

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: February 26, 2023 6:46 PM FILING ID: D713B56BF5315 CASE NUMBER: 2021CV30008
Plaintiff: GRANBY RANCH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado, v. Defendants: HEADWATERS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado; GRAY JAY VENTURES, LLC.; GRANBY PRENTICE, LLC; and GR TERRA, LLC.	<p style="text-align: center;">▲COURT USE ONLY▲</p> Case No.: 2021CV030008 Div.: 1
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PLAINTIFF’S RESPONSE IN OPPOSITION TO DEFENDANT GR TERRA’S MOTION FOR SUMMARY JUDGMENT ON COUNTS IV, V AND VI OF THE THIRD AMENDED COMPLAINT	

Plaintiff, Granby Ranch Metropolitan District (“GRMD”), by and through its attorneys, Burg Simpson Eldredge Hersh & Jardine, P.C., respectfully submits this Response in Opposition to Defendant GR Terra’s Motion for Summary Judgment on Counts IV, V and VI of the Third

Amended Complaint (“Motion”).¹ The Court should deny the Motion for the reasons set forth in this response brief.

I. SUMMARY OF ARGUMENT

The essence of this dispute centers around a lease purchase agreement (“LPA”) which provided governmental rights to acquire ski and golf facilities through 2062, in exchange for imposition of a \$10,000 per lot amenity fee on up to approximately 5,000 lots. Approximately \$6.1 million in amenity fees were collected and paid to the private property owner prior to the foreclosure in 2020, and additional fees continued to be collected through 2022. The LPA was recorded with the Grand County Clerk and Recorder prior to the foreclosure, and all parties clearly had notice of it. GRMD had a significant interest in the ski and golf facilities, as the government entity that authorized the fees to be imposed on properties within the District for the purpose of acquiring the facilities and had the right to acquire and operate the facilities pursuant to an Amended Town Intergovernmental Agreement (“IGA”) with the Town of Granby (“Town”) and Headwaters Metropolitan District (“HMD”).

The Court should deny the Motion because the foreclosure of a deed of trust cannot eliminate GRMD’s rights in the property as a governmental entity. GRMD was not a party to the foreclosure, nor was it notified of the foreclosure. Governmental rights in private property foreclosed (such as public easements, rights of way, development restrictions) that are in the nature of covenants that run with the land are not terminated by foreclosure. As the Court has determined

¹ Defendant Headwaters Metropolitan District (“HMD”) incorporated into their motion for summary judgment Defendant GR Terra’s Argument sections I and III. To avoid duplication, Plaintiff’s response in opposition addresses the motions of both Defendants. Plaintiff’s arguments, here, will also be incorporated in its Response in Opposition to Motion for Summary Judgment of Headwaters Metropolitan District on Counts II and VI of Plaintiff’s Third Amended Complaint.

in deciding GR Terra's prior motion to dismiss, such covenants that do not involve monetary liens are *not* terminated by foreclosure.

GR Terra's argument that it did not breach the LPA because its predecessor (Granby Prentice and Gray Jay) previously declared the LPA terminated fails because if the LPA is a covenant that runs with the land, the public (HMD and GRMD) continue to have an interest in the property even though the property has been sold to a different landlord. Immediately upon purchasing the property, GR Terra entered into a lease of the premises to its affiliated entity, GR Operations, which was wholly inconsistent with recognizing the lease. Thus, there is continuing breach. GR Terra also has disclaimed its obligation to transfer the property to HMD, the Town, or GRMD under the LPA. Thus, its repudiation of the LPA purchase option and lease obligations constitutes a breach.

GR Terra also cannot prevail on its argument that HMD failed to appropriate funds. Initially, the Court should note that under the LPA, rental payments are made ONLY from the Amenity Fees collected each year on new lots that are sold or developed. Thus, HMD has no obligation to make ANY rental payments out of its general governmental funds – just to transfer the amenity fees collected as payments under the LPA. The undisputed facts show that HMD appropriated \$250,000 in funds in 2020 for lease payments under the LPA but only used \$10,000 of its appropriated authority. In 2021, HMD did not prepare a budget until OCTOBER 15, 2021. Accordingly, there could not be a failure to appropriate funds until October 15, 2021, at the earliest. This was after GR Terra breached the LPA by entering a 5-year lease with its affiliate, GR Operations.

The case revolves around a simple principle of Colorado law: public funds cannot be used to subsidize purely private property without public benefit. Colorado Constitution, Article XI Sections 1 and 2, Article X Section 20 (TABOR), Title 32 of the Colorado Revised Statutes (the Special District Act) governing metropolitan districts, and the Districts' service plans all prohibit public funds from being used to solely benefit private property. Colorado's use of metropolitan districts to promote development has always been limited to constructing and improving *public infrastructure* (e.g., roads, water and sewer systems, parks and recreation, etc.). In this case, the Town and original developer allowed public funds (\$10,000 per lot, up to perhaps \$50 million) to fund a private ski resort and golf course by providing the metropolitan district with a LPA, originally dated and incorporated in the June 1, 2005, Deed of Trust and Loan Agreement, so that it would eventually *acquire* the private ski resort and golf course after 50 years or when development is complete. The transaction was properly structured to comply with Colorado law because the private property that was being subsidized would eventually be transferred to the public entity (metropolitan district), and in the meantime, it would be operated by the District with the residents and taxpayers receiving special preferential recreation benefits.²

Unfortunately, the property went into foreclosure³ in 2020. The Lender Defendants³ acquired the property and then asserted that the public's rights under the LPA were foreclosed out.

