

<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: February 26, 2023 6:34 PM  FILING ID: A8DF13761B2B1  CASE NUMBER: 2021CV30008</p>
<p><b>Plaintiff:</b> GRANBY RANCH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado,</p> <p>v.</p> <p><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>	<p><b>▲COURT USE ONLY▲</b></p> <p>Case No.: 2021CV030008</p> <p>Div./Rm.: 1</p>
<p><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 &amp; 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 align="center"><b>PLAINTIFF GRANBY RANCH METROPOLITAN DISTRICT'S STATEMENT OF ADDITIONAL MATERIAL FACTS</b></p>	

To avoid duplication of facts and redundant filing of voluminous documents, Plaintiff respectfully submits *Plaintiff Granby Ranch Metropolitan District's Statement of Additional Material Facts*.

## **PLAINTIFF'S STATEMENT OF ADDITIONAL MATERIAL FACTS**

1. Granby Realty Holdings, LLC (“GRH”), formerly called Sol Vista Corporation, was the developer of Granby Ranch. In 2003 GRH sought the organization of two metropolitan districts within Granby Ranch. **Exs. 1, 2.**

2. In March 2003, the Town approved the Service Plans for Sol Vista Metropolitan District 1, later named HMD, and Sol Vista Metropolitan District 2, later named GRMD. **Exs. 1, 2.**

3. The Districts were intended to operate together for the purpose of providing public infrastructure and facilities for the benefit of the Granby Ranch residents who would live within the boundaries of GRMD. HMD was the “Service District” and GRMD was the “Taxing District.” **Exs. 1, 2.** GRMD, as the Taxing District, includes the residential lots that provide the revenue base. HMD, the Service District, does not provide a revenue base.

4. The 2003 Master Intergovernmental Agreement attached to the Service Plans (“2003 Master IGA”) describes the interrelationship between HMD and GRMD and their assumed roles and responsibilities. **Ex. 2.** GRMD was delegated “the power to finance public improvements, impose property taxes, and collect revenue or take other actions in cooperation with [HMD] that may be necessary to provide the services and facilities needed within the Service Area.” *Id.* §§ 5.1, 5.2, 5.4. Upon dissolution of HMD, GRMD would be responsible for the operation and maintenance of any infrastructure located within the Taxing District. *Id.* HMD was responsible for the development, construction of infrastructure, financing, and was to “manage and administer all business affairs of the Districts.” HMD was to own and operate the infrastructure until it was transferred to the Town or another public agency. *Id.*, Part 4 §§ 4.2, 4.3.

5. Due to the dual structure of HMD and GRMD, HMD needed the cooperation of GRMD to impose taxes or fees on the property. **Ex. 2.**

6. HMD and GRMD entered into an Intergovernmental Agreement with the Town (“2003 Granby IGA) to reflect responsibilities under the 2003 Master IGA and Service Agreements. **Ex. 56.**

7. On February 2, 2005, a Joint Regular Meeting of the Board of Directors of the Metropolitan Districts was held. **Ex. 57.** The Meeting Minutes demonstrate that the Directors had interests in both the developer and metropolitan districts. *Id.*, p. 1. The Minutes also clearly state that the Amenities will be transferred to the District and the Board approved the Amenities Fee Agreement. *Id.*, p. 3.

8. On May 4, 2005, a Joint Regular Meeting of the Board of Directors of the Metropolitan Districts was held. **Ex. 58.** The Meeting Minutes demonstrate that the Directors had interests in both the developer and metropolitan districts. *Id.*, pp. 1-2. The Minutes also clearly discussed the structure of the 2005 Bond Issuance for the Granby Ranch development and financial support by Capital Facilities and Amenities Fees. *Id.*, p. 4 (emphasis added). “The structure of the transaction as proposed will require that a Deed of Trust be filed against the ski area and golf course to be held as security for the bonds.” *Id.*

9. Importantly, Tom Hale of the Town stated clearly during this meeting that “the amenities are a valuable asset to the County and their loss would be a loss to the community as a whole and it is important their use stays public.” *Id.*

