

<p>DISTRICT COURT, GRAND COUNTY, COLORADO  Court Address: Grand County Combined Courts  307 Moffat Ave  Hot Sulphur Springs, CO 80451  Telephone No.: (970) 725-3357</p>	<p>DATE FILED: May 5, 2022 7:51 PM  CASE NUMBER: 2021CV30008</p>
<p><b>Plaintiff:</b> GRANBY RANCH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado,</p> <p>v.</p> <p><b>Defendants:</b> 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.</p>	<p><b>▲COURT USE ONLY▲</b></p> <p>Case No.: 2021CV030008</p> <p>Div.: Rm.:</p>
<p><i>Attorneys for Plaintiff:</i>  Charles E. Norton, #10633  Alicia M. Garcia, #53860  NORTON &amp; SMITH, P.C.  600 17<sup>th</sup> Street, Suite 2150S  Denver, Colorado 80202  Phone Number: (303) 292-6400  FAX Number: (303) 292-6401  E-mail: <a href="mailto:CNorton@NortonSmithLaw.com">CNorton@NortonSmithLaw.com</a>  <a href="mailto:AGarcia@NortonSmithLaw.com">AGarcia@NortonSmithLaw.com</a></p> <p><i>Attorneys for Defendants Gray Jay and Granby Prentice:</i>  Mark Champoux  Kyler Burgi  DAVIS GRAHAM &amp; STUBBS LLP  1550 17th Street, Suite 500  Denver, Colorado 80202  Telephone: 303.892.9400  <a href="mailto:mark.champoux@dgsllaw.com">mark.champoux@dgsllaw.com</a>  <a href="mailto:kyler.burgi@dgsllaw.com">kyler.burgi@dgsllaw.com</a></p> <p><i>Attorneys for Defendants Headwaters Metropolitan District and GR Terra LLC:</i>  Jamie H. Steiner, #49304  JoAnn T. Sandifer (<i>Admitted Pro Hac Vice</i>)  Husch Blackwell LLP  1801 Wewatta St., Suite 1000  Denver, CO 80202</p>	

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**PROPOSED CASE MANAGEMENT ORDER**

Plaintiff Granby Ranch Metropolitan District (“GRMD”) and Defendants Headwaters Metropolitan District (“Headwaters”), GR Terra, LLC (“GR Terra”), Gray Jay Ventures (“Gray Jay”), and Granby Prentice, LLC (“Granby Prentice”) (collectively referred to as “Defendants”), through undersigned counsel, submits the following Proposed Case Management Order.

The case management conference is scheduled for May 5, 2022 at 2:30 MT.

1. The “at issue” date is: March 4, 2022.
2. Responsible attorney’s name, address, phone number and email address:

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3. The lead counsel for each party met and conferred via Zoom concerning this Proposed Order and each of the issues listed in Rule 16(b)(3)(A) through (E) on March 17, 2022.
4. Brief description of the case and identification of the issues to be tried:

**Plaintiff:**

This case involves a dispute between two metropolitan districts, which were originally organized in 2003 under service plans prepared by Sol Vista Corp., the developer of the “Sol Vista Golf & Ski Ranch.” Headwaters was formed in order to construct, install, and acquire public infrastructure serving the residents of all of the Granby Ranch Districts, including GRMD. The original service plan contemplated that this infrastructure would include the recreational amenities that are the subject of this lawsuit. Headwaters was under the control of the original developer of the SolVista project. Headwaters committed to the Town of Granby and the other Granby Ranch Districts that it would acquire the “Amenities” which are the subject of this lawsuit on behalf of all of the Granby Ranch Districts and own and operate them on behalf of the residents of the Districts. The Service Plan for Headwaters provided that when that District dissolved, GRMD would own and maintain the infrastructure.

In 2006, the developer, Granby Realty Holdings, LLC (“GRH”) entered into an “Amended and Restated Lease Purchase Agreement” with Headwaters whereby Headwaters would lease and eventually could acquire the ski area and golf course which were “Amenities” for the Granby Ranch development. The parties subsequently entered into a “Second Amended and Restated Lease Purchase Agreement” (“LPA”) in 2012 with substantially the same terms as

the first agreement. Now, the Defendants' refuse to honor the LPA, claiming that GRMD is not a third-party beneficiary to the LPA and even if it was, the LPA was extinguished through foreclosure.