² The LPA provided that for each lot that was sold to an eventual homeowner, or home/condo unit that was built, the metropolitan districts would impose a \$10,000.00 "Amenity Fee" that would be a lien on the property. Approximately 5000 homes were planned, resulting in approximately \$50 Million to be paid, which would approximate the \$31 Million original value of the facilities plus improvements and interest or inflation. Once all lots were developed and Amenity Fees collected, the property would be conveyed to the operating district. Alternatively, after fifty years in 2062, the property would be conveyed to the operating district even if development was not complete.

³ The Lender Defendants include Gray Jay Ventures, LLC and Granby Prentice, LLC.

The Lender Defendants sold the property to GR Terra in April 2021, who also refused to honor the rights under the LPA. When the Defendants refused to enforce the LPA, GRMD brought this action as a third-party beneficiary that was entitled to acquire and operate the ski resort and golf course amenities (“Amenities”) on behalf of its taxpayers and residents. Numerous disputed material facts regarding GRMD’s interest in the property preclude entry of summary judgment in favor of Defendants as a matter of law. GR Terra’s Motion should be denied in its entirety.

II. RESPONSE TO DEFENDANTS’ STATEMENT OF FACTS

Defendants’ collective statement of facts are filled with incomplete and cherry-picked recitations of material facts and are disputed. *See Plaintiff’s Response in Opposition to Defendants’ Statement of Facts* incorporated herein by reference.

III. ADDITIONAL FACTS⁴

All of the following facts are supported by the evidence and must be viewed in the light most favorable to Plaintiff for purposes of evaluating the Motion. *See Plaintiff Granby Ranch Metropolitan District’s Statement of Additional Material Facts* incorporated herein by reference. As to factual allegations which Defendant has not challenged by citation to record evidence, the Court should accept allegations from the GRMD’s Third Amended Complaint as true.

⁴ To avoid duplication and reduce volume, Plaintiff will not submit exhibits that have already been filed with the Court. Plaintiff has prepared a Master Exhibit List for the summary judgment briefing. The additional exhibits associated with this response will accordingly begin with **Exhibit 56**.

IV. LEGAL STANDARD

A. **Summary Judgment Is A Drastic Remedy Proper Only On A Clear Showing That The Moving Party Is Entitled To Judgment As A Matter of Law.**

Rule 56(c), C.R.C.P. governs motions for summary judgment and provides in part:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

“Summary judgment is a drastic remedy that is warranted only on a clear showing that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Greenberg v. Perkins*, 845 P.2d 530, 531 (Colo. 1993). Summary judgment is no substitute for trial: “[a] litigant is entitled to have disputed facts determined by trial, and it is only in the clearest of cases, where no doubt exists concerning the facts, that a summary judgment is warranted.” *Moses v. Moses*, 505 P.2d 1302, 1304 (Colo. 1973). Its purpose is “to permit the parties to pierce the formal allegations of the pleadings and save the time and expense connected with trial when, as a matter of law, based on undisputed facts, one party could not prevail.” *Peterson v. Halsted*, 829 P.2d 373, 375 (Colo. 1992).

The moving party bears the burden of establishing the lack of a triable issue of fact, with any doubts resolved against them and in favor of the non-moving party. *Kaiser Found. Health Plan v. Sharp*, 741 P.2d 714, 718-19 (Colo. 1987); *Tapley v. Golden Big O Tires*, 676 P.2d 676, 678 (Colo. 1983) (non-moving party must “receive the benefit of all favorable inferences that may be reasonably drawn from the undisputed facts”). Thus, if the trier of fact could draw divergent inferences from the application of the law to the facts, summary judgment should be denied. *See*

People ex rel. S.N. v. S.N., 2014 CO 64, ¶ 23. “Even where it is extremely doubtful that a genuine issue of material fact exists, summary judgment is inappropriate.” *Westin Operator, LLC v. Groh*, 2015 CO 25, ¶ 21 (quotation marks omitted).

V. ARGUMENT

A. **Disputed Issues of Material Fact Regarding the Granby Ranch Development, GRMD’s Interest in the Property, and Use of Public Funds Preclude Entry of Summary Judgment in Favor of Defendants.**

(1) Defendants Use of Public Funds to Subsidize Purely Private Property Without Public Benefit Violates Colorado Law.

Public funds cannot be used to subsidize purely private property without public benefit. Here, Colorado Constitution, Article XI Sections 1 and 2, Article X Section 20 (TABOR), as well as Title 32 of the Colorado Revised Statutes (the Special District Act), governing metropolitan districts, are implicated and provide the context for the Granby Ranch development, GRMD’s interest in the property, and the contractual obligations that should be honored.

