

<p>DISTRICT COURT, GRAND COUNTY, COLORADO 307 Moffat Avenue Hot Sulphur Springs, CO 80451</p>	
<p>Plaintiff: GRANBY RANCH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado,</p> <p>v.</p> <p>Defendants: HEADWATERS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado; GRAY JAY VENTURES, LLC.; REDWOOD CAPITAL FINANCE CO., LLC, GRANBY PRENTICE, LLC; and GR TERRA, LLC.</p>	
<p><i>Attorneys for Headwaters Metropolitan District and GR Terra LLC:</i> Jamie H. Steiner, #49304 JoAnn T. Sandifer (<i>Admitted Pro Hac Vice</i>) Husch Blackwell LLP 1801 Wewatta St., Suite 1000 Denver, CO 80202 Phone: 303-749-7200 Fax: 303-749-7272 E-mail: jamie.steiner@huschblackwell.com joann.sandifer@huschblackwell.com</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p>Case No. 2021CV30008</p> <p>Division 1</p>
<p>DEFENDANTS HEADWATERS AND GR TERRA’S STATEMENT OF UNCONTROVERTED FACTS IN SUPPORT OF THEIR MOTIONS FOR SUMMARY JUDGMENT AND RENEWED MOTION TO DISMISS FOR LACK OF STANDING</p>	

To avoid duplication of facts and redundant filing of voluminous documents, Defendants Headwaters Metropolitan District (“Headwaters”) and GR Terra, LLC (“GR Terra”) (collectively “Defendants”) submit this statement of undisputed facts in support of the following motions filed herewith: 1) Defendants’ Motion to Dismiss the Third Amended Complaint for Lack of Standing;

2) Defendant Headwaters' Motion for Summary Judgment; and 3) Defendant GR Terra's Motion for Summary Judgment.

Creation of the Special Districts and Master IGA

1. In July of 2003, the Town of Granby ("Town") approved Service Plans for two metropolitan districts, attached as **Exhibits 1 & 2**, which districts were known as SolVista No. 1 (now known as Headwaters Metropolitan District or "Headwaters") and SolVista No. 2 (now known as Granby Ranch Metropolitan District or "GRMD"). Am. Compl. ¶¶ 8-9 & Defendants' Answers; Headwaters' Countercl. ¶ 9 & GRMD's Answer.

2. In 2003, SolVista Corp. was the owner and private developer of Granby Ranch, an approximately 5,000 acre planned mixed use development in Grand County. Ex. 1, Art. I(A)(1); Headwaters' Countercl. ¶ 9 & GRMD's Answer. At that time, those two Districts collectively encompassed approximately 3570 of the total 5000-acre Granby Ranch development. Exs. 1 and 2; Ex. A-2 thereto; Headwaters' Countercl. ¶ 9 & GRMD's Answer.

3. While GRMD included approximately 3,563 acres within its boundaries when it was formed, Exhibit 2, Art. I(A)(2), its size was reduced over the years to its current size of approximately 225 acres. **Exhibit 3**, Excerpts of Deposition Transcript of GRMD Corporate Representative, Laura Kaestner, at pp. 46-48.

4. Headwaters' "Service Area" consisted of the entire development, including all property within GRMD's boundaries. Ex. 1, § I(3).

5. The Headwaters and GRMD Services plans originally contemplated a dual district structure; Headwaters, the "Service District" was authorized to provide the services and facilities described in its Service Plan within its Service Area," Ex. 1, § III, and GRMD, the "Tax District"

was authorized to finance public improvements, impose property taxes, and collect revenue or take other action in cooperation with the Service District to provide the services and facilities needed within the Service Area. Ex. 1, § III.

6. Both Service Plans stated that “[t]he interrelationship between the Districts is governed, generally, by a master intergovernmental agreement (“District IGA”) which will be executed by the Districts clarifying the dual responsibilities and nature of the functions and services to be provided by each District.” Exs. 1 & 2, Art. I(A)(5) (third paragraph).