Plaintiff commenced this action on February 23, 2021 by filing a complaint against two defendants, Headwaters and GP Granby Holdings, LLC ("GPGH") seeking to enforce the LPA. On January 28, 2022, this Court granted Headwaters' and the Private Defendants' Motions to Dismiss in part. However, the Court's order kept the majority of the Plaintiff's claims intact and held that GRMD is a third-party beneficiary to the LPA and that the Plaintiff properly stated a claim that the LPA is a covenant running with the land because the Leased Premises touch and concern the land. On March 15, 2022, GRMD filed its Motion for Summary Judgment on Defendant GR Terra's counterclaims, Counts I, II, and III. The Defendants subsequently filed a Motion to Continue or Stay its Response to the Motion for Summary Judgment pending discovery. The Court granted this motion in an order dated April 2, 2022.

Defendants continue to assert the issue of subject-matter jurisdiction based upon their contention that GRMD is not a third-party beneficiary of the LPA. However, GRMD's position is that under the procedures outlined by the Colorado Supreme Court in *Trinity Broad. of Denver, Inc. v. City of Westminster*, 848 P.2d 916, 925 (Colo. 1993) and *Medina v. State*, 35 P.3d 443 (Colo. 2001) this Court's orders of January 28, 2022 addressing the motions to dismiss brought by Headwaters, GR Terra, Granby Prentice, and Gray Jay have resolved the issue of subject matter jurisdiction and third-party beneficiary status for the purposes of this case.

**Defendants:**

Defendants submit that GRMD's claims in this lawsuit are based upon a selective, inaccurate, and misleading recitation of the relevant facts. The facts, documents and surrounding

circumstances establish that the parties to the LPA never intended for GRMD to be a third-party beneficiary – as made abundantly clear by the Headwaters and GRMD’s express termination of the agreements that GRMD relies upon for its claim of third-party beneficiary status and GRMD’s repeated acknowledgements and agreements that the prior relationship between the two Districts has been severed and terminated. This, a question concerning this Court’s subject matter jurisdiction, is one of the central issues for summary judgment or trial, and Defendants do not agree that this Court’s rulings on Defendants’ motions to dismiss preclude this Court’s reconsideration of Plaintiff’s standing or of the Court’s subject matter jurisdiction in this case, particularly if new facts are presented to the Court on those issues following discovery. Moreover, if GRMD had the ability to enforce the LPA, the facts and governing law establish that the LPA was terminated through foreclosure or alternatively under its own terms before GR Terra acquired the property.

The remaining defendants (all named defendants other than Redwood Capital, which was entirely dismissed as a defendant) filed timely answers and affirmative defenses to Plaintiff’s Second Amended Complaint. The affirmative defenses continued to challenge GRMD’s status as a third-party beneficiary of the LPA and its standing to bring claims for breach of that agreement. In addition, the defendants asserted numerous defenses to the remaining claims, including, procedural challenges to GRMD’s attempted enforcement of the LPA, challenges to the validity of the provisions of the LPA GRMD seeks to enforce, and defenses that GRMD had terminated, waived, and relinquished any rights it may have under the LPA through several other agreements not referenced in the Second Amended Petition or attached thereto.

Defendant Headwaters filed four counterclaims against GRMD, asserting, inter alia, that GRMD’s actions – including its prosecution of the claims in this lawsuit – are in breach of four

other contracts between those parties wherein GRMD has waived and relinquished any rights to the amenity fees that constituted the alleged “equity” paid under the LPA and any right to bring claims against Headwaters for breach of the Master IGA or Second Granby IGA.

Defendant GR Terra also filed four counterclaims against GRMD. Count I seeks declaratory relief to declare that the LPA was terminated through the foreclosure, or alternatively through Gray Jay’s notice of termination, or alternatively through Headwaters’ failure to appropriate funds for the payment of rent. Count II asserts that even if the LPA and option to purchase therein constitute covenants running with the land and were not otherwise terminated, then the Court should declare that any such restrictive covenants no longer serve the intended benefit and that same are terminated and canceled from the Property. Count III asserts a claim for quiet title, asking the Court to quiet title of the property to it free and clear of the LPA and any restrictive covenants therein. Count IV asserts a slander of title claim based upon GRMD’s filing of its notice of lis pendens in conjunction with its claims in this lawsuit.