Colorado Constitution, Article XI Sections 1 and 2 “prohibit mingling of public funds with private funds.” *In re Interrogatories by Colo. State Senate (Senate Resolution No. 13) Concerning House Bill No. 1247*, 566 P.2d 350, 356 (Colo. 1977); Colo. Const. Art. XI, §§ 1, 2. “These sections basically prohibit lending, pledging credit or making donations to persons, companies or corporations by the state, counties, cities or towns of Colorado.” *Lyman v. Town of Bow Mar*, 533 P.2d 1129, 1133 (Colo. 1975). Article XI Sections 1 and 2 specifically apply to the state, counties, cities, townships, and school districts, including the Town here. Colo. Const. Art. XI, §§ 1, 2. Article X Section 20 (TABOR) imposes limits on government spending, revenue gathering and accumulation, and indebtedness. Colo. Const. Art. X, § 20. Voter approval is required in advance for the “creation of any multiple-fiscal year direct or indirect district debt or other financial

obligation whatsoever without adequate present cash reserves pledged irrevocably and held for payments in all future fiscal years.” Colo. Const. Art. X, § 20(4)(b). The Town, the metropolitan districts, and the Granby Ranch development are subject to TABOR and acted in accordance with Colorado law.

The Special District Act, C.R.S. §§ 32-1-101 *et seq.* governs the organization and operation of special districts in Colorado. A special district inherently has a public purpose and possesses only those powers that are conferred upon it by statute and the Colorado Constitution. In fact, the Colorado General Assembly specifically declares that “the organization of special districts providing the services and having the purposes, powers, and authority provided in the article will serve a public use and will promote the health, safety, prosperity, security, and general welfare of the inhabitants of such districts and of the people of the state of Colorado.” C.R.S. § 32-1-102(1). It is within this context and under these laws that the Town approved the creation of HMD and GRMD, the related agreements, and the Granby Ranch development. From their inception, the special districts, executed agreements, and fees paid by residents have a public purpose to benefit the Town, GRMD, and their residents. Contrary to Defendants’ arguments, and as will be further discussed, GRMD maintains an interest in the property and the foreclosure of the property did not extinguish its interest. GR Terra, and the other Defendants, had notice of the historical and public purpose of the development and the executed, recorded documents. Thus, not only is it improper under Colorado law for Defendants to collect fees from residents (public funds) to subsidize purely private property without public benefit, but GR Terra, with notice and knowledge, took title to the property subject to the contractual obligations in the Deed of Trust and LPA. Significantly, the Court has already determined as a matter of law that GRMD is a third-party beneficiary entitled to

enforce the terms of the LPA and the LPA is a covenant running with the land. *See Order Granting in Part Gray Jay Ventures, LLC, Granby Prentice, LLC, and GR Terra LLC's Motion to Dismiss Second Amended Complaint* dated January 28, 2022, and *Order Granting in Part the Defendant Headwater Metropolitan District's Motion to Dismiss the Second Amended Complaint Pursuant to C.R.C.P. 12(b)(1) & 5* dated January 28, 2022 (collectively "January 28, 2022, Orders"). The Court should uphold these rulings and deny Defendant's Motion.

(2) The Town Approved the Special Districts and Granby Ranch Agreements for the Benefit of the Residents of the Town and GRMD.

To support the Town's public purpose for the Granby Ranch development, the special districts, and numerous agreements, which may not be disregarded or extinguished, GRMD highlights the following important facts:

Formation of the Special Districts for the Granby Ranch Development

- 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** [Service Plans].
- 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** [Service Plans].
- 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** [Service Plans]. GRMD, as the Taxing District, includes the residential lots that provide the revenue base. HMD, the Service District, does not provide a revenue base.
- 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** [Service Plan]. 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.

- 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.**
- 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.**

Metropolitan Districts’ Board of Director Meetings and Meeting Minutes

- 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.
- 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.*
- 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.*

Agreements and Financing for the Granby Ranch Development

The May 26, 2005, Fee Resolution

- On May 26, 2005, HMD and GRMD passed a Joint Resolution to Establish an Amenity Fee (“2005 Fee Resolution”). **Ex. 7.** 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.*

- Specifically, 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.*

The June 1, 2005, Amenity Fee Agreement

- 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.*
- Specifically, the Agreement provided “[HMD] will impose and 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.*

The June 1, 2005, Lease Purchase Agreement

- 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 original June 1, 2005, LPA was incorporated into the June 1, 2005 Deed of Trust and Loan Agreement, as all agreements between GRH and the Districts were assigned to the lender as part of the Loan Documents. **Ex. 60**, Exhibit A.

The June 1, 2005, Loan Agreement

- On June 1, 2005, GRH entered into a Loan Agreement with Redwood Capital Finance Company, LLC (“Redwood”) 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.

