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DISTRICT COURT, GRAND COUNTY, COLORADO 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.** **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.; GR TERRA, LLC.	**▲COURT USE ONLY▲** 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	

THIRD AMENDED COMPLAINT

Plaintiff Granby Ranch Metropolitan District ("GRMD") through its undersigned counsel, submits the following Third Amended Complaint against Defendants Headwaters Metropolitan District ("Headwaters"),Gray Jay Ventures, LLC ("Gray Jay Ventures"), "Granby Prentice, LLC ("Granby Prentice"), and GR Terra, LLC ("GR Terra") (collectively referred to as "Defendants").

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff GRMD is a Metropolitan District validly organized and existing pursuant to the Colorado Special District Act, Section 32-1-101 et seq., C.R.S. Under Section 32-1-305 (7), C.R.S., the Plaintiff is a quasi-municipal corporation and political subdivision of the state of Colorado with all the powers thereof.

2. Defendant Headwaters is a Metropolitan District validly organized and existing pursuant to the Colorado Special District Act, Section 32-1-101 et seq., C.R.S. Under Section 32-1-305 (7), C.R.S., the Defendant is a quasi-municipal corporation and political subdivision of the state of Colorado with all the powers thereof.

3. Defendant Gray Jay Ventures[1] is a Delaware Limited Liability Company in good standing with its principal place of business located at 10100 Santa Monica Blvd., Suite 1000, Los Angeles, CA 90067. Defendant's registered agent address is 7700 E. Arapahoe Rd. Ste 220, Centennial, CO 80221.

4. Defendant Granby Prentice is a Delaware Limited Liability Company. Its registered agent is National Registered Agents, Inc. whose mailing address is 1209 Orange Street, Wilmington, DE 19801. There is no evidence that as of the date of this Amended Complaint, Granby Prentice is authorized to do business in Colorado.

5. Defendant GR Terra is a Missouri Limited Liability Company. Its registered agent is Georgia Noriyuki located at 365 E. Agate Ave, Unit A, Granby, CO 80446 and whose mailing address is PO Box 949, Granby, CO 80446.

6. This Court is the proper venue for this action pursuant to C.R.C.P. 98(c) because Headwaters and GPGH (the "Districts") are located entirely within the County of Grand, State of Colorado, and the Leased Premises are located entirely within the County of Grand, State of Colorado.

GENERAL ALLEGATIONS

7. Granby Realty Holdings ("GRH"), Headwaters, and GRMD are all separate but related entities. GRH was the petitioner that sought the organization of both Headwaters and GRMD. Sol Vista Corporation was the prior name of GRH.

8. Headwaters came into existence pursuant to a Service Plan approved by the Town of Granby and dated March of 2003. Headwaters was originally called Sol Vista Metropolitan District No. 1; its name was changed to Headwaters on October 23, 2004. Headwaters is the "developer district", covers a geographical area of approximately 7 acres, and the sole developed properties within its boundaries are a single residential condominium unit originally owned by Marise Cipriani, a principal manager of Sol Vista Corporation ("Sol Vista") and an undeveloped parcel of land which serves as a "directors parcel" for Headwaters.

[1] Gray Jay Ventures was originally GP Granby Holdings, LLC and as such many of the documents referenced in this Second Amended Complaint may contain references to GP Granby Holdings, LLC since that was the name of the entity at the time the transactions at issue took place. On June 2, 2021 GP Granby Holdings, LLC changed its name to Gray Jay Ventures, LLC.

9. GRMD (originally called Sol Vista Metropolitan District No. 2) was organized at the same time as Headwaters through a separate Service Plan. Its name was changed to Granby Ranch Metropolitan District, also on October 23, 2004. The two service plans are attached as **Exhibits 1 and 2**. Both Service Plans contemplated that multiple districts may be organized whose boundaries would include the residential areas of Granby Ranch and major amenities including a golf course, fishing access rights, and a ski area. GRMD is the "homeowner district" or the "taxing district" and covers a geographical area of approximately 3,563 acres.