10. In May 26, 2005, HMD and GRMD passed a Joint Resolution to Establish an Amenity Fee (“2005 Fee Resolution”). **Ex. 9.** The 2005 Fee Resolution called for a \$10,000 per lot fee to be imposed and paid to HMD, which in turn would use these fees to acquire and operate

the golf course and ski resort for the benefit of the GRMD residents and property owners. *Id.* The 2005 Fee Resolution was recorded as a lien on the property within GRMD that would run with the land. *Id.*

11. The Amenities included “certain recreational amenities benefiting the property within the Districts, which include a golf course, ski area, river park and related improvements, trails, and other recreation improvements, facilities, appurtenances, rights-of-way and other amenities as shall from time to time be acquired, constructed, and/or operated by the Districts.” *Id.* Additionally, the Amenity Fee was to provide “a source of funding to pay for the costs incurred by the Districts for the costs incurred by the Districts for the financing, acquisition, construction, installation, and/or replacement of the Amenities, which are generally attributable to the persons subject to such charges, and such fees and charges are necessary to provide for the prosperity and general welfare of the Districts and their inhabitants and or the orderly and uniform administration of the Districts’ affairs.” *Id.*

12. On June 1, 2005, GRH and HMD executed an Amenity Fee Agreement (“2005 Fee Agreement”) **Ex. 8**. This Agreement imposed the one-time \$10,000 Amenity Fee collected by HMD per residential unit and lot within the Districts. The Amenity Fee Agreement was recorded with the Grand County Clerk and Recorder. *Id.*

13. The 2005 Fee Agreement provided “[HMD] will impose ad collect certain fees as set forth in this Agreement (the “Amenity Fee”) or the acquisition, financing, leasing, construction, replacement, operation, maintenance and repair of the Amenities . . .” *Id.* The amenities were the same as those described in the May 2005 Fee Resolution. The purpose of the Agreement was to “entitle certain minimum use and enjoyment of the Amenities” to purchasers/owners of homes and homesites within Granby Ranch. *Id.*

14. On June 1, 2005, GRH and HMD entered into a Lease Purchase Agreement (“LPA”) granting HMD the right to use and acquire the Leased Premises, including the golf course, ski area, and improvements thereon. **Ex. 59.** The Lease Purchase Agreement was recorded with the Grand County Clerk and Recorder. *Id.*

15. On June 1, 2005, GRH entered into a Loan Agreement with Redwood Capital Finance Company, LLC to obtain financing for the Granby Ranch development. **Ex. 60.** The Loan Agreement was recorded with the Grand County Clerk and Recorder. *Id.* The Loan Agreement incorporates, among other documents, the Promissory Note Secured by Deeds of Trust, Deeds of Trust, and Assignment of District Agreements executed by GRH with the Districts. *Id.*, Exhibit A.

16. On June 1, 2005, a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing was executed by GRH and recorded with the Grand County Clerk and Recorder. **Ex. 6, 31.**

16. On June 1, 2005, a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing was executed by Trustor and recorded with the Grand County Clerk and Recorder. **Ex. 61.**

17. On June 1, 2005, GRH executed a Promissory Note Secured by Deeds of Trust. **Ex. 62.**

18. On September 25, 2007, a new Consolidated Service Plan was approved by the Town, creating Granby Ranch Metropolitan Districts 2-8 (“GRMD 2-8”). **Ex. 63.** The majority of the property contained in GRMD 2-8 was property that was previously in GRMD. The property in these districts were subject to the terms of the Amenity Fee Agreement and were considered Taxing Districts with GRMD. *Id.*

19. On February 26, 2008, HMD GRMD, and GRMD 2-8 entered into an Intergovernmental Agreement with the Town (“2008 IGA”). **Ex. 22.** This document provided that “In addition to the types of park and recreation services and facilities referred to or reflected in the Service Plans...the Districts will be authorized to acquire, construct, own, operate and maintain the ski area and lifts, ski lodge, golf courses and appurtenant clubhouse 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.” *Id.*

20. “The Districts” were defined in the First Town IGA as Headwaters Metropolitan District, Granby Ranch Metropolitan District, and Granby Ranch Metropolitan District Nos. 2-8. *Id.*