7. A proposed form of Master IGA between Headwaters and GRMD was attached to the Service Plans as Exhibit F (“2003 Master IGA”). Exs. 1 & 2, Ex. F.¹

8. In 2006, GRMD issued bonds to be repaid with the tax levy imposed under its Service Plan. The proceeds of the GRMD bonds were used by Headwaters to finance a portion of the construction and acquisition of public infrastructure, including the roads, water and sewer facilities serving Granby Ranch. Ex. 3, at p. 127.

9. Headwaters did not construct the ski and golf facilities as they were built prior to the formation of the Districts; these facilities were not constructed with Headwaters or GRMD funds, and GRMD’s taxes and bond proceeds have not been used to finance the ski and golf amenities. Ex. 3, pp. 129-130; *See also*, **Exhibit 4**, Excerpts of Lance. Badger deposition, pp. 232-34.

Termination of 2003 Master IGA

10. On June 1, 2006, GRMD and Headwaters entered a new intergovernmental

¹ While GRMD has not produced an executed copy of the 2003 Master IGA, for purposes of these Motion, Headwaters assumes that the form agreement was executed.

agreement (“2006 Master IGA”), attached as **Exhibit 5**, which among other things, expressly terminated the 2003 Master IGA. Headwaters’ Countercl. ¶ 20 & GRMD’s Answer. See § 10.5.

Financing and Deed of Trust on Granby Ranch

11. By 2005, SolVista Corp. had transferred its property in Granby Ranch to Granby Realty Holdings LLC (“GRH”), including the areas comprising the golf course and ski facilities. Headwaters’ Counterclaim ¶ 9 & GRMD’s Answer.

12. In 2005, GRH obtained financing for the development from Redwood Capital Finance Co., LLC (“Redwood”), and GRH granted Redwood various deeds of trust to secure repayment of the debt, including the deed of trust recorded with the Grand County Clerk and Recorder on June 2, 2005 (the “2005 Deed of Trust”) and attached as **Exhibit 6**. Headwaters’ Countercl. ¶ 10 & GRMD’s Answer.

The Amenity Fee Agreements and Resolutions

13. Headwaters and GRMD approved a Joint Resolution to Establish an Amenity Fee, effective May 26, 2005 (“2005 Fee Resolution”), attached as **Exhibit 7**, providing that Headwaters would impose and collect a one-time amenity fee upon property in both Headwaters and GRMD. Am. Compl. ¶ 15 & Defendants’ Answers. The fee was essentially to be paid upon the first transfer from GRH or a developer to an end user. Ex. 7, § 1. The stated purpose of the fee was to finance the acquisition, leasing, construction, and replacement of amenities, including the issuance of bonds. Ex. 7, § 6.

14. The term “amenities” was broadly defined in the 2005 Fee Resolution as “certain recreational amenities benefitting the property within the Districts, which include a golf course, ski area, river park and related improvements, trails, and other recreational improvements,

facilities, appurtenances, rights-of-way and other amenities as shall from time to time be acquired, constructed, and/or operated by the Districts.” Ex. 7, ¶ 2.

15. Separate and apart from the 2005 Fee Resolution, on June 1, 2005, Headwaters entered an Amenity Fee Agreement with GRH, attached as **Exhibit 8**, wherein the parties agreed to the imposition of an amenity fee on the property owned by GRH to be collected by Headwaters to be paid upon the same terms as in the 2005 Resolution. § 1.

16. The 2005 Fee Agreement provided that “[n]othing contained herein obligates the Developer to convey, lease, or otherwise contract for any specific Amenities.” Ex. 8, Recital C.

17. The 2005 Amenity Fee Resolution and Agreement were terminated and superseded by a new Resolution and Agreement in 2013 (“2013 Fee Resolution” and “2013 Fee Agreement”), attached as **Exhibits 9 & 10**. Headwaters’ Countercl. ¶¶ 64 & 66 & GRMD’s Answer. *See* Ex. 9, § 17 & Ex. 10, § 21(C).

