

DISTRICT COURT, GRAND COUNTY, COLORADO DATE FILED: February 27, 2023 3:52 PM FILING ID: BFB5E0FEE90D5 CASE NUMBER: 2021CV30008 	
Court Address: Grand County Combined Courts 307 Moffat Ave Hot Sulphur Springs, CO 80451 Telephone No.: (970) 725-3357	
Plaintiff: GRANBY RANCH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado, v.	▲COURT USE ONLY▲
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.	Case No.: 2021CV030008 Div.: 1
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 IN OPPOSITION TO GRAY JAY VENTURES, LLC AND GRANBY PRENTICE, LLC’S MOTION FOR SUMMARY JUDGMENT	

Plaintiff, Granby Ranch Metropolitan District (“GRMD”), by and through its attorneys, Burg Simpson Eldredge Hersh & Jardine, P.C., respectfully submits Plaintiff’s Response in Opposition to Gray Jay Ventures, LLC (“Gray Jay”) and Granby Prentice, LLC’s (“Granby

Prentice”)(collectively “Lender Defendants”) Motion for Summary Judgment (“Motion”). The Court should deny the Motion for the reasons set forth in this response brief.

I. INTRODUCTION

The Lender Defendants¹ took control of the Leased Premises on or about August 31, 2020, when the Public Trustee Deed was recorded. Almost immediately, they *jointly* disavowed any obligations under the Lease Purchase Agreement (“LPA”) via a letter from their attorney. Meanwhile, on August 31, 2020, an affiliate of Granby Prentice that was organized in January 2020, known as GP Granby Amenities Holdings, LLC or “GPAH” (also referred to in some documents as “GP Amenities Holdings, LLC”) took possession of the leased premises via a lease from Gray Jay. The Lender Defendants, accordingly, jointly acted to repudiate the LPA and to oust Headwaters Metropolitan District (“HMD”) from possession of the leased premises.

Gray Jay and GPAH continued in possession of the leased premises, and continued to exclude HMD, throughout the remaining of 2020 and at the time this lawsuit was filed. It was not until May 5, 2021, after this lawsuit was initiated, when they jointly sold and conveyed their rights and interests to the GR Terra parties. In the meantime, they collected at least \$10,000 of

¹ Granby Prentice, LLC was assigned the Redwood Capital Finance Co. (“Redwood”) Deed of Trust in 2016, prior to the public trustee foreclosure in 2020. GP Granby Holdings, LLC was organized in December 2019, but changed its name to Gray Jay Ventures on or about June 7, 2021. GP Granby Amenities Holdings, LLC was organized in January 2021. Public records with the Colorado Secretary of State show that all these entities have the same business address, registered agent, persons performing the corporate filings, etc. and the assignment of the Certificate of Purchase for the foreclosed property has the same individual signing on behalf of Granby Prentice, LLC and GP Granby Holdings, LLC. In addition, the same demand letters by the Lender Defendants’ attorneys declaring the LPA no longer in force states that the letter is being sent on behalf of both Granby Prentice, LLC and GP Granby Holdings, LLC. Thus, at a minimum, there is a material issue of fact as to whether these Lender Defendants are either acting in concert or are essentially one and the same.

unaccounted for Amenity Fees. As the lenders and lender's assignee, they also benefitted from the \$6.1 million of prior Amenity Fee payments to Granby Realty Holdings, LLC ("GRH"), the original developer, which were security for the loan and were to be applied toward the purchase price of the Amenities (ski resort and golf course) by an acquiring government entity such as HMD, the Town of Granby ("Town"), or GRMD.

The Lender Defendants sold the property to GR Terra, LLC ("GR Terra") in May 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 on behalf of its taxpayers and residents.