The June 1, 2005, Deeds of Trust

- 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.**
- 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.**

The June 1, 2005, Promissory Note

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

Updated and Subsequent Agreements for the Granby Ranch Development

- 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 property in these districts were subject to the terms of the Amenity Fee Agreement and were considered Taxing Districts with GRMD. *Id.*
- 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.*
- The 2008 IGA was replaced by an Amended and Restated IGA on November 8, 2016 (the “2016 Granby 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.*

- On December 31, 2012, GRH and HMD entered into the Second Amended and Restated LPA. (“Second LPA” or “LPA”). **Ex. 32.** 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.
- 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 thus 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.*
- 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.” 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). This provision for “Acquisition by Tenant” allowed HMD to comply with its obligations under the IGA with the Town. The Second LPA was recorded on January 3, 2020, with the Grand County Clerk and Recorder.
- On July 17, 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.**
- 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.*

- 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.**
- 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 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.
- 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 case documents, considered in their proper context and in totality, clearly demonstrate that from the inception of the Granby Ranch development, HMD and GRMD were formed specifically for completion of the development, the various agreements were structured directly involving the Town, HMD, and GRMD, and the residential development and Amenities (golf course and ski resort) were intended to be financed and were financed by the public through Amenity Fees imposed on and collected from Granby Ranch residents. As the Court found, HMD and GRMD had a symbiotic relationship, organized with the intention that they would act reciprocally as the Taxing District and Service District and for one another’s benefit. *See January 28, 2022, Orders.* The purpose for assessing the Amenity Fees to the Granby Ranch residents and property owners was to ensure that the Amenities remained available for the use of these residents (as opposed to being converted for additional housing units), to raise funds to be turned over to the

ski and golf facilities owner to eventually acquire the property, and in turn, provide benefits to the residents/owners.

The 2003 IGA with the Town and 2005 LPA were executed to ensure there was a public purpose for the Amenity Fees. The IGA permits the Town, HMD, or ultimately GRMD to acquire the Amenities by 2062. The LPA provided the mechanism whereby the lease rent payments were applied to acquiring the Amenities. This structure was necessary for the public ownership and operation of the Amenities, and without it, public ownership could not be accomplished. Importantly, the Amenity Fee could not be assessed against residents without a public purpose and consent of GRMD. While earlier agreements were amended and restated throughout subsequent years, the terms essentially remained the same. Thus, GRMD's interest in the property and the public purpose of property should be upheld and enforced as contractual covenants. The Court should reject Defendants' arguments which disregard GRMD's role in and rights to the property and financing. Due to the existence of numerous disputed issues of material fact, Defendant's Motion should be denied.

(3) GRMD Maintains an Interest in the Property and GR Terra Took Title to the Property Subject to the Contractual Obligations.

Under Colorado law, courts have held that foreclosure on a deed of trust did not extinguish contractual covenants. Two cases previously referenced by the Court include: *Schwab v. Martin*, 441 P.2d 17, 19 (Colo. 1968)(In a case involving beneficiaries' interests in rental properties, court concluded that a provision of a deed of trust remained operative as a contract between the parties even though the debt was extinguished by the foreclosure sale and the instrument was surrendered by the public trustee); and *Top Rail Ranch Estates, LLC v. Walker*, 327 P.3d 321, 327 (Colo. App. 2014)(In a case involving a real estate transaction, court found that subsequent foreclosure did not

extinguish seller's deed of trust and contractual rights). In *Top Rail*, the Court specifically held: "Regardless of whether the lien imposed by the deed of trust was extinguished by foreclosure of the bank's senior lien, the contractual covenants in the deed of trust were not extinguished by the foreclosure." *Id.*

The Colorado Supreme Court's decision in *Schmelzle v. Key, Inc.* is also instructive. *Schmelzle* involved plaintiff landowners who executed a deed to the developer of residential real estate and later recorded their agreement covering the landowners' retained rights and interests in the property. *Schmelzle v. Key, Inc.*, 452 P.2d 41, 42 (Colo. 1969). The developer failed to complete the development within the time provided for in the agreement and plaintiffs sought adjudication of the parties' rights. *Id.* Defendants denied plaintiffs' ownership and right to the property and argued that their interests were prior and superior to the claims of plaintiffs by virtue of the mortgages, conveyance, and foreclosure of the deeds of trust. *Id.* at 42-43. The Court disagreed and held that plaintiffs' interest under their agreement with the developer was an equitable interest in the property that could not be transferred, surrendered, or waived by the defendants. *Id.* at 45. Significantly, the Court further found that the deeds given to secure the debt were "valid first liens, but nothing more." *Id.* at 46. *See also, Foot v. Burr*, 92 P. 236, 237-238 (Colo. 1907)(court stated that a deed of trust is both a lien and a personal contract); *Compass Bank v. Kone*, 134 P.3d 500, 503 (Colo. App. 2006)(In a case involving secured transactions, court held that "a security interest can be created in an integrated document containing both the security agreement and other contractual terms").

