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DISTRICT COURT, GRAND COUNTY, COLORADO
307 Moffat Avenue
Hot Sulphur Springs, CO 80451

Plaintiff: GRANBY RANCH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado,

v.

Defendants: HEADWATERS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado; GRAY JAY VENTURES, LLC.; REDWOOD CAPITAL FINANCE CO., LLC, GRANBY PRENTICE, LLC; and GR TERRA, LLC.

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Case No. 2021CV30008

Division 1

HEADWATER METROPOLITAN DISTRICT'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S THIRD AMENDED COMPLAINT, JURY DEMAND, AND COUNTERCLAIMS

Defendant Headwaters Metropolitan District ("Defendant" or "Headwaters") submits this answer, affirmative defenses, jury demand and counterclaims to Plaintiff Granby Ranch Metropolitan District's Third Amended Complaint ("Amended Complaint").

PARTIES, JURISDICTION, AND VENUE

1. Defendant admits that GRMD was organized as a Metropolitan District pursuant to the Colorado Special District Act, Section 32-1-101 et seq., C.R.S. The remainder of the

allegations in paragraph 1 are legal conclusions to which no response is required. To the extent further response is required, Defendant denies these allegations.

2. Admit.

3. Defendant lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 3 and footnote 1and therefore denies same.

4. Defendant lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 4 and therefore denies same.

5. Defendant lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 5 and therefore denies same.

6. Defendant admits that it and GRMD are located within Grand County, Colorado as is the leased premises referred to in the Amended Complaint. The balance of the allegations of paragraph 7 are legal conclusions to which no response is required. To the extent further response is required, Defendant denies these allegations.

GENERAL ALLEGATIONS

7. Defendant admits that GRH, Headwaters and GRMD are separate entities, but denies that they are related entities. Defendant is without sufficient knowledge and information to form a belief as to the balance of the allegations in paragraph 7 and therefore denies same.

8. Defendant states that the Service Plan referenced in paragraph 8 and as subsequently amended, speaks for itself and denies any characterization of that document inconsistent with the terms thereof. Defendant admits that it was originally called SolVista Metropolitan District No. 1 and that its name was changed to Headwaters on October 23, 2004. Defendant denies the balance of the allegations in paragraph 8.

9. Defendant states that the Service Plans referenced in paragraph 9 and attached to the Amended Complaint as Exhibits 1 and 2 and as subsequently amended speak for themselves and denies any characterization of those documents inconsistent with the terms thereof. Defendant admits that GRMD was originally called SolVista Metropolitan District No. 2 and its name was changed to GRMD on October 23, 2004. Defendant denies the balance of the allegations in paragraph 9.

10. Defendant states that it is unable to respond to the first sentence of paragraph 10 as the term "property" is not defined. Defendant denies the second sentence of paragraph 10. Defendant states that the remainder of the allegations of paragraph 10 are either characterizations of documents that speak for themselves or legal conclusions, to which no response is required. To the extent a response is required to these allegations, Defendant denies same.

11. Defendant denies the allegations of paragraph 11.

12. Defendant states that the Consolidated Service Plan referenced in paragraph 12 and attached to the Amended Complaint as Exhibit 3 and as subsequently amended speaks for itself and denies any characterization of that document inconsistent with the terms thereof.

13. Defendant states that it is unable to respond to the first sentence of paragraph 13 as the term "affairs" is ambiguous and the timeframe referenced is not defined. The remainder of the allegations are characterizations of the Master IGA, and that document speaks for itself. Defendant denies any characterization of the Master IGA inconsistent with the terms thereof and also states that the Master IGA was terminated and of no force in effect as of June 1, 2006.

14. The allegations of paragraph 14 are characterizations of the Master IGA, and that document speaks for itself. Defendant denies any characterization of the Master IGA inconsistent with the terms thereof and also states that the Master IGA was terminated as of June 1, 2006, and is of no force in effect.

15. The allegations of paragraph 15 are characterizations of the Fee Resolution attached to the Amended Complaint as Exhibit 4. The Fee Resolution speaks for itself, and Defendant denies any characterization of the Fee Resolution in paragraph 16 or in footnote 2 inconsistent with the terms thereof. Defendant also states that the Fee Resolution was superseded in its entirety on July 17, 2013, and is of no force and effect.

16. The allegations of paragraph 16 are characterizations of the Fee Resolution attached to the Amended Complaint as Exhibit 4. That document speaks for itself, and Defendant denies any characterization of the Fee Resolution inconsistent with the terms thereof. Defendant also states that the Fee Resolution was superseded in its entirety on July 17, 2013, and is of no force and effect.

17. Admit. Defendant also states that the Granby IGA was superseded and replaced in its entirety on November 8, 2016, and is of no force and effect.

18. The allegations of paragraph 18 are characterizations of the Granby IGA attached to the Amended Complaint as Exhibit 5. That document speaks for itself, and Defendant denies any characterization of the Granby IGA inconsistent with the terms thereof. Defendant also states that the Granby IGA was superseded and replaced in its entirety on November 8, 2016, and is of no force and effect.

19. The allegations of paragraph 19 are characterizations of the Granby IGA attached to the Amended Complaint as Exhibit 5. That document speaks for itself, and Defendant denies any characterization of the Granby IGA inconsistent with the terms thereof. Defendant also states that the Granby IGA was superseded and replaced in its entirety on November 8, 2016, and is of no force and effect.

20. Defendant admits the allegations in the second sentence of paragraph 20. Defendant denies the allegations of the first and third sentences of paragraph 20.

21. The allegations of paragraph 21 are characterizations of the LPA attached to the Amended Complaint as Exhibit 6. That document speaks for itself, and Defendant denies any characterization of the LPA inconsistent with the terms thereof.

22. Defendant denies the allegations of paragraph 22 and the allegations of footnote 3.

23. Defendant denies the first sentence of paragraph 23. Defendant states that the remainder of the allegations of paragraph 23 are either characterizations of documents that speak for themselves or legal conclusions, to which no response is required. To the extent a response is required to these allegations, Defendant denies same and denies any characterization of the LPA inconsistent with the terms thereof.

24. The first sentence of paragraph 24 is a legal conclusion to which no response is required, and to the extent a response is required, Defendant denies that conclusion. Defendant denies the remainder of the allegations of paragraph 24.

25. Defendant denies the allegations of paragraph 25.

26. The allegations of paragraph 26 are characterizations of the LPA attached to the Amended Complaint as Exhibit 6. That document speaks for itself, and Defendant denies any characterization of the LPA inconsistent with the terms thereof.

27. Defendant lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 27 and therefore denies same. Defendant further states that all claims against Redwood Capital has been dismissed with prejudice.

28. The allegations of paragraph 28 are characterizations of the LPA attached to the Amended Complaint as Exhibit 6. That document speaks for itself, and Defendant denies any characterization of the LPA inconsistent with the terms thereof.

29. Defendant states that it is unable to respond to paragraph 29 as the term "Non-Disturbance Agreement" is ambiguous and undefined, and the allegations of paragraph 29 are characterizations of the LPA attached to the Amended Complaint as Exhibit 6. That document speaks for itself, and Defendant denies any characterization of the LPA inconsistent with the terms thereof.

30. Defendant admits the first sentence of paragraph 30. Defendant denies the remainder of the allegations of paragraph 30.

31. Defendant is unable to respond to the allegations in the first and second sentences of paragraph 31 as the terms "control" and "homeowner-controlled" are vague and ambiguous; to the extent a response to those allegations is required, Defendant denies same. Defendant admits that it, GRMD and Granby Ranch Metropolitan Districts Nos. 2 through 8 agreed to terminate the Master IGA pursuant to the Termination of Intergovernmental Agreement attached

to the Amended Complaint as Exhibit 8 and admits that in Recital G of that Termination Agreement, the parties indicated their intent that GRMD operate independently of Headwaters. Defendant denies all allegations of paragraph 31 not expressly admitted herein.

32. The allegations of paragraph 32 state legal conclusions to which no response is required; to the extent a response is required, Defendant denies same.

33. Defendant lacks sufficient knowledge or information to form a belief as to the allegations contained in the last sentence of paragraph 33 and therefore denies same. The remaining allegations of paragraph 33 are characterizations of the referenced letter dated September 1, 2020. That document speaks for itself, and Defendant denies any characterization of the letter dated September 1, 2020 inconsistent with the terms thereof.

34. Defendant admits the first three sentences of paragraph 34. Defendant lacks sufficient knowledge or information to form a belief as to the allegations of the final sentence of paragraph 34 and therefore denies same.

35. Defendant admits that, on August 14, 2020, after providing all notices required by Colorado statute, the Public Trustee held a public sale of the Leased Premises and other property subject to the Deed of Trust. Following the sale, the Public Trustee issued a Certificate of Purchase for the subject property, including the Leased Premises, to Granby Prentice. Granby Prentice assigned the Certificate of Purchase to GP Granby Holdings LLC (now known as Gray Jay Ventures, LLC). After the expiration of the redemption period, title to the property vested in GP Granby Holdings free and clear of all liens and encumbrances junior to the Deed of Trust, including the LPA. On August 27, 2020, the Public Trustee issued a Public Trustee's Deed to GP Granby Holdings granting it title to the Leased Premises and other subject property, which deed was recorded in the land records for Grand County on August 1, 2020 at Reception No. 202000007560. Defendant is without sufficient knowledge or information to form a belief as to the remainder of the allegations in paragraph 35 and denies same. Defendant denies all allegations of paragraph 35 not admitted herein.

36. Defendant denies the first sentence of paragraph 36. Defendant admits the allegation of the second sentence of paragraph 36 and further states that the LPA was terminated through the foreclosure, based upon the notice of termination referenced in paragraph 40, and other means. Defendant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations of paragraph 36 and therefore denies same.

37. Defendant denies that Redwood Capital ever delivered to it the agreement referenced in paragraph 37. Defendant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations of paragraph 37 and therefore denies same.

38. Defendant acknowledges that the allegations of paragraph 38 may state Plaintiff's legal positions, but Defendant denies those conclusions and states that the LPA was terminated via the foreclosure, or alternatively, based upon the notice of termination referenced in paragraph 40 below or, alternatively, by other means in accordance with the terms of the LPA.

39. Defendant states that the allegations of paragraph 39 are characterizations of the LPA attached to the Amended Complaint as Exhibit 6. That document speaks for itself, and Defendant denies any characterization of the LPA inconsistent with the terms thereof. Defendant further states that first sentence of paragraph 39 states a legal conclusion to which no response is required; to the extent a response is required, Defendant denies same. Defendant denies the allegations of the second and third sentences of paragraph 39.

40. Admit.

41. The allegations of paragraph 41 are characterizations of the LPA. That document speaks for itself, and Defendant denies any characterization of the LPA inconsistent with the terms thereof.