The Lender Defendants' Motion should be denied because the foreclosure of a deed of trust cannot eliminate GRMD's rights in the property as a governmental entity. Governmental rights in private property that are in the nature of covenants that run with the land (such as public easements, rights of way, development restrictions, subdivision declarations) are not terminated by foreclosure. As the Court previously determined, such covenants that do not involve monetary liens are not terminated by foreclosure. Lender Defendants' predecessor in interest acknowledged in the Subordination, Non-Disturbance and Attornment Agreement that the LPA would survive foreclosure. Furthermore, GRMD was neither provided notice nor made a party to the public trustee proceedings. GRMD's rights could not be extinguished, and numerous disputed issues of material fact preclude entry of summary judgment as a matter of law.

II. RESPONSE TO DEFENDANTS' STATEMENT OF FACTS

Defendants' collective statement of facts contains disputed and incomplete recitations of material facts. *See 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 incorporated herein by reference.

III. ADDITIONAL FACTS²

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

GRMD highlights the following facts about the Lender Defendants:

- On April 15, 2016, Defendant Granby Prentice obtained an assignment from Redwood, the original lender, assigning the rights to the June 1, 2005, Deed of Trust and Loan Documents. **Ex. 33.**
- Granby Prentice had both actual notice of the LPA and the Subordination, Non-Disturbance and Attornment Agreement executed in 2012 which were part of the Redwood loan documents that it was assigned, as well as the LPA that was recorded in 2020. **Exs. 32, 70.**
- Paragraph 3 of the Subordination, Non-Disturbance and Attornment Agreement dated December 31, 2012, states in pertinent part: “[P]urchaser shall be bound to such Successor Seller under all of its terms, covenants and conditions of the Agreement with the same force and effect as if Successor Seller, rather than Seller, had been a party to the Agreement, ***and such Successor Seller shall be bound to Purchaser under all the terms, covenants and conditions of the Agreement arising from and after the date***

² 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.

such Successor Seller became the owner of Seller's interest in the property.” Ex. 70 ¶ 3 (emphasis added).

- In spring of 2020, when GRH defaulted on its loan obligations, Granby Prentice initiated a nonjudicial foreclosure proceeding under the 2005 Deed of Trust through a Notice of Election and Demand for Sale by the Public Trustee. **Ex. 34.**
- At the foreclosure sale on August 14, 2020, Granby Prentice was both the *beneficiary* of the Deed of Trust to be partially satisfied from the sale proceeds and *purchaser* of the property subject to the Deed of Trust and was issued a Certificate of Purchase for the property. **Ex. 35.**
- Only a few days later, on August 18, 2020³, Granby Prentice assigned its Certificate of Purchase to Gray Jay. **Ex. 36.** The Public Trustee issued a Public Trustee's Deed of Trust to Gray Jay granting it title to the property on August 31, 2020. **Ex. 37.**
- The Lender Defendants then asserted that the public's rights under the LPA were extinguished by the foreclosure, *jointly* notifying HMD and the Granby Ranch residents on September 1-2, 2020. **Exs. 38, 39.**
- Subsequent to these notifications, counsel for Gray Jay and Granby Prentice jointly sent a letter to HMD on November 11, 2020, claiming that, even if the LPA was not extinguished by the foreclosure, the LPA was terminated. **Ex. 40.**
- On that same day, November 11, 2020, GRH (which no longer had any interest in the property after the foreclosure) sent a letter to HMD terminating the LPA. **Ex. 71.**
- Gray Jay sold the property to GR Terra, LLC (“GR Terra”), a private party, on May 5, 2021. **Ex. 41.**
- Immediately after GR Terra purchased the property, Robert Glarner, one of GR Terra's principals, appointed his own Directors, the Johnsons, to HMD's Board of Directors which then aligned its interests with GR Terra instead of the Town and GRMD.
- Despite the sale to Gray Jay and GR Terra, HMD continued to collect the \$10,000 Amenity Fee per home for two years until at least January 2022. In particular, it is unclear who received the 2020 Amenity Fee payments of at least \$10,000 that HMD's financials show were paid to the landlord, but apparently not GRH. **Ex. 65.**
- Over \$6.1 Million of Amenity Fees have been collected and paid to the private property owner since 2005, based on the sale of approximately 610 lots to date. **Ex. 72.**

³ The document was not signed until August 19, 2020, although dated August 18, 2020.

