

<p>DISTRICT COURT, GRAND COUNTY, COLORADO Court Address: Grand County Combined Courts 307 Moffat Ave Hot Sulphur Springs, CO 80451 Telephone No.: (970) 725-3357</p>	<p>DATE FILED: February 27, 2023 9:45 PM FILING ID: 59E0CDF70EA45 CASE NUMBER: 2021CV30008</p>
<p>Plaintiff: GRANBY RANCH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado,</p> <p>v.</p> <p>Defendants: HEADWATERS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado; GRAY JAY VENTURES, LLC.; GRANBY PRENTICE, LLC; and GR TERRA, LLC.</p>	<p>▲COURT USE ONLY▲</p> <p>Case No.: 2021CV030008</p> <p>Div.: 1</p>
<p>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</p>	
<p align="center">PLAINTIFF’S RESPONSE IN OPPOSITION TO RENEWED MOTION UNDER C.R.C.P. 12(B)(1) TO DISMISS FOR LACK OF STANDING FILED BY DEFENDANTS HEADWATERS AND GR TERRA</p>	

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 the Renewed Motion Under C.R.C.P. 12(B)(1) to Dismiss for Lack of Standing Filed by Defendants Headwaters and GR Terra (“Motion”). In support thereof, Plaintiff states as follows:

I. SUMMARY OF ARGUMENT

As previously determined by this Court, the facts surrounding the Parties' execution of the Lease Purchase Agreement ("LPA") clearly demonstrates an intent to confer a benefit to GRMD and establishes GRMD's interest in the LPA as a third-party beneficiary. The LPA was implemented pursuant to the Service District Agreements for Headwaters Metropolitan District ("HMD") and GRMD, the 2003 Master Agreement, the 2005 Fee Resolution, the 2005 Fee Agreement, and the 2008 Granby IGA. *See* Order on Headwaters' Motion to Dismiss dated January 28, 2022, p. 9 ("Order"). These documents, which were in full force and effect when HMD and GRH executed the LPA, reflect the symbiotic and interrelated relationship between the Districts, as well as the intent and purpose of the dual-district structure.

The Court recognized this interdependent relationship between GRMD and HMD, which provides "the why and how each district was to function." *See* Order, p. 11. HMD was to manage and control the construction and financing of the infrastructure and establish all necessary service charges including the "development fees" for GRMD. *See* **Ex. 56** Sections 4.2, 4.3, and 4.4.) It was contemplated that HMD would own and operate the infrastructure until it was transferred to the Town of Granby ("Town") or another public agency. *Id.*, Section 4.5. It was never intended for HMD to permanently operate and maintain the infrastructure – it was always the expectation that such responsibility would vest in GRMD.

The LPA contains specific reference to GRMD, the 2005 Fee Resolution and the 2005 Fee Agreement. Specifically, Recital B. provides that the Joint Resolution imposing the Amenity Fee had been adopted "In order to pay rental payments with respect to the Leased Premises and pay the purchase price of the Leased Premises." **Ex. 13, 32**. GRMD jointly adopted an Amenities Fee with HMD to allow HMD to fund the rental payments for the Amenities (ski resort and golf

course), to which title was expected to vest in HMD then the Town or GRMD. It is imperative to note that *this structure would not, and could not, exist without the Town's and GRMD's authorization and cooperation* per Colorado's Special District Act, which declares that the "organization of special districts providing the services and having the purposes, powers, and authority provided in this article will serve a public use and will promote the health, safety, prosperity, security, and general welfare of the inhabitants of such special districts and of the people of the state of Colorado." Section C.R.S. § 32-1-102(1).

The 2008 Granby provides additional support for GRMD's status as a third-party beneficiary. Entry of this agreement between the Town, HMD, GRMD, and GRMD Nos. 2-8 was "determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this Agreement to promote the coordinated development" of the property. **Ex. 22**, Recitals.