10. When the two Districts were first organized, the property was owned entirely by a private development company, SolVista. (This entity later became the developer, "GRH."). Owners of taxable real and personal property, the holders of certain option contracts, and residents within both Headwaters and GRMD are "eligible electors" who may vote in district elections. Corporate entities and partnerships may not vote. The Districts were organized by Sol Vista so that Headwaters, which would have only developer-affiliated directors, would be the control or service district, and GRMD would pay taxes and fees to finance district services. SolVista conveyed property interests in small tracts of land, either through outright conveyance or options to purchase. This would qualify the transferees to vote in Headwaters and GRMD elections pursuant to C.R.S. 32-1-103(5)(a), C.R.S., and to petition for the organization of the district and submit a proposed service plan. Using this method, Headwaters would always be controlled by the Developer, which would lose control of GRMD as residents acquired lots, built homes, and took an interest in the affairs of the District.

11. Currently, the Headwaters Board is comprised of five members, none of whom reside within the boundaries of that district. The GRMD Board is comprised of five members all of whom are homeowners within that district.

12. The Granby Ranch Metropolitan Districts Nos. 2-8 were formed under a Service Plan approved by the Town of Granby on September 25, 2007. A copy of this Consolidated Service Plan is attached as **Exhibit 3**.

13. As the Service District, the Developer-controlled Headwaters ran the affairs of GRMD. Under the "Master Intergovernmental Agreement ("Master IGA"), attached to the Headwaters Service Plan, Headwaters was to establish "manage and control the financing" of infrastructure, budget monies for public purposes, adopt uniform rules and regulations for administrative and operational purposes, and establish all necessary service charges including "development fees" for the Taxing District (eventually GRMD and Granby Ranch Metropolitan Districts Nos. 2-8). Headwaters was to own and operate the infrastructure until it was transferred to the Town of Granby or another public agency. Headwaters was also responsible for the construction of the infrastructure and to arrange for the financing of it. *See* Master IGA, Sections 4.2 and 4.3. As section 4.4 of the Master IGA succinctly put the point, "the Service District shall manage and administer all business affairs of the Districts."

14. The responsibilities of the Taxing District were to impose the required mill levy to pay debt obligations incurred by the Districts, including Headwaters pursuant to Section 5.1 of the

Master IGA; to adopt, impose, collect, and remit to Headwaters as the Service District such rates, fees, tolls and charges as are established by the Service District" to fund its administrative and operating expenses pursuant to Section 5.2 of the Master IGA; and pursuant to Section 5.4 of the Master IGA, upon the dissolution of the Headwaters, GRMD was to accept responsibility for the operation and maintenance of any infrastructure located within the Taxing District.

15. On May 26, 2005 Headwaters and GRMD passed a Joint Resolution to Establish an Amenity Fee ("Fee Resolution")[2]. This Fee Resolution established that Headwaters would impose and collect an Amenity Fee in coordination with Granby Ranch with respect to each lot or parcel of land within GRMD's boundaries. This Amenity Fee was to provide "a source of funding to pay 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 for the orderly and uniform administration of the Districts' affairs." *See* Recitals of Fee Resolution. A copy of the Fee Resolution is attached as **Exhibit 4**.

16. The Amenities were defined in the Fee Resolution as "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." *See* Recitals of Fee Resolution.

17. On February 26, 2008, the Town of Granby, Headwaters, GRMD, and the Granby Ranch Metropolitan Districts Nos. 2-8 entered into an Intergovernmental Agreement (the "Granby IGA") which is attached as **Exhibit 5**.

18. Section 5 of the Granby IGA provided that "In addition to the types of park and recreation services and facilities referenced to or reflected in the Service Plans, including the exhibits thereto, 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 in Exhibit A, attached to the Granby IGA and incorporated herein by reference, collectively called the "**Amenities**", which included a "Fishing Camp" on the Fraser River, the 18-hole Headwaters Golf Course, the SolVista Ski Basin, and parks, trails, and recreation areas within the Granby Ranch property."