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.*

To avoid repetition, Plaintiff incorporates herein by reference the Legal Standard from its *Response in Opposition to Defendant GR Terra's Motion for Summary Judgment On Counts IV, V and VI of the Third Amended Complaint.*

V. ARGUMENT

A. *Disputed Issues of Material Fact Regarding Whether the Lender Defendants Breached the LPA Preclude Entry of Summary Judgment in Favor of Defendants.*

(1) Granby Prentice and Gray Jay Took Ownership of the Property Subject to the 2005 Deeds of Trusts and Loan Documents, Including the LPA.

Under Colorado law, a purchaser of property is bound by the record title. *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.* Granby Prentice and Gray Jay, as purchasers of the property, were bound by the record title, and are charged with knowledge of the facts to which the investigation would have led. *Id.*

The facts surrounding the property clearly demonstrate that from the inception of the Granby Ranch development in 2003, the various agreements involving the Town, HMD, GRMD, and the original developer were structured so that the Amenities were financed by the public through Amenity Fees imposed on and collected from Granby Ranch residents. 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.

Significantly, Granby Prentice obtained an assignment from Redwood, the original lender, on April 15, 2016, assigning the rights to the June 1, 2005, Deed of Trust and Loan Documents. **Ex. 33.** These Loan Documents included the LPA, the 2012 Subordination, Non-Disturbance and Attornment Agreement, and other documents that clearly indicate the existence of the LPA and the intent that it survive a foreclosure. **Exs. 7-8, 12-13, 32, 59-62, 70.** They also reflect that lease payments under the recorded Amenity Fee Agreements and Joint Resolution were additional security to be remitted and applied to the loan. From April 2016 until the August 2020 foreclosure sale, Granby Prentice had significant time and ability to investigate and understand the history of the property and the structure of the agreements executed and recorded. The record title of the property was clear.

Granby Prentice and Gray Jay both had actual and constructive knowledge that its predecessor in interest, Redwood, had agreed to be bound by the June 1, 2005, Deed of Trust and Loan Documents, including all Agreements between GRH and the Districts setting forth the rights of the Districts to acquire and own the Amenities for public benefit.

The June 1, 2005, LPA was an integral part of the original June 1, 2005, Deed of Trust and Loan Agreement and is not, as Defendants contend, a junior encumbrance. **Exs. 6-8, 59-62.** The fact that the LPA was later amended and restated does not relegate it to a junior encumbrance. The Lender Defendants had in their files the 2012 Subordination, Non-Disturbance and Attornment Agreement that demonstrates an intent that the LPA survive any foreclosure and states that a Successor Seller shall be bound to the District under all the terms, covenants and conditions of the Agreement. **Ex. 70 ¶ 3.** The LPA terms remained essentially the same in the subsequent agreements. **Ex. 32, 59.** Granby Prentice became bound by the LPA when it was assigned Redwood's interests and took ownership of the property.⁴ **Ex. 33.** However, Granby Prentice denies it was ever a party to the LPA. This is inaccurate. The Redwood loan that Granby Prentice acquired expressly mentioned that the Amenities may at some time be transferred to a District, that the proceeds of such a sale must be at least \$8 million, and that the proceeds of any sale of the Amenities or lease on the property would be paid to the lender as additional security. **Ex. 60, p.12 ¶ 2.9(e).** As a lender holding a secured interest in the property under a deed of trust, and as the successor in interest of Redwood under the Deed of Trust, its interest is subject to the covenants, restrictions, and other lawful interests burdening the property. The LPA, at Section 13(b) explicitly states that Redwood had signed an agreement “*obligating the Lender and any successor thereto to be bound by this Lease and by all of Tenant’s rights hereunder...*” **Ex. 32,**

⁴ The Court has already ruled 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) & dated January 28, 2022* (collectively “January 28, 2022 Orders”).

