

DISTRICT COURT, GRAND COUNTY, COLORADO Court Address: Grand County Combined Courts 307 Moffat Ave Hot Sulphur Springs, CO 80451 Telephone No.: (970) 725-3357	DATE FILED: March 4, 2022 2:33 PM FILING ID: 62A8D56E4B86B CASE NUMBER: 2021CV30008
Plaintiff: GRANBY RANCH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado, v. Defendants: HEADWATERS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado; GRAY JAY VENTURES, LLC.; REDWOOD CAPITAL FINANCE CO., LLC; GRANBY PRENTICE, LLC.; GR TERRA, LLC.	<p style="text-align: center;">▲COURT USE ONLY▲</p> Case No.: 2021CV030008 Div.: Rm.:
<i>Counsel for Plaintiff:</i> Charles E. Norton, #10633 Alicia M. Garcia, #53860 NORTON & SMITH, P.C. 600 17 th Street, Suite 2150S Denver, Colorado 80202 Phone Number: (303) 292-6400 FAX Number: (303) 292-6401 E-mail: CNorton@NortonSmithLaw.com AGarcia@NortonSmithLaw.com	
PLAINTIFF GRANBY RANCH METROPOLITAN DISTRICT’S REPLY TO HEADWATERS’ COUNTERCLAIMS	

Plaintiff Granby Ranch Metropolitan District (“GRMD”) through its undersigned counsel, submits the following Reply to Headwaters’ Counterclaims, and in support thereof states as follows:

REPLY TO INTRODUCTION

1. Plaintiff states that paragraph 1 states a legal conclusion to which no response is required; to the extent that paragraph 1 contains factual allegations to which a response is required, Plaintiff denies same.
2. Plaintiff denies. Plaintiff has standing to enforce claims under the Second Amended and Restated Lease Purchase Agreement (“LPA”) because it is a third-party beneficiary of the

LPA. In its January 28, 2022 Order (“Order”) this Court held that GRMD is a third-party beneficiary to the LPA.

3. Plaintiff denies.
4. Plaintiff denies.

REPLY TO PARTIES, VENUE, AND JURISDICTION

5. Plaintiff admits.
6. Plaintiff admits.
7. Plaintiff admits.
8. Plaintiff admits.
9. Plaintiff admits.

REPLY TO GENERAL ALLEGATIONS

Creation of the Special District

10. Plaintiff admits the allegations in paragraph 10, with the exception of whether SolVista Corp. had transferred “all” of the property it then owned and included within the Service Areas of the Service Plans to Granby Realty Holdings, LLC (“GRH”). Plaintiff is without sufficient knowledge or information to form a belief as to whether “all” of the property was transferred and hence that allegation is denied. Plaintiff admits that the areas comprising the golf course and ski resort were transferred to GRH and that those areas were within the Service Areas of the Service Plans.
11. Plaintiff admits.
12. Plaintiff admits.
13. Plaintiff admits.
14. The allegations of paragraph 14 are characterizations of the referenced Headwaters and GRMD Service Plans. Those document speak for themselves, and Plaintiff denies any characterization of the Service Plans inconsistent with the terms thereof.
15. The allegations of paragraph 15 contain accurately quoted but partial provisions and characterizations of the referenced Headwaters and GRMD Service Plans. Those documents speaks for themselves, and Plaintiff denies any characterization of the Service

Plan inconsistent with the terms thereof. Upon information and belief, Plaintiff admits that Headwaters has not been consolidated or dissolved.