19. Importantly, the term "Districts" was defined on page 1 of the Granby Ranch IGA and included Headwaters, GRMD, and the Granby Ranch Districts Nos. 2-8. All of these entities were collectively given the power to acquire the Amenities. In order to defray the costs of this

[2] The Fee Resolution was amended on September 6, 2006 and was amended and restated on July 17, 2013. The Amendments to the Fee do not change the amount of the fee and the agreement, the rights and obligations remain a covenant running with the land and is to be binding to the parties and to their successors.

acquisition, the Districts were authorized 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. *See* Granby IGA, Section 5(c). *See* Fee Resolution. Under this agreement, the Districts would provide preferred access to the Amenities for Town residents which was to be at a higher level for the Town residents than the general public, but not higher than for residents of the Districts. The Granby IGA noted that the Amenities were not items required by the Town ordinances or other authorities to be dedicated or conveyed to the Town. The Granby IGA does provide that property interests and assets needed for the Amenities that would be acquired from the Developer shall be acquired at prices that do not exceed fair market value as established by a qualified appraiser. *See* Granby IGA Section 5(b).

20. On December 31, 2012, GRH and Headwaters entered into the Second Amended and Restated Lease Purchase Agreement ("LPA") for purposes of Headwaters purchasing the Amenities. A true and correct copy of the LPA is attached to this complaint as **Exhibit 6** and incorporated herein by this reference. The LPA was the consummation of the vision in the Granby IGA that the Amenities would be under public ownership.

21. In Recital B., the LPA notes that "in order to pay rental payments with respect to the Leased Premises and to pay the purchase price of the Leased Premises," Headwaters had "previously adopted, with the Granby Ranch Metropolitan District, a Joint Resolution to Establish an Amenity Fee....The Fee Resolution was entered into on May 26, 2005 by the Board of Directors of Headwaters and GRMD.

22. In Section 23 of the LPA, Headwaters and the developer, GRH, agreed that the "Purchase Price" for the Amenities would be the lesser of the Adjusted Appraisal Value of the Leased Premises subject to increases for the value of capital improvements adjusted for inflation and all Amenity Fees collectable by Headwaters under the Amenity Fee Agreements[3] and the Fee Resolution. The Amenities would also pass to the Tenant on December 31, 2062 if the Lease had not been terminated in accordance with Section 2(a), and (b) or (c) of the LPA.

23. "Rental Payments" under the LPA were restricted to "any Amenity Fee imposed pursuant to the Fee Resolution and the Fee Agreement." The Parties acknowledged that "due to the nature of the due dates of the Amenity Fees, as set forth in the Fee Resolution and the Fee Agreement, the amount of Amenity Fees received by the Tenant (Headwaters) may fluctuate greatly from month to month and year to year." *See* LPA, section 3. The plain language of the LPA leads to the conclusion that if no Amenity Fees were collected in a given year, the Rent would be zero.

24. GRMD is a third-party beneficiary under the LPA because it was expressly intended to be benefited under the LPA. GRMD imposed an Amenities Fee that was used to finance the purchase, and it was authorized under the Granby IGA to make the purchase along with

[3] Although not mentioned in the LPA, Headwaters entered into an "Amenity Fee Agreement" with GRH on June 1, 2005, and Headwaters subsequently entered into and "Amenity Fee Agreement" with Aspen Meadows Condominiums, LLC on July 5, 2005. These agreements are collectively referred to as the "Amenity Fee Agreements" in various documents and also within this Amended Complaint.

Headwaters and the Granby Ranch Metropolitan Districts Nos. 2-8. GRMD also contains the overwhelming majority of the "taxpayers, residents, occupants, visitors and invitees" described in the LPA as using the Leased Premises.

25. The Fee Resolution required GRMD to collect an Amenity Fee from property owners within the Granby Ranch development which was to be remitted to Headwaters to then apply to payments due under to the LPA. Such a fee would not be able to be collected were it not for the LPA between GRH and Headwaters since Headwaters is collecting the Amenity Fee through GRMD and pursuant to GRMD's legislative authority pursuant to C.R.S. 32-1-1001(j)(I).

26. In Section 13 of the LPA, "Title and Possession," GRH represented to Headwaters that it had the full right to enter into the LPA and to perform its obligations under the LPA, including without limitation the sale of the Leased Premises in accordance with Section 23, without the consent or approval of any other party. These other parties expressly included "the lenders indicated as beneficiaries to the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing from Granby Realty Holdings, LLC, a Colorado limited liability company to the Public Trustee of Grand County for the use of Redwood Capital Finance Company, LLC, a Delaware limited liability company, recorded June 2, 2005 at Reception No. 2005-005679, as amended."