¶ 13(b)(emphasis added). Granby Prentice, via Redwood's assignment of its rights in the 2005 Deed of Trust and Loan Documents, was Redwood's successor and it was fully bound by the LPA and GRH's agreements with the Districts. **Exs. 6-8, 32-33, 59-62.** As owner of the property, Granby Prentice, in turn, initiated foreclosure proceedings under the June 1, 2005, Deed of Trust. **Ex. 33.** GRMD was neither listed as a party entitled to notice via the Public Trustee nor made a party to the foreclosure. **Ex. 35.** Thus, GRMD's rights could not be extinguished.

Following the foreclosure sale, Gray Jay became the successor in interest to the LPA and was bound to assume the role of the Landlord accepting the Amenities Fees paid pursuant to the LPA and to be applied toward the purchase of the Amenities/Leased Premises by HMD, the Town, and GRMD under Section 23 of the LPA. **Exs. 7-10, 32, 57-60.** Granby Prentice mischaracterizes its status as owner and successor by arguing that (a) the holder of a Certificate of Purchase takes title only once all redemption periods have expired, and (b) it held the Certificate of Purchase for only a few days until it assigned its Certificate to Gray Jay. **Ex. 36.** These arguments have no merit. Significantly, the Court previously disagreed with arguments that Granby Prentice never took title to the property and was never a party to the LPA. Rather, the Court found that Granby Prentice was the holder of the Certificate of Purchase when title to the property vested, subjecting it to the covenants of the LPA. *See January 28, 2022, Orders.* Granby Prentice and Gray Jay, thus, took ownership of the property subject to the 2005 Deed of Trusts and Loan Documents, including the LPA and Amenity Fee Agreement. **Exs. 6-8, 32, 36, 41, 59-62.** Defendants' Motion should be denied.

(2) The Lender Defendants Breached the Contractual Obligations in the LPA.

Disputed issues of material facts regarding the Lender Defendants breach of contract precludes entry of summary judgment as a matter of law. To prevail on a breach of contract claim, 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). Immediately after recording the Public Trustee Deed, a joint letter was sent by an attorney on behalf of both Granby Prentice and Gray Jay repudiating the LPA. Almost contemporaneously, on August 31, 2020, Gray Jay leased the amenities to GPAH, an affiliate of Granby Prentice. GPAH thereafter took possession of the amenities and immediately hired two contractors to manage the amenities under a revenue sharing agreement. These were the same contractors that HMD had used previously.

On November 11, 2020, the Lender Defendants acted to notify HMD that even assuming the LPA was not terminated by way of foreclosure that HMD ceased to operate the Amenities for in excess of 30 days, and thus, pursuant to Section 10 of the LPA, Gray Jay was electing to terminate the LPA. **Ex. 40.** First, the November 11, 2020, letter demonstrates that the Lender Defendants and their counsel, *after* the foreclosure, sought another reason why the LPA would be terminated. *Id.* This demonstrates an attempt to find a pretext for termination. If the foreclosure had extinguished the LPA an alternative reason for its termination would not be necessary. Second, Defendants' accusation that HMD ceased to operate the Amenities is not accurate. HMD continued to act pursuant to the prior agreements and collected Amenity Fees from residents and owners until at least January 2022. **Ex. 65.**

The Lender Defendants' additional argument that there was no breach because they were simply communicating an opinion is not credible. It is clear the Lender Defendants intended to sell the property to a private third party and did not just communicate an opinion. Rather, Defendants acted to disregard GRMD's legal rights and interests in the property, and in fact, sold the property to GR Terra, a private party, on May 5, 2021. **Ex. 41.** Based on the facts, there are genuine issues of fact that preclude summary judgment as a matter of law.

(3) The LPA Contains Contractual Obligations, Not Conditions Precedent.