42. Defendant denies the allegations of paragraph 42.

43. Defendant states that the first sentence of paragraph 43 states a legal conclusion to which no response is required; to the extent a response is required, Defendant denies same. Defendant denies the allegations of the second sentence of paragraph 43.

44. Defendant admits the first sentence of paragraph 44. Defendant denies the second, third and last sentences of paragraph 44. Defendant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations of paragraph 44 and therefore denies same.

45. Defendant admits the first and third sentences of paragraph 45. Defendant lacks sufficient knowledge and information to form a belief as to the allegations in the second sentence of paragraph 45 and therefore denies same. Defendant denies the last sentence of paragraph 45.

46. Defendant denies the allegations of paragraph 46.

47. Defendant admits that GR Terra purchased the property formerly subject to the LPA on or about May 5, 2021, but Defendant deny that the property was subject to the LPA at the time of GR Terra's purchase because the LPA had been extinguished and terminated prior to that time.

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

48. Defendant incorporates its responses to all of the allegations contained in the foregoing paragraphs as if the responses were fully restated herein.

49-53. The allegations made in paragraphs 49-53 are not directed at Defendant and therefore no response is necessary. To the extent a response is deemed necessary, Defendant denies same.

SECOND CLAIM FOR RELIEF
(Breach of Contract against Headwaters)

54. Defendant incorporates its responses to all of the allegations contained in the foregoing paragraphs as if the responses were fully restated herein.

55. Defendant denies the allegations of paragraph 55.

56. Defendant denies the allegations of paragraph 56. Further, the Court has dismissed any claims against Headwaters under the Granby IGA.

57. Defendant admits that it had knowledge that the LPA existed. The balance of the allegations of paragraph 57 state legal conclusions to which no response is required; to the extent a response is deemed necessary, Defendant denies the same.

58. Defendant denies the allegations of paragraph 58 and denies Plaintiff's right to the requested relief. Further, the Court has dismissed any claims against Headwaters under the Granby IGA.

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

59. Defendant incorporates its responses to all of the allegations contained in the foregoing paragraphs as if the responses were fully restated herein.

60-64. The allegations made in paragraphs 60-64 are not directed at Defendant and therefore no response is necessary. To the extent a response is deemed necessary, Defendant denies same.

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

65. Defendant incorporates its responses to all of the allegations contained in the foregoing paragraphs as if the responses were fully restated herein.

66-71. The allegations made in paragraphs 66-71 are not directed at Defendant and therefore no response is necessary. To the extent a response is deemed necessary, Defendant denies same.

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

72. Defendant incorporates its responses to all of the allegations contained in the foregoing paragraphs as if the responses were fully restated herein.

73-80. The allegations made in paragraphs 73-80 are not directed at Defendant and therefore no response is necessary. To the extent a response is deemed necessary, Defendant denies same.

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. Defendant incorporates its responses to all of the allegations contained in the foregoing paragraphs as if the responses were fully restated herein.

82. The allegations of paragraph 82 state legal conclusions to which no response is required; to the extent a response is required, Defendant denies the allegations of paragraph 82.

83. The allegations of paragraph 83 state legal conclusions to which no response is required; to the extent a response is required, Defendant denies the allegations of paragraph 83.

84. Defendant denies the allegations of paragraph 84.

85. The allegations of paragraph 85 state legal conclusions to which no response is required; to the extent a response is required, Defendant denies the allegations of paragraph 85.

86. Defendant denies the allegation of paragraph 86 and Plaintiff's right to the relief requested therein.

General Denial

Headwaters denies each allegation of the Amended Complaint that is not specifically admitted herein, including any factual allegations in the paragraph titled WHEREFORE to which a response is deemed necessary.

Affirmative Defenses

1. The Amended Complaint fails to state a claim upon which relief may be granted.

2. The Amended Complaint fails because GRMD lacks standing to bring its claims against Headwaters. Neither the terms of the Second Amended and Restated Lease Purchase Agreement ("LPA") nor the surrounding circumstances establish in clear terms or by necessary implication that the owner of the Leased Premises (GRH) and Headwaters intended to confer a direct benefit on GRMD when they entered the LPA giving Headwaters the right to lease the Leased Premises and an option to purchase during the 50-year lease term. Because Headwaters' breach of contract claim in essence seeks to force Headwaters to exercise rights under the LPA, it lacks standing to bring that claim.

3. To the extent that GRMD was a third-party beneficiary to the LPA at the time that document was executed in 2012 (which Defendant disputes), GRMD waived and relinquished those rights through various agreements it entered subsequent to 2012, including, without limitation: the Exclusion Agreement dated April 21, 2010 by and between GRMD, Headwaters, and Granby Realty Holdings, Inc. ("GRH"); the Letter Agreement dated August 22, 2016 by and between GRMD, Headwaters, GRMD No. 8 and GRH, as amended in 2017 and 2018; the 2016 Second Amendment to the GRMD Service Plan and 2016 Amendment to the Service Plan for Headwaters; the November 17, 2017 Termination of Intergovernmental Agreement by and between GRMD, GRMD Nos. 2-8 and Headwaters; and the Waiver and Release Agreement entered in April of 2018 by and between GRMD, GRMD No. 8, Headwaters and GRH (all of the foregoing agreements are more fully described in GR Terra's Counterclaims). Therefore, GRMD does not have standing to seek to enforce the LPA, to seek a declaratory judgment regarding its validity and existence, or to seek damages for alleged breach of the LPA.

4. GRMD lacks standing to bring its claims for breach of contract and declaratory relief because it asserts no facts that constitute injury-in-fact to GRMD; GRMD did not pay any of the Amenity Fees that allegedly constitute "equity" under the LPA and that give rise to GRMD's alleged damages and GRMD does not use the amenities that are the subject of the LPA.

5. To the extent that GRMD seeks to bring claims on behalf of GRMD Nos. 2-8 or asserts rights or obligations to those entities, these claims fail for lack of standing in that GRMD has pleaded no facts to establish that those entities have assigned or otherwise transferred any claims to GRMD.

6. GRMD's breach of contract claim against Headwaters fails because none of the contracts relied upon by GRMD impose any obligation upon Headwaters to acquire the Leased Premises on behalf of GRMD and to the extent any of those contracts ever so required (which Headwaters disputes) the contracts have been terminated and amended such that there is no current obligation upon Headwaters to acquire the Leased Premises on GRMD's behalf or to acquire the Leases Premises at all.

7. GRMD is estopped and/or otherwise barred from bringing its breach of contract claim against Headwaters GR Terra in that GRMD waived and relinquished any right to compel enforcement of the LPA through various agreements it entered subsequent to 2012, including, without limitation: the Exclusion Agreement dated April 21, 2010 by and between GRMD, Headwaters, and Granby Realty Holdings, Inc. ("GRH"); the Letter Agreement dated August 22, 2016 by and between GRMD, Headwaters, GRMD No. 8 and GRH, as amended in 2017 and 2018; the 2016 Second Amendment to the GRMD Service Plan and 2016 Amendment to the Service Plan for Headwaters; the November 17, 2017 Termination of Intergovernmental Agreement by and between GRMD, GRMD Nos. 2-8 and Headwaters; and the Waiver and Release Agreement entered in April of 2018 by and between GRMD, GRMD No. 8, Headwaters and GRH (all of the foregoing agreements are more fully described in GR Terra's Counterclaims).

8. GRMD's breach of contract claim and request for damages against Headwaters based on alleged "equity" from the payment of Amenity Fees as rent under the LPA fails because GRMD terminated and waived any rights it had to Amenity Fees collected under the Amenity Fee Resolution and/or Amenity Fee Agreement and released any claim to same in an agreement that Granby Realty Holdings LLC, Headwaters and GRMD entered on April 21, 2010, called the "Exclusion Agreement." Under provision 3.2.1 of the Exclusion Agreement, where it "acknowledged and agreed" that the Amenity Fees paid under the 2005 Fee Resolution were payable solely to Headwaters and that GRMD had "no right, title or interest thereto."

9. GRMD's breach of contract claim and request for damages against Headwaters based on alleged "equity" from the payment of Amenity Fees as rent under the LPA fails because GRMD terminated and waived any rights it had to Amenity Fees collected under the 2005 or 2013 Amenity Fee Resolution and/or the 2005 or 2013 Amenity Fee Agreement and released any claim to same in an agreement that Granby Realty Holdings LLC, Headwaters and GRMD entered on April 21, 2010, called the "Exclusion Agreement." Under provision 3.2.1 of the Exclusion Agreement, where it "acknowledged and agreed" that the Amenity Fees paid under the 2005 Fee Resolution were payable solely to Headwaters and that GRMD had "no right, title or interest thereto" and agreed to fully cooperate to give effect to the intent and purpose of that Agreement.

10. GRMD's breach of the 2003 Master IGA claim against Headwaters fails because the 2003 Master IGA was expressly terminated by the 2006 Master IGA, section 10.5 stating: "the 2003 IGA is hereby terminated as of the date of this Agreement and shall be of no further force or effect."

11. GRMD's breach of contract claim against Headwaters is barred by failure of GRMD or other parties to satisfy necessary condition precedent in the LPA and/or 2003 Master IGA and 2016 Granby IGA.

12. GRMD's breach of contract claim and request for damages against Headwaters based on alleged "equity" from the payment of Amenity Fees as rent under the LPA are barred, waived and released under the terms of the agreement dated April of 2018 between GRH, Headwaters, GRMD, and Granby Ranch Metropolitan District No. 8 ("Waiver and Release Agreement") and the GRMD's broad release and waiver of liability granted to Headwaters therein.

13. GRMD's claims for breach of contract and for declaratory relief against Headwaters fail to state a claim for relief because the LPA was extinguished by foreclosure. The LPA was recorded after and junior to the Deed of Trust and there are no facts to prove that any subordination, non-disturbance and attornment agreement was ever tendered, executed, or recorded, therefore the LPA was extinguished pursuant to C.R.S. § 38-38-501 via the 2020 foreclosure.

14. GRMD's claims for breach of contract and for declaratory relief against Headwaters fail because even if the LPA survived the foreclosure and Gray Jay succeeded to the

rights of landlord thereunder, on November 11, 2020, Gray Jay notified Headwaters in accordance of the terms of the LPA that if the LPA was not terminated by way of foreclosure, Gray Jay was electing to terminate the LPA pursuant to section 10 thereof based upon Headwaters' failure to operate the Amenities for more than thirty days. If not previously terminated, the LPA was terminated by that notice.