21. The 2008 IGA was replaced by an Amended and Restated IGA on November 8, 2016 (the “2016 IGA”). **Ex. 21.** The 2016 IGA had identical language that authorized the Districts to acquire the Amenities. *Id.*, ¶ 5 a., p. 3. “Districts” was a defined term under both agreements, and included Headwaters, GRMD, and GRMD 2-8. The 2016 IGA also authorized the Districts to impose and collect “a one-time, front-end Amenities Fee, in an amount not to exceed \$10,000.00 per lot or equivalent dwelling unit in the Districts....” *Id.*

22. On December 31, 2012, HMD and GRH entered into the Second Amended and Restated LPA. (“Second LPA”). **Ex. 13.** This lease purchase agreement was the successor to “that certain Amended and Restated Lease Purchase Agreement dated as of June 1, 2006, as amended by the First, Second, Third, Fourth and Fifth Addenda.” *Id.*, p. 1. Section 2 of the Second LPA provides that the term of the Lease shall be the end of the current fiscal year, and 49 additional one-year terms coinciding with the fiscal year of HMD. Renewal shall be automatic, unless HMD

“elects not to appropriate funds to pay amounts due under this Lease as set forth in Section 3.c.”  
Section 2.a.-f. list other grounds for termination. *Id.* § 2.

23. In Section 3a. of the Second LPA, HMD agreed to pay as rent the proceeds of “all amenity fees collected by the Tenant.” *Id.* § 3a. As used in the Second LPA, the term “Amenity Fees shall mean and refer to any Amenity Fee imposed pursuant to the Fee Resolution and the Fee Agreements, as the same may be amended and restated from time to time, and any other resolution adopted or agreement entered into for the purpose of imposing fees related to the use of the Leased Premises.” All Amenities Fees collected pursuant to the 2013 Fee Resolution and its predecessors were to be paid as rent to GRH and its successors as “Landlord.” These Amenity Fees were to be the sole source of rent payments; it was entirely possible under the Second LPA that there could be no rent due in any fiscal year if no Amenity Fees were collected by HMD. *Id.*

24. The Second LPA also provided in Section 23 that HMDs could acquire the Leased Premises for the lesser of the Adjusted Appraised Value, which was \$18,949,226, subject to certain adjustments for inflation and capital improvements and the value of after-acquired equipment and machinery, or “all Amenity Fees collectable by Tenant under the Amenity Fee Agreements and the Fee Resolution.” *Id.* HMD was also to acquire the Leased Premises on December 31, 2062 if the Lease had not otherwise been terminated in accordance with Section 2(a), (b), or (c). *Id.* This provision for “Acquisition by Tenant” allowed HMD to comply with its obligations under the IGA with the Town. *Id.*

25. The Second LPA expressly provides that all amenity fees collected from any of the properties subject to amenity fees, regardless of whether or not the properties are in GRMD, GRMD 2-8, or otherwise, are to be applied toward the price of acquiring the amenities. *Id.*

26. The Second LPA was recorded on January 3, 2020, with the Grand County Clerk and Recorder. **Ex. 32.**

27. Section 13(b) of the LPA provides, in part, “The Parties acknowledge that the Leased Premises are currently subject to the Deed of Trust, which is prior and superior to this Lease, and that, in connection with the Prior Lease, Landlord shall cause to be delivered to Tenant a Subordination, Non-Disturbance and Attornment Agreement, to be executed by Redwood Capital Finance.” Section 13 (b) further provides,

Landlord and Tenant hereby acknowledge that, in connection with the execution of this Lease, Landlord has delivered to Tenant, an agreement executed by the Lender either subordinating this Lease to the deed of trust held by the Lender but obligating the Lender and any successor thereto to be bound by this Lease and by all of Tenant’s rights hereunder (to the extent such Lender should succeed to the interest of Landlord and/or acquire title or right of possession of the Leased Premises), including but not limited to the rights of Tenant conferred by Sections 2 and 23 hereof. Such agreement provides that, notwithstanding any other agreement with the Landlord, the Lender’s consent shall not be required to permit the acquisition of the Leased Premises by the Tenant in accordance with the terms hereof.