This Court found that the LPA does not contain language either expressly creating or disavowing the existence of any third-party beneficiaries, and the Court is entitled to examine the contract as a whole and the surrounding circumstances to determine the parties' intent. Order, p.9 (citing *Jefferson County School Dist. No. R-1 v. Shorey*, 826 P.2d 830, 843 (Colo. 1992)). Upon examining the contract as a whole the Court further found the LPA was a covenant that runs with the land and that GRMD is a third-party beneficiary of the LPA. *Id.* The Court should uphold its prior ruling. Defendants do not offer any new evidence or arguments that warrant a different ruling in their favor. Defendants' Motion should be denied.

II. RESPONSE TO DEFENDANTS' STATEMENT OF FACTS

Defendants' collective statement of facts are rife with incomplete recitations of material facts and are disputed. *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 FACTS

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.

IV. LEGAL STANDARD

A motion to dismiss for subject matter jurisdiction is governed by C.R.C.P. 12(b)(1).1 "Issues concerning subject-matter jurisdiction may be raised at any time." *Medina v. State*, 35 P.3d 443, 452 (Colo. 2001) (citation omitted). "Under C.R.C.P. 12(b)(1), the plaintiff has the burden of proving jurisdiction and the trial court is authorized to make appropriate factual findings." *Id.* (internal and other citation omitted). "Rule 12(b)(1) permits the court 'to weigh the evidence and satisfy itself as to the existence of its power to hear the case.'" *Id.* (citation omitted). "Subject matter jurisdiction concerns a court's authority to deal with the class of cases in which it renders judgment." *People v. Sandoval*, 2016 COA 57, P45 (citations omitted). "[A] court possesses subject matter jurisdiction 'where it has been empowered to entertain the type of case before it by the sovereign from which the court derives its authority.'" *Id.* (citations omitted). "The Colorado Constitution vests district courts with general subject matter jurisdiction in civil cases." *Ashton Properties, Ltd. v. Overton*, 107 P.3d 1014, 1017 (Colo. App. 2004) (citing Colo. Const. art. VI, § 9). "As courts of general jurisdiction, the district courts in Colorado have the authority to consider questions of law and of equity and to award legal and equitable remedies." *Id.* (citation omitted).

"In Colorado, parties to lawsuits benefit from a relatively broad definition of standing." *Ainscough v. Owens*, 90 P.3d 851, 855 (Colo. 2004). Plaintiff must satisfy two criteria to establish

standing: "First, the plaintiff must have suffered an injury-in-fact, and second, this harm must have been to a legally protected interest." *Id.* (citation omitted). Courts interpret the first prong "to require 'a concrete adverseness which sharpens the presentation of issues that parties argue to the courts.'" *Id.* 90 P.3d at 856 (citation omitted). "Standing is conveyed by neither the remote possibility of a future injury nor an injury that is overly 'indirect and incidental' to the defendant's action." *Id.* (citation omitted). The second prong "requires that the plaintiff have a legal interest protecting against the alleged injury." *Id.* (citation omitted). "This is a question of whether the plaintiff has a claim for relief under the constitution, the common law, a statute, or a rule or regulation." *Id.* (citation omitted). "A legally protected interest may be tangible or economic such as 'one of property, one arising out of contract, one protected against tortious invasions, or one founded on a statute which confers a privilege.'" *Id.* (citations omitted). "Although necessary, the test in Colorado [for standing] has traditionally been relatively easy to satisfy." *Id.*

V. ARGUMENT

A. **GRMD Is A Third-Party Beneficiary Entitled To Enforce The Terms Of The LPA.**

Third-party beneficiaries may be entitled to standing if they meet specific criteria. The individual or entity, not a party to an express contract, may bring an action on the contract if (1) the parties to the agreement intended to benefit that third party; and (2) if the benefit claimed is a direct and not merely an incidental benefit of the contract. *SK Peightal Engineers, LTD v. Mid Valley Real Estate Sols. V, LLC*, 342 P.3d 868, 872 (Colo. 2015). Thus, the inquiry examines whether the plaintiff is an intended or incidental beneficiary to the alleged contract:

The key question is the intent of the parties to the actual contract to confer a benefit on a third party. That intent must appear from the contract itself or be shown by necessary implication. It is a question of fact to be determined by the terms of the

contract taken as a whole, construed in the light of the circumstances under which it was made and the apparent purpose the parties were trying to accomplish.