27. Redwood Capital Finance Co., LLC ("Redwood Capital") is a Delaware Limited Liability Company with its principal place of business located at 10100 Santa Monica Blvd., Suite 1000, Los Angeles, CA 90067. Defendant's registered agent is National Registered Agents, Inc. whose mailing address is 1209 Orange Street, Wilmington, DE 19801. According to the records of the California Secretary of State, Redwood Capital was authorized to do business in the State of California but was "cancelled." There is no evidence that Redwood Capital was ever authorized to do business in Colorado.

28. Section 13(b) of the LPA provides, in part, "The Parties acknowledge that the Leased Premises are currently subject to the Deed of Trust, which is prior and superior to this Lease, and that, in connection with the Prior Lease, Landlord shall cause to be delivered to Tenant a Subordination, Non-Disturbance and Attornment Agreement, to be executed by Redwood Capital Finance." Section 13 (b) further provides,

> Landlord and Tenant hereby acknowledge that, in connection with the execution of this Lease, Landlord has delivered to Tenant, an agreement executed by the Lender either subordinating this Lease to the deed of trust held by the Lender but obligating the Lender and any successor thereto to be bound by this Lease and by all of Tenant's rights hereunder (to the extent such Lender should succeed to the interest of Landlord and/or acquire title or right of possession of the Leased Premises), including but not limited to the rights of Tenant conferred by Sections 2 and 23 hereof. Such agreement provides that, notwithstanding any other agreement with the Landlord, the Lender's consent shall not be required to permit

the acquisition of the Leased Premises by the Tenant in accordance with the terms hereof.

29. According to Section 26, the Non-Disturbance Agreement shall provide, among other things, that upon such lenders' succession of interest it shall be bound as Landlord to the provisions of the LPA, including Headwater's right to acquire the Leased Premise pursuant to Section 23.

30. On November 8, 2016, the Town of Granby, Headwaters, GRMD, and the Granby Ranch Metropolitan Districts Nos. 2-8 entered into an Amended and Restated Intergovernmental Agreement replacing the Granby IGA (the "Second Granby IGA"), which is attached to this Amended Complaint as **Exhibit 7**. In this Second Granby IGA, Section 5 a., the parties re-affirmed the authority of "the Districts" to acquire the ski area and lifts, ski lodge, golf courses and appurtenant clubhouses and maintenance facilities. Exhibit A to the Second Granby IGA lists the same Amenities that could be acquired by the Districts as the original Granby IGA.

31. In November of 2016, Headwaters and GRMD Districts Nos. 2-8 remained under the control of the developer GRH, but GRMD was under homeowner and lot owner control. GRMD and its homeowner-controlled Board were dissatisfied with the state of the infrastructure developed by Headwaters as the Service District, particularly the roads within Granby Ranch. Because of this dispute, the parties agreed to terminate the prior master IGAs under which the Granby Ranch districts would finance the roads and other related infrastructure within Granby Ranch and Headwaters would construct and operate that infrastructure. *See* "Termination of Intergovernmental Agreement" between GRMD, Granby Ranch Metropolitan Districts Nos. 2 through 8, and Headwaters, dated November 17, 2017 (the "Termination IGA"). In Recital G. of the Termination IGA, the parties indicated their intent that GRMD should operate independently of Headwaters. A copy of the Termination IGA is attached to this Amended Complaint as **Exhibit 8.**

32. However, the Second Granby IGA was not terminated nor was the authority that the Town of Granby had given to "the Districts" to purchase the Amenities ever taken away. The LPA was entered into in 2012 pursuant to the authority granted by the original Granby IGA, which was dated in 2008, and that authority was reaffirmed in the Second Granby IGA in 2016.

33. According to a letter dated September 1, 2020, from Christopher L. Richardson, counsel to defendant Gray Jay Ventures, to Mr. Clint Waldron, counsel to Headwaters, the interest in the 2005 Redwood Capital Deed of Trust was somehow transferred to an entity called Granby Prentice, LLC. Mr. Richardson described Redwood Capital as the "predecessor in interest" to Granby Prentice. According to the website maintained by the California Secretary of State, the business address of Granby Prentice is identical to that of the Redwood Capital Finance Company, LLC, 10100 Santa Monica Boulevard, Los Angeles, California, 90067.