18. The 2013 Fee Agreement again provided that the developer had no obligation to convey, lease, or otherwise contract for any specific Amenities, and it stated that this agreement “creates no third-party beneficiary rights in favor of any person not a Party to this Agreement unless the Parties mutually agree otherwise in writing” with the possible exception of GRMD Nos. 3-7. Ex. 10, § 21(d).

The Exclusion Agreement and First Amendment to 2006 Master IGA

19. On April 21, 2010, GRH, Headwaters and GRMD entered an Exclusion Agreement (“Exclusion Agreement”), attached as **Exhibit 11**, to, among other things, document the terms and conditions under which GRMD would exclude certain property from its boundaries. Headwaters’ Countercl. ¶ 38 & GRMD’s Answer. Pursuant to the Exclusion

Agreement, GRH, GRMD and Headwaters repudiated a 2008 Master IGA (that had replaced the 2006 Master IGA) and they reinstated the 2006 Master IGA. Ex. 11, § 4.1.

20. Section 3.2.1 of the Exclusion Agreement states:

GRMD acknowledges and agrees that the Amenity Fees are payable to HWMD [Headwaters] and GRMD has no right, title or interest thereto. Accordingly, any Amenity Fees received by GRMD shall be paid over to HWMD by GRMD as soon as practical, and GRMD agrees to execute any necessary documents to assign all right, title, and interest in any Amenity Fee to HWMD. Ex. 11.

The Lease Purchase Agreement

21. On December 27, 2012, Headwaters' Board of Directors ("Board") approved a Resolution, attached as **Exhibit 12**, authorizing a new lease purchase agreement and new leased premises management agreement ("2012 Resolution"). Ex. 12, § 1.

22. The 2012 Resolution stated that Headwaters owed \$8.58 million to GRH under the parties' prior management agreement for ski and golf amenities; those amounts represented advances made by GRH to cover shortfalls in operating revenue and unpaid management fees due from Headwaters to GRH. Ex. 12, Recital I.

23. The 2012 Resolution stated that GRH had agreed to forgive the advances made by GRH in conjunction with the approval of a new management agreement with GRH (through its affiliate Granby Ranch Amenities, LLC ("GRA")) and new lease purchase agreement. Ex. 12, Recital N.

24. In the 2012 Resolution, Headwaters' Board of Directors ("Board") determined and declared that "the rental amount under the Lease, the Purchase Price and other terms of the Lease do not place the District under an economic or practical compulsion to appropriate moneys

to make payments under the Lease or to exercise its option to purchase the Leased Premises pursuant to the Lease.” Ex. 12, § 1.

25. As approved in the 2012 Resolution, on December 31, 2012, GRH as “Landlord” and Headwaters as “Tenant” entered into the Second Amended and Restated Lease Purchase Agreement (“LPA”), attached as **Exhibit 13**, for the stated purpose of giving Headwaters the right to use and an option to acquire a portion of the Granby Ranch development (as defined in the LPA, the “Leased Premises”). Headwaters’ Countercl. ¶ 46 & GRMD’s Answer.

26. The Leased Premises included portions of the ski facilities, golf course and fishing areas at Granby Ranch (herein, the “LPA Amenities”). Ex. 13, Recital C.

27. Section 2 of the LPA stated that its “Original Term” shall terminate at the end of the current fiscal year, but that the “Lease shall automatically renew for 49 additional one-year terms coinciding with the fiscal year of the Tenant (each a ‘Renewal Term’), at the end of the Original Term and each Renewal Term unless Tenant elects not to appropriate funds to pay amounts due under this Lease as set forth in Section 3.c.” Ex. 13, § 2.

28. Annual rent under the LPA consisted solely of the proceeds of Amenity Fees, if any, collected by Headwaters each year under the 2005 Fee Resolution and Agreement and another 2005 fee agreement for Aspen Meadows Subdivision. Ex. 13, § 3.