East Meadows Co. LLC v. Greeley Irr. Co., 66 P.3d 214, (Colo. App. 2003)(citing *Concrete Contractors, Inc. v. E.B. Roberts Construction Co.*, 664 P.2d 722, 725 (Colo. App. 1982)).

Intended third-party beneficiaries are those upon which the contracting parties intended to confer a benefit. *Everett v. Dickinson & Co. Inc.*, 929 P.2d 10, 12 (Colo. App. 1996). The benefit must be direct and not merely incidental. *Harwig v. Downey*, 56 P.3d 1220, 1221 (Colo. App. 2002); *Everett*, 929 P.2d at 12 (“[I]t is not enough that some benefit incidental to the performance of the contract may accrue to the third party.”). The parties’ intent must be apparent from the terms of the contract, in light of all surrounding circumstances. *Id.*; see also *East Meadows Co., LLC v. Greeley Irr. Co.*, 66 P.3d 214, 217 (Colo. App. 2003) (“[A] person who is not a party to an agreement may enforce a contractual obligation if the promise to be enforced is expressly stated in the contract, or is apparent from the agreement and surrounding circumstances, and the benefit conferred is direct and not incidental.”). The question of intent “may be evidenced either from the terms of the agreement, the surrounding circumstances, or both.” *Villa Sierra Condo. Ass'n v. Field Corp.*, 878 P.2d 161, 166 (Colo. App. 1994)

(1) HMD and GRH Intended to Confer a Direct Benefit on GRMD as a Third-Party Beneficiary.

Parties’ intent to confer benefit on a third-party may be evidenced by the circumstances surrounding the contract. *Jefferson County School Dist. No. R-1 v. Shorey*, 826 P.2d 830, 843 (Colo. 1992); *Vallagio at Inverness Residential Condo. Ass’n, Inc. v. Metro. Homes, Inc.*, 412 P.3d 709, 718 (Colo. App. 2015); *Villa Sierra Condo. Ass'n v. Field Corp.*, 878 P.2d 161, 166 (Colo. App. 1994). As this Court previously found, the circumstances surrounding the LPA include the Service District Agreements for HMD and GRMD, the 2003 Master Agreement, the 2005 Fee

Resolution, the 2005 Fee Agreement, and the 2008 Granby IGA. *See* Order, p. 9. These documents establish the structure of the agreements and the relationship between the parties. HMD, GRMD, and Granby Realty Holdings, LLC (“GRH”), the original developer, performed pursuant to these agreements for many years from 2003-2020.

The Service Plans provide for the financing and operation of “community-wide infrastructure and public facilities and services that will service the [Granby Ranch] Development.” **Exs. 1 & 2.** GRMD, as the Taxing District, taxed and financed the services and infrastructure that the Service District (HMD) acquired, constructed, and operated. *Id.* HMD was to manage and control the construction and financing of the infrastructure and establish all necessary service charges including the “development fees” for GRMD. *See Ex. 56, ¶¶ 4.2, 4.3, and 4.4.* It was agreed that HMD would own and operate the infrastructure until it was transferred to the Town or GRMD. *Id.*, ¶ 4.5. Section 5.4 of the 2003 Master IGA states that “upon receipt of notice and the dissolution of the Service District in accordance with its Service Plan, the Service District shall transfer, and ***the Tax District shall accept responsibility for the operation and maintenance of any Infrastructure located within the Tax District***, which has not been transferred to the Town or another public agency.” (emphasis added). This statement, that title to the infrastructure would eventually vest in the Taxing District (GRMD), is not evidenced solely by the language of the 2003 Master IGA – it is reinforced several times through the actions of the parties. In a February 2, 2005, meeting of the Board of Directors of SolVista Metropolitan District, Headwaters Metropolitan District, and Granby Ranch Metropolitan District, counsel for the Districts stated that the Amenities ***will be transferred to the District*** through a lease purchase. **Ex. 4, p. 3.** (emphasis added). In 2012, even after the termination of the 2003 Master IGA, the HMD Board of Directors approved the Second Amended and Restated Lease Purchase Agreement

and stated 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*” in approving the leasing of the Leased Premises by the District. (emphasis added). Ex. 67, ¶ 1. Further, 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.*” (emphasis added). Ex. 64. After he did not receive a response from counsel, Harris followed up with additional 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 agreements, when viewed in their totality, and the Parties’ performance under the agreements from 2003-2020 solidify that HMD was never meant to permanently own and operate the Amenities – it was always intended that ownership and title would vest in GRMD.

