

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 10:52 PM FILING ID: 7C923349CFF33 CASE NUMBER: 2021CV30008
<b>Plaintiff:</b> GRANBY RANCH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado,  v.  <b>Defendants:</b> 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;"><b>▲COURT USE ONLY▲</b></p> Case No.: 2021CV030008  Div.: Rm.:
<b>ATTORNEYS FOR PLAINTIFFS:</b> 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	
<b>PLAINTIFF GRANBY RANCH METROPOLITAN DISTRICT'S          ANSWER TO HEADWATERS' COUNTERCLAIMS</b>	

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

**REPLY TO INTRODUCTION**

1. Paragraph 1 states a legal conclusion to which no response is required; to the extent that paragraph 1 contains factual allegations to which a response is required, Plaintiff denies same.

2. Plaintiff denies. Plaintiff 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.

3. Plaintiff denies.

### **REPLY TO PARTIES, VENUE AND JURISDICTION**

4. Plaintiff admits.

5. Plaintiff admits.

6. Plaintiff admits.

7. Plaintiff admits.

8. Plaintiff admits.

### **REPLY TO GENERAL ALLEGATIONS**

#### ***Creation of the Special Districts and Master IGA***

9. Plaintiff admits the allegations in paragraph 9, 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.

10. Plaintiff admits.

11. Plaintiff admits.

12. Plaintiff admits.

13. The allegations of paragraph 13 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.

14. The allegations of paragraph 14 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.

15. Plaintiff is without sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 15 and accordingly the same are denied in full.

16. The allegations of paragraph 16 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.

17. The allegations of paragraph 17 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.

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. 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 19 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.

20. The allegations of paragraph 20 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.

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. Plaintiff admits that Granby Ranch Metropolitan Districts Nos. 2-8 are separate legal entities from GRMD. The balance of the allegations in paragraph 22 are denied.

23. Plaintiff admits that the parties entered into the Master IGA on or about September 17, 2008. The allegations of paragraph 23 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.

24. The allegations of paragraph 24 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**

25. The allegations of paragraph 25 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.

26. The allegations of paragraph 26 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.

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. 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.

29. Plaintiff denies.

30. The allegations of paragraph 30 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.

31. Plaintiff denies.

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

33. 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.

34. 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**

35. Plaintiff admits.

36. Plaintiff admits.

37. 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**

38. 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.

39. The allegations of paragraph 39 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.

40. Plaintiff admits that section 3.2.1 is accurately quoted in paragraph 40. The Exclusion Agreement speaks for itself, and Plaintiff denies any characterization of the document inconsistent with the terms thereof.

41. 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.

42. Plaintiff admits that the Exclusion Agreement contains an appropriations clause. The allegations of paragraph 42 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.

43. 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 is without knowledge or information sufficient to form a belief as to whether the events anticipated in paragraph 4.3.2 ever took place.

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 affirmatively pleads that the quotation from section 9.6 of the Exclusion Agreement is incomplete and not a precise paraphrase.

45. Plaintiff admits that GRMD and Headwaters entered into the First Amendment of the 2006 Master IGA. The remaining allegations of paragraph 45 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**

46. Plaintiff admits that GRH and Headwaters entered into the LPA. The remaining allegations of paragraph 43 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.

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

48. 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 48.

49. The allegations of paragraph 49 are characterizations of the referenced LPA. That document speaks for itself, and Plaintiff denies any characterization of the LPA inconsistent with the terms thereof.

50. 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”).

51. Plaintiff denies.

52. 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 52 are specifically denied.

53. 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 53 and therefore denies same.

54. The allegations of paragraph 54 are characterizations of the referenced LPA. That document speaks for itself, and Plaintiff denies any characterization of the LPA inconsistent with the terms thereof.

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

56. Plaintiff denies.

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

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

59. The allegations of paragraph 59 are characterizations of the referenced LPA. That document speaks for itself, and Plaintiff denies any characterization of the LPA inconsistent with the terms thereof.

60. 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**

61. The allegations of paragraph 58 are characterizations of the referenced LPA. That document speaks for itself, and Plaintiff denies any characterization of the LPA inconsistent with the terms thereof.