34. Upon information and belief, GRH purportedly defaulted on the loan obligation secured by the 2005 Redwood Capital Deed of Trust. Subsequently, Granby Prentice initiated a

foreclosure by filing a Notice of Election and Demand on March 24, 2020 as to the 2005 Redwood Capital Deed of Trust. The LPA had previously been recorded in the real property records of Grand County on January 3, 2020 at Reception No. 2020000067. At the time the foreclosure was initiated, Granby Prentice had both actual and constructive knowledge that its predecessor in interest, Redwood Capital, had agreed to be bound by the LPA including the right of Headwaters to purchase the Amenities.

35. On August 14, 2020, the Public Trustee held a public sale of the Leased Premises under the LPA. Granby Prentice's bid of $25,000,000 was the highest and only bid. The Public Trustee issued a Certificate of Purchase for the subject property, including the Leased Premises, to Granby Prentice. Granby Prentice assigned this Certificate of Purchase to the defendant Gray Jay Ventures. Gray Jay Ventures has both actual and constructive knowledge that its predecessor in interest, Redwood Capital had agreed to be bound by the LPA including the right of Headwaters to purchase the Amenities.

36. Following the foreclosure, Gray Jay Ventures became the successor in interest to the LPA and was bound to assume the role of the Landlord under the LPA and to honor the right of the Granby Ranch Metropolitan Districts Nos. 2-8 to purchase the Amenities/Leased Premises under section 23 of the LPA. Gray Jay Ventures asserts that it was not a successor in interest to the LPA because the LPA was terminated by way of the foreclosure. Perhaps unsurprisingly, Gray Jay Ventures has the same Los Angeles business address as Redwood Capital and Granby Prentice.

37. From the time of Mr. Richardson's correspondence of September 1, 2020 through the filings of the motions to dismiss by Headwaters and Gray Jay Ventures, Gray Jay Ventures has taken the position that the LPA was wiped out by the public trustee foreclosure. At no time has it been noted that Redwood Capital delivered an agreement to Headwaters at the time the LPA was entered into stating that Redwood Capital would be bound by the terms of the LPA, including the right of Headwaters to purchase the Amenities and related property.

38. Plaintiff maintains both that Gray Jay Ventures is expressly bound to the terms of the LPA as a successor in interest and that the LPA was not terminated by way of public trustee foreclosure because the LPA is an installment land contract which must be foreclosed on as a mortgage through the Courts. As such, the LPA is still binding.

39. Even assuming that the LPA was terminated by way of foreclosure, in the LPA, the parties also acknowledged that the Leased Premises were subject to the Redwood Capital Deed of Trust, and that GRH would cause a Subordination, Non-Disturbance and Attornment Agreement to be delivered to Headwaters. However, the parties also exchanged "an agreement executed by the Lender either subordinating this Lease to the deed of trust held by the Lender but obligating the Lender and any successor thereto to be bound by this Lease and by all of Tenant's rights hereunder (to the extent that such Lender should succeed to the interest of Landlord and/or acquire title or right of possession of the Leased Premises) including but not limited to the rights of Tenant conferred by Sections 2 and 23 hereof. Such agreement provides that, notwithstanding any other

agreement with the Landlord, the Lender's consent shall not be required to permit the acquisition of the Leased Premises by the Tenant in accordance with the terms hereof."

40. On November 11, 2020, Gray Jay Ventures notified Headwaters that even assuming the LPA was not terminated by way of foreclosure that Headwaters ceased to operate the Amenities for in excess of 30 days, and thus, pursuant to Section 10 of the LPA, Gray Jay Ventures was electing to terminate the LPA.

41. Section 10 of the LPA provides, in part, "if Tenant ever ceases to operate the Amenities on the Leased Premises for 30 days or longer . . . Landlord may, in its sole discretion and after at least 10 days advance notice to Tenant (which notice may be given within 10 days after the Tenant ceases operation of the Amenities), elect to terminate this lease . . . ."

42. The termination of the LPA will prevent GRMD from collecting fees pursuant to the LPA and will lose approximately $6.05 million dollars in equity already paid (out of a purchase price of $18 million) subject to the LPA from fees collected from its residents and members and terminate the right of the Districts to acquire the Amenities.

43. Notice was not properly given by Gray Jay Ventures as required under Section 10. In addition, Headwaters had never ceased to operate the Amenities for a period in excess of thirty days.