The LPA contains specific reference to GRMD, the 2005 Fee Resolution and the 2005 Fee Agreement. Specifically, Recital B. provides that the Joint Resolution imposing the Amenity Fee had been adopted “In order to pay rental payments with respect to the Leased Premises and pay the purchase price of the Leased Premises.” GRMD *jointly* adopted an Amenities Fee with HMD to allow HMD to fund the rental payments for the ski area and golf course Amenities, to which title was expected to vest first in HMD. It is imperative to note that *this structure would not, and could not, exist without GRMD’s authorization and cooperation.* C.R.S. § 32-1-102(1) declares that the “organization of special districts providing the services and having the purposes, powers, and authority provided in this article will serve a public use and will promote the health, safety,

prosperity, security, and general welfare of the inhabitants of such special districts and of the people of the state of Colorado.” A special district possesses only those powers that are expressly conferred upon it by the constitution and by statute. Section 32-1-1001(1)(j)(I) empowers the board of directors of a special district for and on behalf of the special district: “To fix and from time to time increase or decrease fees, rates, tolls, penalties, or charge for services, programs, or facilities furnished by the special district.” This is why, as this Court previously recognized in its Order, the Service Plans create a symbiotic relationship between HMD and GRMD. GRMD was designated as the “Taxing District” because it contains property which provides a revenue base (residential lots) whereas HMD, containing no residential lots, does not provide a revenue base. **Exs. 1-2, 56.** HMD therefore needed GRMD to impose taxes or fees on property. The Amenity Fees could not be assessed and collected against the residents of GRMD without the consent of GRMD.

The 2008 Granby IGA also supports GRMD’s status as a third-party beneficiary of the LPA. Entry of this agreement between the Town, HMD, GRMD, and GRMD Nos. 2-8 was “determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this Agreement to promote the coordinated development” of the property. **Ex. 22, Recitals.** It provided that “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,” which included a Fishing Camp on the Fraser River, the 18-hole HMD Golf Course, and the Sol Vista Ski Basin. All of these were Amenities that were subsequently leased to be purchased by HMD and GRMD under the LPA.

Defendants’ attempt to set aside this Court’s prior finding of GRMD’s third-party beneficiary status and standing has no merit. First, rather than respecting the Court’s decision finding, Defendants mischaracterize facts arguing that GRMD lacks an “overwhelming” majority

of the residents of Granby Ranch – although admitting later that “[w]hether or not GRMD can establish a ‘majority’ of current LPA users is not the issue.” *See* Defendants’ Motion, p.7. GRMD agrees – this is not the issue, especially since GRMD 2-8 were organized. More importantly, the language of the LPA and the circumstances surrounding the LPA evidence a clear intent of the parties to confer a direct benefit to GRMD.

The Parties intention remained the same in subsequent amended and restated agreements through the 2016 Granby IGA, the currently operative Agreement which has not been terminated. It does not matter, as Defendants assert, that the 2005 Fee Agreement and Resolution, on their own, do not require HMD to acquire any particular amenities or provide a basis for GRMD’s anticipated ownership. These agreements, as this Court found, contribute to the “surrounding circumstances” which, taken in totality, evidence an intent to benefit GRMD. The 2005 Fee Resolution was executed “in the best interests of the Districts to acquire, lease, construct, maintain, provide, operate, and or administer” the Amenities “benefiting the property within the Districts,” which included the golf course, ski area, river park and other improvements. **Ex. 9**, Recitals. It was deemed necessary “to provide for the prosperity and general welfare of the Districts and their inhabitants.” *Id.* The Resolution gave authorization for HMD to impose and collect an Amenity Fee to fund the Amenities for these purposes. As the Court noted, none of the language of the 2005 Fee Resolution limited any of the stated benefits to HMD or the Service District alone. Order, p. 12. Additionally, the LPA contains specific reference to the Resolution. *See* Ex. 13, Recital B, §§ 3.b. and 23.) The Amenities Fee Resolution and Agreement were amended and restated on July 17, 2013, but the terms essentially remained the same, and are likewise, currently operative. **Exs. 9-10.**