62. Plaintiff lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 62 and therefore denies same.

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

**REPLY TO ALLEGATIONS REGARDING THE 2013 FEE AGREEMENT**

64. Plaintiff admits that GRH and Headwaters entered into an Amended and Restated Amenity Fee Agreement. The remaining allegations of paragraph 64 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.

65. The 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. 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 66 and therefore denies the same.

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

67. Plaintiff admits that GRMD, Headwaters, GRMD No. 8 and GRH entered into a Letter Agreement on August 22, 2016. The remaining allegations of paragraph 67 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.

68. Plaintiff admits that the 2016 Letter Agreement was modified in 2017 and 2018. The remaining allegations of paragraph 68 are characterizations of the referenced modifications.

69. 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 69 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.

70. Plaintiff admits that paragraph 70 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.

71. 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 71 are denied.

72. The allegations of paragraph 72 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.

73. Plaintiff admits.

74. The allegations of paragraph 74 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.

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. Plaintiff also pleads that the citation to the Master IGA Termination in paragraph 75 is incomplete; Defendant quotes from both Recitals G and H of the document.

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.

#### **REPLY TO ALLEGATIONS REGARDING SECOND GRANBY IGA**

77. Plaintiff admits.

78. Plaintiff admits.

79. The allegations of paragraph 79 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.

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

81. 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 81 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.

82. The 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. Plaintiff admits.

84. Plaintiff admits.

85. The allegations of paragraph 85 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**

86. Plaintiff admits.

87. The allegations of paragraph 87 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.

88. The allegations of paragraph 88 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.

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 lacks sufficient knowledge or information to form a belief as to the averments in paragraph 90 and therefore denies same.

**REPLY TO ALLEGATIONS REGARDING THE GRANBY RANCH FORECLOSURE**

91. Plaintiff denies.

92. Plaintiff admits.

93. Plaintiff admits.

94. Plaintiff admits.

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

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

97. Plaintiff denies.

98. Plaintiff denies.

99. 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.

100. Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the averments set forth in paragraph 100 and therefore denies same.

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.

**REPLY TO ALLEGATIONS REGARDING HEADWATERS OPTION TO PURCHASE**

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.

103. Plaintiff denies.

104. Plaintiff denies.

**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 (i) Headwaters breached the Master IGA, the Granby Ranch IGA, and the Second Granby IGA; (ii) Headwaters breached a covenant of good faith and fair dealing under the LPA based on its failure to acquire the leased premises; and (iii) asking the Court to declare that the LPA continues to encumber the Leased Premises.

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.

109. Plaintiff denies.

110. Plaintiff lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 110 and therefore denies same.

**COUNT I**  
**(Breach of the Exclusion Agreement)**

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

112. Section 1.1 of the Exclusion Agreement states that “the purpose of this Agreement is to document the terms and conditions under which GRMD will exclude the Property from the boundaries of District; together with the maintenance, operations, and future obligations of each of the Parties.” Plaintiff denies any characterization of the Exclusion Agreement in paragraph 112 that is inconsistent with the terms thereof.

113. The allegations of paragraph 113 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the Exclusion Agreement inconsistent with the terms thereof.

114. The allegations of paragraph 114 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the Exclusion Agreement inconsistent with the terms thereof.

115. The allegations of paragraph 115 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the Exclusion Agreement inconsistent with the terms thereof.

116. The allegations of paragraph 116 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the Exclusion Agreement inconsistent with the terms thereof.

117. The allegations of paragraph 117 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the Exclusion Agreement inconsistent with the terms thereof.

118. The allegations of paragraph 118 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the Exclusion Agreement inconsistent with the terms thereof.

119. The allegations of paragraph 119 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the Exclusion Agreement inconsistent with the terms thereof.

120. The allegations of paragraph 120 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the Exclusion Agreement inconsistent with the terms thereof.

121. Plaintiff denies. GRMD is not seeking repayment of the Amenity Fee under the LPA. GRMD is seeking to enforce the terms of the LPA.