15. GRMD's claims for breach of contract and for declaratory relief against Headwaters fail because even if the LPA was not terminated by the foreclosure or by Gray Jay's exercise of its option to terminate as set forth above, the LPA was terminated by Headwaters' failure to appropriate Amenity Fees for payment of rent for calendar years 2021, 2022 and 2023. Under Section 2(a) of the LPA, the LPA automatically terminated by its own terms upon Headwaters' failure to appropriate Amenity Fees to be paid pursuant to the terms of the Lease, an appropriation requirement mandated by C.R.S. § 29-1-110 and Colo. Const. Art. XI, § 6; therefore, the LPA terminated as of January 1, 2021 and/or as of the ensuing calendar years for which Headwaters failed to appropriate funds for payment of rent under the LPA.

16. To the extent GRMD's claims for declaratory relief seeks to compel Headwaters to perform obligations under the LPA, that claim is barred by the Colorado Governmental Immunity Act ("CGIA"), Colo. Rev. Stat. § 24-10-102 *et. seq*. in that a governmental entity cannot be compelled to specifically perform a contract.

17. GRMD's claim for breach of the LPA against Headwaters and request for damages fails because GRMD's rights are limited by the terms of the contract in that a third-party beneficiary cannot have greater rights than the parties to the contract and (i) the LPA allows for termination thereof based upon various circumstances, including foreclosure, default, or Headwaters' failure to appropriate rental payments; (ii) the LPA did not require Headwaters to acquire the Leased Premises prior to 2062; (iii) the LPA precludes any recoupment of the rental payments by Headwaters and precludes recovery of consequential damages; and (iv) rental paid under the LPA does not constitute equity toward the purchase price of the Amenities.

18. GRMD's claim for breach of the LPA against Headwaters and request for damages is barred by the terms of the LPA which limit remedies for default and preclude recoupment of rental payments and recovery of consequential damages.

19. GRMD's claim for breach of the LPA against Headwaters is barred by GRMD's failure to adhere to mandatory contractual obligations and remedies in the LPA, including but not limited to, satisfaction of the default and notice provisions of the LPA before filing suit (including but not limited to LPA Section 24(b).

20. GRMD's breach of contract claim against Headwaters fails because the LPA and the purchase option therein are void under the statute of frauds in that the purchase option did not contain a sufficiently definite purchase price.

21. GRMD's breach of contract claim against Headwaters fails because to the extent the LPA is construed to impose an obligation on Headwaters to appropriate funds in any lease

year for the payment of rent or for the payment of the purchase price for acquisition of the Amenities, the LPA is void under C.R.S. § 29-1-110, which prohibits local governments from spending or contracting to spend "any money, or incur any liability, or enter into any contract which, by its terms, involves the expenditures of money in excess of amounts appropriated" and under Colo. Const. Art. XI, § 6, which renders such obligations an illegal debt of a government body.

22. GRMD is estopped and/or otherwise barred from bringing its breach of contract claim against Headwaters based upon its own conduct, including but not limited to its failure to tender any funds towards the purchase of the Leased Premises, its failure to acquire the Amenities under the Second Granby IGA (as defined in GR Terra's Counterclaims), its failure to demand that Headwaters perform under the LPA or take action to protect any rights under the LPA prior to the foreclosure and sale of the Leased Premises, and GRMD's own failure to take any action to protect any alleged rights under the LPA prior to the foreclosure and sale of the property subject to the LPA.

23. GRMD's breach of contract claim against Headwaters is barred under the doctrine of impossibility. Even if Headwaters had wanted to purchase the Leased Premises before the LPA was terminated, sufficient Amenity Fees had not been collected for it to acquire the Leased Premises under the terms of the LPA and Headwaters did not have sufficient funds to pay the Purchase Price from funds other than Amenity Fees and did not have the Landlord's consent to pay the Purchase Price from funds other than the Amenity Fees or the availability of any such funds. Moreover, Headwaters does not have sufficient funds to operate the Amenities and carry out the obligations of the Tenant under the terms of the LPA.

24. GRMD's breach of contract claim against Headwaters fails because following the 2020 foreclosure, the owner of the Leased Premises treated the LPA as terminated and never demanded that Headwaters perform any obligations as Tenant under the LPA, a necessary precondition to any alleged breach of contract on the part of Headwaters under the LPA.

25. GRMD is estopped and/or otherwise barred from bringing its breach of contract claim against Headwaters due to its own breach of the Second Granby IGA and its own failure to acquire the Leased Premises or to tender any funds towards the purchase of the Leased Premises.

26. GRMD is estopped and/or otherwise barred from bringing its breach of contract claim against Headwaters due to its own breach of its Service Plan, as amended in 2016, or alternatively, its attempt to materially modify the terms of its Service Plan to reinstate the roles and obligations of GRMD as the "Tax District" and Headwaters as the "Service District" without approval of the Town of Granby as required by C.R.S. § 32-1-207(2)(a).

27. GRMD is estopped and/or otherwise barred from bringing its breach of contract claim against Headwaters because, to the extent Headwaters has any liability under the 2016 Granby IGA, GRMD is jointly and severally liable for Headwaters' obligations and Headwaters is therefore entitled to an offset from GRMD for the full amount of any such liability imposed upon Headwaters under the 2016 Granby IGA.

28. GRMD's breach of contract claim is barred by the applicable statute of limitations because its breach of contract claim arose on December 31, 2012 when the LPA was executed in that the LPA – the only contract between Headwaters and the owner of the Leased Premises – did not obligate Headwaters to acquire the Leased Premises.

29. GRMD's alleged damages for breach of contract, if any, are speculative and not caused by the alleged breach of contracts by Headwaters.

30. To the extent GRMD obtains an award of damages against Headwaters in this case, collection of any damages is limited to the procedure set forth in C.R.S. § 13-60-101.

31. GRMD's damages alleged for breach of contract, if any, are barred by the doctrine of superseding or intervening causes.

32. GRMD's damages alleged for breach of contract, if any, are barred in whole or in part by its failure to mitigate their damages, if any.

33. GRMD's damages alleged for breach of contract, if any, are caused by the acts or omissions of third parties.

34. GRMD's claims are barred in whole or in part by one or more of the doctrines of latches, estoppel, waiver, acquiescence, or ratification.

35. Headwaters expressly reserves the right to rely upon affirmative defenses asserted by other defendants and to assert additional affirmative defenses that may become known through ongoing investigation and discovery.

Jury Demand

Headwaters hereby demands a jury trial, pursuant to C.R.C.P. 38, on all issues so triable.

Prayer for Relief

WHEREFORE, Headwaters respectfully requests that the Plaintiff's claims be dismissed with prejudice, Plaintiff takes nothing, Judgment be entered in Headwater's favor on Plaintiff's claims, Headwaters be awarded attorneys' fees and costs in defending against Plaintiff's claims, and such other and further relief as the Court deems just and proper.

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Counterclaims

Headwaters Metropolitan District ("Headwaters"), by and through the undersigned counsel, and for its Counterclaims against Granby Ranch Metropolitan District ("GRMD") states as follows:

Introduction

1. These claims are filed in response to GRMD's lawsuit attempting to enforce alleged contract rights against Headwaters. As GRMD's complaint recognizes, these two public bodies – and the developer and owner of the Granby Ranch Development – entered a series of agreements originally designed to facilitate the development.

2. But GRMD's claims are based upon a selective, inaccurate, and blatantly misleading recitation of the relevant facts. Headwaters disputes that GRMD ever had the right to enforce the alleged contractual obligations it seeks to impose on Headwaters in this lawsuit, but even if it did, those claims are now squarely defeated by GRMD's express termination of the Master IGA (and all versions thereof), amendment of its service plan, GRMD's repeated acknowledgements and agreements that the prior relationship between the two Districts had been severed and terminated, and GRMD's contractual relinquishment of the precise claims it now tries to assert against Headwaters.

3. GRMD ignores the crucial and dramatic change in the relationships and agreements between GRMD and Headwaters over the years. It is GRMD, not Headwaters, who has breached the agreements between these two parties by filing this lawsuit. GRMD's claims are not only frivolous when viewed in light of all relevant facts, they constitute a breach of material provisions of at least three separate agreements between the parties as well as GRMD's own Service Plan. Headwaters therefore seeks relief from this Court in the form of an order of specific performance, damages, and attorneys' fees.

Parties, Venue and Jurisdiction

4. Counterclaim Plaintiff Headwaters is a Metropolitan District organized and existing pursuant to the Colorado Special District Act, § 32-1-101 et seq., C.R.S.

5. Counterclaim Defendant GRMD is a Metropolitan District organized and existing pursuant to the Colorado Special District Act, § 32-1-101 et seq., C.R.S.

6. The Court possesses personal jurisdiction over Counterclaim Defendant because it filed the litigation in this venue, among other reasons.

7. The Court possesses subject matter jurisdiction over the issues raised herein pursuant to Article 6, Section 9 of the Constitution of the State of Colorado.

8. Venue is proper in this Court pursuant to C.R.C.P. 98(c) because Headwaters and GRMD are located within the County of Grand, State of Colorado and the real property that is the subject of this lawsuit is located entirely within the County of Grand, State of Colorado.

General Allegations

Creation of the Special Districts and Master IGA

9. In 2003, SolVista Corp. was the owner and private developer of Granby Ranch, an approximately 5,000 acre planned mixed use development in Grand County. In accordance with an Annexation and Development Agreement, dated March 5, 2003, entered into by SolVista Corp. and the Town of Granby ("Town"), the Town approved Service Plans in July 2003, relating to the development of Granby Ranch. The Service Plans attached as **Exhibits 1 and 2** to the Amended Complaint, encompassed approximately 3570 of the total 5000-acre development. By 2005, SolVista Corp. had transferred all of the property it then owned, including that within the Service Areas of the Service Plans, to Granby Realty Holdings LLC ("GRH") which included, but was not limited to, the areas comprising the golf course and ski resort, and related amenities.

10. In 2005, GRH obtained financing for the development from Redwood Capital Finance Co., LLC ("Redwood"). GRH granted Redwood a deed of trust to secure repayment of that debt (the "Deed of Trust"). The Deed of Trust encumbered the golf course and ski resort along with the other property transferred to GRH from SolVista Corp. The Deed of Trust was recorded with the Grand County Clerk and Recorder on June 2, 2005.

11. Headwaters was organized to coordinate the acquisition, financing, and construction of public improvements, including streets and roadways, safety protection systems, water improvements, sanitary sewer and storm drainage, and park and recreation facilities, benefitting Granby Ranch (collectively, the "Facilities") and for the management, operation and maintenance of improvements not conveyed to the Town.

12. GRMD was organized contemporaneously with Headwaters, in order to provide the funding for the Facilities and other purposes as set forth in its Service Plan.