Similarly, Granby Ranch is a case where the foreclosure on the Deed of Trust should not extinguish the contractual covenants and the public nature of GRMD's interest in the property. At

a minimum, disputed material facts exist regarding GRMD's interest which preclude entry of summary judgment as a matter of law. HMD and GRMD were organized in 2003 for the purpose of the Granby Ranch development and financing of the Amenities by the public. **Exs. 1-2, 56-58.** In fact, the numerous agreements were structured and executed on May 26, 2005, and on June 1, 2005, to implement the Amenity Fee payments. **Exs. 6-8, 59-62.** As summarized above, HMD and GRMD passed the 2005 Fee Resolution on May 26, 2005, so that the \$10,000 per lot fee could be 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. **Ex. 7.** The 2005 Fee Resolution was recorded as a lien on the property within GRMD that would run with the land. *Id.* On June 1, 2005, GRH and HMD then executed the 2005 Fee Agreement which imposed the \$10,000 Amenity Fee per residential unit and lot within the Districts. **Ex. 8.** The Amenity Fee Agreement was recorded with the Grand County Clerk and Recorder. *Id.* Additionally, the Loan Agreement, Promissory Note, two Deeds of Trust, and LPA were executed and recorded at the same time on June 1, 2005. The Deeds of Trust specifically reference and incorporate the Assignment of Leases and Rents and Loan Agreement documents. **Exs. 6, 61.** The Loan Agreement references the Amenity Fee Agreement, HMD, and GRMD, and specifically incorporates the Promissory Note, Deeds of Trust, and Assignment of District Agreements executed by GRH such as the LPA. **Ex. 60, §§ 1.1, 1.4, Exhibit A.** The June 1, 2005, LPA was an integral part of the original Loan Documents and is not, as Defendants contend, a junior lien or encumbrance. The fact that the LPA was later amended and restated does not relegate it to a junior lien. The LPA terms remained essentially the same in the subsequent agreements.

The Second LPA, hereinafter LPA, is the key operative agreement that is the subject of this action. **Ex. 32.** Significantly, the Court has determined as a matter of law that the LPA is a covenant running with the land and GRMD was a third-party beneficiary of the LPA. *See January 28, 2022, Orders.* As in *Schwab* and *Top Rail*, the obligations and covenants contained in the Deeds of Trust, Loan Documents, and Agreements, including the LPA and Amenity Fee Agreement, remain operative contracts separate from the debt and were not extinguished by the foreclosure. Defendant's argument that C.R.S. § 38-38-501 mandates that the foreclosure extinguished the LPA is inaccurate. Rather, GR Terra took title to the property subject to the contractual obligations and covenants. Importantly, while C.R.S. § 38-38-501 was implemented to render title to real property absolute and free of technical defects so that subsequent purchasers may rely on record title, "a purchaser is bound by the record." *Ragsdale Bros. Roofing, Inc. v. United Bank of Denver, N.A.*, 744 P.2d 750, 753 (Colo. App. 1987). "If [the record] indicates the existence of some outside interest by which the title may be affected, a purchaser is bound to investigate and is charged with knowledge of the facts to which the investigation would have led." *Id.* Clearly, GR Terra had notice of the historical and public nature of the Granby Ranch property and GRMD's interest, and it is bound by the record.

In addition, Plaintiff GRMD was neither listed as a party entitled to notice via the Public Trustee nor made a party to the foreclosure. **Ex. 35.** Therefore, GRMD's rights could not be extinguished. *See* C.R.S. § 38-38-506. The cases cited by Defendant are distinguishable from the facts of Granby Ranch and are not binding on this Court. Particularly, *First Interstate Bank v. Tanktech*, 864 P.2d 116 (Colo. 1993) involved private parties of a month-to-month holdover commercial lease. However, it is important to note the Colorado Supreme Court stated that the

purpose of the foreclosure statute is to allow a transferee to rely on *the state of record title*. *Id.* at 119 (emphasis added). *Land Title Ins. Corp. v. Ameriquest Mortgage Co.*, 207 P.3d 141 (Colo. 2009) involved multiple liens on a home during a refinance and application of the doctrine of equitable subrogation. Similarly, *Green Tree Servicing, LLC v. U.S. Bank Nat'l Ass'n, N.D.*, 192 P.3d 1014 (Colo. App. 2007) involved financing and a line of credit on a home. *Town of Grand Lake v. Lanzi*, 937 P.2d 785 (Colo. App. 1996) pertained to a town's zoning ordinance and a parking agreement. None of these cases are applicable here.

B. Disputed Issues of Material Fact Regarding Defendant's Breach of Contract Preclude Entry of Summary Judgment in Favor of Defendants.

(1) GR Terra Failed to Recognize GRMD's Interest in the Property and Abide by the LPA.