16. Plaintiff is without sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 16 and accordingly the same are denied in full.
17. The allegations of paragraph 17 are characterizations of the referenced Headwaters and GRMD Service Plans. Those documents speak for themselves, and Plaintiff denies any characterization of the Service Plans inconsistent with the terms thereof.
18. The allegations of paragraph 18 are characterizations of the referenced 2003 Master IGA. That document speaks for itself, and Plaintiff denies any characterization of the 2003 Master IGA inconsistent with the terms thereof.
19. The allegations of paragraph 19 are characterizations of the referenced 2003 Master IGA. That document speaks for itself, and Plaintiff denies any characterization of the 2003 Master IGA inconsistent with the terms thereof.
20. The allegations of paragraph 20 are characterizations of the referenced 2006 Master IGA. That document speaks for itself, and Plaintiff denies any characterization of the 2006 Master IGA inconsistent with the terms thereof.
21. The allegations of paragraph 21 are characterizations of the referenced 2006 Master IGA. That document speaks for itself, and Plaintiff denies any characterization of the 2006 Master IGA inconsistent with the terms thereof.
22. Plaintiff admits that Granby Ranch Metropolitan Districts Nos. 2-8 are separate legal entities from GRMD. The balance of the allegations in paragraph 22 are denied.
23. Plaintiff admits that the parties entered into the Master IGA on or about September 17, 2008. The allegations of paragraph 23 are characterizations of the referenced 2008 Master IGA. That document speaks for itself, and Plaintiff denies any characterization of the 2008 Master IGA inconsistent with the terms thereof.
24. The allegations of paragraph 24 are characterizations of the referenced 2006 and 2008 Master IGA. That document speaks for itself, and Plaintiff denies any characterization of the 2006 and 2008 Master IGA inconsistent with the terms thereof.

REPLY TO ALLEGATIONS REGARDING THE AMENITY FEE AGREEMENT AND RESOLUTION

25. The allegations of paragraph 25 are characterizations of the referenced Joint Resolution to Establish an Amenity Fee ("Joint Resolution"). That document speaks for itself, and Plaintiff denies any characterization of the Joint Resolution inconsistent with the terms thereof. Paragraph 25 also contains an incomplete paraphrase of Section 6 of the 2005

Amenity Fee Resolution, which provides that “Until such time as the purchase price for the Amenities to be purchased by Headwaters pursuant to the Lease Purchase Agreement between the Developer and Headwaters has been paid in full (and all debt used to finance or refinance such debt has been paid in full),” the revenues generated by the Amenities Fee would be used solely for the purpose of financing the acquisition, leasing, construction, and replacement of Amenities, including the issuance of bonds.

26. The allegations of paragraph 26 are characterizations of the referenced Joint Resolution. That document speaks for itself, and Plaintiff denies any characterization of the Joint Resolution inconsistent with the terms thereof.
27. Plaintiff denies. Exhibit B is not an Amenity Fee Agreement, but rather a Capital Facilities Fee Agreement, dated June 1, 2005. The Amenity Fee and the Capital Facilities Fee are two different impositions and used for different purposes.
28. Plaintiff denies.
29. Plaintiff denies.
30. Plaintiff denies. Recital C of Exhibit B attached to the Answer and Counterclaims does not contain the quoted language.
31. Plaintiff denies. Exhibit B does not contain the referenced language regarding third-party beneficiaries. GRMD admits that it is not a party to Exhibit B, although it denies the allegations to the extent that Headwaters is suggesting that GRMD was not a third-party beneficiary to any particular document.

REPLY TO ALLEGATIONS REGARDING THE GRANBY IGA

32. Plaintiff admits.
33. Plaintiff admits.
34. Plaintiff admits that the quoted language appears in the Granby IGA. That language may only be interpreted in light of the entire Granby IGA and related documents.

REPLY TO ALLEGATIONS REGARDING THE EXCLUSION AGREEMENT AND FIRST AMENDMENT TO 2006 MASTER IGA

35. Plaintiff admits that GRH, GRMD, and Headwaters entered into the Exclusion Agreement on April 21, 2010. That document speaks for itself, and Plaintiff denies any characterization of the document inconsistent with the terms thereof.