29. Termination of the LPA was automatic upon the earliest of any of several delineated events, including “a) the expiration of the Original Term or any Renewal Term due to the failure of Headwaters to appropriate Amenity Fees to be paid pursuant to the terms of the LPA to continue leasing the Leased Premises for the ensuing Renewal Term;

...” Ex. 13, § 2. The LPA precludes recovery of consequential damages by either party. Ex. 13, § 24(b).

30. The Leased Premises were part of the Granby Ranch property encumbered by the 2005 Deed of Trust. *See* Headwaters’ Counterclaim, ¶ 11 & GRMD’s Answer.

31. The LPA acknowledged that the Leased Premises were, at the time of execution of the LPA, subject to the Deed of Trust “which is prior and superior to this Lease.” Ex. 13, § 13(b); Am. Compl. ¶ 22 & Defendants’ Answers. No subordination and non-disturbance agreement (“SNDA”) relating to the LPA was ever recorded in the Grand County land records. Ex. 4, pp. 152-54.

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

32. On August 22, 2016, GRMD, Headwaters, GRMD No. 8² and GRH entered into a Letter Agreement (“Letter Agreement”) whereby, among other things, GRH agreed to cancel or release any right to payment on GRMD’s 2010 bonds in the amount of \$11.1 million held solely by GRH, GRH assumed certain obligations with respect to refunding of GRMD’s 2006 bonds, and the parties agreed to “*eliminate any obligations between the parties other than GRMD’s funding of road operations, maintenance and minor repairs;*” and “*terminate any financial obligations other than road operation, maintenance and minor repairs between GRMD and Headwaters.*” A copy of the Letter Agreement is attached as **Exhibit 14** (emphasis added).

33. The Letter Agreement was modified by the parties in 2017 and 2018, attached as **Exhibits 15 & 16**, due to delays in the bond refunding, but this obligation was not modified other

² GRMD Nos. 2 – 8 are separate metropolitan districts that may be referenced herein. No claim is asserted by or against those entities.

than to note its satisfaction in 2018. Headwaters' Countercl. ¶ 68 & GRMD's Answer.

34. On October 11, 2016, the Town approved a second amendment to the Service Plan for GRMD, attached as **Exhibit 17**. Headwaters' Countercl. ¶ 69 & GRMD's Answer. A stated purpose of the amendment was to "clarify that the relationship between GRMD and Headwaters as otherwise set forth in the Service Plan is terminated and rendered null and void."

Ex. 17, § I.

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

The Original Service Plan is amended as a whole to clarify that the District IGA between GRMD and HMD will be terminated [and] GRMD will provide all its own operation and maintenance functions . . . ***with the intent that any role or relationship of GRMD as a "Tax District" and HMD as a "Service District" is terminated.***

Ex. 17, § II(B).

36. On November 8, 2016, the Town approved an amendment to the Service Plan for Headwaters, attached as **Exhibit 18**, for the stated purpose of modifying the relationship between Headwaters and GRMD.

37. Specifically, Headwaters' Service Plan was amended "to clarify" that the IGA between GRMD and Headwaters would be terminated and that GRMD would thereafter provide all of its own operation and maintenance functions. Ex. 18, § III(1). That section further stated:

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

Ex. 18 § III(1) (emphasis added).

38. On November 17, 2017, Headwaters, GRMD, GRMD Nos. 2-8, entered a Termination of Intergovernmental Agreement (“Master IGA Termination”), attached as **Exhibit 19**. Headwaters’ Countercl. ¶ 73 & GRMD’s Answer.

39. The Master IGA Termination stated that both the 2006 Master IGA and 2008 Master IGA were terminated and of no further force and effect. Ex. 19, §§ 2-3.

40. GRMD has admitted that the 2003 Master IGA was terminated in 2006 and that after 2017, there was no Master IGA in place between Headwaters and GRMD. Ex. 3, at pp. 267-68; **Exhibit 20**, Response to Headwaters Request for Admission, ¶ 8.

