizations of the referenced Master IGA Termination. That document speaks for itself, and Plaintiff denies any characterization of the Master IGA Termination inconsistent with the terms thereof. Plaintiff also pleads that the citation to the Master IGA Termination in paragraph 76 is incomplete; Defendant quotes from both Recitals G and H of the document.

77. The allegations of paragraph 77 are characterizations of the referenced Master IGA Termination. That document speaks for itself, and Plaintiff denies any characterization of the Master IGA Termination inconsistent with the terms thereof.

REPLY TO ALLEGATIONS REGARDING SECOND GRANBY IGA

78. Plaintiff admits.

79. Plaintiff admits.

80. The allegations of paragraph 80 are characterizations of the referenced Second Granby IGA. That document speaks for itself, and Plaintiff denies any characterization of the Second Granby IGA inconsistent with the terms thereof. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averment that “No Exhibit A was attached to or included in the executed version of the Second Granby IGA” and accordingly that averment is denied.

81. Plaintiff admits that Defendant has accurately quoted paragraph 16 of the Second Granby IGA.

82. Plaintiff denies that the Second Granby IGA “acknowledges the potential authority of Headwaters, GRMD, and the Granby Ranch Metropolitan Districts Nos. 2-8 to acquire the Amenities.” Instead, the Second Granby IGA expressly states that “In addition to the types of park and recreation services and facilities referenced or reflected in the Service Plans, including the exhibits thereto, the Districts (a defined term including Headwaters, GRMD, and the Granby Ranch Metropolitan Districts Nos. 2-8) will be authorized to acquire, construct, own, operation (sic) and maintain the ski area and lifts, ski lodge, golf courses and appurtenant clubhouses and maintenance facilities, fishing or ‘river park’ facilities and programs, and parks, trails, and open space for various recreational purposes as more fully described on Exhibit A, attached hereto and incorporated herein by reference, collectively called the ‘Amenities.’ The remaining allegations of paragraph 82 are characterizations of the referenced Second Granby IGA. That document speaks for itself, and Plaintiff denies any characterization of the Second Granby IGA inconsistent with the terms thereof.

83. The allegations of paragraph 83 are characterizations of the referenced Second Granby IGA. That document speaks for itself, and Plaintiff denies any characterization of the Second Granby IGA inconsistent with the terms thereof.

84. Plaintiff admits.

85. Plaintiff admits.

86. The allegations of paragraph 86 are characterizations of the referenced Second Granby IGA. That document speaks for itself, and Plaintiff denies any characterization of the Second Granby IGA inconsistent with the terms thereof. Plaintiff affirmatively states that the covenant of good faith and fair dealing that is part of every contract in Colorado, and Headwaters duties as a political subdivision of the state of Colorado, require that it act in a manner to preserve public property and contract rights, including preserving the right to acquire the property.

**REPLY TO ALLEGATIONS REGARDING THE 2018
WAIVER AND RELEASE AGREEMENT**

87. Plaintiff admits.

88. Plaintiff admits.

89. The allegations of paragraph 89 are characterizations of the referenced 2018 Waiver and Release Agreement. That document speaks for itself, and Plaintiff denies any characterization of the 2018 Waiver and Release Agreement inconsistent with the terms thereof.

90. Plaintiff admits.

91. Plaintiff lacks sufficient knowledge or information to form a belief as to the averments in paragraph 91 and therefore denies same.

REPLY TO ALLEGATIONS REGARDING THE GRANBY RANCH FORECLOSURE

92. Plaintiff denies.

93. Plaintiff admits.

94. Plaintiff admits.

95. Plaintiff admits.

96. Based upon its current knowledge and understanding, Plaintiff admits.

97. Based upon its current knowledge and understanding, Plaintiff admits.

98. Plaintiff denies.

99. Plaintiff denies.

100. Plaintiff admits that Exhibit L is a letter authored by Christopher L. Richardson.

Plaintiff denies that the letter had any legal force or effect, and denies the factual recitation set forth in the letter.

101. Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the averments set forth in paragraph 101 and therefore denies same.

102. Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the averments set forth in paragraph 102 and therefore denies same.

REPLY TO ALLEGATIONS REGARDING HEADWATERS OPTION TO PURCHASE

103. Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the averments set forth in paragraph 103 and therefore denies same.

104. Plaintiff admits that it has not yet tendered the purchase price under the option to purchase because the time to exercise the option has not yet run, but Plaintiff has expressly stated an interest in acquiring the Leased Premises from GR Terra. Plaintiff denies any remaining allegations.

