

<p>DISTRICT COURT, GRAND COUNTY, COLORADO Court Address: Grand County Combined Courts 307 Moffat Ave Hot Sulphur Springs, CO 80451 Telephone No.: (970) 725-3357</p>	<p>DATE FILED: November 28, 2022 8:36 PM FILING ID: DA02680492062 CASE NUMBER: 2021CV30008</p>
<p>Plaintiff: GRANBY RANCH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado,</p> <p style="text-align: center;">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 style="text-align: center;">▲COURT USE ONLY▲</p> <p>Case No.: 2021CV030008</p> <p>Div.: Rm.:</p>
<p>ATTORNEYS FOR PLAINTIFFS: 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</p>	
<p>[PROPOSED] AMENDED CASE MANAGEMENT ORDER</p>	

Plaintiff Granby Ranch Metropolitan District (“GRMD”) and Defendants Headwaters Metropolitan District (“Headwaters”), GR Terra, LLC (“GR Terra”), Gray Jay Ventures (“Gray Jay”), and Granby Prentice, LLC (“Granby Prentice”) (collectively referred to as “Defendants”), through undersigned counsel, submits the following Proposed Amended Case Management Order.

- 1. The “at issue” date is: March 4, 2022.**

2. Responsible attorney's name, address, phone number and email address:

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3. Conferral: The lead counsel for each party previously met and conferred via telephone on the matters listed in Rule 16(b)(3)(A)-(E). With respect to this amended case management order, the parties exchanged emails regarding the changes required to the case management order to accommodate the changed trial date.

4. Brief description of the case and identification of the issues to be tried:

Plaintiff:

This case involves a dispute regarding the applicability of lease purchase agreements (“LPA’s”) as amended, and a series of related agreements involving the metropolitan districts that financed, operated, and maintained property in the Granby Ranch development in Granby, Colorado. These LPA’s provide public funding for recreational facilities (including ski area lifts and facilities, golf course facilities, and other trails and recreational facilities) in Granby Ranch. Because these facilities include privately owned ski area and golf course facilities, Colorado law and in particular the Colorado Constitution’s anti-donation provisions would ordinarily prohibit the use of public funds of the state or any political subdivision to develop and operate private recreational facilities. However, if a public entity acquired some interest in the private facility for the public benefit, then public funds could be used. The LPA’s and related agreements that are relevant to this case provided that \$10,000 per lot “amenity fees” could be imposed by GRMD as a lien on the property originally within the district (including properties later excluded and included in related metropolitan districts). The fees would be paid to Headwaters, for the purposes of developing, acquiring, and/or operating the private amenities including the private ski area and golf course. Headwaters would pay these fees to the private owner of the recreational facilities under the LPA. In exchange, Headwaters would have an option to acquire the amenities based on a formula price, annually renewable through 2062. Upon exercising the purchase option, Headwaters (or a related governmental entity such as the Town of Granby or GRMD) could acquire and operate the amenities as public facilities. During the interim period of the lease purchase agreement prior to public acquisition of the facilities, the residents of GRMD would be entitled to preferred access to the facilities, discounts, or free passes.

Originally, two metropolitan districts were organized in 2003 under service plans prepared by Sol Vista Corp., the developer of the “Sol Vista Golf & Ski Ranch.” Sol Vista Metropolitan District No. 1 (later renamed as Headwaters Metropolitan District, a defendant in this action) was originally organized as the “operating district” in order to construct, install, acquire, and operate public infrastructure serving the residents of all the subdivisions in the Granby Ranch development. Sol Vista Metropolitan District No. 2 (later renamed as Plaintiff Granby Ranch Metropolitan District together with property that was later transferred to other newly organized metropolitan districts) was the “taxing” district. The “taxing” districts would contain substantially all of the residential property and commercial property that would be subject to ad valorem property taxes and fees, which would be transferred to the operating district to pay for the infrastructure and expenses.

The original service plan contemplated that this infrastructure would include the recreational amenities that are the subject of this lawsuit. Headwaters was under the control of the original developer of the SolVista project. Headwaters committed to the Town of Granby and the other Granby Ranch Districts that it would acquire the “Amenities” which are the subject of this lawsuit on behalf of all of the Granby Ranch Districts and own and operate them on behalf of the residents of the Districts. The Service Plan for Headwaters provided that when that District dissolved, GRMD would own and maintain the infrastructure.