**Ex. 32**

28. According to Section 26, the Non-Disturbance Agreement shall provide, among other things, that upon such lenders’ succession of interest it shall be bound as Landlord to the provisions of the LPA, including Headwater’s right to acquire the Leased Premise pursuant to Section 23. *Id.*

29. Redwood Capital Finance Company, LLC executed a Subordination, Non-Disturbance and Attornment Agreement on December 31, 2012. **Ex. 70.**

30. In July 2013, HMD, GRMD, and GRMD 2-8 adopted an Amended and Restated Joint Resolution (“2013 Fee Resolution”), substantially the same as the prior Fee Resolution, to continue the Amenity Fee imposed on properties and collected by HMD. **Ex. 9.**

31. Paragraph 8 of the 2013 Fee Resolution provided that the revenues generated by the Amenity Fee shall be used solely for the purpose of financing the acquisition, construction, and installation of Amenities, which may include, without limitation: (1) the issuance of bonds or (2) reimbursement of amounts advanced by GRH or other parties. The Districts removed the provision that Amenity Fee revenues could be used for operations and maintenance after the Amenities Payment Date under the Second LPA. Instead, the 2013 Fee Resolution flatly stated the restriction on the use of Amenity Fee revenues; that they be used solely for the purpose of financing the acquisition, construction, and installation of Amenities shall be “absolute and without qualification.” *Id.*

32. On July 17, 2013, GRH and HMD entered into an Amended and Restated Amenity Fee Agreement (“2013 Fee Agreement”) that superseded and replaced the 2005 Fee Agreement.

**Ex. 10.**

33. On November 8, 2016, the Town, HMD, GRMD, and GRMD 2-8 amended and restated the 2008 Granby IGA (“2016 Granby IGA”). **Ex. 21.** The 2016 Granby IGA expressly allowed GRMD to own and operate its own facilities, including the golf course and ski resort amenities, if the Town or HMD did not want to own or operate these facilities. *Id.* GRMD now was able to operate independently.

34. On November 17, 2017, HMD, GRMD, and GRMD 2-8 terminated the prior Master IGAs through the Termination of Intergovernmental Agreement (“Termination IGA”). **Ex. 19.** HMD continued to collect Amenity Fees from GRMD after this agreement. The Termination IGA did not provide for termination of any other agreements other than the Master IGAs.

35. However, the Second Granby IGA was not terminated nor was the authority that the Town of Granby had given to “the Districts” to purchase the Amenities ever taken away. The

LPA was entered into in 2012 pursuant to the authority granted by the original Granby IGA, which was dated in 2008, and that authority was reaffirmed in the Second Granby IGA in 2016.

36. GRH defaulted on the loan obligation secured by the 2005 Redwood Capital Deed of Trust. Subsequently, Granby Prentice initiated a foreclosure by filing a Notice of Election and Demand on March 24, 2020 as to the 2005 Redwood Capital Deed of Trust. **Ex. 34.**

37. The Notice of Election and Demand indicates that GRMD was not made a party to the foreclosure action nor provided notice of the public trustee sale. **Ex. 34.**

38. On August 14, 2020, the Public Trustee held a public sale of the Leased Premises under the LPA. Granby Prentice's bid of \$25,000,000 was the highest and only bid. The Public Trustee issued a Certificate of Purchase for the subject property, including the Leased Premises, to Granby Prentice. Granby Prentice assigned this Certificate of Purchase to the defendant Gray Jay Ventures. **Ex. 36.**

39. The LPA was recorded in the real property records of Grand County on January 3, 2020 at Reception No. 2020000067, prior to the commencement of the foreclosure action. **Ex. 32.**

40. On or about August 31, 2020, Gray Jay, as the new owner of the leased premises, took possession of the Leased Premises, ousted Headwaters, and entered into a lease agreement with its affiliate, GP Amenities Holdings, LLC (GPAH), which then immediately took over the lease and entered into new contracts with Touchstone and Ridgeline, Headwaters' former contractors, to operate the ski and golf facilities. **Ex. 80, Ex. 81, Ex. 73**, 213:5-8; 280:7-281:15.