36. The allegations of paragraph 36 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the document inconsistent with the terms thereof.
37. Plaintiff admits that section 3.2.1 is accurately quoted in paragraph 37. The Exclusion Agreement speaks for itself, and Plaintiff denies any characterization of the document inconsistent with the terms thereof.
38. The allegations of paragraph 38 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the document inconsistent with the terms thereof. Plaintiff also denies that the “repudiation” of the 2008 Master IGA is pertinent in any way to this Lawsuit.
39. Plaintiff admits that the Exclusion Agreement contains an appropriations clause. The allegations of paragraph 39 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the document inconsistent with the terms thereof. Plaintiff also affirmatively pleads that the appropriations clause in the Exclusion Agreement does not control the terms of the Second Amended and Restated Lease Purchase Agreement (“LPA”) at issue in this Lawsuit, which contains an appropriations clause that is materially different from the one in the Exclusion Agreement.
40. The allegations of paragraph 40 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the document inconsistent with the terms thereof. Plaintiff also is without knowledge or information sufficient to form a belief as to whether the events anticipated in paragraph 4.3.2 ever took place.
41. The allegations of paragraph 41 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the document inconsistent with the terms thereof. Plaintiff also affirmatively pleads that the quotation from section 9.6 of the Exclusion Agreement is incomplete and not a precise paraphrase.
42. Plaintiff admits that GRMD and Headwaters entered into the First Amendment of the 2006 Master IGA. The remaining allegations of paragraph 42 are characterizations of the referenced First Amendment of the 2006 Master IGA. That document speaks for itself, and Plaintiff denies any characterization of the document inconsistent with the terms thereof.

REPLY TO ALLEGATIONS REGARDING THE LEASE PURCHASE AGREEMENT

43. Plaintiff admits that GRH and Headwaters entered into the LPA. The remaining allegations of paragraph 43 are characterizations of the referenced LPA. That document speaks for itself, and Plaintiff denies any characterization of the LPA inconsistent with the terms thereof. Plaintiff admits that it was not a stated party to the LPA, although

pursuant to this Court's order of January 28, 2022, it has been determined to be a third-party beneficiary of the LPA.

44. Plaintiff admits, although other recreational facilities and areas are also part of the Amenities.
45. Plaintiff admits that the initial term of the LPA was to be one year, which would automatically renew for an additional 49 one-year terms. . Plaintiff denies that this renewal would take place "unless Headwaters stopped appropriating rent in its budget." Instead, the renewal would continue unless Headwaters elected to stop paying rent to the Landlord pursuant to the detailed procedures set forth in section 3.c of the LPA. Plaintiff denies the remainder of the allegations in paragraph 45.
46. The allegations of paragraph 46 are characterizations of the referenced LPA. That document speaks for itself, and Plaintiff denies any characterization of the LPA inconsistent with the terms thereof.
47. Plaintiff denies. Pursuant to paragraph 3.a of the LPA, "Tenant shall pay as rent for the Original Term and all of the Renewal Terms of this Lease, upon receipt, an amount equal to all Amenity Fees Collected by Tenant (the "Rental Payments").
48. Plaintiff denies.
49. Plaintiff lacks sufficient knowledge or information to form a belief as to whether Headwaters retained any Amenity Fees to fund operation of the Amenities or other District expenses, and section 3.a of the LPA, cited by the Defendants, says nothing about this issue. Accordingly, the allegation is denied. The remaining allegations in paragraph 49 are specifically denied.
50. Plaintiff admits that Rental Payments made under the LPA were subject to the terms of the LPA. Plaintiff lacks sufficient knowledge or information to form a belief as to the remaining allegations of paragraph 50 and therefore denies same.
51. The allegations of paragraph 51 are characterizations of the referenced LPA. That document speaks for itself, and Plaintiff denies any characterization of the LPA inconsistent with the terms thereof.
52. Plaintiff admits that the quoted language is an incomplete quote from section 10 of the LPA.
53. Plaintiff denies.
54. Plaintiff admits.