13. The Service Plans for Headwaters and GRMD set forth the relationship between Headwaters and GRMD and provided that Headwaters was to construct, manage, own, operate and maintain the Facilities and provide services to Granby Ranch, and GRMD was to produce tax and other revenue sufficient to pay all costs related to the construction, financing, acquisition, operation, and maintenance of the Facilities. The Service Plans are attached to the Amended Complaint as **Exhibits 1 & 2.**[1]

[1] Exhibits attached to the Amended Complaint are referenced by the numerical exhibit numbers used in the Amended Complaint and are incorporated herein by reference. Counterclaim

14. The Service Plan for GRMD further provided: "Until the Service District [Headwaters] is consolidated or dissolved in accordance with the District IGA [Master IGA set forth below], only the Service District will have the authority to provide services and complete public improvements within the Service Area." Art. III. Headwaters has not been consolidated or dissolved.

15. While GRMD originally included approximately 3,563 acres within its boundaries when it was formed, its size was reduced in 2005 to approximately 869 acres. In 2010, its size was further reduced to 225.37 acres.

16. In order to assure the orderly provision of the Facilities and essential services to Granby Ranch, and to assure the economic administration of the Districts' fiscal affairs, the Service Plans contemplated the necessity for a master intergovernmental agreement to fully implement the provisions of the Service Plans.

17. The 2003 Master Intergovernmental Agreement ("2003 Master IGA") between Headwaters and GRMD, attached to the Service Plans as Exhibit F, stated that Headwaters would serve as the "Service District" and would manage and control the financing of infrastructure, budget monies for public purposes, construct and finance infrastructure, and establish necessary service charges and development fees for the "Taxing District."

18. The 2003 Master IGA stated that GRMD would serve as the "Taxing District" and would impose the required mill levy to pay debt obligations of the districts and offset the expenses of construction, operation and maintenance of the public improvements.

19. The ski and golf facilities at Granby Ranch were constructed prior to the creation of GRMD and Headwaters with private funds and have, since construction, been held in private ownership. These facilities are not public facilities that were constructed by Headwaters pursuant to the 2003 Master IGA. Nothing in the GRMD or Headwaters' Service Plans or the 2003 Master IGA required Headwaters to acquire the ski and golf facilities on its own behalf or on behalf of GRMD.

20. On June 1, 2006, GRMD and Headwaters entered a new District Facilities Construction and Service Agreement ("2006 Master IGA"), which among other things, expressly terminated the 2003 Master IGA. A copy of the 2006 Master IGA is attached hereto as **Exhibit A**.

21. Pursuant to the 2006 Master IGA, the Districts agreed that Headwaters would own, operate, construct, and maintain the Facilities benefiting Headwaters and GRMD and that GRMD would pay all costs related to the construction, financing, acquisition, operation and maintenance of the Facilities.

Plaintiff's new exhibits are referenced by letters and are attached hereto and incorporated herein by this reference.

22. Granby Ranch Metropolitan District Nos. 2-8 ("GRMD Nos. 2-8") are separate and distinct metropolitan districts from GRMD that were organized to more fully accommodate phasing of the Granby Ranch project and to provide greater flexibility for the potential uses of property within the development.

23. On September 17, 2008, GRMD, Headwaters, and GRMD Nos. 2-8 entered a "First Amended and Restated District Facilities Construction and Service Agreement ("2008 Master IGA"), which among other things, expressly terminated the 2006 Master IGA.

24. As set forth below, the parties to the 2006 and 2008 Master IGAs terminated both of those agreements in November of 2017.

The Amenity Fee Agreement and Resolution

25. Headwaters and GRMD approved a Joint Resolution to Establish an Amenity Fee, effective May 26, 2005 ("2005 Fee Resolution"), providing that Headwaters would impose and collect a one-time amenity fee upon property in both Headwaters and GRMD to be paid to Headwaters upon the initial transfer of a lot or residential unit. The fee was imposed for the purpose of financing the acquisition, leasing, construction, and replacement of amenities, including the issuance of bonds. A copy of the 2005 Fee Resolution is attached as **Exhibit 4** to the Amended Complaint.

26. The term "Amenities" was broadly defined in the 2005 Fee Resolution as "certain recreational amenities benefitting the Districts, which include a golf course, ski area, river park and related improvements, trails, and other recreational improvements, facilities, appurtenances, rights-of-way and other amenities as shall from time to time be acquired, constructed, and/or operated by the Districts."

27. Under the 2005 Joint Resolution, residential dwelling units for which an Amenity Fee had been paid were entitled to certain priority access to amenities and discounts for use of the amenities as set forth therein and subject to the availability of the Amenities from time to time.

28. Separate and apart from the 2005 Resolution, on June 1, 2005, Headwaters entered an Amenity Fee Agreement with GRH where the parties agreed to the imposition of an amenity fee to be collected by Headwaters on a one-time basis upon the sale of a lot or parcel of land within *all* of the approximately 4,937 acres of property then owned by GRH, including the approximately 3,563 acres of property then within the boundaries of GRMD. A copy of the 2005 Fee Agreement is attached hereto as **Exhibit B.**

29. The stated purpose of the fee under the 2005 Fee Agreement was the acquisition, financing, leasing, construction, replacement, operation, maintenance and repair of certain improvements benefiting the property owned by GRH, including the golf course, ski area, and other recreational improvements, referred to therein as the "Amenities."

30. The Amenities were broadly defined in the same manner as set forth in the 2005 Fee Resolution and that agreement provided similar priority access to eligible property owners subject to the availability of Amenities from time to time.

31. Pursuant to the 2005 Fee Agreement, GRH agreed to subject *all of its property* to the amenity fees and granted certain minimum use and enjoyment of the Amenities to subsequent owners and purchasers of homes in the development.

32. The 2005 Fee Agreement provides that "[n]othing contained herein obligates the Developer to convey, lease, or otherwise contract for any specific Amenities." Recital C.

33. GRMD was not a party to the 2005 Fee Agreement. The 2005 Fee Agreement inured to the benefit of the parties thereto and their success and assigns, and it did not identify any third-party beneficiaries.

34. No provision of the 2005 Fee Resolution or the 2005 Fee Agreement required Headwaters to acquire the ski and golf facilities on its own behalf or on behalf of GRMD.

The Granby IGA

35. In accordance with the Service Plans, on December 9, 2003, GRMD, Headwaters and the Town entered into an Intergovernmental Agreement, which was subsequently amended by a First Amendment to Intergovernmental Agreement dated May 20, 2005, and a Second Amendment to Intergovernmental Agreement dated April 11, 2006 (collectively, the "2003 Granby IGA").

36. On February 26, 2008, GRMD, Headwaters, the Town, and GRMD Nos. 2-8 entered into an intergovernmental agreement ("Granby IGA"). A copy of the Granby IGA is attached as **Exhibit 5** to the Amended Complaint. The Granby IGA superseded and replaced the 2003 Granby IGA in its entirety.

37. The Granby IGA provided that GRMD, Headwaters and GRMD Nos. 2-8 "will be authorized to acquire, construct, own, operate and maintain the ski area and lifts, ski lodge, golf courses . . . . as more fully described on Exhibit A, attached hereto and incorporated by references, collectively called the 'Amenities.'" That agreement acknowledged that the Amenities are not required to be dedicated or conveyed by the Developer for public use, authorized the imposition of an amenities fee upon dwelling units in the District to defray the costs of "acquisition, construction and installation of the Amenities," and provided Granby residents with preferred access and discounts to the Amenities. ¶ 5(b) – (f).

The Exclusion Agreement and First Amendment to 2006 Master IGA

38. On April 21, 2010, GRH, Headwaters and GRMD entered an Exclusion Agreement ("Exclusion Agreement") to, among other things, document the terms and conditions

under which GRMD would exclude certain property from its boundaries. A copy of the Exclusion Agreement is attached hereto as **Exhibit C.**

39. The Exclusion Agreement provides that unless otherwise agreed to by Headwaters, the Amenity Fee established under the 2005 Fee Resolution would remain in full force and effect, that the excluded property would remain liable for payment of same, and that Headwaters would continue to impose and collect the Amenity Fee pursuant to the terms of the Amenity Fee Resolution. § 3.2.

40. Section 3.2.1 of the Exclusion Agreement further states:

> GRMD acknowledges and agrees that the Amenity Fees are payable to HWMD [Headwaters] and GRMD has no right, title or interest thereto. Accordingly, any Amenity Fees received by GRMD shall be paid over to HWMD by GRMD as soon as practical, and GRMD agrees to execute any necessary documents to assign all right, title, and interest in any Amenity Fee to HWMD.

41. Pursuant to the Exclusion Agreement, GRH, GRMD and Headwaters repudiated the 2008 Master IGA and reinstated the 2006 Master IGA. § 4.1.

42. The Exclusion Agreement provides that the obligations of Headwaters and GRMD under the 2006 Master IGA are subject to annual budgeting and appropriations and that financial obligations of a district payable after the current year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the applicable rules, regulations, and resolutions of the district and applicable law. § 4.3.1.

43. The Exclusion Agreement amended the 2006 Master IGA to provide that the failure of a District to budget and appropriate funds for the succeeding year shall terminate the 2006 Master IGA in its entirety as of December 31 of the current year and that if either district anticipated terminating the 2006 Master IGA, it should notify and confirm its intent in August and September of the year of the anticipated termination. § 4.3.2.

44. Under the Exclusion Agreement, Headwaters and GRMD agreed to fully cooperate to give effect to the intent and purposes of that Agreement and to act in good faith in the performance of that Agreement. § 9.6.

45. On the same day as the Exclusion Agreement, GRMD and Headwaters entered into a first amendment to the 2006 Master IGA to make the payment and termination provisions of that document consistent with the provisions of the Exclusion Agreement, including amendment of the 2006 Master IGA to state that the payment obligations of either district are subject to annual budgeting and appropriations, that the financial obligations of a district payable after the current year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available, providing for termination of the 2006 Master IGA if either district fails to budget and appropriate funds for the succeeding year, and providing for notice of same if

either party anticipates such termination as set forth in the Exclusion Agreement. A copy of the First Amendment to 2006 Master IGA is attached hereto as **Exhibit D**.

The Lease Purchase Agreement

46. On December 31, 2012, GRH as "Landlord" and Headwaters as "Tenant" entered into a Second Amended and Restated Lease Purchase Agreement ("LPA") for the stated purpose of giving Headwaters the right to use and an option to acquire a portion of the Granby Ranch development, including the ski area and golf course and improvements located thereon (as defined in the LPA, the "Leased Premises"). A copy of the LPA is attached to the Amended Complaint as **Exhibit 6**. GRMD was not a party to the LPA.

47. The ski area and golf area portions of the Leases Premises are referred to in the LPA (and herein) as the "Amenities," Recital C.

48. The initial term of the LPA was one year, which would automatically renew for an additional 49 one-year terms unless Headwaters' board of directors chose during any lease year not to appropriate rent in its budget for the ensuing lease year or the LPA was terminated for other reasons set forth therein. § 2.

49. For the life of the LPA, GRH remained responsible for the payment of utilities, taxes, costs of certain insurance, and maintenance, and GRH retained fee title to the Leased Premises, including improvements. §§ 5-6, 8.a.