Immediately upon purchasing the property, GR Terra leased the property to GR Operations, its affiliate, under a 5-year lease. This lease was inconsistent with the LPA. GR Terra also has repudiated the terms of the LPA including the purchase option. To prevail on a claim for breach of contract, a plaintiff must prove: (1) the existence of a contract, (2) that it performed their contractual duties or a justification for nonperformance of contractual duties, (3) that the other party to the contract failed to perform, and (4) damages resulted. *Long v. Cordain*, 343 P.3d 1061, 1067 (Colo. App. 2014). As previously stated, the Court has determined as a matter of law that the LPA is a covenant running with the land and GRMD was a third-party beneficiary of the LPA. For years, from 2003-2020, the Town, HMD, GRMD, and GRH intended and agreed that the conveyance of the Amenities from GRH to HMD to the Town or GRMD would occur by 2062. **Exs. 1-2, 6-8, 21-22, 32, 56-64.** Furthermore, the June 1, 2005, LPA was included in the original Loan Documents and the LPA remains the operative contract. **Exs. 1-2, 6-8, 56-62.** Under

Colorado law, the terms of the LPA are separate from any lien for the debt secured by the Deed of Trust. *Supra*. GR Terra took title to the property subject to its contractual obligations and covenants and GRMD's interest in the property was not extinguished by the foreclosure. *Id*.

GR Terra argues that since its purchase of the property, HMD has never performed as tenant under the LPA. *See* Motion at p. 20. This is inaccurate.⁵ As noted above, the reason why HMD has not performed as a tenant was because GR Terra immediately leased the premises to GR Operations under a 5-year lease, preventing HMD from taking possession. At least until October 15, 2021, HMD continued to collect the Amenity Fees and its then-current budget contained appropriations for rental payments. **Ex. 68**. It would be absurd for a landlord to claim that a tenant did not perform because the landlord's own actions prevented the tenant from performing. At a minimum, there exist disputed issues of material fact that prevent entry of summary judgment as a matter of law.

Section 3 c. of the LPA states that the Rental Payments are "a current obligation of the Tenant." **Ex. 32** § 3 c. In section 3 a. of the LPA, HMD agreed to pay as rent the proceeds of "all amenity fees collected by the Tenant." *Id.*, § 3 a. As used in the 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

⁵ Importantly, after GR Terra purchased the property, it immediately appointed its own Directors, the Johnsons, to the HMD Board of Directors. The Johnsons were long-time friends of Robert Glarner, one of the principals of GR Terra. So, GR Terra cannot claim that HMD committed a breach excusing its performance when the HMD Board of Directors was hand-picked by Robert Glarner to do his bidding.

adopted or agreement entered into for the purpose of imposing fees related to the use of the Leased Premises.” *Id.* All Amenity Fees collected pursuant to the 2013 Fee Resolution and its predecessors were thus 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 LPA that there could be no rent due in any fiscal year if no Amenity Fees were collected by HMD. *Id.* (emphasis added).

It is undisputed that HMD continued to demand the collection of Amenity Fees through at least January of 2022 – long after this lawsuit was filed and eight months after GR Terra purchased the property. In two emails sent to Mylea Draper, an Escrow Officer at Title Company of the Rockies, both Diane Rodriguez, accounting manager at Community Resource Services of Colorado, which manages HMD, and Clint Waldron, Esq., of White Bear Tanaka & Waldron, P.C., General Counsel to HMD, affirm that the Amenity Fee of \$10,000 is still to be collected per each lot sold at Granby Ranch. **Ex. 65.** Mr. Waldron states that the Amenity Fees were not wiped out by the private foreclosure action and that it can still be used “to finance the acquisition, construction and installation of Amenities.” *Id.* In a contrary position, Robert Glarner testified that the LPA had gone away in foreclosure, and the LPA was a “tiny blip” on the radar screen of due diligence. **Ex. 66**, 90:7-21. That “tiny blip” was part of the record title. Mr. Glarner further testified that the advice he received from counsel – that the LPA was eliminated through the foreclosure process – was material to his decision to proceed forward with the transaction. *Id.*, 91:3 – 92:8. Glarner even compared the LPA as an encumbrance of the property to “buying a house that the neighbor could buy for a dollar next door. [He] wouldn’t purchase the home.” *Id.*, 93:3-9. Thus, the disputed material facts show that GR Terra had knowledge of the LPA, took title to the

property subject to the LPA, but disregarded the LPA and GRMD's interest in the property as extinguished.

(2) GRMD Has Suffered Damages By the Loss of Its Valuable Asset and Fees Paid.

GR Terra took title to the property subject to the contractual obligations of the LPA, and its refusal to honor those obligations has resulted in significant damages to GRMD. The factual history of this case and the structure of the agreements illustrate that from the very beginning of the Granby Ranch development, the property was always intended for public ownership, through title vesting in GRMD. This was not a "speculative" event as GR Terra claims. This certainty is evident as early as February 2, 2005, when counsel for the Districts stated that the Amenities will be transferred to the District through a lease purchase. **Ex. 57**, p. 3. This intent is reiterated by former Town Manager for the Town, Tom Hale, who stated that it was the Town's position 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." **Ex. 58**, p. 4.