122. Plaintiff denies.

123. Plaintiff denies.

124. Plaintiff admits.

125. Plaintiff admits.

126. Plaintiff admits.

127. Plaintiff admits.

128. Plaintiff admits.

129. Plaintiff denies.

130. Plaintiff denies.

131. The allegations of paragraph 131 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the Exclusion Agreement inconsistent with the terms thereof. Plaintiff specifically denies any liability for attorney's fees and costs or that any breach of the Exclusion Agreement has taken place.

132. Plaintiff denies the allegation in paragraph 132 and Defendant's right to the relief requested therein.

**COUNT II**  
**(Breach of the Master IGA Termination)**

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

134. Plaintiff denies.

135. The allegations of paragraph 135 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.

136. The allegations of paragraph 136 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.

137. The allegations of paragraph 137 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.

138. Plaintiff denies that its breach of contract claim against Headwaters is in direct contravention with the Master IGA Termination. Plaintiff admits that its breach of contract claim alleges that Headwaters breached the Master IGA by failing to acquire the amenities and it seeks damages for this breach.

139. Plaintiff denies.

140. Plaintiff admits that its breach of contract claim against Headwaters alleges that Headwaters breached the Second Granby IGA by failing to acquire the Amenities and it seeks damages for this breach. Plaintiff denies that this claim is in violation of the Master IGA Termination.

141. Plaintiff denies.

142. Plaintiff denies.

143. Plaintiff denies.

144. Plaintiff denies.

145. Plaintiff denies.

146. Plaintiff denies the allegation in paragraph 146 and Defendant's right to the relief requested therein.

**COUNT III**  
**(Breach of the Waiver and Release Agreement)**

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

148. The allegations of paragraph 148 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.

149. Plaintiff states that paragraph 149 states a legal conclusion to which no response is required; to the extent a response is required, Plaintiff denies.

150. Plaintiff admits that its breach of contract claim against Headwaters alleges that Headwaters breached the Master IGA by failing to acquire the Amenities and it seeks damages for the breach. Plaintiff denies all other allegations in paragraph 150.

151. Plaintiff denies.

152. Plaintiff admits that its breach of contract claim against Headwaters alleges that Headwaters breached the Second Granby IGA. Plaintiff denies all other allegations in paragraph 152.

153. Plaintiff states that paragraph 153 states a legal conclusion to which no response is required; to the extent a response is required, Plaintiff denies.

154. Plaintiff denies.

155. Plaintiff denies.

156. Plaintiff denies.

157. Plaintiff denies.

158. Plaintiff denies the allegation in paragraph 158 and Defendant's right to the relief requested therein.

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

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

160. The allegations of paragraph 160 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.

161. Plaintiff denies.

162. Plaintiff denies.

163. Plaintiff denies.

164. Plaintiff denies.

165. Plaintiff denies.

166. Plaintiff denies.

167. Plaintiff admits that this language is a characterization of C.R.S. §32-1-207. However, Plaintiff denies that there has been a material modification to the service plan within the meaning of the statute.

168. Plaintiff admits that this language is a characterization of C.R.S. §32-1-207. However, Plaintiff denies that there has been a material modification to the service plan within the meaning of the statute.

169. Plaintiff denies.

170. Plaintiff admits that this language is a characterization of C.R.S. §32-1-207. However, Plaintiff denies that there has been a material modification to the service plan within the meaning of the statute.

171. Plaintiff denies the allegation in paragraph 171 and Defendant's right to the relief requested therein.

**COUNT V**  
**(Alternative Claim for Breach of the Second Granby IGA)**

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

173. Plaintiff denies.

174. Plaintiff admits that the Second Granby IGA contains this language, taken out of context and without the emphasis supplied.

175. Plaintiff admits that it has not yet tendered payment, as payment is not due until the option is exercised prior to 2062, and denies the remainder of paragraph 175.

176. Plaintiff denies.

177. Plaintiff admits this language is taken out of context as part of the agreement but denies that it has any applicability.