5. The following motion has been filed and is unresolved
  - a. Plaintiff’s Motion for Summary Judgment on Count I, II and II of Defendant GR Terra’s Counterclaims. This Court granted Defendants’ motion to stay its response to this summary judgment motion until discovery is completed.
6. Brief assessment of each party’s position on the application of the proportionality factors, including those listed in C.R.C.P.26(b)(1): Based upon the complex and extended set of facts giving rise to the parties’ claims, defenses and counterclaims, the parties have agreed upon a limited expansion of the discovery limitations set forth in C.R.C.P. 26(b)(2). As set forth in Plaintiff’s Second Amended Complaint, Plaintiff is alleging rights to enforce the LPA against the subject property now owned by Defendant GR Terra and/or seeks damages against all defendants estimated to be in excess of \$6 million. The facts GRMD and the Defendants rely upon date back to 2003 and involve other entities that are not parties to this lawsuit, including the prior owner of the subject property, Granby Ranch Holdings, LLC. Discovery will likely be required from that entity as well as the entities that previously operated the Granby Ranch development. On information and belief, some of those entities are outside the State and possibly the County. In addition, because the claims and defenses turn upon various agreements entered and actions taken by the two metropolitan districts, GRMD and Headwaters, the parties wish to pursue additional depositions of former and current Board members of

those districts and may seek depositions of the entities that have managed the two Districts.

7. The lead counsel for each party, met and conferred concerning possible settlement and they have exchanged their positions concerning settlement. The parties agreed to commence discovery and revisit settlement when appropriate as the facts in the case develop.
8. Deadline for:
  - a. Amending or supplementing pleadings (Not more than 105 days (15) weeks from at issue date): June 17, 2022.
  - b. Joinder of additional parties (Not more than 105 days (15) weeks from at issue date): June 17, 2022.
  - c. Identifying non-parties at fault (90 days from at issue date): June 2, 2022.
9. Date of Initial Disclosures: April 1, 2022.

Objections, if any, about their adequacy: None to date.

10. If full disclosure of information under C.R.C.P. 26(a)(1)(C) was not made because of a party's inability to provide it, provide a brief statement of reasons for that party's inability and the expected timing of full disclosures (NOT APPLICABLE) and completion of discovery on damages: Discovery regarding damages is anticipated to be fully completed by the discovery cutoff date 49 days before the trial date.
11. Proposed limitations on and modifications to the scope and types of discovery, consistent with the proportionality factors in C.R.C.P. 26(b)(1): The parties have agreed to the following enlarged discovery limitations:
  - a. Number of depositions per party: Each party may take the deposition of the opposing party pursuant to C.R.C.P. 30(b)(6), plus 5 additional fact witnesses, as well as any current or prior members of the Boards of Directors of GRMD or Headwaters, plus experts per C.R.C.P. 26(b)(4)(A).
  - b. Number of Interrogatories per party (C.R.C.P. 26(b)(2)(B) : 30.
  - c. Number of requests for production of documents per party (C.R.C.P. 26(b)(2)(D): 20.
  - d. Number of requests for admission per party (C.R.C.P. 26(b)(2)(E): 20.
  - e. Any physical or mental examination per C.R.C.P. 35: None.
  - f. Any limitations on awardable costs: Headwaters and GRMD are political subdivisions of the state of Colorado and are not subject to an award of costs.

- g. State the justifications for any modifications in the foregoing C.R.C.P. 26(b)(2) limitation: The parties propose that the C.R.C.P. 26(b)(2) limitations be modified by allowing the depositions of five other persons rather than the two provided for in the Rule and for the deposition of any present or former member of the Board of Directors of GRMD or Headwaters. See justification set forth in paragraph 6 above.

12. Number of experts, subjects for anticipated expert testimony, and whether experts will be under C.R.C.P. 26(a)(2)(B)(I) or (B)(II):

- a. Plaintiff anticipates calling an expert in the area of special district formation and special district structure, and an expert or experts with regard to the computation of damages.
- b. Defendants anticipate calling an expert or experts relating to the special district purpose and structure, special district assessments, and the special district agreements at issue in this case as well as an expert with respect to the calculation of damages. In addition, Defendants reserve the right to name rebuttal experts to respond to the Plaintiffs' expert testimony.
- c. If more than one expert in any subject per side is anticipated, state the reasons why such expert is appropriate consistent with proportionality factors in C.R.C.P. 26(b)(1) and any differences among the positions of multiple parties on the same side: The parties believe these experts are necessary and consistent with the proportionality factors because they involve entirely different areas of expertise. The computation of damages may require an economist and a certified public accountant.

13. Proposed deadlines for expert witness disclosure:

- a. Production of expert reports
  - i. Production of expert reports by Plaintiff: \_\_\_\_\_ (126 days (18 weeks) before the trial date per C.R.C.P. 26(a)(2)(C)( I)).
  - ii. Production of expert reports by Defendants: 28 days after service of Plaintiff's disclosures; provided, however, that if Plaintiff serves its disclosures earlier than 126 days before the trial date, Defendant is not required to serve its disclosures earlier than \_\_\_\_\_ (98 days (14 weeks) before the trial date per C.R.C.P. 26(a)(2)(C)( II)).
- b. Production of rebuttal expert reports: No later than \_\_\_\_\_ (77 days (11 weeks) before the trial date per C.R.C.P. 26(a)(2)(C)(III)).
- c. Production of expert witness files: The expert witness files will be produced 10 days prior to the expert's deposition.