41. On or about September 1, 2020, Gray Jay alleged that the LPA was terminated by foreclosure and sent out a letter renouncing any obligations to abide by the LPA. **Ex. 38.**

42. Two months later, on November 11, 2020, Gray Jay sent out another letter, claiming for the first time that the LPA was terminated due to Headwaters' failure to operate the facilities for more than 30 days. **Ex. 40.**

43. On the very same day, November 11, 2020, the FORMER owner of the leased premises, GRH through its principal Marise Cipriani, sent out a letter declaring an alleged breach because Headwaters had not operated the facilities for more than 30 days. **Ex. 71.**

44. Contrary to the pretextual allegations in the November 11, 2020, letters, Headwaters had operated the ski facilities through the end of the ski season (March 15, 2020) and operated the golf course from June 2020 until Gray Jay ousted it from possession on September 1, 2020. Prior to November 2020, neither GRH nor any other entity had declared a breach of the LPA by Headwaters' failure to operate the amenities. **Ex. 73**, 214:17 – 216:2; 280:7-25.

45. GRCO, LLC purchased the foreclosed property from Gray Jay through a purchase and sale agreement dated March 28, 2021. **Ex. 74.**

46. GRCO, LLC then assigned the leased premises under the LPA to another affiliated company, GR Terra, LLC. **Ex. 75.**

47. GRCO, LLC then closed the purchase on the remaining property, also on May 5, 2021. **Ex. 76.**

48. GR Terra purchased the property subject to the LPA from Gray Jay Ventures on or about May 5, 2021. **Ex. 77.**

49. After GR Terra and GRCO closed the sale of the Leased Premises as well as the remaining development property, Bob Glarner (the principal of GR Terra and GRCO) appointed Scott Johnson (an old friend of his) and Mr. Johnson's wife to the Board of Directors of Headwaters on or about June 23, 2021. **Ex. 79.**

50. On or about May 5, 2021, GR Terra entered into a 5-year lease with an affiliated entity, GR Operations, LLC, to lease the amenities. **Ex. 78.** GR Operations, LLC is managed by the same manager, Swiss, LLC, that manages GR Terra, and the same person (David Glarner) signed the lease on behalf of both GR Terra and GR Operations.

51. GR Terra purchased the property subject to the LPA under the advisement of Counsel that the LPA was eliminated through the foreclosure process. Deposition of Robert Glarner, Jr. at 91:3-92:8, **Ex. 66.**

52. Headwaters Metropolitan District's 2020 budget appropriated \$250,000 from amenity fees collected for payments under the LPA. **Ex. 68.**

52. Headwaters Metropolitan District did not adopt its 2021 budget until October 15, 2021. **Ex. 69.** The October 15, 2021 budget was the first Headwaters budget that failed to appropriate funds for payments under the LPA. In that submission, Headwaters indicated that it had only expended \$10,000 of the \$250,000 appropriated in the 2020 budget for LPA payments.

53. At least as of September 2022, Headwaters continued to collect an Amenity Fee for properties sold within the district. **Ex. 65; Ex. 72; Ex. 66,** 114:8-115:20.

Respectfully submitted this 26<sup>th</sup> day of February 2023.

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

*(Original signature on file)*

/s/ Brian K. Matise

David K. TeSelle, Reg. No. 29648

Brian K. Matise, Reg. No. 33755

Erica N. Garcia, Reg. No. 56450

***Attorneys for Granby Ranch Metropolitan District***

**CERTIFICATE OF SERVICE**

I hereby certify that on the 26<sup>th</sup> day of February 2023, a true and correct copy of the foregoing **PLAINTIFF GRANBY RANCH METROPOLITAN DISTRICT'S STATEMENT OF ADDITIONAL MATERIAL FACTS** was filed and served via Colorado Courts E-Filing on all Counsel of Record.

/s/ Caroline J. Nohl

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  
E-mail: jamie.steiner@huschblackwell.com  
joann.sandifer@huschblackwell.com

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