Lastly, Defendants again raise GRMD's refusal to identify what specific provisions in the LPA accord it third-party beneficiary status, despite the fact that this Court previously rejected this argument. Order, p. 9. The Court specifically held that upon examining the contract as a whole and the surrounding circumstances to determine the parties' intent, GRMD is a third-party beneficiary of the LPA. Defendants do not offer new facts or arguments that justify a reversal of the Court's finding. The Court should deny Defendants' Motion.

(2) Defendants Misstate that GRMD Improperly Seeks the Equitable Remedy of Specific Performance

Defendants try to convolute the issues so that the Court will make a different finding. They confuse GRMD's legal rights and interest in the property with HMD's contractual obligation to make the Amenity Fees payment and argue that GRMD cannot make a claim for specific performance against a governmental entity. However, GRMD is not seeking specific performance against HMD as that term is used in the cases cited, just declaratory judgment and injunctive relief on GRMD's property rights in a RECORDED document. Courts routinely enforce property rights in recorded documents vis-à-vis governments, i.e., private party development rights and entitlements in recorded plats, site plans, etc. GRMD is merely seeking declaratory and injunctive relief that these property rights in the LPA remain in place and have not been foreclosed out. The Court has already found that the LPA is a covenant that runs with the land and GRMD is a third-party beneficiary of the LPA. The LPA, 2016 Granby IGA, 2013 Amenities Fees Agreement, and other evidence further demonstrates the intent of the parties that GRMD may acquire and operate the amenities. **Exs. 9-10, 12-13, 19, 32.** Significantly, in addition to the LPA, the 2016 Granby IGA is operative and has not been terminated.¹ The 2016 Granby IGA expresses the intent of the

¹ The November 17, 2017, Termination of Intergovernmental Agreement ("Termination Agreement") only terminated the 2006 and 2008 IGAs. **Ex. 21.**

parties that GRMD may acquire and operate the Amenities. GRMD respectfully requests the Court deny Defendants' Motion.

(3) GRMD's Third-Party Beneficiary Status Was Neither Waived Nor Relinquished.

Importantly, since the 2016 Granby IGA affirmed that the District could acquire, own, and operate the Amenities including ski and golf facilities, Defendants' waiver argument fails and has no merit. *Id.* The intended third party beneficiary status is determined at the time of the making of the LPA in 2005 and then as amended in 2012. **Exs. 13, 32, 59.** The intent at the time was that the property be an amenity for the benefit of the GRMD residents and not be converted into condos or other lots. The Termination Agreement and Letter Agreement do not affect the LPA at all, nor do they affect the Amenity Fee Agreement or the Joint Resolution imposing amenity fees. **Exs. 9-10.** The focus of the Termination Agreement and Letter Agreement was the relationship under the Master IGA's and Service Plans under which GRMD could not own property or operate independently, ALL of GRMD's operations revenues were turned over to HMD and only HMD could previously perform services or own/acquire amenities. After the Service Plan amendment and Termination Agreement, the LPA continued in place, the Joint Resolution authorizing Amenity Fees continued in place, and Amenity Fees continued to be collected by HMD into 2022. The Defendants attempt to rewrite and alter the history of the property and the structure of the agreements should be rejected. It is a mischaracterization. The agreements show that the relationship of HMD and GRMD changed, consistent with the original intent of the parties, so that HMD could eventually be dissolved and GRMD could independently own and operate the Amenities. The Service Plans were amended to allow GRMD to operate independently, an event contemplated by GRMD's Service Plan, which states that upon dissolution of HMD, GRMD would be responsible for the operation and maintenance of any infrastructure located within the

Taxing District. **Ex. 56**, § 5.4. The relationship between GRMD and Headwaters was thus amended in 2016 to account for the eventual independent operation of the Districts.