This intent remains evident throughout the years and throughout various amendments and restatements to the agreements. In approving the 2012 Resolution Authorizing a Second Amended and Restated Lease Purchase Agreement and a Leased Premises Management Agreement, HMD's Board of Directors clearly states that consideration was given for "the cost and use of the Amenities and the Leased Premises, and their benefits to the District and the enjoyment by the taxpayers, residents, occupants, visitors and invitees of Granby Ranch, and the ***expected eventual vesting of the fee title to the Leased Premises in the District.***" **Ex. 67**, ¶ 1 (emphasis added). In 2015, HMD Director Kyle Harris asserted that "[t]he term of the lease and sublease will end in 2062, to coincide with the ***anticipated conveyance of the Amenities (ski and golf facilities) from GRH to HMD.***"

Ex. 64 (emphasis added). Upon apparently not receiving a response from counsel, Harris followed up on his previous correspondence, stressing the time-sensitive nature of the agreements and further stating that he thought language was needed “in both of the leases stating *when and how the facilities will ultimately transfer to HMD.*” *Id.* (emphasis added).

These facts relate contractual obligations and are certain. It wasn’t until the foreclosure and purchase by GR Terra, a private party who intends the Amenities to be private, argued that the LPA was extinguished. GRMD’s damages for the loss of the valuable Amenities and fees paid to date are “neither uncertain, unnatural, nor remote as to cause, or speculative and conjectural in effect.” *Vanderbeek v. Vernon Corp.*, 50 P.3d 866, 870-71 (Colo. 2002). At a minimum, material facts are in dispute which preclude entry of summary judgment in favor of Defendant as a matter of law. Defendant’s Motion should be denied.

C. Disputed Issues of Material Fact Regarding Appropriation of Rent Payments for Lease Years 2021 to 2023 Preclude Entry of Summary Judgment in Favor of Defendants.

(1) The Town, HMD, GRMD, and GRH Originally Structured the LPA to Comply with Colorado Law.

Although the LPA, from its inception as part of the original June 2005 Loan Documents, was structured to comply with Colorado law, GR Terra argues that the LPA was terminated. This argument, too, is incorrect. The original 2005 LPA and Second LPA were structured to comply with TABOR and included provisions for one-year renewal periods and annual appropriations. **Ex. 32, ¶¶ 2 a, 3 c.** In addition to standard TABOR language, the LPA contains other provisions which demonstrate the LPA was to establish a public interest in the Amenities. Without a public interest, there would be no valid basis for HMD and GRMD to impose the Amenity Fee. LPA Section 4 pertains to the public use and enjoyment of the Amenities for the “taxpayers, residents, occupants,

visitors, and invitees of Granby Ranch.” *Id.*, ¶ 4 a. LPA Sections 4 a and 23 provide HMD would acquire the Amenities at the end of the last Renewal Term, 2062, or earlier by payment of a predetermined purchase price. *Id.*, ¶¶ 4 a, 23. Without HMD’s purchase of the Amenities under the agreement, it would be making Amenity Fee payments to a private developer for it to own private assets. This outcome is unlawful.

HMD’s 2020 budget expressly appropriated ALL of the amenity fees collected, up to \$250,000, for payment under the LPA. **Ex. 68** [2020 Budget]. HMD only collected \$10,000 in amenity fees in 2020, but that budget and appropriation remained in effect until the next year’s budget was adopted. HMD did not adopt a budget for 2021 until October 15, 2021. **Ex. 69** [2021 Budget]. This was long after GR Terra had breached the LPA. Accordingly, it cannot claim justification based on HMD’s failure to appropriate funds.

(2) The LPA Remains in Full Force and Effect.

Based on the foregoing, the LPA remains in full force and effect and GRMD maintains a valid interest in the property. Defendant also argues that the LPA has been terminated because HMD Board did not appropriate rent payments for lease years 2021 to 2023. However, the requirements for termination based upon non-appropriation set forth in LPA Sections 2 and 3 have not been met, and the LPA remains an ongoing contractual obligation. **Ex. 32**, ¶¶ 2, 3.

Defendants have characterized the LPA as being subject to annual appropriation essentially at the unlimited discretion of HMD. This is not accurate. Instead, the LPA states that the Lease will be renewed annually “unless the Tenant elects not to appropriate funds to pay the amounts dues under this Lease as set forth in Section 3 c.” **Ex. 32**, ¶ 2. Section 2 also provides that the Lease will terminate upon the earlier of any of the following events: a. The expiration of the

Original Term or any Renewal Term due to the failure of Tenant to appropriate Amenity Fees to be paid pursuant to the terms of this Lease to continue leasing the Leased Premises or the ensuing Renewal Term[.]” *Id.*, ¶ 2 a. Section 3.c states that the Rental Payments constitute “a current obligation of the Tenant payable exclusively from current and legally available funds and shall not in any way be construed to be an indebtedness or multiple fiscal-year obligation of the Tenant within the meaning of the provision of any constitutional or statutory limitation or requirement applicable to the Tenant.” **Ex. 32**, ¶ 3 c. HMD agreed that during the Original Term and Renewal Term, “the chairman or president of the Tenant shall request the required appropriation from Tenant’s board of directors (“the **Board**”) for the ensuing Renewal Term and exhaust all available administrative reviews and appeals in the event such portion of the budget is not approved.” *Id.* Section 3 further provides that “If the chairman or president of Tenant periodically requests from its governing body funds to be appropriated for payment to Landlord under this lease and, notwithstanding the making in good faith of such request in accordance with appropriate procedures and with the exercise of reasonable care and diligence the governing body does not approve funds to be paid to the Landlord for the Leased Premises, the Lease shall not be renewed[.]” *Id.* At other places in the LPA, HMD covenants “that it will do all things lawfully within its power to obtain, maintain and properly request and pursue the Amenity Fees.” *Id.*, ¶ 3 b. In Section 14, HMD further represents and warrants that “The chairman or president of Tenant will request funds to make payments in each renewal term.” *Id.*, ¶ 14. Hence, on the face of the LPA, it has not been terminated and remains in full force and effect by operation of law.