44. On or about April 8, 2020, the former operating entity, Granby Ranch Amenities ("GRA") provided notice to the Headwaters board that it intended to terminate its agreement with Headwaters to manage the Leased Premises on or before October 5, 2020. GRA then provided notice on May 28, 2020 that it would no longer operate the Amenities after May 30, 2020. At that same board meeting, the Headwaters board resolved to award Granby Prentice Amenities/Ridgeline ("GPA/Ridgeline") the management contract for the Leased Premise subject to receipt and execution of a mutually acceptable management agreement. GRMD is not aware of a final written agreement ever being entered into between GPA/Ridgeline and Headwaters. During all relevant periods of time, Headwaters continued to operate the Amenities, under contract with those private entities.

45. On or about May 30, 2020 the Headwaters board voted and approved Touchstone Golf ("Touchstone") as the new operating entity for the golf amenities. On or about September 2, 2020 Gray Jay Ventures informed Granby Ranch homeowners that it had contracted with Touchstone to operate the golf amenities and with Ridgeline to operate the ski amenities. The governor ordered all ski resorts to close effective March 15 and the ski amenities remained closed through December 10, 2020. Upon information and belief, during these periods of mandatory regulatory closing, Headwaters continued to perform routine maintenance and to operate the Amenities to the extent permitted by law.

46. As such, there was never a 30-day period in which Headwaters failed to operate the amenities. Although new management companies were operating the Amenities, they were appointed by Headwaters and thus, Headwaters, despite having a new board, was still managing the Amenities through its appointed contractors.

47. GR Terra purchased the property subject to the LPA from Gray Jay Ventures on or about May 5, 2021.

FIRST CLAIM FOR RELIEF
(Breach of Contract against Gray Jay Ventures)

48. The allegations set forth in paragraphs 1 through 47 of this Complaint are incorporated by this reference as though fully set forth herein.

49. Gray Jay Ventures, as a successor in interest to Redwood Capital, is bound by the LPA, including the terms set forth under Section 13 and 26 of the LPA. Assuming that the Subordination, Non-Disturbance, and Attornment Agreement referenced in Section 13 of the LPA was executed and delivered, as described in the LPA, Gray Jay Ventures was obligated to act as Landlord and accept the purchase provisions of Section 23.

50. Further, Gray Jay Ventures had actual and constructive knowledge that the LPA existed and that it was bound by its provisions as a covenant running with the land.

51. By asserting that the LPA was terminated, Gray Jay Ventures has refused to be bound as Landlord to Headwaters and has refused accept the purchase provisions of Section 23 of the LPA. Gray Jay Ventures has thus breached its duties to GRMD as a third-party beneficiary to the LPA.

52. As established by the Amenity Fee Resolution, and other circumstances, GRMD is a third-party beneficiary to the LPA.

53. WHEREFORE, Plaintiff requests that this Court enter judgment in its favor and against Gray Jay Ventures as follows:

i. For general and special damages, in the monetary amount to be determined at trial, and including an award of attorney's fees incurred in bringing and maintaining this action;

ii. For a decree of specific performance ordering that Gray Jay Ventures reinstate all existing agreements with GRMD;

iii. For a decree of specific performance ordering that Gray Jay Ventures uphold the provisions of the LPA;

iv. For GRMD's cost of suit;

v. For such other and further relief as this Court may deem just.

SECOND CLAIM FOR RELIEF
(Breach of Contract against Headwaters)

54. The allegations set forth in paragraphs 1 through 53 of this Complaint are incorporated by this reference as though fully set forth herein.

55. Under the Service Plans of Headwaters and GRMD, the 2003 Master IGA, the Second Granby IGA, and the LPA, Headwaters had a duty to acquire the Amenities on behalf of the GRMD.

56. In failing to do so, Headwaters breached its contractual duties to GRMD.

57. Further, Headwaters had actual and constructive knowledge that the LPA existed and that it was bound by its provisions as a covenant running with the land.

58. WHEREFORE, Plaintiff requests that this Court enter judgment in its favor and against Headwaters as follows:

i. For general and special damages, in the monetary amount to be determined at trial, and including an award of attorney's fees incurred in bringing and maintaining this action;

ii. For GRMD's cost of suit;

iii. For such other and further relief as this Court may deem just.

