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August 31, 2023

SENT VIA E-MAIL ONLY

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Re: **SUBJECT TO C.R.E. AND F.R.E. 408**
Granby Ranch Metropolitan District v. Headwaters Metropolitan District, et al. 2021cv30008 (Grand County District Court); and GRCO, LLC v. Granby Ranch Metropolitan District, 1:23-cv-01351 (U.S. District Court)

Our File No.: **245782.04**

Dear Counsel:

The Granby Ranch Metropolitan District (GRMD) Board of Directors has received and reviewed the counteroffer contained in your August 23, 2023, letter to David K. TeSelle and William T. O'Connell, III, who are respective counsel for GRMD on the two litigation matters referenced above. As you know, the Board held a special session for August 29, 2023. Husch Blackwell attorneys attended the special session and therefore you are aware of the actions that the Board took at that meeting. The Board also met in executive session on August 29, 2023, to obtain legal advice and direction regarding the pending litigation in Grand County District Court related to the 2012 Lease Purchase Agreement (the LPA litigation) and associated agreements.

The GRMD Board made the decision in open public session to reject the terms of the August 23, 2023, counteroffer. The Board also directed both litigation counsel to confer and jointly formally communicate the rejection to you, along with other matters, which this letter represents.

This letter will advise you of GRMD's formal rejection of your counteroffer. We also write to advise you of GRMD's reasoning as to the rejection based on the status of both of the referenced and current litigation matters. However, GRMD's rejection of the counteroffer does not mean that the Board is unwilling to engage in further good-faith negotiations to resolve all issues between all parties to end the litigation. To the contrary, GRMD's Board has appointed a litigation negotiation committee of two directors (Directors O'Munneke and Girard) to facilitate further settlement discussions. The committee has the authority to participate in confidential discussions or mediation, and to recommend settlement offers to the full GRMD Board for consideration.

As you know, the Court has ruled in favor of the Defendants on the declaratory judgment and quiet title claims in the LPA litigation. Under the American Rule, parties to litigation generally

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bear their own attorney fees, unless there is a statutory, common law, or contractual fee shifting provision. The claims on which the Court has ruled in Defendants' favor do not entitle any of the Defendants to recover attorney fees. GRMD recognizes that a prevailing party is entitled to recover certain costs, but these costs are far less than the demand for attorney fees contained in your counteroffer.

To be sure, Headwaters has asserted counterclaims for breach of contract that could potentially implicate a fee shifting provision. However, the Court has not ruled in Headwaters' favor on any of those claims. In fact, the Court's ruling on standing contains language indicating that the Court believes Headwaters' contract claims are moot. If there is no basis for these contract claims due to mootness, or if GRMD did not breach those contracts, then Headwaters would not be entitled to any award of attorney fees.

Notably, the Court has not set a status conference to reset the trial on any of these counterclaims. Thus, it appears that (although a final judgment has not yet entered), the Court may believe all issues have been resolved or will be resolved upon entry of its final judgment. Such a final judgment that disposes of all claims would clarify that Headwaters has no basis for its claim of attorney fees. The District Board has directed us to move the Court for entry of a final judgment which would clarify that Headwaters has no basis for an award of any attorney fees.

As to the counteroffer proposals regarding the GRCO litigation, the counteroffer does not make any compromise and instead insists that GRMD provide GRCO with all the relief that it possibly could obtain if it prevailed. GRMD believes that the GRCO claims are defensible, and therefore it would not be in the best interest of the District or its taxpayers to settle on these terms. In particular, GRCO would escape all responsibility for capital fees on the remaining lots that it owns, while the existing lots that are homeowner-owned have paid these significant fees as well as property taxes for many years. It would be unfair and a breach of trust to the taxpayers to allow GRCO to escape all responsibility for its share of the fees.

As noted above, GRMD is interested in further negotiations. We invite you to discuss an opportunity to meet in person or otherwise with the GRMD litigation negotiation committee to try to reach an agreement on all issues in all cases. We believe this will assist all parties in reducing litigation costs and establishing better relationships moving forward.

Very truly yours,

BURG SIMPSON
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Dean Batchelder

D. Dean Batchelder

DDB:mn
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