**REPLY TO ALLEGATIONS REGARDING PLAINTIFF'S
CLAIMS AGAINST HEADWATERS**

105. Plaintiff admits that it filed its lawsuit in February 2021, as amended in May of 2021, and again in July of 2021, asserting among other things, that GR Terra breached the LPA

seeking damages for same and asking the Court to declare the LPA continues to encumber the Leased Premises. The remaining allegations in paragraph 105 are denied.

106. Plaintiff states that it asserts it is a third-party beneficiary to the LPA and it is entitled to recover approximately \$6 million in equity in the Leased Premises. Plaintiff denies the remainder of the allegations in paragraph 106.

107. Plaintiff admits.

108. Plaintiff denies.

COUNT I

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

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

110. Plaintiff denies.

111. Plaintiff pleads that paragraph 111 states a legal conclusion to which no response is required; to the extent a response is required, Plaintiff denies same.

112. Plaintiff denies.

113. Plaintiff denies.

114. Plaintiff denies.

115. Plaintiff denies.

116. Plaintiff denies.

117. Plaintiff pleads that paragraph 117 states a legal conclusion to which no response is required; to the extent a response is required, Plaintiff denies same.

118. Plaintiff pleads that paragraph 118 states a legal conclusion to which no response is required; to the extent a response is required, Plaintiff denies same.

119. Plaintiff pleads that paragraph 119 states a legal conclusion to which no response is required; to the extent a response is required, Plaintiff denies same.

120. Plaintiff denies the allegation of paragraph 120 and Defendant's right to the relief requested therein.

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

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

122. Plaintiff pleads that paragraph 122 states a legal conclusion to which no response is required; to the extent a response is required, Plaintiff denies same.

123. Plaintiff pleads that paragraph 123 states a legal conclusion to which no response is required; to the extent a response is required, Plaintiff denies same.

124. Plaintiff denies that the waivers and releases it granted to Headwaters released any claims that could require Headwaters to purchase the Leased Premises on its behalf.

125. Plaintiff denies.

126. Plaintiff lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 126 and therefore denies same.

127. Plaintiff pleads that paragraph 127 states a legal conclusion to which no response is required; to the extent a response is required, Plaintiff denies same.

128. Plaintiff pleads that paragraph 128 states a legal conclusion to which no response is required; to the extent a response is required, Plaintiff denies same.

129. Plaintiff denies the allegation of paragraph 129 and Defendant's right to the relief requested therein.

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

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

131. Plaintiff states that paragraph 131 states a legal conclusion to which no response is required. To the extent that paragraph 131 sets forth factual allegations, Plaintiff is without knowledge or information sufficient to form a belief as to the truth of those averments, and accordingly they are denied.

132. Plaintiff admits that GR Terra asserts the legal theories described in paragraph 132 but denies that those theories have substantial legal merit.

133. Plaintiff admits that GR Terra asserts the legal theories described in paragraph 133 but denies that those theories have substantial legal merit.

134. Plaintiff admits that GR Terra asserts the legal theories described in paragraph 134 but denies that those theories have substantial legal merit.

135. Plaintiff states that paragraph 135 states a legal conclusion to which no response is required; to the extent a response is required, Plaintiff denies.

136. Plaintiff denies the allegations in paragraph 136 and Defendant's right to the relief requested therein.

COUNT IV
(Breach of GRMD's Service Plan Or Improper Modification of Same)

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

138. The allegations of paragraph 138 are characterizations of the referenced 2016 Amendment to the GRMD Service Plan. That document speaks for itself, and Plaintiff denies any

characterization of the 2016 Amendment to the GRMD Service Plan inconsistent with the terms thereof.

139. Plaintiff denies.

140. Plaintiff denies.

141. Plaintiff denies.

142. Plaintiff denies.

143. Plaintiff lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 143 and therefore denies same.

144. Plaintiff denies.

145. Plaintiff admits this statutory provision exists.

146. Plaintiff denies.

147. Plaintiff denies the allegations in paragraph 147 and Defendant's right to the relief requested therein.

COUNT V

(Breach of the Waiver and Release Agreement)

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

149. The allegations of paragraph 149 are characterizations of the referenced 2016 Letter Agreement. That document speaks for itself, and Plaintiff denies any characterization of the referenced 2016 Letter Agreement inconsistent with the terms thereof.

150. Plaintiff admits that paragraph 150 contains certain partial excerpts from the Letter Agreement but denies that paragraph 150 accurately sets forth the applicable terms of said agreement.