55. Plaintiff denies. The language regarding integration appears in section 28(e) of the LPA, not 28(c) as cited by Defendant.

56. The allegations of paragraph 56 are characterizations of the referenced LPA. That document speaks for itself, and Plaintiff denies any characterization of the LPA inconsistent with the terms thereof.

57. Plaintiff admits that the LPA was not recorded in the Grand County Real Estate Records until January 2020 and was recorded by the President of GRMD Board of Directors, Matt Girard. As President of GRMD, Mr. Girard has an official capacity with GRMD and has an interest in the Leased Premises as a taxpayer, resident, occupant, visitor, and invitee of Granby Ranch. Plaintiff denies the remaining allegations in paragraph 57.

REPLY TO ALLEGATIONS REGARDING THE NONDISTURBANCE AND ATTORNMENT AGREEMENT

58. The allegations of paragraph 58 are characterizations of the referenced LPA. That document speaks for itself, and Plaintiff denies any characterization of the LPA inconsistent with the terms thereof.

59. Plaintiff lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 59 and therefore denies same.

60. Plaintiff lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 60 and therefore denies same.

REPLY TO ALLEGATIONS REGARDING THE 2013 FEE AGREEMENT

61. Plaintiff admits that GRH and Headwaters entered into an Amended and Restated Amenity Fee Agreement. The remaining allegations of paragraph 61 are characterizations of the referenced Amenity Fee Agreement. That document speaks for itself, and Plaintiff denies any characterization of the Amenity Fee Agreement inconsistent with the terms thereof.

62. The allegations of paragraph 62 are characterizations of the referenced Amenity Fee Agreement. That document speaks for itself, and Plaintiff denies any characterization of the Amenity Fee Agreement inconsistent with the terms thereof.

63. Plaintiff denies.

REPLY TO ALLEGATIONS REGARDING THE AMENDMENT OF THE SERVICE PLANS AND TERMINATION OF THE MASTER IGA

64. Plaintiff admits that GRMD, Headwaters, GRMD No. 8 and GRH entered into a Letter Agreement on August 22, 2016. The remaining allegations of paragraph 64 are

characterizations of the referenced Letter Agreement. That document speaks for itself, and Plaintiff denies any characterization of the Letter Agreement inconsistent with the terms thereof.

65. Plaintiff admits that a second amendment to the GRMD Service Plan was approved by the Town on October 11, 2016. The remaining allegations of paragraph 65 are characterizations of the referenced Service Plan amendment. That document speaks for itself, and Plaintiff denies any characterization of the Service Plan amendment inconsistent with the terms thereof.
66. Plaintiff admits that paragraph 66 sets forth a partial quotation from the 2016 Amendment. The referenced Service Plan amendment speaks for itself, and Plaintiff denies any characterization of the Service Plan amendment inconsistent with the terms thereof.
67. Plaintiff admits that amendment to the GRMD Service Plan was approved by the Town Board of Trustees on November 8, 2016. The remaining allegations in paragraph 67 are denied.
68. The allegations of paragraph 68 are characterizations of the referenced Service Plan amendment. That document speaks for itself, and Plaintiff denies any characterization of the Service Plan amendment inconsistent with the terms thereof, including the bolding of some of the quoted language by Defendant.
69. Plaintiff admits.
70. The allegations of paragraph 70 are characterizations of the referenced Master IGA Termination. That document speaks for itself, and Plaintiff denies any characterization of the Master IGA Termination inconsistent with the terms thereof.
71. The allegations of paragraph 71 are characterizations of the referenced Master IGA Termination. That document speaks for itself, and Plaintiff denies any characterization of the Master IGA Termination inconsistent with the terms thereof. Plaintiff also pleads that the citation to the Master IGA Termination in paragraph 71 is incomplete; Defendant quotes from both Recitals G and H of the document.
72. The allegations of paragraph 72 are characterizations of the referenced Master IGA Termination. That document speaks for itself, and Plaintiff denies any characterization of the Master IGA Termination inconsistent with the terms thereof.