THIRD CLAIM FOR RELIEF
(Breach of Contract against Granby Prentice)

59. The allegations set forth in paragraphs 1 through 58 of this Complaint are incorporated by this reference as though fully set forth herein.

60. On March 24, 2020 Granby Prentice initiated foreclosure proceedings under the 2005 Redwood Capital Deed of Trust.

61. At that time, Granby Prentice had both actual and constructive knowledge that its predecessor in interest, Redwood, had agreed to be bound by the LPA, including the purchase provisions of Section 23, and to act as Landlord if it acquired title to the Leased Premises.

62. When Granby Prentice failed to recognize the LPA, specifically its refusal to act as landlord and to accept the purchase provisions of Section 23, it breached its duties to GRMD as a third-party beneficiary of the LPA.

63. Further, Granby Prentice had actual and constructive knowledge that the LPA existed and that it was bound by its provisions as a covenant running with the land.

64. WHEREFORE, Plaintiff requests that this Court enter judgment in its favor and against Granby Prentice as follows:

i. For general and special damages, in the monetary amount to be determined at trial, and including an award of attorney's fees incurred in bringing and maintaining this action;

ii. For GRMD's cost of suit;

iii. For such other and further relief as this Court may deem just.

FOURTH CLAIM FOR RELIEF
(Breach of Contract Against GR Terra)

65. The allegations set forth in paragraphs 1 through 64 of this Complaint are incorporated by this reference as though fully set forth herein.

66. On May 5, 2021 GR Terra purchased the property subject to the LPA from Gray Jay Ventures, who conveyed the property to GR Terra via special warranty deed.

67. As a successor in interest to Gray Jay Ventures and Redwood Capital GR Terra is subject to the provisions of the LPA, including the terms set forth under Section 13 and 26 of the LPA.

68. Since acquiring the Leased Premises, GR Terra failed to recognize the LPA and has refused to act as landlord and to accept the purchase provisions of Section 23.

69. In doing so, GR Terra has breached its duties to GRMD as a third-party beneficiary of the LPA.

70. Further, GR Terra had actual and constructive knowledge that the LPA existed and that it was bound by its provisions as a covenant running with the land.

71. WHEREFORE, Plaintiff requests that this Court enter judgment in its favor and against GR Terra as follows:

i. For general and special damages, in the monetary amount to be determined at trial, and including an award of attorney's fees incurred in bringing and maintaining this action;

ii. For GRMD's cost of suit;

iii. For such other and further relief as this Court may deem just.

FIFTH CLAIM FOR RELIEF
(Declaratory Judgment against Gray Jay Ventures and GR Terra)

72. The allegations set forth in paragraphs 1 through 71 of this Complaint are incorporated by this reference as though fully set forth herein.

73. Granby Prentice was a successor in interest to Gray Jay Ventures and subsequently GR Terra and thus Gray Jay Ventures and GR Terra are bound to the LPA. Foreclosure has no effect on the contractual obligations under the LPA because as successors in interest, Gray Jay Ventures and GR Terra are bound to the terms of the LPA.

74. Alternatively, the LPA was not terminated through the public trustee foreclosure because it was an installment land contract. As such, the LPA created a security interest benefitting GR Terra and Gray Jay Ventures' predecessor in interest, Redwood Capital, and Gray Jay Ventures

and GR Terra, to the extent Gray Jay Ventures, and now GR Terra, are the legal successor in interest to the LPA.

75. An installment land contract is characterized by the following elements: (1) the owner's agreement to sell and the buyer's agreement to buy; (2) the promise of the buyer that he will make payments, usually over a long period of time and in installments, and that buyer will keep the premises insured and maintain them; (3) the seller's promise that he will deliver a deed when the payments have been completed; and (4) an agreement that, in the event of default by the buyer in making the payments or performing the other covenants contained in the instrument, the seller may declare the contract at an end and retain the payments made as liquidated damages.

76. The LPA meets the criteria for an installment land contract in a number of ways including but not limited to (1) GRH agreeing to sell and Headwaters agreeing to purchase the Leased Premises; (2) the LPA was to automatically renewed for 49 additional one-year terms; (3) GRH promised to deliver a deed when the payments were completed; and (4) upon default, GRH had the right "to terminate this Lease and reenter the Leased Premises;" in addition, under Section 3.a of the LPA, "the Rental Payments will be absolute and unconditional in all events and will not be subject to any set-off, defense, counterclaim or recoupment for any reason whatsoever."