In 2006, the developer, Granby Realty Holdings, LLC (“GRH”) entered into an “Amended and Restated Lease Purchase Agreement” with Headwaters whereby Headwaters would lease and eventually could acquire the ski area and golf course which were “Amenities” for the Granby Ranch development. The parties subsequently entered into a “Second Amended and Restated

Lease Purchase Agreement” (“LPA”) in 2012 with substantially the same terms as the first agreement.

In 2020-2021, the property that was the subject of the LPA was foreclosed. At various times, various interests in the property were acquired by GR Terra, LLC (“GR Terra”), Gray Jay Ventures (“Gray Jay”), and Granby Prentice, LLC (“Granby Prentice”). These Defendants contended that the LPA did not survive the foreclosure. Defendants refuse to honor the LPA, claiming that GRMD is not a third-party beneficiary to the LPA and even if it was, the LPA was extinguished through foreclosure. After the foreclosure, Headwaters’ board members were replaced by new Board members hand-picked by GR Terra to serve on the Headwaters board. Headwaters (a public governmental entity) under the control of GR Terra–selected Board members is now taking the position that it committed a breach of the LPA by facility to operate the facilities for a period of time allowing GR Terra to terminate the LPA, or alternatively that it failed to appropriate funds for the facilities. Meanwhile, Headwaters continues to collect \$10,000 amenity fees from new GRMD home purchasers – even though it claims there is no longer an option to purchase the private facilities. GRMD contends that these actions are illegal under Colorado law.

Plaintiff commenced this action on February 23, 2021 by filing a complaint against two defendants, Headwaters and GP Granby Holdings, LLC (“GPGH”) seeking to enforce the LPA. On January 28, 2022, this Court granted Headwaters’ and the Private Defendants’ Motions to Dismiss in part and denied the Motions in part. The Court’s order held that GRMD is a third-party beneficiary to the LPA and 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. On March 15, 2022, GRMD filed its Motion for Summary Judgment on Defendant GR Terra’s counterclaims, Counts I, II, and III. The Defendants subsequently filed a Motion to Continue or Stay its Response

to the Motion for Summary Judgment pending discovery. The Court granted this motion in an order dated April 2, 2022. The Court thereafter allowed GRMD leave to serve a Third Amended Complaint. Defendants filed their answers and counterclaims. GRMD filed its answers to the re-asserted counterclaims on November 25, 2022.

The remaining issues to be tried are primarily: 1) whether the LPA was extinguished during the foreclosure; 2) whether the LPA was otherwise terminated by Headwaters; 3) whether Defendants have breached the LPA; 4) whether the property owned by GR Terra is subject to the terms of the LPA; 5) whether GRMD, as a third party beneficiary under the LPA, has suffered damages due to the breach; and 6) what is the property remedy and/or measure of damages.

Defendants:

GRMD's claims in this lawsuit are based upon a selective, inaccurate, and misleading recitation of the relevant facts. The facts, documents and surrounding circumstances establish that the parties to the LPA never intended for GRMD to be a third-party beneficiary. But even if they did, the undisputed facts show that GRMD relinquished any third-party rights under the LPA years before this lawsuit was filed – as made abundantly clear by Headwaters and GRMD's 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. This, a question concerning this Court's subject matter jurisdiction, is one of the central issues for summary judgment or trial, and Defendants do not agree that this Court's rulings on Defendants' motions to dismiss preclude this Court's reconsideration of Plaintiff's standing or of the Court's subject matter jurisdiction in this case, particularly if new facts are presented to the Court on those issues following discovery.

The LPA does not require Headwaters to purchase the ski and golf facilities on GRMD's behalf. It is simply a lease purchase agreement whereby Headwaters entered a one-year lease (renewable for one-year terms through 2062) with the owner of the ski and golf facilities that allowed Headwaters to lease and operate those amenities ("LPA"). Amenity fees collected by Headwaters were paid as rent to the property owner for the public purpose of making those facilities available for public use. The LPA was subject to various termination rights, including termination in the event Headwaters' board exercised its discretion to choose not to appropriate funds for rent payments for any renewal term. The LPA contained an option that allowed Headwaters to purchase the ski and golf amenities for a designated purchase price; but Headwaters had no obligation (or ability) to purchase those amenities at any time prior to GRMD's commencement of this litigation. In 2020, the LPA was terminated through foreclosure or alternatively the LPA has been terminated by Headwaters' failure to operate the amenities for a period of 30 days and/or based upon Headwaters' failure to appropriate rent under the LPA.