151. Plaintiff lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 151 and therefore denies the same.

152. Plaintiff denies that paragraph 152 accurately sets forth the substance or terms of said agreement.

153. Plaintiff denies that paragraph 153 accurately sets forth the substance or terms of said agreement.

154. Plaintiff denies.

155. Plaintiff denies.

156. Plaintiff lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 156 and therefore denies the same.

157. Plaintiff denies the allegations in paragraph 157 and Defendant's right to the relief requested therein.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

GR Terra's Answer and each claim contained therein fails to state a claim upon which relief can be granted.

SECOND DEFENSE

GR Terra's claims for declaratory relief against GRMD fail because the LPA is a covenant running with the land and thus was not extinguished through the foreclosure.

THIRD DEFENSE

GR Terra's claims are barred, in whole or in part, under a theory of equitable estoppel.

FOURTH DEFENSE

GR Terra's claims for equitable relief are barred by the doctrine of unclean hands. Without limitation, this is demonstrated by the allegations in paragraph 11 of GR Terra's Affirmative Defenses, in which GR Terra asserts that the promises of the LPA (to which GR Terra succeeded as Landlord) are "illusory."

FIFTH DEFENSE

None of the events or conditions giving rise to termination under the LPA have taken place. This is a complete defense to all of Defendant's claims.

SIXTH DEFENSE

GR Terra's claims are precluded by the express language of the LPA, which may not be varied by parole evidence to the contrary, should any exist.

SEVENTH AFFIRMATIVE DEFENSE

The LPA provides that "Tenant shall pay as rent for the Original Term and all of the Renewal Terms of this Lease, upon receipt, an amount equal to the proceeds of all Amenity Fees collected by Tenant." The Tenant is Headwaters under the LPA. Headwaters continues to collect the Amenity Fee to finance the acquisition, construction, and installation of Amenities through the date of this Reply to Counterclaims. The use of these Amenity Fees is subject to the terms of the LPA, the 2013 Fee Agreement, the 2013 Fee Resolution, and the Second Granby IGA. The Amenity Fees may also be deemed appropriated under the Local Government Budget Law of Colorado, section 29-1-101 et seq., C.R.S.

EIGHTH AFFIRMATIVE DEFENSE

All of Defendant's claims for damages, including its claims for consequential damages and its "reserved" claim for punitive damages, either lie in tort or could lie in tort, and are barred by sovereign immunity, as provided in the Colorado Governmental Immunity Act, sections 24-10-

106 and 24-10-108, C.R.S. Sovereign immunity is also a complete bar to Count IV, which is predicated on GRMD's purported slander of title.

NINTH AFFIRMATIVE DEFENSE

Defendant's claims for damages are also barred by its failure to meet the procedural requirements of the Colorado Governmental Immunity Act, including without limitation section 24-10-109, C.R.S. This is also a complete defense to Count IV.

TENTH AFFIRMATIVE DEFENSE

All of Defendant's claims for damages, including its claims for consequential damages and its "reserved" claim for punitive damages, are further barred by common law immunity doctrines that remain the law after passage of the Colorado Governmental Immunity Act.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant's claims for damages are barred by the doctrine of assumption of risk.

TWELFTH AFFIRMATIVE DEFENSE

Defendant's damages, if any, are speculative and cannot be measured with reasonable certainty.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims were brought in good faith and without intent to "vex, annoy, or injure" GR Terra as those terms are defined at law.

FOURTEENTH AFFIRMATIVE DEFENSE

Defendant's claims for attorney's fees and costs have no basis in statute, contract, or law.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendant's claims are barred, in whole or in part, by Defendant's failure to mitigate any damages allegedly sustained.

SIXTEENTH AFFIRMATIVE DEFENSE

Defendant’s claims are barred, in whole or in part, by the anti-donation provisions of the Colorado Constitution, Article XI, which generally preclude public funds from being used to support private enterprises without a corresponding public property interest or benefit.

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

- A. Dismissing GR Terra’s counterclaims, Counts I through V, with prejudice.
- B. Awarding GRMD its attorney’s fees and costs, to the extent permitted by law.

Respectfully submitted this 25th day of November 2022.

**BURG SIMPSON
ELDREDGE HERSH & JARDINE, P.C.**

(Original signature on file)

/s/ Brian K. Matis
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Attorneys for Granby Ranch Metropolitan District

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of November 2022, a true and correct copy of the foregoing was served via Colorado Courts E-Filing on all Counsel of Record.

/s/ Brian K. Matis

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