50. Annual rent under the LPA consisted solely of an amount equal to the proceeds of all Amenity Fees collected by Headwaters each year under the 2005 Fee Resolution, the 2005 Fee Agreement and another 2005 fee agreement with a different property owner (as those agreements may be amended and restated from time to time).

51. There was no set amount of rent because, as the parties acknowledged in the LPA, "the amount of Amenity Fees received by the Tenant may fluctuate greatly from month to month and year to year." § 3.b.

52. Headwaters did not retain any Amenity Fees to fund operation of the Amenities or other district expenses. § 3.a. Nor was Headwaters required to remit a minimum amount of Amenity Fees per year; rather, the LPA was not to be construed as indebtedness of Headwaters or a pledge of Headwaters' credit. § 3.a, c.

53. All Rental Payments Headwaters made to GRH under the LPA were "absolute and unconditional in all events" and not subject to recoupment, counterclaims, or other defenses. § 3.a.

54. The LPA had multiple termination provisions. Termination of the LPA was automatic upon the earliest of any of the following events: a) the expiration of the Original Term or any Renewal Term due to the failure of Headwaters to appropriate Amenity Fees

to be paid pursuant to the terms of the LPA to continue leasing the Leased Premises for the ensuing Renewal Term; b) default by Headwaters and GRH's election to terminate the LPA; c) all Amenity Fees collectable under the Amenity Fee Agreements and the Fee Resolution have been collected in full; d) payment of the Purchase Price as defined in the LPA exclusively from Amenity Fees; e) with the Landlords' prior written consent, payment of the Purchase Price from sources other than Amenity Fees; or f) December 31, 2062. § 2.

55. In addition, the LPA provided that "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 . . . elect to terminate this Lease . . . ." § 10.

56. Section 23 of the LPA stated that Headwaters would acquire the Leased Premises for the defined Purchase Price on December 31, 2062 if the Lease was not terminated before that date. § 23.

57. The LPA stated that the Purchase Price of the Leased Premises would be the lesser of (i) the Adjusted Appraisal Value as more fully specific therein and (ii) "all Amenity Fees collectable by Tenant under the Amenity Fee Agreements and the Fee Resolution." § 23(b). Amounts previously paid as rental under the LPA were not credited against or deducted from the Purchase Price due and owning in the event Headwaters exercised its option to purchase prior to December 31, 2062.

58. The LPA contained a merger/integration provision stating that:

> This instrument shall merge all undertakings, representations, understandings, and agreements whether oral or written, between the Parties with respect to the Leased Premises and the provisions of this Lease and shall constitute the entire Lease unless otherwise hereafter modified by both Parties in writing.

§ 28(c).

59. The LPA granted the Landlord and Headwaters the right to modify the LPA in writing at any time, and no party other than GRH and Headwaters had any right to notices under the LPA, including notices of default or termination. §§ 20, 28 (e).

60. The LPA was not recorded in the Grand County real estate records upon its execution in December of 2012. It was first recorded in the real estate records some seven years later, in January of 2020, by Matt Girard, an individual that had no affiliation with Headwaters or GRH and no interest in the Leased Premises.

No Non-Disturbance and Attornment Agreement

61. The LPA acknowledges that the Leased Premises were, at the time of execution of the LPA, subject to the Deed of Trust "which is prior and superior to this Lease." § 13(b).

62. While the LPA provided that the GRH would cause to be delivered to Headwaters a Subordination, Non-Disturbance, and Attornment Agreement, to be executed by the Redwood as lender, no such executed agreement was ever delivered to Headwaters.

63. No document was ever recorded with the Grand County real estate records wherein Redwood (or any successors in interest) ever agreed to be bound by the terms of the LPA or to recognize same upon default and foreclosure.

The 2013 Fee Agreement

64. In July of 2013, GRH and Headwaters entered into an Amended and Restated Amenity Fee Agreement ("2013 Fee Agreement") that superseded and replaced the 2005 Fee Agreement. A copy of the 2013 Fee Agreement is attached hereto as **Exhibit E**. In that agreement, GRH again agreed to subject *all of its property*, which included the property within the GRMD boundaries, to the one-time amenity fee payable as set forth therein.

65. The 2013 Fee Agreement imposed a one-time amenity fee to be collected by Headwaters and set forth the rights of eligible property owners to priority access to the Amenities as determined by Headwaters from time to time in its sole and absolute discretion. The 2013 Fee Agreement contained a broad definition of "Amenities" similar to that set forth in the 2005 Fee Agreement, provided that the developer had no obligation to convey, lease, or otherwise contract for any specific Amenities, Recital C, and it stated that this agreement "creates no third-party beneficiary rights in favor of any person not a Party to this Agreement unless the Parties mutually agree otherwise in writing, except that Granby Ranch Metropolitan District Nos. 3-7 shall be a third party beneficiary if any of the Property is included within its respective boundaries." § 21(d).

66. Separately and independently, in July of 2013, Headwaters and GRMD passed an Amended and Restated Joint Resolution to establish an amenity fee ("2013 Fee Resolution."). The 2013 Fee Resolution superseded and replaced the 2005 Fee Resolution. The 2013 Fee Resolution approved an amenity fee to be paid to Headwaters on approximately 9.16 acres of property then within Headwaters and approximately 212.15 acres of property then within GRMD. A copy of the 2013 Fee Resolution is attached hereto as **Exhibit F.** That Fee Resolution contained a broad definition of "Amenities" similar to that set forth in the 2004 Fee Resolution and set forth the priority access available to eligible property owners as determined by Headwaters' board of directors from time to time in its sole and absolute discretion.

Amendment of the Service Plans and Termination of the Master IGA.

67. On August 22, 2016, GRMD, Headwaters, GRMD No. 8 and GRH entered into a Letter Agreement ("Letter Agreement") to, whereby, among other things, GRH agreed to cancel or release any right to payment on GRMD bond issued in 2010 in the amount of $11.1 million held solely by GRH, GRH assumed certain obligations with respect to refunding of GRMD's 2006 bonds, and the parties agreed to ***"eliminate any obligations between the parties other than GRMD's funding of road operations, maintenance and minor repairs;" and "terminate any***

financial obligations other than road operation, maintenance and minor repairs between GRMD and Headwaters." A copy of the Letter Agreement is attached hereto as **Exhibit G.** (emphasis added).

68. The 2016 Letter Agreement was modified by the parties in 2017 and 2018 to account for delays in the refunding of the 2006 bonds; the above-quoted provision was not modified in those amendments other than to note that the parties had satisfied this obligation and terminated their obligation to one another in 2017.

69. In furtherance of the Letter Agreement, on October 11, 2016, a second amendment to the Service Plan for GRMD was approved by the Town to, among other things, "clarify that the relationship between GRMD and Headwaters as otherwise set forth in the Service Plan is terminated and rendered null and void." A copy of the 2016 Amendment to GRMD Service Plan is attached hereto as **Exhibit H.**

70. The 2016 Amendment to the GRMD Service Plan stated:

> The Original Service Plan is amended as a whole to clarify that the District IGA between GRMD and HMD will be terminated [and] GRMD will provide all its own operation and maintenance functions …. [and] any obligation of GRMD, other than as set forth in the road maintenance and snow removal agreement, to provide funds to HMD [Headwaters], or any delegation of power or delegation of approval or disapproval authority to HMD of any acts of the District, are repealed and rendered null and void ***with the intent that any role or relationship of GRMD as a "Tax District" and HMD as a "Service District" is terminated.***

§ II(B) (emphasis added).

71. On November 8, 2016, an amendment to the Service Plan for Headwaters was approved by the Town Board of Trustees for the express purpose of modifying the relationship between Headwaters and GRMD. A copy of the 2016 Amendment to Headwaters Service Plan is attached hereto as **Exhibit I**.

72. Specifically, Headwaters' Service Plan was amended "to clarify" that the IGA between GRMD and Headwaters would be terminated and that GRMD would thereafter provide all of its own operation and maintenance functions. § III(1). That section further stated:

> The Service Plan is further amended to clarify that any obligation of Granby Ranch Metropolitan District, other than as set forth in the road maintenance and snow removal agreement, to provide funds to the District, or any delegation of power or delegation of approval or disapproval authority to the District of any acts of Granby Ranch Metropolitan District, are repealed and rendered null and void ***with the intent that any role or relationship of the District (as the Service District) and Granby Ranch Metropolitan District (as the Tax District) is terminated.***

§ III(1) (emphasis added).

73. As contemplated in the Letter Agreement and the amendments to the Service Plans of Headwaters and GRMD, on November 17, 2017, GRMD, GRMD Nos. 2-8, entered a Termination of Intergovernmental Agreement ("Master IGA Termination"). A copy of the Master IGA Termination is attached to the Amended Complaint as **Exhibit 8**.

74. The Master IGA Termination stated that both the 2006 Master IGA and 2008 Master IGA were terminated and of no further force and effect. §§ 2-3.

75. The Master IGA Termination provided that "the Parties intend for certain of the Granby Ranch Districts, specifically GRMD, to operate independently from Headwaters," and that "[d]ue to the amended service plans and the intention of certain of the Parties to operate independently from each other, there is no further need for the Master IGAs." Recital H.

76. The Master IGA Termination further provided that Headwaters, GRMD, and GRMD Nos. 2-8 have "fully satisfied their obligations under the Master IGAs and are released from any further obligations thereunder" § 4, and stated that:

> To the extent permitted by law, each District hereby waives the right to recover from and generally, unconditionally, fully and irrevocably releases, waives, acquits and forever discharges each of the other Districts, their officers and directors (collectively "Released Parties"), from and against any and all costs, losses, claims, liabilities, expenses, demands, debts, controversies, actions or causes of action, agreements, and promises, including reasonable attorneys' fees (including appeals) (collectively, "Claims"), which has been raised or could have been raised, whether arising before, on or after the date hereof.

§ 5.

The Second Granby IGA.

77. On November 8, 2016, the Town, Headwaters, GRMD, and the GRMD Nos. 2-8 entered into an Amended and Restated Intergovernmental Agreement (the "Second Granby IGA"). A copy of the Second Granby IGA is attached to the Amended Complaint as **Exhibit 7**.

78. The Second Granby IGA superseded and replaced the Granby IGA in its entirety.

79. The Second Granby IGA provides that GRMD, Headwaters and GRMD Nos. 2-8 "will be authorized to acquire, construct, own, operate and maintain the ski area and lifts, ski lodge, golf courses . . . . as more fully described on Exhibit A, attached hereto and incorporated by references, collectively called the 'Amenities.'" Ex. 5, ¶ 5(a). No Exhibit A was attached to or included in the executed version of the Second Granby IGA.

80. The parties stipulated that the Second Granby IGA "constitutes the entire agreement among the Parties and supersedes all prior written or oral agreements, negotiations, or

representations and understandings of the Parties with respect to the subject matter contained herein."