41. The Master IGA Termination provided that “[t]he Parties intend for certain of the Granby Ranch Districts, specifically GRMD, to operate independently from [Headwaters],” and that “[d]ue to the amended service plans and the intention of certain of the Parties to operate independently from each other, there is no further need for the Master IGAs.” Ex. 19, Recitals C-H.

42. The Master IGA Termination further provided that the Parties have “fully satisfied their obligations under the Master IGAs” and “are released from any further obligations thereunder” and it contained a broad waiver and release of claims by GRMD and Headwaters between each other, including all claims “which has been raised or could have been raised, whether arising before, on or after the date hereof.” Ex. 19, §§ 4, 5.

The Second Granby IGA.

43. On November 8, 2016, the Town, Headwaters, GRMD, and the GRMD Nos. 2-8 entered into an Amended and Restated Intergovernmental Agreement (the “Second Granby IGA”), attached as **Exhibit 21**, which superseded and replaced a 2008 agreement between those

parties, attached as **Exhibit 21A**. Headwaters' Countercl. ¶¶ 77-78 & GRMD's Answer.

44. The Second Granby IGA provides that GRMD, Headwaters and GRMD Nos. 2-8 "will be authorized to acquire, construct, own, operat[e] and maintain the ski area and lifts, ski lodge, golf courses . . . as more fully described on Exhibit A" Ex. 21, § 5(a).

45. The Second Granby IGA affirms that the Amenities described therein are not required to be dedicated or conveyed by the Developer for public use. Ex. 21, § 5(b),

2018 Waiver and Release Agreement

46. In April of 2018, "in consideration of the mutual covenants of this Agreement, the promises and conditions contained in the [2016] Letter Agreement, and other good and valuable consideration," GRH, Headwaters, GRMD, and GRMD No. 8 entered into an agreement entitled Agreement Re Waiver and Release of Claims ("2018 Waiver"), attached as **Exhibit 22**. Headwaters' Countercl. ¶ 86 & GRMD's Answer.

47. The 2018 Waiver stated that it was entered in consideration of the agreements in the 2016 Letter Agreement and other agreements made to resolve disputes between them and it acknowledges that due to the status of development within GRMD and the amendment of the services plans, the Master IGAs "are no longer necessary." Ex. 22, Recitals S-T.

48. In the 2018 Waiver, the parties broadly released each other and their successors and assigns:

[F]rom and against any and all claims, demands, obligations, duties, liabilities, damages, expenses, breaches of contract, acts, omissions, causes of action, promises, damages, costs, and remedies therefor of every kind, description, character or nature whatsoever now or in the future, whether known or unknown, raised or which could have been raised, which may otherwise exist or which may arise in relation to . . . the Master IGA, . . . or any other matter related to the formation, administration, and operation of the Districts (the "Claims") existing as of the Release Date.

Ex. 22, § 1.

49. The waiver relating to the Master IGA was effective upon the termination of the Master IGA, which occurred on November 17, 2017. Ex. 22, § 3(c).

50. The waiver relating to the formation, administration and operation of the Districts was effective upon refinancing of the Senior Bonds, release and discharge of the Subordinate Bonds, and Termination of the Master IGAs. Ex. 22, § 3(e). All those events occurred prior to 2019. Headwaters' Countercl. ¶ 90 & GRMD's Answer.

Granby Ranch Foreclosure

51. Due to GRH's default on its obligations under the Deed of Trust, in January 2020, the court appointed a receiver over the property subject to the 2005 Deed of Trust, including the Leased Premises. Headwaters' Countercl. ¶ 94 & GRMD's Answer.

52. In the spring of 2020, Granby Prentice, then holder of the 2005 Deed of Trust, initiated nonjudicial foreclosure proceedings pursuant to C.R.S. § 38-38-101, *et seq.* (the "2020 Foreclosure"). Headwaters' Countercl. ¶ 95 & GRMD's Answer.