As stated, the LPA was structured and incorporated as part of the original June 1, 2005, Deed of Trust and Loan Documents. The LPA contained explicit and binding contractual obligations. The argument by Lender Defendants that none of the conditions precedent to the LPA's purchase option occurred fails. Defendants define a condition precedent as "[A] condition is an event, not certain to occur, which must occur, unless its non-occurrence is excused, before performance under a contract becomes due." Motion, p. 12 (citing *St. Paul Fire & Marine Ins. Co. v. Est. of Hunt*, 811 P.2d 432, 434 (Colo. App. 991)). Under the facts of this case, condition precedent is not applicable: There was no event, not certain to occur, which must occur unless excused, before performance under the contract becomes due. *Id.* Rather, the LPA had been in place for many years, from 2005-2020, and had been performed.

Furthermore, the LPA contains certain not speculative contractual obligations. Amenity Fees were collected and paid by GRMD and HMD pursuant to the numerous resolutions and agreements. **Exs. 7-10, 32, 57-60.** The Amenity Fee agreements were not conditions precedent and GRMD had an interest and expectation that the contractual obligations in the LPA, and other agreements, would be continued and performed. The provision that the full purchase price of the

property could be paid earlier does not create a condition precedent. The Lender Defendants were bound by the terms of the LPA despite the provision for the early lump sum pay-off. This argument should be rejected and Defendants' Motion should be denied.

(4) Plaintiff has Suffered Damages Resulting from Defendants' Breaches.

The Lender Defendants breached the LPA resulting in the loss of a valuable asset and significant damages to GRMD. The factual history of this case illustrates that from the very beginning of the Granby Ranch development, the Amenities were always intended for public ownership. 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. **Exs. 6-10, 12-13, 17-18, 21-22, 24, 32, 59-63.**

In approving the 2012 Resolution Authorizing a Second Amended and Restated Lease Purchase Agreement and a Leased Premises Management Agreement, HMD's Directors clearly state 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: "The 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).

The Lender Defendants received at a minimum the benefits of the Amenity Fees that were paid which were security for the loan and to be paid to the lender. The Lender Defendants sold the property to GR Terra and received the proceeds of the sale, purportedly without the LPA in place. The Lender Defendants also received Amenity Fee payments made in 2020 (at least \$10,000 was reported paid by HMD in 2020 but are not listed as being paid to GRH and therefore that payment appears to have been paid to the Lender Defendants). The Lender Defendants also received the benefits of operating the amenities and collecting the revenues from the amenities from August 2020 – May 2021. These are significant damages. In addition, nominal damages are available for a breach of contract. Therefore, summary judgment on a breach of contract is not appropriate based on lack of damages.

GRMD’s damages for the loss of the Amenities and more than \$6.1 Million in Amenity Fees paid to date to acquire the property 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 as a matter of law. Defendants’ Motion should be denied.

(5) The Lender Defendants Mischaracterize Plaintiff’s Interrogatory Response.

Defendants claim that Plaintiff made an “uncontroverted admission” in its response to Interrogatory No. 3. That is not accurate and is another mischaracterization. Unlike a party’s

admissions, this Interrogatory response is not binding upon the party and Plaintiff reserved its right to amend or supplement its responses. Additionally, Plaintiff qualified its response stating: “*Based on discovery to date, it does not appear . . .*” (emphasis added). **Ex. 44.** Furthermore, in GRMD’s preliminary statement to its Interrogatory responses, it states, “Discovery is continuing in this matter. Plaintiff has made a good faith effort to address each of the interrogatories based on information *currently available and known* to Plaintiff through the discovery process...” *Id.* GRMD also states: “Plaintiff is responding to these interrogatories based on their best effort to discern these transactions and the relationship of these entities through public records with the Grand County Clerk and Recorder and Public Trustee...” *Id.*

However, by conducting additional discovery and analyses of voluminous documents, Plaintiff has learned that both Granby Prentice and Gray Jay were owners and successors of the property subject to GRMD’s legal rights and interests. *Supra.* Plaintiff’s Interrogatory response does *not* compel the entry of summary judgment for Granby Prentice and Gray Jay on GRMD’s Third Claim for Relief, and it would be improper where, as here, there are numerous disputed issues of material fact which preclude summary judgment as a matter of law.

