

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 6:34 PM FILING ID: A8DF13761B2B1 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.; REDWOOD CAPITAL FINANCE CO., LLC, GRANBY PRENTICE, LLC; and GR TERRA, LLC.	<p style="text-align: center;">▲COURT USE ONLY▲</p> Case No.: 2021CV030008 Div.: Rm.:
ATTORNEYS FOR PLAINTIFFS: David K. TeSelle, Reg. No. 29648 Brian K. Matise, Reg. No. 33755 Erica N. Garcia, Reg. No. 56450 Burg Simpson Eldredge Hersh & Jardine, P.C. 40 Inverness Drive East Englewood, Colorado 80112 Telephone: (303) 792-5595 Facsimile: (303) 708-0527 E-Mail: dteselle@burgsimpson.com E-Mail: bmatise@burgsimpson.com E-Mail: egarcia@burgsimpson.com	
PLAINTIFF’S RESPONSE TO 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	

Plaintiff Granby Ranch Metropolitan District, by and through its attorneys, Burg Simpson Eldredge Hersh & Jardine, P.C., responds to 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 as follows:

Creation of the Special Districts and Master IGA

1. Undisputed.
2. Undisputed.
3. This statement is misleading and incomplete. The original taxing district (Sol Vista No. 2 which was renamed GRMD) was later divided into 8 separate districts, named GRMD and GRMD 2-8. Substantially all of the original 3,563 acres of territory contained within GRMD was contained in GRMD and GRMD 2-8. In addition, the property in all of these districts were required to pay the \$10,000 amenity fee to Headwaters, which in turn was dedicated for purchase of the leased premises, transferred to the private owner of the ski facilities and golf course, and credited to the purchase price under the LPA.
4. This statement is misleading and incomplete. Originally, Headwaters as the “service district” was the only district that had the ability to provide services and own/acquire infrastructure in the Granby Ranch development. However, in 2016 the GRMD and Headwaters service plans were amended, and in 2016-2017 the IGAs between the Districts were terminated and the IGA with the Town of Granby was amended to allow GRMD to provide services and to own and acquire infrastructure, including the amenities.
5. Undisputed that this was true originally. But see response to Para. 4, above, as to subsequent amendments in 2016-2017.
6. Undisputed that this was true originally. But see response to Para. 4, above, as to subsequent amendments in 2016-2017.
7. Undisputed that this was originally true. But see response to Para. 4, above, as to subsequent amendments in 2016-2017. The Master IGA was terminated in 2017, and an

amended Town IGA was established in 2016 which controlled the relationship as of 2020-present.

8. Undisputed but irrelevant to this dispute. These bonds were for other infrastructure, such as roads, water and sewer, and are not material to the issues in this case.

9. Misleading and disputed. Although it is true that originally, the ski and golf facilities were not constructed using public funds, over \$6.1 million of Amenity Fee funds have been imposed by the GRMD and Headwaters joint fee resolution, collected by Headwaters, and paid to the private owner for the purpose of acquiring the facilities. Thus, it is inaccurate to say that public funds were not used to “finance” the amenities.

Termination of 2003 Master IGA

10. Undisputed. But see response to paragraph 4, as this IGA was terminated/replaced as a result of service plan amendments in 2016, the Town IGA amendment in 2016, and the 2017 Termination Agreement¹.

Financing and Deed of Trust on Granby Ranch

11. Undisputed.

12. Undisputed. In particular, the 2005 Deed of Trust was entered into contemporaneously and as part of the same transaction as the original 2005 LPA.

The Amenity Fee Agreements and Resolutions

13. Undisputed.

14. Undisputed.

¹ Importantly, the 2017 Termination Agreement terminated only the 2006 Master IGA and the 2008 Master IGA.

15. Undisputed.
16. Undisputed.
17. Undisputed.
18. Undisputed that this language is contained in the 2013 Fee Agreement, although the LPA defines specific leased premises as amenities and expressly provides that the Amenity Fees imposed are for the purpose of acquiring the Amenities. The 2016 amended Town IGA authorizes GRMD to acquire the Amenities.

The Exclusion Agreement and First Amendment to 2006 Master IGA

19. Undisputed.
20. Undisputed. As previously noted, GRMD imposed those fees on properties within its boundaries pursuant to the Joint Resolution as amended, as did GRMD 2-8 with respect to the properties that were transferred to these newly created districts. The fees were then paid to HMD to acquire the leased premises under the LPA, which paid the fees to the landlord, to be applied to the purchase price.