81. The Second Granby IGA acknowledges the potential authority of Headwaters, GRMD, and the GRMD Nos. 2-8 to acquire the Amenities, ¶ 5(a), but imposed no obligation on Headwaters to acquire the Amenities. Nor did it provide any right for Headwaters to acquire the Amenities in that the then owner of the Amenities (GRH) was not a party to the Second Granby IGA.

82. The Second Granby IGA affirms that the Amenities are not required to be dedicated or conveyed by the Developer for public use, authorizes the imposition of an amenities fee upon dwelling units in the district to defray the costs of "acquisition, construction and installation of the Amenities," and provides Granby residents with preferred access and discounts to the Amenities.

83. The Second Granby IGA provides that GRMD, Headwaters and GRMD Nos. 2-8 "shall be jointly and severally liable for each obligation of the Districts set forth herein."

84. The parties further stipulated that the Second Granby IGA "is not intended to, and shall not be deemed to confer any rights upon any persons or entities not named as parties, nor to limit in any ways the powers and responsibilities of the Town, the Districts, or any other entity not a party hereto."

85. Nothing in the Second Granby IGA requires Headwaters to acquire the ski and golf facilities on its own behalf or on behalf of GRMD.

2018 Waiver and Release Agreement

86. In April of 2018, in consideration of the agreements in the 2016 Letter Agreement and other agreements made to resolve disputes between them, GRH, Headwaters, GRMD, and GRMD No. 8 entered into an agreement entitled Agreement Re Waiver and Release of Claims ("Waiver and Release Agreement"). A copy of the Waiver and Release Agreement is attached hereto as **Exhibit J**.

87. The Waiver and Release Agreement acknowledges that due to the status of development within GRMD and the amendment of the services plans, the Master IGAs "are no longer necessary." Recital S.

88. Pursuant to the Waiver and Release Agreement, the parties broadly released each other and their successor and assigns "from and against any and all claims, demands, obligations, duties, liabilities, damages, costs, and remedies therefor of every kind, description, character or nature whatsoever now or in the future, whether known or unknown, raised or which could have been raised, which may otherwise exist or which may arise in relation to ….the Master IGA, …

or any other matter related to the formation, administration, and operation of the District (the "Claims") existing as of the Release Date. § 1.

89. The release and waiver of claims relating to the Master IGA was effective upon the termination of the Master IGA and the obligations of the parties therein. § 3(c).

90. The release and waiver of claims for other matters relating to the formation, administration and operation of the Districts was effective upon refinancing of the Senior Bonds, release and discharge of the Subordinate Bonds, and Termination of the Master IGAs. § 3(e). All of those events occurred prior to 2019.

Granby Ranch Foreclosure.

91. The Governor of the State of Colorado ordered all ski resorts to close effective March 15, 2020. Granby Ranch ski amenities and all other facilities subject to the LPA were closed at that time. The ski facilities remained closed until December 10, 2020. Though golf courses were not closed by the State of Colorado, the Granby Ranch golf course did not open for use until on or after mid-June 2020. No other Granby Ranch facilities subject to the LPA were operated during the spring or summer of 2020.

92. 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 in May 2020 that it would no longer operate the Amenities after May 30, 2020.

93. On or about April 21, 2020, two Headwaters board members received an email from Matt Girard, the president of GRMD, requesting that Headwaters "consider terminating the management agreement immediately per clause 6.1(iii) in that GRA has ceased to operate the golf Amenity as required under the agreement, as any reasonable person would interpret the fact that GRA having no staff working and no intention to hire staff to work on opening the golf course as, for all practical purposes, "ceasing operations", and have already done so for a period of 30 days." A copy of the April 21, 2020 Email from Matt Girard is attached hereto as **Exhibit K**.

94. Eventually, GRH defaulted on its obligations under the Deed of Trust. In January 2020, the court appointed a receiver over the property subject to the Deed of Trust, including the Leased Premises.

95. In the spring of 2020, Granby Prentice, then holder of the Deed of Trust, initiated nonjudicial foreclosure proceedings pursuant to C.R.S. § 38-38-101, *et seq.* Following issuance of an order authorizing sale and the August 14, 2020 sale by the Public Trustee, Granby Prentice submitted the highest bid and was issued a Certificate of Purchase for the property that included the Leased Premises. *Id.* Granby Prentice then assigned the Certificate of Purchase to GP Granby Holdings LLC, now known as Gray Jay Ventures, LLC ("Gray Jay").

96. Pursuant to C.R.S. § 38-38-501, on or about August 31, 2020, Gray Jay, as holder of the Certificate of Purchase upon expiration of all redemption periods, took title to Granby Ranch, including the Leased Premises. In August of 2020, the Public Trustee issued a Public Trustee's Deed to GP Granby Holdings granting it title to the Leased Premises and other subject property, which deed was recorded in the land records for Grand County on August 31, 2020 at Reception No. 202000007560.

97. The foreclosure terminated the LPA, a junior lien and encumbrance on the property subject to the Deed of Trust.

98. Gray Jay did not succeed GRH as Landlord under the LPA because, by operation of law, the foreclosure extinguished the LPA.

99. On November 11, 2020, Gray Jay notified Headwaters that, even if the LPA was not terminated by way of foreclosure, Gray Jay was electing to terminate the LPA pursuant to section 10 thereof based upon Headwaters' failure to operate the Amenities for more than thirty days. A copy of that notice is attached hereto as **Exhibit L**.

100. Based upon its belief that the LPA had been terminated and its inability to fund and fulfill the obligations of the Tenant under the LPA, Headwaters has not appropriated rental payments for payment of rent under the LPA for fiscal years 2021, 2022, or 2023.

101. On May 5, 2021, GR Terra and its affiliate, GRCO LLC, purchased the majority of the Granby Ranch development, including the property formerly comprising the Leased Premises, from Gray Jay. GR Terra and GRCO LLC have already begun to make significant investments to continue the development of Granby Ranch and enhance the Amenities.

Headwaters Never Exercised Its Option to Purchase

102. At no point during the term of the LPA did Headwaters ever attempt to or offer to purchase the Leased Premises pursuant to any provision of the LPA. It has never provided notice to the Landlord under the LPA of any intent to acquire the Leased Premises pursuant to that document; nor has it ever tendered the Purchase Price set forth in the LPA.

103. Headwaters does not currently have, and has never had, sufficient funds to purchase the Leased Premises or pay the Purchase Price, and Headwaters' Board of Directors has never budgeted nor appropriated funds for Headwaters' purchase of the Leased Premises.

104. GRMD never made demand upon Headwaters for it to acquire the Amenities prior to filing this lawsuit; nor did it ever notify Headwaters that it deemed Headwaters in breach of any contractual obligation or in default of any contract based upon Headwaters' failure to acquire the Amenities.

Plaintiff's Claims Against Headwaters

105. In direct contravention and derogation of the relationship and agreements between Headwaters and GRMD, as modified and terminated over the years, GRMD filed this lawsuit in February 2021, as amended that Headwaters breached a duty to acquire the Amenities on behalf of GRMD (Count II) and asserting that Headwaters is bound by the LPA as a covenant running with the land (Count VI).

106. GRMD's claims against Headwaters (and all other Defendants) are premised upon GRMD's assertion that it has, and is entitled to recover, some $6 million in "equity" in the property now owned by GR Terra. The claims erroneously assert that, under the LPA, Headwaters paid over $6 million dollars in Amenity Fees to the owner of the Amenities (GRH and its successors) on GRMD's behalf and that this sum represents equity of GRMD under the LPA.

107. On May 20, 2021, GRMD filed in this Court, and recorded in the land records through a filing with the County Clerk and Recorder, a "Notice of Commencement of Action" stating that the action had been commenced wherein relief is claimed affecting title to the property legally described therein in that notice, which includes property now owned by GR Terra ("Lis Pendens Notice." A copy of the Lis Pendens Notice is attached hereto as **Exhibit M**.

108. GRMD's claims for breach of the Master IGA, Service Plans, Second Granby IGA and LPA are unfounded, frivolous, in bad faith and in violation of GRMD's own agreements with Headwaters. Even if GRMD ever had the right to enforce the alleged contractual obligations it seeks to impose on Headwaters in this lawsuit (which Headwaters disputes), any such claims are now squarely defeated by GRMD's express termination of the Master IGA (and all versions thereof) and amendment of its Service Plan, GRMD's repeated acknowledgements and agreements that the prior relationship between the two Districts has been severed and terminated, and GRMD's express waiver and relinquishment of claims against Headwaters based upon the District's prior relationship and agreements.

109. Moreover, GRMD's claims to enforce the LPA are unfounded, frivolous, and in bad faith in that, whether not a covenant running with the land, the LPA was terminated by the foreclosure of the senior deed of trust or alternatively was terminated pursuant to its own terms as set forth herein.

110. In response to GRMD's claims, Headwaters has been required to retain legal counsel and to expend significant resources and attorneys' fees to defend these unfounded and frivolous claims, including those now dismissed by this Court. The litigation is ongoing and Headwaters, a public body, will be forced to continue to expend its limited resources to defend against GRMD's claims.

Count I
(Breach of the Exclusion Agreement)

111. The allegations of paragraphs 1 through 110 of these Counterclaims are incorporated by this reference as if fully set forth herein.

112. GRMD and Headwaters entered into the 2010 Exclusion Agreement, in part, to document their agreements relating to maintenance, operations and future obligations of the parties. Ex. C, § 1.1.

113. Pursuant to the Exclusion Agreement, GRMD "acknowledges and agrees" that the Amenity Fees paid under the 2005 Fee Resolution (as continued in the 2013 Fee Resolution) were payable solely to Headwaters and that GRMD had "no right, title or interest thereto" and "agrees to execute any necessary documents to assign all right, title, and interest in any Amenity Fee to HWMD [Headwaters]." Ex. C, § 3.2.1.

114. In addition, GRMD expressly agreed it would "from time to time execute and deliver such further reasonably acceptable instruments as the other Party or its counsel may reasonably request to effectuate the intent of this Agreement" and to "to fully cooperate to give effect to the intent and purposes of this Agreement." Ex. C, §§ 9.5, 9.6.

115. Pursuant to the Exclusion Agreement, GRMD also agreed that the "Property", which included the Leased Premises, "shall not be liable or have any obligations for operations of GRMD of any kind." § 3.4.

116. In Section 4.4 of the Exclusion Agreement, GRMD agreed to "convey and dedicate any public improvements for which it has ownership to HWMD [Headwaters] for ownership, operations, and maintenance," and to "execute such necessary conveyance documents to transfer and public improvements and related appurtenances to HWMD, including as necessary and appropriate, special warranty deeds, bills of sale, assignment agreements, or other conveyance documents, conveying title to the public facilities, infrastructure, any property and any appurtenances thereto owned by GRMD to HWMD."