None of the other documents relied upon by GRMD in its claims imposes any obligation on Headwaters to acquire the ski and golf amenities at issue in this litigation – either on its own behalf or on behalf of GRMD. Defendants disagree with GRMD's characterization of the GRMD and Headwaters Service Plans as set forth above, but in any event, both GRMD and Headwaters amended their service plans in 2016 and terminated the intergovernmental agreement between them in 2017, thus eliminating the relationship and obligations between those two districts.

GRMD filed a Third Amended Complaint on October 13, 2022, asserting the following claims: (1) breach of LPA against Gray Jay Ventures, (2) breach of the Headwaters and GRMD Service Plans, the 2003 Master IGA, the Second Granby IGA, and the LPA against Headwaters, (3) breach of LPA against Granby Prentice, (4) breach of the LPA against GR Terra, (5) declaratory

judgment that Gray Jay and GR Terra are bound to the LPA even after foreclosure, and (6) a declaratory judgment that the parties intended the LPA to be a covenant running with the land. Plaintiff continues to seek \$6MM in damages based upon alleged equity paid as rent under the LPA and/or reinstatement of the LPA.¹

The remaining defendants (all named defendants other than Redwood Capital, which was entirely dismissed as a defendant) filed timely answers and affirmative defenses to Plaintiff's Third Amended Complaint. The affirmative defenses continued to challenge GRMD's status as a third-party beneficiary of the LPA and its standing to bring claims for breach of that agreement – issues that Defendants contend will be ripe for decision on motion for summary judgment or trial. In addition, the defendants asserted numerous defenses to the remaining claims, including, claims that GRMD had terminated, waived, and relinquished any rights it may have under the LPA through other agreements and releases.

Moreover, it is GRMD, not Defendants, who has breached the agreements at issue in this lawsuit. Defendant Headwaters filed six counterclaims against GRMD. In claims I – V, Headwaters asserts that GRMD's actions – including its prosecution of the claims in this lawsuit – are in breach of four other contracts between those parties wherein GRMD has waived and relinquished any rights to the amenity fees that constituted the alleged “equity” paid under the LPA and any right to bring claims against Headwaters for breach of the Master IGA or Second Granby IGA. In claim VI, Headwaters asserts a claim for declaratory judgment that the LPA was terminated by foreclosure, by Gray Jay's notice of termination, or because Headwaters failed to appropriate funds for rental payments in 2021.

¹ Plaintiff's statement asserts for the first time potential constitutional challenges or claims not set forth in its pleadings. To the extent that Plaintiff is asserting or plans to assert a claim about the constitutionality of Headwater's actions, Defendants will object to introduction of this argument, supporting facts, or related instructions at trial since this claim has not been plead by Plaintiff.

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

5. The following motion has been filed and is unresolved:

- a. Plaintiff's Motion for Summary Judgment on Count I, II and II of Defendant GR Terra's Counterclaims. This Court granted Defendants' motion to stay its response to this summary judgment motion until discovery is completed.

6. Proportionality: Based upon the complex and extended set of facts giving rise to the parties' claims, defenses and counterclaims, the parties have agreed upon a limited expansion of the discovery limitations set forth in C.R.C.P. 26(b)(2). As set forth in Plaintiff's Second Amended Complaint, Plaintiff is alleging rights to enforce the LPA against the subject property now owned by Defendant GR Terra and/or seeks damages against all defendants estimated to be in excess of \$6 million. The facts GRMD and the Defendants rely upon date back to 2003 and involve other entities that are not parties to this lawsuit, including the prior owner of the subject property, Granby Ranch Holdings, LLC. Discovery will likely be required from that entity as well as the entities that previously operated the Granby Ranch development. On information and belief, some of those entities are outside the State and possibly the County. In addition, because the claims and defenses turn upon various agreements entered and actions taken by the two metropolitan

districts, GRMD and Headwaters, the parties wish to pursue additional depositions of former and current Board members of those districts and may seek depositions of the entities that have managed the two Districts.

7. Settlement: The lead counsel for each party, met and conferred concerning possible settlement and they have exchanged their positions concerning settlement. The parties have agreed on a potential mediator and are attempting to schedule mediation to take place approximately January 30, 2023.

8. Deadline for:

- a. Amending or supplementing: Not applicable (date has passed).
- b. Joinder of additional parties: Not applicable (date has passed).
- c. Identifying non-parties at fault: Not applicable.

9. Date of Initial Disclosures: Initial disclosures were made on April 1, 2022.

10. Full Disclosure: If full disclosure of information under C.R.C.P. 26(a)(1)(C) was not made because of a party's inability to provide it, provide a brief statement of reasons for that party's inability and the expected timing of full disclosures: **NOT APPLICABLE**

Completion of discovery on damages: Discovery regarding damages is anticipated to be fully completed by the discovery cutoff, March 6, 2023.