53. Following issuance of an order authorizing sale and the August 14, 2020 sale by the Public Trustee, Granby Prentice submitted the highest bid and was issued a Certificate of Purchase for the property that included the Leased Premises. Am. Compl. ¶ 35 & Defendants' Answers. Granby Prentice then assigned the Certificate of Purchase to GP Granby Holdings LLC, now known as Gray Jay Ventures, LLC ("Gray Jay"). Am. Compl. ¶ 35 & Defendants' Answers.

54. No party exercised the right to redeem and, on or about August 27, 2020, Gray Jay, as holder of the Certificate of Purchase upon expiration of all redemption periods, took title

to Granby Ranch, including the Leased Premises. Headwaters' Countercl. ¶ 96 & GRMD's Answer.

55. The Public Trustee issued a Public Trustee's Deed to Gray Jay granting it title to the Leased Premises and other subject property, which deed was recorded in Grand County land records on August 31, 2020. Headwaters' Countercl. ¶ 96 & GRMD's Answer. A copy of the Trustee's Deed is attached as **Exhibit 23**.

56. On September 1, 2020, Gray Jay notified Headwaters that the LPA was terminated through the 2020 Foreclosure and issuance of the certificate of purchase. **Exhibit 24**, Declaration of Sue Blair, at pp. 52-53 of the exhibit. Headwaters never tried to exercise the option to purchase prior to the foreclosure. Ex. 4, p. 251.

Headwaters Did Not Appropriate Rent Payments For Lease Years 2021-2023.

57. Headwaters' Board did not adopt a 2021 budget until October of that year. Ex. 24 & Exhibit A thereto, at HWMD 0008337-8349. That budget resolution did not appropriate any funds for payment of rent under the LPA. *Id.*

58. In December of 2021, Headwaters Board adopted a budget for 2022 that did not include any appropriation of funds for the payment of rent under the LPA. *Id.* at HWMD 0008350-8362.

59. On November 15, 2022, Headwaters' Board met to adopt its budget for 2023. The proposed budget did not include an appropriation of funds for payment of rent under the LPA. *Id.* at HWMD 8363-8366, 8368, 8369-8381.

60. At that meeting, the Board considered separate motions made by Scot Johnson, President of Headwaters' Board, to amend the 2022 budget and proposed 2023 budget to

appropriate all Amenity Fees collected during the 2022 and 2023 calendar years for payment of rent to the landlord in the event a court rules that the LPA remains in effect. *Id.* at HWMD 8363-8366, 8367, 8368.

61. Mr. Johnson's motion informed the Board that if the LPA remained in effect following the foreclosure and the 2022 budget amendment was not approved, then, per its terms, the LPA was not renewed for the 2022 lease year and terminated as of December 31, 2021. *Id.* He made a similar statement regarding the impact of the failure to approve the proposed change to the 2023 budget. *Id.*

62. Headwaters Board voted against both proposed amendments and approved the 2023 budget as submitted. *Id.* at 8363-8366, 8369-8381.

63. On December 13, 2022, Mr. Johnson, as President of the Board, submitted a written formal request to the Board for reconsideration and appeal of his proposals for amendments to the 2022 and 2023 Headwaters budgets. *Id.* at 8382-8383.

64. The Headwaters' Board considered that appeal at its meeting of December 14, 2022, and it declined to take any further action with respect to the appeal. *Id.* at 8384-8386.

65. In 2018, Headwaters and GRMD Nos 2-8 entered an Intergovernmental Agreement re Road Maintenance and Snow Removal. *See* e-mail from GRMD counsel to David Richardson dated 12/23/2022 and attachment attached as **Exhibit 25**.

66. Section 2 of the above-referenced agreement established a one-year term and stated that the agreement would automatically renew each year, subject to annual appropriation of all Districts. It stated that "[i]f any single district not on inactive status fails to appropriate

funds for the following year, the agreement shall terminate at the end of the then current term.”