117. In Section 6.1 of the Exclusion Agreement, GRMD agreed that "it shall not attempt to provide, independent of HWMD [Headwaters], any operation and maintenance services for the Facilities."

118. In Section 6.2 of the Exclusion Agreement, GRMD agreed to "not interfere with the operations and maintenance responsibilities of HWMD [Headwaters]."

119. In Section 6.3 of the Exclusion Agreement, GRMD agreed not to "interfere with or restrict future construction or development with the Granby Ranch development."

120. Section 8.1 of the Exclusion Agreement provides that an "Event of Default" occurs under that Agreement if any party fails to perform any of its obligations therein, including but not limited to:

8.1.1. The violation of or failure to perform any material provision of this Agreement by any Party or the failure of any representation or warranty of a Party to be true;

8.1.3. The failure to perform or observe any other covenants, agreements, or conditions in this Agreement on the party of any Party and to cure such failure in accordance with Section 8.3.

8.1.4. Any effort by any Party …. that might reasonably be believed to result in the avoidance by court order or otherwise of any Party's obligations under this Agreement."

8.1.5. Any act or omission by and Party …. That might reasonably be believed to result in the interference in the exercise of any Party's rights hereunder; and/or

8.1.6. The failure of any Party to take such action as is required by law to enable each Party to perform its obligations hereunder, …..

121. GRMD's filing and continued prosecution of its claims against Headwaters in this lawsuit based upon its alleged interest in the Amenity Fees in the form of "equity" in favor of GRMD, its demand to recover the amount of Amenity Fees paid as rent under the LPA, and its demand that Headwaters has an obligation to purchase the Amenities on behalf of GRMD directly contravene its acknowledgment and agreement in the Exclusion Agreement that GRMD has no right, title or interest in the Amenity Fees as well as is obligation to fully cooperate to give effect to the intent and purpose of that Agreement.

122. GRMD's filing and prosecution of its claims against Headwaters constitutes an event of default under all of the above cited provisions of Section 8.1 of the Exclusion Agreement in that the claims constitute: (i) a violation and failure to perform material provisions of the Exclusion Agreement and an attempt to invalidate representations and warranties made by GRMD therein; (ii) a failure to perform and observe covenants, agreements, and conditions in the Exclusion Agreement; (iii) an effort by GRMD that might reasonably be believed to result in the avoidance by court order or otherwise of GRMD's obligations under the Exclusion Agreement; (iv) an act that might reasonably be believed to result in the interference in the exercise of any party's rights under the Exclusion Agreement; and (v) the failure to take such action as is required by law to enable each party to perform its obligations under the Exclusion Agreement.

123. In addition, GRMD has failed to comply with Sections 3.4, 4.4, 6.1, 6.2, and 6.3, giving rise to additional Events of Default under the terms of the Exclusion Agreement.

124. On January 10, 2022, Headwaters gave notice of default to GRMD in accordance with the notice and default provisions of the Exclusion Agreement and provided GRMD an opportunity to cure its default by dismissing its claims with prejudice.

125. GRMD responded on January 25, 2022, denying that its actions gave rise to any breach or default under the Exclusion Agreement and refusing to take the necessary steps to cure the alleged default.

126. On January 26, 2022, Headwater sent GRMD a notice of continuing default in accordance with the Exclusion Agreement and instigated the dispute resolution process set forth in Section 8.4 of the Exclusion Agreement.

127. Both Headwaters and GRMD appointed two representatives to serve on the Dispute Resolution Committee and that Committee met on February 1, 2022; the representatives agreed at that meeting that they were unable to reach any resolution of Headwaters' claim and would not be able to render any decision on that matter.

128. At the conclusion of the meeting of the Dispute Resolution Committee, all representatives, as well as counsel for both Headwaters and GRMD, agreed that with respect to Headwaters' claimed default under the Exclusion Agreement, the parties had completed the Dispute Resolution process set forth in Section 8.4 of the Exclusion Agreement.

129. GRMD's claims for breach of the Master IGA and Second Granby IGA and damages based upon alleged equity consisting of payment of Amenities Fees are unfounded, frivolous and in bad faith in light of GRMD's agreement that it has no right, title or interest in the Amenities Fees under the Exclusion Agreement.

130. GRMD's breach of the Exclusion Agreement as set forth herein has caused, and will continue to cause, Headwaters damages, including but not limited to, the significant attorneys' fees that it has incurred and will incur to defend these claims against it.

131. Section 8.5.2 of the Exclusion Agreement allows any party to protect and enforce its rights under this Agreement by such suit or special proceedings as they may deem appropriate, including suits for specific performance of covenants and agreements contained therein and/or damages caused by the breach, including attorneys' fees and all other costs and expenses incurred in enforcing the Exclusion Agreement.

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

A. Declaring that GRMD's commencement and prosecution of this Lawsuit constitutes a breach of the Exclusion Agreement and ordering GRMD to perform all of its other obligations under the Exclusion Agreement, specifically Sections 3.2.1, 3.4, 4.4, 6.1, 6.2, and 6.3.

B. For all damages caused by GRMD's breach of the Exclusion Agreement, including, without limitation, the costs and attorneys' fees incurred by Headwaters in defending the claims in this litigation, in amounts to be proved at trial.

C. For Headwaters attorneys' fees and costs incurred in enforcing the terms of the Exclusion Agreement.

D. Pre- and post-judgment interest as provided by law; and

E. Such other and further relief as the Court may deem just.

Count II
(Breach of the Letter Agreement and Master IGA Termination)

133. The allegations of paragraphs 1 through 132 of these Counterclaims are incorporated by this reference as if fully set forth herein.

134. In accordance with and as contemplated in the Letter Agreement as well the amendment to Headwaters' Service Plan, GRMD and Headwaters terminated the 2003 Master IGA in 2006 and terminated the only surviving Master IGA, the 2006 Master IGA, on November 17, 2017 via the Master IGA Termination. Though previously repudiated, that Master IGA Termination also terminated the 2008 Master IGA. Ex. 8, §§ 2-3.

135. The Master IGA Termination clearly stated the intent of the parties thereto, including GRMD, that GRMD would "operate independently from Headwaters," and that "[d]ue to the amended service plans and the intention of certain of the Parties to operate independently from each other, there is no further need for the Master IGAs." Recital H.

136. Pursuant to the Master IGA Termination, GRMD agreed that Headwaters had "fully satisfied" its obligations under the Master IGAs and it released Headwaters from any further obligations thereunder" § 4.

137. Pursuant to the Master IGA Termination, GRMD waived, released and discharged Headwaters from all Claims, broadly defined to include "any and all costs, losses, claims, liabilities, expenses, demands, debts, controversies, actions or causes of action, agreements, and promises, including reasonable attorneys' fees (including appeals) …. Which has been raised or could have been raised, whether arising before, on or after the date hereof." § 5.

138. In direct contravention of GRMD's agreements and release under the Master IGA Termination, GRMD's breach of contract claim against Headwaters alleges that Headwaters has breached the Master IGA by failing to acquire the Amenities and seeks damages for this alleged breach.

139. GRMD's claim ignores the Master IGA Termination's termination of the Master IGA and violates GRMD's agreement in the Master IGA Termination to waive, release and discharge Headwaters from any obligations, demands, losses, causes of action, etc., under the IGAs.

140. GRMD's breach of contract claim against Headwaters also alleges that Headwaters breached the Second Granby IGA by failing to acquire the Amenities and seeks damages for this alleged breach. This claim is also in violation of the broad release language in the Master IGA Termination.

141. At the time that the Master IGA Termination was executed in November of 2017, Headwaters and GRH had already entered the LPA (dated December of 2012) and GRMD was aware of that document and was thus also aware that Headwaters was not obligated to acquire the Amenities thereunder due to the numerous options for termination of the LPA without Headwaters' exercise of the option to purchase.

142. Therefore, to the extent that GRMD asserted that Headwaters was obligated under the Second Granby IGA to purchase the Amenities, GRMD's claim against Headwaters under the Second Granby IGA arose when Headwaters and GRH entered the LPA in December of 2012 and that claim could have been raised prior to the Master IGA Termination and is covered by the broad release agreement therein.

143. GRMD's breach of contract claims against Headwaters and demand that Headwaters has an obligation to purchase the Amenities on GRMD's behalf violates material terms of the Master IGA Termination, the parties' intent as set forth therein to operate independently of one another, and the broad release of claims, causes of actions, and damages agreed to by GRMD in the Master IGA Termination.

144. GRMD's claims for breach of the Master IGA and Second Granby IGA are unfounded, frivolous and in bad faith in light of GRMD's express termination of the Master IGA and its express waiver of these claims under the Master IGA Termination.

145. GRMD's breach of the Master IGA Termination as set forth herein has caused, and will continue to cause, Headwaters damages, including but not limited to, the significant attorneys' fees that it has incurred and will continue to incur to defend these claims against it.

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

A. For all damages caused by GRMD's breach of the Letter Agreement and Master IGA Termination, including, without limitation, the costs and attorneys' fees incurred by Headwaters in defending the claims in this litigation, in amounts to be proven at trial.

B. Reasonable attorneys' fees and costs as provided in the parties' agreement and by law;

C. Pre- and post-judgment interest as provided by law; and

D. Such other and further relief as the Court may deem just.

Count III
(Breach of the Waiver and Release Agreement)

147. The allegations of paragraphs 1 through 146 of these Counterclaims are incorporated by this reference as if fully set forth herein.

148. In the 2018 Waiver and Release Agreement, Headwaters and GRMD acknowledged the termination of the Master IGAs, affirmed their intent to operate independently and again granted one another broad releases "from an against any and all claims, demands, obligations, duties, liabilities, damages, costs, and remedies therefor of every kind, description, character or nature whatsoever now or in the future, whether known or unknown, raised or which could have been raised, which may otherwise exist or which may arise in relation to ….the Master IGA, … or any other matter related to the formation, administration, and operation of the District (the "Claims") existing as of the Release Date." Ex. J, § 1.

149. The aforesaid release and waiver of claims relating to the Master IGA was effective in November of 2017 when the Master IGA was terminated and the release and waiver of claims relating to the administration and operation of the Districts was effective in 2019, long before GRMD filed its claims against Headwaters.

150. In direct contravention of GRMD's agreements and release under the Waiver and Release Agreement, GRMD's breach of contract claim against Headwaters alleges that Headwaters has breached the Master IGA by failing to acquire the Amenities and seeks damages for the alleged breach. GRMD's thus asserts claims arising under the Master IGA and relating to the administration and operation of the Districts.

151. GRMD's breach of contract claim against Headwaters and demand that Headwaters has an obligation to purchase the Amenities on behalf of GRMD violates GRMD's agreement in the Waiver and Release Agreement to waive, release and discharge Headwaters from any obligations, damages, remedies, etc., arising under the Master IGA or relating to the administration, and operation of the District.