11. Proposed limitations on and modifications to the scope and types of discovery, consistent with the proportionality factors in C.R.C.P. 26(b)(1): The parties have agreed to the following enlarged discovery limitations:

- a. **Number of depositions per side:** Each party may take the deposition of the opposing party pursuant to C.R.C.P. 30(b)(6), plus 5 additional fact witnesses, as well as

any current or prior members of the Boards of Directors of GRMD or Headwaters, plus experts per C.R.C.P. 26(b)(4)(A).

b. Number of interrogatories per side: 30

c. Number of requests for production of documents per side: 20

d. Number of requests for admission per side: 20

e. Any physical or mental examination per C.R.C.P. 35: Not Applicable.

f. Any limitations on awardable costs: Headwaters and GRMD are political subdivisions of the state of Colorado and are not subject to an award of costs.

g. Justifications for any modifications in the foregoing C.R.C.P. 26(b)(2) limitations: The parties propose that the C.R.C.P. 26(b)(2) limitations be modified by allowing the depositions of five other persons rather than the two provided for in the Rule and for the deposition of any present or former member of the Board of Directors of GRMD or Headwaters. See justification set forth in paragraph 6 above.

12. Number of experts, subjects for anticipated expert testimony, and whether experts will be under C.R.C.P. 26(a)(2)(B)(I) or (B)(II):

a. Plaintiff anticipates calling an expert in the area of special district formation and special district structure, and an expert or experts with regard to the computation of damages.

b. Defendants anticipate calling an expert or experts relating to the special district purpose and structure, special district assessments, and the special district agreements at issue in this case as well as an expert with respect to the calculation of damages and an expert on the lien priority issue and impact of a ruling that covenants running with the land are not terminated via foreclosure. In addition,

Defendants reserve the right to name rebuttal experts to respond to the Plaintiffs' expert testimony.

- c. If more than one expert in any subject per side is anticipated, state the reasons why such expert is appropriate consistent with proportionality factors in C.R.C.P. 26(b)(1) and any differences among the positions of multiple parties on the same side: The parties believe these experts are necessary and consistent with the proportionality factors because they involve entirely different areas of expertise. The computation of damages may require an economist and a certified public accountant.

13. Proposed deadlines for expert witness disclosure:

- a. Production of expert reports
 - i. **Plaintiff:** January 3, 2023.
 - ii. **Defendants:** 28 days after service of Plaintiff's disclosures; provided, however, that if Plaintiff serves its disclosures earlier than January 3, 2023, Defendant is not required to serve its disclosures earlier than January 31, 2023.
- b. **Rebuttal:** Production of rebuttal expert reports: No later than February 21, 2023.
- c. **Expert Witness Files:** Within 7 days of disclosure of the expert.

14. Oral Discovery Motions: The court does not require discovery motions to be presented orally, without written motions or briefs.

15. Electronically Stored Information: The parties do anticipate needing to discover a significant amount of electronically stored information. The following is a brief report concerning their agreements or positions on search terms to be used, if any, and relating to the

production, continued preservation, and restoration of electronically stored information, including the form in which it is to be produced and an estimate of the attendant costs: The parties have already disclosed a significant amount of electronically stored information. The situation is not anticipated to involve unusual or complex issues of e-discovery. Instead, documents which were originally in hard copy form are now stored electronically (in some instances) and so disclosures and responses to requests for production involve listing the documents as provided for in the applicable rules and then making them available via Dropbox or a similar platform.

16. Close of Discovery and Trial: The parties estimate that discovery can be completed no later than March 6, 2023.

17. Dispositive Motions: Motions for summary judgment or other dispositive motions shall be filed no later January 23, 2023. A cross-motion for summary judgment shall be filed no later than February 8, 2023.

18. Parties' best estimate of the length of the trial: The parties currently believe that this case will take two weeks, or ten days of the Court's time to try.

19. Trial will commence on April 24, 2023.

20. Other appropriate matters for consideration: If desired by the Court, the parties agree to work together to set a date to mediate the issues in this case.

Respectfully submitted November 28, 2022

s/ Erica N. Garcia

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CASE MANAGEMENT ORDER

IT IS HEREBY ORDERED that the foregoing, including any modifications made by the Court, is a Case Management Order in this case.

Dated this ____ day of _____ 2022.

BY THE COURT:

District Court Judge