There is no evidence that HMD met any of these prerequisites to terminating the LPA, and disputed issues of material fact preclude summary judgment in favor of Defendant. In fact, HMD

has continued to demand the collection of Amenity Fees at closings in Granby Ranch. **Ex. 22.** The emails prove that HMD was taking this position as recently as January 25, 2022. All these Amenity Fees should have been appropriated to make rent payments under the LPA, which clearly states in Section 3 c. that “If actual Amenity Fees collected during any fiscal year exceed the amount budgeted for Rental Payments for such year, the Board shall amend its budget during such fiscal year to allow for payment of such additional Amenity Fees.” **Ex. 32, ¶ 3 c.**

Defendants argue that the provisions of the LPA call for the Lease to be terminated if HMD elected not to appropriate funds to pay the amounts due under the LPA. However, this power to terminate is illusory, and it sheds no light on the status of GRMD as a third-party beneficiary. No general fund monies would ever be needed to provide funding under the LPA, since the rental payments consisted entirely of the Amenity Fees and those Fees could only be used to make payments under the LPA. Pursuant to Section 3 b. of the LPA, the chair and president of the Tenant is obligated to request the required appropriation for each renewal term, which requests were to be “made in good faith” “and in accordance with appropriate procedures.” *Id.*, ¶ 3 b. HMD, of course, does not assert that any of this happened, precisely because once its Board members were replaced it intended in bad faith to try to terminate the LPA to benefit Granby Prentice and the purchaser of the Amenities, GR Terra. Given the history and structure of the Service Plans, Deeds of Trust, Loan Documents, Resolutions, and Agreements, including the LPA, as well as the symbiotic relationship between HMD and GRMD, and assessing the Amenity Fees, the assertion that HMD had a unilateral power to terminate the LPA without regard to the interests of intended third-party beneficiaries is without merit. The historical documents demonstrate that HMD has contractual obligations and does not have unlimited discretion with respect to the annual appropriation of

funds to pay rent under the LPA. **Exs. 1-2, 6-10, 19, 21-22, 32, 56-63.**

HMD cannot, in good will, terminate the LPA at will by refusing to appropriate the Amenities Fees that it has collected. This is particularly true in this case where HMD's Board of Directors is now controlled by individuals specifically selected by Robert Glarner, the principal of GR Terra, to do his bidding. In *City of Golden v. Parker*, 138 P.3d 285, 288-89 (Colo. 2006), the Colorado Supreme Court dealt with certain economic incentive agreements entered between Golden and private developers. The incentive agreements were subject to annual appropriation under certain restrictions. The Court held that while the agreements complied with Article X, Section 20 of the Colorado Constitution, since they were subject to annual appropriation, they also vested contractual rights in the developers. *Id.* at 294-96. The LPA created vested contractual rights that would terminate only under the conditions set forth in Sections 2 and 3.⁶ GRMD may enforce these rights as a third-party beneficiary of the LPA.

Based on the lengthy case history and facts, there are genuine issues of material fact that preclude summary judgment and the Motion should be denied.

⁶ The cases cited by Defendant, again, are distinguishable: *Glennon Heights, Inc. v. Central Bank & Trust*, 658 P.2d 872, 874 (Colo. 1983)(State of Colorado financed construction of two group homes for developmentally disabled persons); *Gude v. Lakewood*, 636 P.2d 691, 694 (Colo. 1981)(City of Lakewood issued bonds to finance construction of new City Hall); *Board of County Comm'rs v. Dougherty, Dawkins, Strand & Bigelow*, 890 P.2d 199, 201 (Colo. App. 1994) (County of Boulder entered into equipment lease-purchase agreement with investment banking firm); and *Falcon Broadband, Inc. v. Banning Lewis Ranch Metro. Dist. No. 1*, 474 P.3d 1231, 1240 (Colo. App. 2018)(A metropolitan district contracted with cable company to provide internet and cable services to residents).

VI. CONCLUSION

For all of the reasons set forth herein, and for any other reasons the Court finds just, Plaintiff respectfully requests that Defendant's Motion be denied in its entirety.

Respectfully submitted this 26th day of February 2023.

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

(Original signature on file)

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of February 2023, a true and correct copy of the foregoing **PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT GR TERRA'S MOTION FOR SUMMARY JUDGMENT ON COUNTS IV, V AND VI OF THE THIRD AMENDED COMPLAINT** was filed and served via Colorado Courts E-Filing on all Counsel of Record.

/s/ Natalie N. Newlander

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