The Lease Purchase Agreement

21. Undisputed.
22. Undisputed.
23. Undisputed.
24. Undisputed.
25. Undisputed.
26. Undisputed.
27. Undisputed.

28. Undisputed.

29. Disputed. Does not accurately state the contents of the paragraph. Renewal is automatic unless the tenant (Headwaters) elects not to appropriate funds. Headwaters appropriated funds in 2020 of \$250,000 to be paid, but only spent \$10,000 of the appropriation during that year. Headwaters delayed adopting its 2021 budget until October 15, 2021, after this lawsuit was filed and GR Terra was made a party.

30. Disputed in part. The original 2005 LPA was executed June 1, 2005, contemporaneously with the 2005 Deed of Trust that was recorded the next day, June 2, 2005, as well as the June 1, 2005 Loan Agreement, Promissory Note, and Amenity Fee Agreement. The 2012 LPA amended and restated the 2005 LPA. While there is no dispute that the Landlord's interest in the Leased Premises

31. Disputed in part; a Subordination, Non-Disturbance and Attornment Agreement, signed by Redwood Capital Finance Company, LLC, the predecessor in interest and affiliate of Granby Prentice and Gray Jay, was produced by the Lender Defendants. It is immaterial that this document was not recorded. **Ex. 70.**

Amendment of the Service Plans and Termination of the Master IGA

32. Undisputed but immaterial. The Letter Agreement by its plain language applied only to the financial obligations that previously existed with GRMD each year paying all of its revenues to Headwaters and in exchange Headwaters providing all of the management, operation, and services. The Letter Agreement never mentions any other agreements such as the Joint Resolution to collect amenity fees, the LPA, the Town IGA, or similar agreements.

33. Undisputed.

34. Undisputed.

35. Undisputed. Again, this relates only to the prior limitation of the service plans in which all GRMD funds would be turned over to Headwaters for operations each year. Instead, this gave GRMD the ability to keep its own tax revenues, acquire and operate properties such as the amenities (see the 2016 amended Town IGA),

36. Undisputed.

37. Undisputed. See also response to Paragraph 35.

38. Undisputed.

39. Undisputed. However, the 2016 amended Town IGA remained in effect (which was an IGA between and among GRMD, Headwaters, GRMD 2-8, and the Town of Granby.

40. Disputed in part to the extent that the 2016 amended Town IGA remained in effect (which was an IGA between and among GRMD, Headwaters, GRMD 2-8, and the Town of Granby. Also nothing in this document refers to or terminates any other agreements between the districts.

41. Undisputed. See also response to Paragraph 40.

42. Undisputed, however these paragraphs relate only to the prior Master IGA's, not any other agreements, as noted in responses to Paragraphs 35 and 40.

The Second Granby IGA

43. Undisputed.

44. Undisputed.

45. Disputed. Defendants do not accurately cite the language of § 5(b). Section 5(b) states: “The Parties acknowledge that the Amenities are not required by Town ordinances or other authorities to be conveyed or dedicated to the Developer (as defined in the Service Plans) for public use within the meaning of § 32-1-1001(f), C.R.S.” **Ex. 21.** (Second Granby IGA). Importantly, the term “Developer” is not a defined term in either of the original Service Plans, nor in the First Amendment to the HMD Service Plan. Nothing in this paragraph affects the terms of the LPA.

2018 Waiver and Release Agreement

46. Undisputed.

47. Disputed to the extent that Defendant misstates the language of the cited Recitals S-T. Recital U states “The Parties have determined it is in their collective best interest to resolve the matters in dispute among them **regarding the Senior Bonds, the Subordinate Bonds, the Master IGAs, and the repair and operation and maintenance of the roads** within Granby Ranch without any admissions by any party.” (emphasis added). **Ex. 23.** (Agreement re Waiver and Release of Claims, Recital U).

48. Disputed as to the assertion that the Parties “broadly” released each other and their successors and assigns. The release language contained in § 1 limits release of the defined Claims to those existing as of the Release Date, which are specifically defined in § 3(a-e).

49. Disputed; Ex. 22 does not define “Master IGA” as any one IGA, and rather refers to “various intergovernmental agreements regarding the provision of certain services and the contracting of the authority to perform such services to HMD” as “the Master IGAs.” (emphasis added).

50. Undisputed.

Granby Ranch Foreclosure

51. Undisputed but not material as the receivership and actions of the receiver are not at issue in this case.

52. Undisputed.

53. Undisputed.

54. Undisputed.

55. Undisputed.

56. Disputed in part as to Headwaters' responses to the September 1, 2020 letter from Gray Jay. Lance Badger, former board member of HMD, testified in his deposition that upon receiving the letter, he discussed its contents with counsel and contacted the lender's representative, Mark Meyers, to request funding of a third party review so that HMD "could formally make some kind of decision about [the letter.]" Mr. Badger indicated that he did not receive a response. **Ex. 73** (201:19 - 204:9).