77. Courts should treat an installment land contract as a mortgage based upon a number of factors, including the amount of the vendee's equity in the property, the length of the default period, the willfulness of the default, whether the vendee has made improvements, and whether the property has been adequately maintained. The parties had been performing under the LPA for over 14 years at the time of the foreclosure, including 14 years of rental payments which went towards the amount of equity in the property. Additionally, GRMD has paid out approximately $6.05 million (of the $18.9 million total due) to GRH under the LPA since 2006.

78. Plaintiff is a party that is interested under a written contract, or other writings constituting a contract, and may have determined any question of construction or validity arising under the contract, and obtain a declaration of rights, status, or other legal relations thereunder, pursuant to the terms of C.R.C.P. 57 and the Uniform Declaratory Judgments Law, § 13–51–101 et seq., C.R.S.

79. This claim was pled as the Eighth Claim for Relief in paragraphs 87 through 94 of GRMD's Second Amended Complaint. In an order dated January 22, 2022, this Court granted Gray Jay Ventures', Granby Prentice LLC's, and GR Terra LLC's motion to dismiss the Eighth Claim. This Fifth Claim for Relief is pled solely to preserve any rights to appeal that Plaintiff may have and is governed by the doctrine of law of the case.

80. WHEREFORE, Plaintiff requests a declaratory judgment of this Court including, without limitation, that:

a. The LPA is an installment land contract.

b. That the LPA should have been treated as a mortgage and thus could only have been terminated through a judicial foreclosure.

c. For these reasons, and because Redwood Capital, Granby Prentice, Gray Jay Ventures, and GR Terra had agreed to be bound by the LPA, the LPA was not terminated through the public trustee foreclosure.

SIXTH CLAIM FOR RELIEF
(Declaratory Judgment and Injunctive Relief: Covenant Running with the Land against Headwaters, GR Terra, Gray Jay Ventures, and Granby Prentice)

81. The allegations set forth in paragraphs 1 through 80 of this Third Amended Complaint are incorporated by this reference as though fully set forth herein.

82. The Parties to the LPA intended that it be a covenant running with the land. This intent was expressed in both the conduct of the parties and the language of the LPA, including without limitation Section 28.f., which provided that "[t]his instrument shall also bind and benefit, as the case may require, the heirs, legal representatives, assigns and successors of the respective Parties, and all covenants, conditions and agreements herein contained shall be construed as covenants running with the land."

83. The LPA and the Leased Premises touch and concern the land and thus the LPA is a covenant running with the land.

84. Further, the LPA has never been terminated in accordance with its own provisions or by operation of law.

85. Plaintiff is a party that is interested under a written contract, or other writings constituting a contract, and may have determined any question of construction or validity arising under the contract, and obtain a declaration of rights, status, or other legal relations thereunder, pursuant to the terms of C.R.C.P. 57 and the Uniform Declaratory Judgments Law, § 13–51–101 et seq., C.R.S.

86. WHEREFORE, Plaintiff requests judgment in its favor and against Gray Jay Ventures, Granby Prentice, Headwaters, and GR Terra as follows:

a. For a declaratory judgment that the LPA is covenant running with the land, fully binding and enforceable against Headwaters as a Party to the LPA and against Gray Jay Ventures, Granby Prentice, and GR Terra as successors to or assigns of the Parties to the LPA, and that the covenant set forth in the LPA has not been terminated by foreclosure;

b. For appropriate injunctive relief under the equitable powers of this Court enforcing the terms of the LPA as a covenant running with the land;

c. For Plaintiff's attorneys' fees and costs of suit;

d. For such other and further relief as this Court may deem just.

Respectfully submitted this 13th day of October 2022.

BURG SIMPSON
ELDREDGE HERSH & JARDINE, P.C.

(Original signature on file)

/s/ Erica N. Garcia
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ADDRESS FOR PLAINTIFF

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of October 2022, a true and correct copy of the foregoing **THIRD AMENDED COMPLAINT** was filed and served via Colorado Courts E-Filing on all Counsel of Record.

/s/ Caroline J. Nohl

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