152. GRMD's breach of contract claim against Headwaters also alleges that Headwaters breached the Second Granby IGA by failing to acquire the Amenities and seeks damages for the alleged breach. This claim is also in violation of the broad release language in the Waiver and Release Agreement.

153. At the time that the Waiver and Release Agreement was executed in November of 2017, Headwaters and GRH had already entered the LPA (dated December of 2012) and GRMD was aware of that document and was thus also aware that Headwaters was not obligated to acquire the Amenities thereunder due to the numerous options for termination of the LPA without Headwaters' exercise of the option to purchase.

154. Therefore, to the extent that GRMD asserted that Headwaters was obligated under the Second Granby IGA to purchase the Amenities, GRMD's claim against Headwaters under the Second Granby IGA arose when Headwaters and GRH entered the LPA in December of 2012 and that claim could have been raised prior to Waiver and Release Agreement and is covered by the broad release agreement therein.

155. GRMD's breach of contract claims against Headwaters violates material terms of the Waiver and Release Agreement, the parties' intent as set forth therein to operate independently of one another, and the broad release of claims, causes of action, and damages agreed to by GRMD in the Waiver and Release Agreement.

156. GRMD's claims for breach of the Master IGA and Second Granby IGA are unfounded, frivolous and in bad faith in light of GRMD's express termination of the Waiver and Release Agreement and its express waiver of these claims.

157. GRMD's breach of the Waiver and Release Agreement as set forth herein has caused, and will continue to cause, Headwaters damages, including but not limited to, the significant attorneys' fees that it will incur to defend these claims against it.

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

A. For all damages caused by GRMD's breach of the Waiver and Release Agreement, including, without limitation, the costs and attorneys' fees incurred by Headwaters in defending the claims in this litigation, in amounts to be proven at trial.

B. Reasonable attorneys' fees and costs as provided in the parties' agreement and by law;

C. Pre- and post-judgment interest as provided by law; and

D. Such other and further relief as the Court may deem just.

Count IV
(Breach of GRMD's Service Plan Or Improper Modification of Same)

159. The allegations of paragraphs 1 through 158 of these Counterclaims are incorporated by this reference as if fully set forth herein.

160. The 2016 Amendment to the GRMD Service Plan, approved by GRMD's board and the Town of Granby, stated that GRMD would operate independently of Headwaters and, except as set forth in the road maintenance and snow removal agreement, ***with the intent that any role or relationship of GRMD as a "Tax District" and HMD as a "Service District" is terminated.*** § II(B) (emphasis added).

161. In direct contravention of that language, GRMD is now suing Headwaters for breach of Headwaters' alleged obligation to acquire the Amenities on GRMD's behalf.

162. GRMD's assertions in this lawsuit and claims against Headwaters are in breach of the terms of its Service Agreement.

163. Moreover, to the extent that GRMD could impose any obligation on Headwaters to operate or acquire the Amenities, then GRMD is in breach of its obligation under its original Service Plan to finance the costs of acquisition and operation of the Amenities in that GRMD has not provided any funds to Headwaters to purchase the Amenities and has not provided any funds toward operation of the Amenities.

164. GRMD's claims for breach of its Service Plan is unfounded, frivolous and in bad faith in light of GRMD's amendment to its Service Plan in 2016.

165. GRMD's breach of its Service Plan has caused, and will continue to cause, Headwaters damages, including but not limited to, the significant attorneys' fees that it will incur to defend these claims against it.

166. In the alternative, GRMD is seeking to materially modify the terms of its Service Plan to reinstate the roles and obligations of GRMD as the "Tax District" and Headwaters as the "Service District" contrary to the 2016 Amendment to the GRMD Service Plan.

167. C.R.S. § 32-1-207(2)(a) permits material modifications of a Service Plan to be made by the governing body of such special district *only by* petition to and approval by the board of county commissioners or the governing body of the municipality that has adopted a resolution of approval of the special district.

168. "Material modifications" include: "changes of a basic or essential nature, including but not limited to the following: Any addition to the types of services provided by the special district; a decrease in the level of services; a decrease in the financial ability of the district to discharge the existing or proposed indebtedness; or a decrease in the existing or projected need for organized service in the area." C.R.S. § 32-1-207(2)(a).

169. The material modifications GRMD seeks to implement in its Service Plan have not been approved by the Town of Granby as required by C.R.S. § 32-1-207(2)(a).

170. C.R.S. § 32-1-207(3)(a) permits the Court to enjoin any material departure from the Service Plan, which constitutes a material modification, upon the motion of any interested party.

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

A. For all damages caused by GRMD's breach of its Service Plan, including, without limitation, the costs and attorneys' fees incurred by Headwaters in defending the claims in this litigation, in amounts to be proven at trial.

B. Reasonable attorneys' fees and costs as provided in the parties' agreement and by law;

C. Pre- and post-judgment interest as provided by law;

D. Or, in the alternative, Headwaters seeks an order from this Court to permanently enjoin GRMD's material departure from its Service Plan without the requisite approval required by C.R.S. § 32-1-07(2)(a).

E. Such other and further relief as the Court may deem just.

Count V
(Alternative Claim For Breach of the Second Granby IGA)

172. The allegations of paragraphs 1 through 171 of these Counterclaims are incorporated by this reference as if fully set forth herein.

173. While Headwaters disputes any breach by it of the Second Granby IGA and any obligation thereunder to acquire the Leases Premises, if this Court would impose any such obligation on Headwaters, then GRMD is also liable for such breach.

174. The Second Granby IGA provides that GRMD, Headwaters and GRMD Nos. 2-8 "will be authorized to acquire, construct, own, operate and maintain the ski area and lifts, ski lodge, golf courses . . . . collectively called the 'Amenities.'" Ex. 5, ¶ 5(a).

175. GRMD has never sought to acquire the Amenities and has never tendered the Purchase Price for the Leased Premises to the Landlord or Headwaters.

176. The Second Granby IGA also provides that GRMD has never sought to acquire the Amenities and has never tendered the Purchase Price for the Leased Premises to the Landlord or to Headwaters for its acquisition of the Leases Premises.

177. The Second Granby IGA also provides that GRMD, Headwaters and GRMD Nos. 2-8 "shall be jointly and severally liable for each obligation of the Districts set forth herein."

178. Therefore, to the extent Headwaters is in breach of the Second Granby IGA, GRMD is also in breach of that agreement for failing to acquire the Amenities and, in any event, GRMD is jointly and severally liable for any obligation of Headwaters under the Second Granby IGA.

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

A. For all damages caused by GRMD's breach of the Second Granby IGA, including, without limitation, the costs and attorneys' fees incurred by Headwaters in defending the claims in this litigation, in amounts to be proven at trial.

B. For damages (in the nature of offset or otherwise) based upon GRMD's joint and several liability for the full amount of any liability of Headwaters under the Second Granby IGA.

C. Pre- and post-judgment interest as provided by law; and

D. Such other and further relief as the Court may deem just.

Count VI
(Declaratory Judgment – C.R.C.P. 57 and C.R.S. § 13-51-101 et. seq.)

180. The allegations of paragraphs 1 through 179 of these Counterclaims are incorporated by this reference as if fully set forth herein.

181. The LPA, including the option to purchase therein, was executed and recorded following execution and recording of the Deed of Trust. As such, the LPA was a junior lien or encumbrance on the property and the option to purchase therein was, at most, a junior sale contract.

182. Under the non-judicial foreclosure provisions in Article 38 of Title 30 of the Colorado statutes, a non-judicial foreclosure of a senior deed of trust extinguishes junior liens and land contracts.

183. Headwaters, the tenant under the LPA, was provided all required notices of the non-judicial foreclosure sale, and Headwaters did not exercise its statutory cure or redemption rights. Thus, Gray Jay, as the party holding the Certificate of Purchase upon expiration of the redemption periods, took title to the property formerly subject to the Leased Premises free and clear of the LPA and the purchase option therein.

184. The option to purchase provision of the LPA did not constitute a covenant running with the land, but even if it did, that covenant was junior to the LPA and extinguished through the foreclosure proceedings.

185. Alternatively, even if the LPA survived the foreclosure and Gray Jay succeeded to the rights of landlord thereunder, on November 11, 2020, Gray Jay notified Headwaters in accordance with the terms of the LPA, that if the LPA was not terminated by way of foreclosure,

Gray Jay was electing to terminate the LPA pursuant to section 10 thereof based upon Headwaters' failure to operate the Amenities for more than thirty days.

186. Alternatively, even if the LPA was not terminated by the foreclosure or by Gray Jay's exercise of its option to terminate as set forth above, the LPA was terminated by Headwaters' failure to appropriate Amenity Fees for payment of rent for calendar years 2021, 2022, and 2023. Under Section 2(a) of the LPA, the LPA automatically terminated by its own terms upon Headwaters' failure to appropriate Amenity Fees to be paid pursuant to the terms of the Lease; therefore, the LPA terminated as January 1, 2021 and/or as of the ensuing calendar years for which Headwaters failed to appropriate funds for payment of rent under the LPA.

187. The option to purchase provision of the LPA did not constitute a covenant running with the land, but even if it did and even if not extinguished by the foreclosure, restrictive covenants are limited by the terms thereof and subject to termination rights thereunder and the LPA was terminated under its terms based upon Gray Jay's termination notice and/or Headwaters' failure to appropriate rent payments for the 2021 calendar year or ensuing years.

188. Headwaters is a party that is interested under a written contract, or other writings constituting a contract, and it 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 Judgment Law, § 13-51-101 et. seq.

189. Headwaters has no adequate remedy at law.

190. Accordingly, Headwaters seeks a declaration that the LPA was terminated for one or more of the foregoing reasons and that no party, including GRMD, has any right to seek to enforce any provision thereof.

191. WHEREFORE, Headwaters respectfully requests that this Court enter judgment in its favor and against GRMD as follows:

A. Declaring that the LPA was terminated in its entirely through foreclosure of the Leased Premises, or alternatively, through Gray Jay's notice of termination, or alternatively, due to Headwaters' failure to appropriate funds for rental payments for the calendar year 2021 or the ensuring years.

B. Awarding reasonable attorneys' fees and costs as provided in the parties' agreement and by law;

C. Granting such other and further relief as the Court may deem just.

Dated this 3rd day of November, 2022.

HUSCH BLACKWELL LLP

s/ Jamie H. Steiner
Jamie H. Steiner, #49034
JoAnn T. Sandifer (Admitted Pro Hac Vice)

Attorneys for Headwaters Metropolitan District and GR Terra LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **HEADWATER METROPOLITAN DISTRICT'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S THIRD AMENDED COMPLAINT, AND COUNTERCLAIMS** was served via the Colorado Courts e-filing system on November 3, 2022, addressed to the following:

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