Headwaters Did Not appropriate Rent Payments For Lease Years 2021-2023²

57. Disputed in part. Headwaters adopted a 2020 budget that appropriated \$250,000 of amenity fee payments to be applied to the LPA. Headwaters did not use up all of that appropriated authority, using only \$10,000 of it in 2020. For some reason, Headwaters did not adopt its 2021 budget until October 15, 2021, after this lawsuit commenced. Headwaters continued to collect amenity fees, which were either pledged for LPA payments or appropriated under the prior year budget. After this lawsuit was filed and the

² To the extent that this sub-heading is an assertion of fact, Plaintiff disputes.

landlords repudiated the LPA, Headwaters failed to appropriate LPA funds for the first time on October 15, 2021.

57. Undisputed that Headwaters 2022 budget, adopted in December 2021, did not appropriate additional funds. However, Headwaters continued to collect amenity fees, which were either previously pledged for LPA payments or appropriated under the 2020 budget.

57. Undisputed.

58. Undisputed.

59. Undisputed.

60. Undisputed.

61. Undisputed.

62. Undisputed.

63. Immaterial to this lawsuit at involves a completely different agreement that is not related to the pleadings.

64. Immaterial to this lawsuit at involves a completely different agreement that is not related to the pleadings.

65. Immaterial to this lawsuit in that it involves a completely different agreement that is not related to the pleadings. Importantly, the agreement mentioned in this paragraph requires appropriation of GENERAL district funds, as opposed to the LPA which only required appropriation of PREVIOUSLY pledged funds specifically received from amenity fee liens that had been imposed for this purpose.

GR Terra's Acquisition

66. Undisputed.

67. Disputed as to the assertion that Headwaters has not tried to exercise its obligations of the tenant under the LPA since 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 Fee 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.* As such, Headwaters continued to act as tenant under the LPA at least as long as eight (8) months after GR Terra purchased the Property.

68. Disputed. GRMD brought this lawsuit prior to GR Terra acquiring the Property. GR Terra specifically asked to be joined in this lawsuit rather than honoring the LPA, and in fact the same day that GR Terra acquired the property it signed a 5-year lease with its affiliate, GR Operations.

69. Disputed. To purchase the property, Headwaters need only turn over Amenity Fees as they come due, with no other payments. Once all collectable Amenity fees are paid, or when the term of the lease expires in 2062, the property is immediately turned over to Headwaters for no cost.

70. Undisputed that these documents by their own terms do not impose an obligation on Headwaters to acquire the Leased Premises.

GRMD's Lawsuit

71. Undisputed.

72. Undisputed although not a material fact but a legal argument. GRMD contends the entire LPA is a covenant that runs with the land, just as plats, site plans, and condominium declarations as a whole are covenants that run with the land and can't be "parsed out" into what specific paragraphs are covenants that run with the land and what specific paragraphs do not. **Ex. 13, 32.**

73. Undisputed although not a material fact.

74. Undisputed. See also response to Paragraph 3, as these inclusions/exclusions were primarily transferred to GRMD 2-8 which are also subject to the same Amenity Fees, Joint Resolution, and LPA.

75. Undisputed but misleading. See also response to Paragraph 3. These properties were also subject to the same Amenity Fees, and there was a separate IGA concerning GRMD and these properties.

76. Disputed. While it is true that the Amenity Fees have always been paid directly to Headwaters, Headwaters is only able to directly collect Amenity Fees as liens on the property within GRMD's boundaries pursuant to the joint resolution from GRMD to do so, per Section 32-1-1001(1)(j), C.R.S. In the joint resolution GRMD provides authority for Headwaters to collect Amenity Fees.

77. Undisputed that GRMD itself has not paid amenity fees, as it does not own residential units that are subject to the amenity fees. However, GRMD has authorized the Amenity Fees to be imposed on properties within the GRMD boundaries under the Joint

Resolution for the purpose of acquiring the leased premises, and GRMD has the authority under the 2016 Town IGA to acquire and operate the property (i.e., the amenities or leased premises).

Respectfully submitted this 26th day of February 2023.

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

(Original signature on file)

/s/ Erica N. Garcia

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Attorneys for Granby Ranch Metropolitan District

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 TO 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** was filed and served via Colorado Courts E-Filing on all Counsel of Record.

/s/ Caroline J. Nohl

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