State the reasons for any different dates from those in C.R.C.P. 26(a)(2)(C): The dates are

those provided for in C.R.C.P. 26(a)(2)(C).

14. Oral Discovery Motions: The court does not require discovery motions to be presented orally, without written motions or briefs.
15. Electronically Stored Information. The parties do anticipate needing to discover a significant amount of electronically stored information. The following is a brief report concerning their agreements or positions on search terms to be used, if any, and relating to the production, continued preservation, and restoration of electronically stored information, including the form in which it is to be produced and an estimate of the attendant costs: The parties have already disclosed a significant amount of electronically stored information. The situation is not anticipated to involve unusual or complex issues of e-discovery. Instead, documents which were originally in hard copy form are now stored electronically (in some instances) and so disclosures and responses to requests for production involve listing the documents as provided for in the applicable rules and then making them available via Dropbox or a similar platform.
16. Parties' best estimate as to when discovery can be completed: The parties estimate that discovery can be completed within six to seven months of the date that this case management order is entered by the Court, or approximately December 31, 2023.
17. Parties' best estimate of the length of the trial: The parties currently believe that this case will take two weeks, or ten days of the Court's time to try.
18. Trial will commence on (or will be set by the court later):  

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19. Other appropriate matters for consideration: If desired by the Court, the parties agree to work together to set a date to mediate the issues in this case.

Dated this 3<sup>rd</sup> day of May, 2022.



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NORTON & SMITH, P.C.

*Kyler Burgi*

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*Attorneys for Defendants Gray Jay and Granby Prentice:*

Mark Champoux

Kyler Burgi

DAVIS GRAHAM & STUBBS LLP

*JoAnn T. Sandifer*

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*Attorneys for Defendants Headwaters Metropolitan District and GR  
Terra LLC:*

Jamie H. Steiner, #49304

JoAnn T. Sandifer (*Admitted Pro Hac Vice*)

Husch Blackwell LLP

### **CASE MANAGEMENT ORDER**

IT IS HEREBY ORDERED that the foregoing, including any modifications made by the Court and the rulings set forth below, is and shall be the Case Management Order in this case.

This matter came before the Court for a Case Management Conference on May 5, 2022, at 2:45 p.m. The Plaintiff appeared by Attorneys Norton and Garcia. The Defendants GR Terra, LLC and Headwaters Metropolitan District appeared by Attorney Sandifer. The Defendants Granby Prentice, LLC and Gray Jay Ventures, LLC appeared by Attorney Burgi. The Court held the Case Management Conference by video via WebEx.

The Court orders the parties shall comply with C.R.C.P. 16 and 26.

The parties are to file any discovery dispute motions in writing.

The Court sets this matter for a ten-day jury trial to begin on February 6, 2023, at 8:00 a.m. The following claims will not be tried to the jury, but will be tried to the Court based on the evidence presented at the jury with a closing argument made after the jury retires for deliberation: the Plaintiff's 8<sup>th</sup> claim in the Plaintiff's Second Amended Complaint and Grand Terra's first, second, and third counterclaims. The Court will rule after the jury returns its verdict.

The Court orders the parties to comply with all discovery obligations under the Colorado Rules of Civil Procedure, unless the parties have stipulated to the contrary or the Court has ruled otherwise.

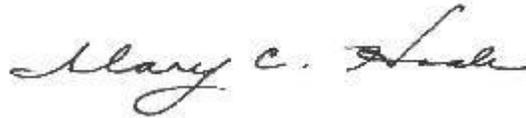
The parties are to complete Alternate Dispute Resolution and file a certificate of completion at least thirty (30) days in advance of trial. The Court orders the parties to attend ADR in person. Individuals with decision making capability for insurance companies are to appear in person unless the Court excuses a party's attendance in writing.

The parties are to file all motions in limine forty-five (45) days in advance of trial. The Court will deem waived any motions not filed by that date.

The parties are to file any summary judgments at least seventy-five (75) days prior to trial.

The Plaintiffs' counsel shall file the joint Trial Management Order at least thirty (30) days prior to trial and shall set a Trial Management Conference prior to the trial dates.

Dated this 5<sup>th</sup> day of May, 2022.

A handwritten signature in cursive script that reads "Mary C. Hoak".

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Mary C. Hoak, District Court Judge