178. Plaintiff denies.

179. Plaintiff denies the allegation in paragraph 179 and Defendant's right to the relief requested therein.

**COUNT VI**  
**(Declaratory Judgment)**

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

181. Plaintiff denies

182. Plaintiff denies.

183. Plaintiff denies.

184. Plaintiff denies.

185. Plaintiff denies.

186. Plaintiff denies.

187. Plaintiff denies.

188. Plaintiff denies and affirmatively states that Headwaters, through its own misconduct and/or fraud in collusion with other Defendants, has waived its rights to such a determination.

189. Plaintiff denies.

190. Plaintiff denies that Headwaters is entitled to any such declaration.

191. Plaintiff denies the allegation in paragraph 191 and Defendant's right to the relief requested therein.

**AFFIRMATIVE DEFENSES**  
**FIRST DEFENSE**

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

**SECOND DEFENSE**

Headwaters' 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**

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

**FOURTH 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.

### **FIFTH DEFENSE**

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

### **SIXTH 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.

### **SEVENTH AFFIRMATIVE DEFENSE**

The LPA is a separate contract, which stands on its own terms independent of the Exclusion Agreement, Master IGA Termination Agreement, Waiver and Release Agreement, or Second Granby IGA. None of those documents released any obligations of Headwaters under the LPA.

### **EIGHTH AFFIRMATIVE DEFENSE**

If any waiver of future breaches of the LPA is actually set forth in the Exclusion Agreement, Master IGA Termination Agreement, Waiver and Release Agreement, or Second Granby IGA (which Plaintiff denies) then such waiver is void as against public policy.

#### **NINTH AFFIRMATIVE DEFENSE**

Counts II and III of the Counterclaims are contrary to the express terms of section 23 of the LPA, which defines the terms and conditions under which the Tenant may acquire the Leased Premises.

#### **TENTH AFFIRMATIVE DEFENSE**

Defendant's claims are barred by its own breach of contract, including without limitation the fact that it continues to collect Amenities Fees under the 2013 Fee Resolution while refusing to pay them as rent under the LPA.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

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

#### **TWELFTH AFFIRMATIVE DEFENSE**

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

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

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

#### **FOURTEENTH AFFIRMATIVE DEFENSE**

Upon information and belief, material actions in connection with the events that are the basis of this Lawsuit, including without limitation the decision to file Headwater's counterclaims, were made without Headwaters having the requisite Board of Directors composed of electors of Headwaters.

**FIFTEENTH 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.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Headwaters, through its own intentional misconduct, collusion with other Defendants, and/or fraudulent behavior, has waived its right to the relief sought by abandoning its interests.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Headwaters lacks standing to assert some or all of the claims asserted by it.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Headwaters Board is illegally constituted in violation of Colorado law, thereby all actions taken by it are ultra vires and void ab initio.

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

- A. Dismissing Headwaters' counterclaims with prejudice.
- B. Awarding GRMD its attorney's fees and costs, to the extent permitted by law.

Respectfully submitted this 25<sup>th</sup> day of November 2022.

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

*(Original signature on file)*

/s/ *Brian K. Matisse*

David K. TeSelle, Reg. No. 29648

Brian K. Matisse, Reg. No. 33755

Erica N. Garcia, Reg. No. 56450

*Attorneys for Granby Ranch Metropolitan District*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 25<sup>th</sup> 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. Matisse*

Mark Champoux, # 40480  
Kyler Burgi, # 46479  
DAVIS GRAHAM & STUBBS LLP  
1550 17th Street, Suite 500  
Denver, Colorado 80202  
Telephone: 303.892.9400  
mark.champoux@dgsllaw.com  
kyler.burgi@dgsllaw.com

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

Jamie H. Steiner, #49304  
JoAnn T. Sandifer (Admitted Pro Hac Vice)  
HUSCH BLACKWELL LLP  
1801 Wewatta St., Suite 1000  
Denver, CO 80202  
Phone: 303-749-7200  
Fax: 303-749-7272  
jamie.steiner@huschblackwell.com  
joann.sandifer@huschblackwell.com

*Attorneys for Defendant Headwaters Metro. District and GR  
Terra, LLC*