Id.

67. GRMD recently took the position that the above-referenced agreement had been terminated pursuant to Section 2 because GRMD did not appropriate funds for one or more years after 2019. *Id.*

GR Terra's Acquisition

68. On May 5, 2021, GR Terra and its affiliate, GRCO LLC, purchased the majority of the Granby Ranch development from Gray Jay; GR Terra owns fee title to the property formerly comprising the Leased Premises. GR Terra LLC's Answer ¶ 47; Affidavit of Robert B. Glarner, Jr., attached as **Exhibit 26**.

69. Since GR Terra purchased the Property, Headwaters has never tried to exercise the rights or obligations of the tenant under the LPA. It has not paid any rent to GR Terra, asserted control over operation of the Leased Premises described in the LPA, or tried to assume possession of the Leased Premises. Nor has it ever tried to exercise the option to purchase the Leased Premises described in the LPA. Ex. 26, ¶ 5.

70. Since GR Terra purchased the Property, GRMD has never tried to exercise the rights or obligations of the tenant under the LPA. It has not paid any rent to GR Terra, asserted control over operation of the Leased Premises described in the LPA, or tried to assume possession of the Leased Premises. Nor has it ever tried to exercise the option to purchase the Leased Premises described in the LPA. Ex. 26, ¶ 6.

71. Since GR Terra purchased the property that includes the former Leased Premises, Headwaters never had sufficient funds to exercise the option to purchase and pay the Purchase

Price under the LPA. Ex. 24, at HWMD 8375-8380.

72. GRMD admits that the Service Plans, 2003 Master IGA, and Second Granby IGA “standing alone” imposed no obligation on Headwaters to acquire the LPA Amenities. Ex. 20, Response to Headwaters’ Request for Admission, ¶¶ 5, 6, 7.

GRMD’s Lawsuit

73. In April of 2021, GRMD commenced this action against Defendants asserting claims for breach of contract and seeking injunctive relief to enforce the LPA.

74. GRMD has not identified what provisions of the LPA it alleges constitute covenants running with the land, instead stating that the whole LPA is such a covenant. Ex. 20, Response to Headwaters Interrogatory, ¶ 1.

75. GRMD’s answers to GR Terra’s interrogatories state that it is not currently aware of any material ambiguities in the “Documents,” which includes the agreements, resolutions and service plans that give rise to GRMD’s claims and Defendants’ Counterclaims. GRH, Headwaters, GRMD, and GRMD No. 8.

76. The GRMD boundary map posted on its website, attached as **Exhibit 27**, accurately reflects the current boundaries of GRMD and depicts inclusions and exclusions from those boundaries over the years. *See* Ex. 3, pp. 46-47.

77. GRMD’s corporate representative acknowledged that at least one significant subdivision within the Granby Ranch development, Kicking Horse, is not in GRMD boundaries (though Amenities Fees have been paid with respect to those lots and are included in GRMD’s claimed damages). Ex. 3, pp. 175, 450-53. The GRMD boundary map depicts hundreds of platted lots in the Granby Ranch development that are not within GRMD boundaries. Ex. 27.

78. Amenity Fees have been paid directly to Headwaters; GRMD has not in the past recognized those fees as revenue to it because they do not flow through GRMD. Ex. 3, pp. 125-126; **Exhibit 28**, Excerpts of Deposition Transcript of GRMD Manager, Charles Wolfersberger, pp. 69-70, 73-74.

79. GRMD has not itself ever paid any Amenity Fees, and does not own any property. Ex. 3, pp. 128, 204.

Dated this 25th day of January, 2023.

HUSCH BLACKWELL LLP

s/ Jamie H. Steiner _____
Jamie H. Steiner, #49034
JoAnn T. Sandifer (Admitted Pro Hac Vice)

Attorneys for GR Terra LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via the Colorado Courts e-filing system on January 25, 2023, addressed to the following:

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