B. A Judicial Declaration of GRMD’s Rights Against Lender Defendants Is Proper.

At the time this lawsuit was commenced, the Lender Defendants held both title to the Leased Premises and possession of the Leased Premises. Plaintiff was forced to commence this action to assert its rights and protect its interests in the Amenities under the prior agreements. Plaintiff seeks a declaration of its rights, enforcement of the prior agreements, including the LPA and Amenity Fee Agreement, as well as the \$6.1 Million collected from residents and paid as Amenity Fees toward the purchase of the property. As Defendants state: “The purpose of a

declaratory judgment claim is to obtain a judicial declaration of rights, status, or other legal relations under a contract.” Motion, p. 14 (citing 57(b)). The Lender Defendants’ argument that they are not the appropriate parties for the relief Plaintiff seeks is misguided. The Lender Defendants are prior owners of the property, part of the record title, and they had notice and knowledge of the history and public nature of the property and GRMD’s interests. Despite their notice and knowledge, and the \$6.1 Million in Amenity Fees paid, the Lender Defendants sold the property to a private third party without regard to GRMD’s interests in the property. GRMD’s claim against the Lender Defendants for a judicial declaration of its rights, status, or other legal relations under the LPA and prior agreements is proper.

C. The LPA Was Neither a Junior Lien Extinguished by Foreclosure nor Terminated by HMD and the Disputed Facts Preclude Entry of Summary Judgment.

The Lender Defendants join in and incorporate by reference Sections I, II and III of Defendant GR Terra’s Motion for Summary Judgment on Counts IV, V, and VI of the Third Amended Complaint (Jan. 25, 2023)(the “GR Terra Motion”) and Defendants’ Statement of Facts to additionally or alternatively argue that (a) the LPA is a junior encumbrance that was extinguished by the foreclosure, and (b) the LPA terminated due to HMD’s failure to appropriate Amenity Fees as required by the LPA. Neither argument is accurate. The LPA was an integral part of and incorporated in the original 2005 Deed of Trust and Loan Documents. **Exs. 6-8, 32, 59-62.** Thus, it was part of the structure of the transaction from the inception of the development project. *Id.* The LPA is not a junior encumbrance.

Furthermore, HMD did not terminate the LPA by failing to appropriate Amenity Fees. HMD’s 2020 budget expressly appropriated \$250,000 payments under the LPA. Under the LPA,

HMD need not appropriate ANY funds other than the Amenity Fees that it collects each year. And those Amenity Fees are expressly pledged to be applied to the LPA. Therefore, HMD satisfied its appropriation of funds prior to the time when Lender Defendants committed their breach on August 31, 2020. Pursuant to the prior agreements, HMD continued to collect Amenity Fees until 2022. **Ex. 65.** Plaintiff incorporates herein by reference *Plaintiff's Statement of Facts* and *Response in Opposition to Defendant GR Terra's Motion for Summary Judgment on Counts IV, V and VI of the Third Amended Complaint*.

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

VI. CONCLUSION

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

Respectfully submitted this 27th day of February 2023.

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

(Original signature on file)

/s/ Brian K. Matisse
David K. TeSelle, Reg. No. 29648
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Erica N. Garcia, Reg. No. 56450

Attorneys for Granby Ranch Metropolitan District

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of February 2023, a true and correct copy of the foregoing **PLAINTIFF'S RESPONSE IN OPPOSITION TO GRAY JAY VENTURES, LLC AND GRANBY PRENTICE, LLC'S MOTION FOR SUMMARY JUDGMENT** was filed and served via Colorado Courts E-Filing on all Counsel of Record.

/s/ Natalie N. Newlander

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