The 2018 Waiver, relied upon by Defendants, was narrowly tailored to the GRMD Bonds which financed the development infrastructure and GRMD's operations expenses, including road maintenance and snow removal, and are entirely independent from the Amenities. The Waiver explicitly refers to the refinance of GRMD's Senior Bonds and discharge of Subordinate Bonds to lower the interest rate and provide sufficient funds for GRMD to pay for its operations expenses "and a portion of the maintenance and snow removal expenses for roads within Granby Ranch beginning on January 18, 2018, and thereafter[.] **Ex. 23**, Recital Q. *See also, Id.*, Recitals F & G; I-L; O-Q. Recital S explains that due to the 2016 Granby IGA, the prior Master IGAs were no longer necessary and that the Waiver was specifically for the purpose of accomplishing the refinance of the Senior Bonds, discharge of the Subordinate Bonds, terminating the Master IGAs, and the repair and operation and maintenance of the roads within Granby Ranch. *Id.*, Recitals S-U, ¶ 1. This Waiver does not concern, pertain to, or impact the LPA and Amenities ski resort and golf course or the 2016 Granby IGA at all.

(4) Plaintiff Has Alleged an Injury in Fact.

Plaintiff has clearly and sufficiently alleged an injury in fact. "In order to establish standing, a plaintiff must allege an injury in fact to a legally protected interest as contemplated by statutory or constitutional provisions." *Bd. of Com'rs of Cnty of Boulder v. City of Broomfield*, 7 P.3d 1033, 1035 (Colo. App. 1999). "Parties seeking declaratory or injunctive relief, [as in this case], may satisfy the injury-in-fact test by showing that the action complained of has caused or has threatened to cause injury." *Colo. Gen. Assembly v. Lamm*, 700 P.2d 508, 516 (Colo. 1985); *see also Dunlap v. Colo. Springs Cablevision, Inc.*, 829 P.2d 1286, 1289 (Colo. 1992) ("A plaintiff satisfies the

injury in fact requirement by demonstrating that the activity complained of has caused or has threatened to cause injury to the plaintiff."); *People ex rel. J.C.S.*, 169 P.3d 240, 245 (Colo. App. 2007). "In resolving whether the plaintiff has alleged an injury sufficient to confer standing, a court must accept as true the allegations set forth in the complaint and may weigh other evidence supportive of standing." *Dunlap*, 829 P.2d at 1289.

In its well-pled Third Amended Complaint, GRMD seeks a declaration from this Court that the LPA has not been terminated, therefore GRMD maintains an interest in the leased premises. GRMD is not seeking a "refund" as Defendants' assert. Defendants' Motion, p. 17. Defendants' refusal to honor the obligations of the LPA has resulted in GRMD's loss of its interest in the property and caused it significant damages. . The factual history of this case and the structure of the agreements surrounding the LPA illustrate that from the very beginning of the Granby Ranch development, the property was always intended for public ownership, through title vesting in **GRMD**. The value of the amenities vesting to public ownership was clearly evident through the actions and various agreements of the parties. . *See supra.*, p.5-6. Defendants' refusal to honor the LPA, has caused GRMD to suffer the loss of its expected interest in the Leased Premises and Amenities. Plaintiff has thus alleged and established an injury in fact. Under Colorado law, they need do no more to establish the first prong of standing. *Dunlap*, 829 P.2d at 1289.

Plaintiff's injury is to a legally protected interest because, as argued at length above, it was an intended third-party beneficiary to the LPA.

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 27th 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 27th day of February 2023, a true and correct copy of the foregoing **PLAINTIFF'S RESPONSE IN OPPOSITION TO RENEWED MOTION UNDER C.R.C.P. 12(B)(1) TO DISMISS FOR LACK OF STANDING FILED BY DEFENDANTS HEADWATERS AND GR TERRA** was filed and served via Colorado Courts E-Filing on all Counsel of Record.

/s/ Caroline J. Nohl

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