REPLY TO ALLEGATIONS REGARDING THE SECOND GRANBY IGA

73. Plaintiff admits.

74. Plaintiff admits.

75. The allegations of paragraph 75 are characterizations of the referenced Second Granby IGA. That document speaks for itself, and Plaintiff denies any characterization of the Second Granby IGA inconsistent with the terms thereof. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the averment that "No Exhibit A was attached to or included in the executed version of the Second Granby IGA" and accordingly that averment is denied.

76. Plaintiff admits that Defendant has accurately quoted paragraph 16 of the Second Granby IGA.

77. Plaintiff denies that the Second Granby IGA "acknowledges the potential authority of Headwaters, GRMD, and the Granby Ranch Metropolitan Districts Nos. 2-8 to acquire the Amenities." Instead, the Second Granby IGA expressly states that "In addition to the types of park and recreation services and facilities referenced or reflected in the Service Plans, including the exhibits thereto, the Districts (a defined term including Headwaters, GRMD, and the Granby Ranch Metropolitan Districts Nos. 2-8) will be authorized to acquire, construct, own, operation (sic) and maintain the ski area and lifts, ski lodge, golf courses and appurtenant clubhouses and maintenance facilities, fishing or 'river park' facilities and programs, and parks, trails, and open space for various recreational purposes as more fully described on **Exhibit A**, attached hereto and incorporated herein by reference, collectively called the '**Amenities**.' The remaining allegations of paragraph 77 are characterizations of the referenced Second Granby IGA. That document speaks for itself, and Plaintiff denies any characterization of the Second Granby IGA inconsistent with the terms thereof.

78. The allegations of paragraph 78 are characterizations of the referenced Second Granby IGA. That document speaks for itself, and Plaintiff denies any characterization of the Second Granby IGA inconsistent with the terms thereof.

79. Plaintiff admits.

80. Plaintiff admits.

REPLY TO ALLEGATIONS REGARDING THE 2018 WAIVER AND RELEASE AGREEMENT

81. Plaintiff admits.

82. The allegations of paragraph 82 are characterizations of the referenced 2018 Waiver and Release Agreement. That document speaks for itself, and Plaintiff denies any characterization of the 2018 Waiver and Release Agreement inconsistent with the terms thereof.

83. The allegations of paragraph 83 are characterizations of the referenced 2018 Waiver and Release Agreement. That document speaks for itself, and Plaintiff denies any characterization of the 2018 Waiver and Release Agreement inconsistent with the terms thereof.

84. The allegations of paragraph 84 are characterizations of the referenced 2018 Waiver and Release Agreement. That document speaks for itself, and Plaintiff denies any characterization of the 2018 Waiver and Release Agreement inconsistent with the terms thereof.

85. Plaintiff lacks sufficient knowledge or information to form a belief as to the averments in paragraph 85 and therefore denies same.

REPLY TO ALLEGATIONS REGARDING THE GRANBY RANCH FORECLOSURE

86. Plaintiff admits.

87. Plaintiff admits.

88. Plaintiff admits.

89. Plaintiff admits.

90. Based upon its current knowledge and understanding, plaintiff admits.

91. Based upon its current knowledge and understanding, plaintiff admits.

92. Plaintiff denies.

93. Plaintiff denies.

94. Plaintiff admits that Exhibit L is a letter authored by Christopher L. Richardson. Plaintiff denies that the letter had any legal force or effect, and denies the factual recitation set forth in the letter.

95. Based upon its current knowledge and understanding, plaintiff admits.

96. Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the averments set forth in paragraph 96 and therefore denies same.

97. Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the averments set forth in paragraph 97 and therefore denies same.

REPLY TO ALLEGATIONS REGARDING HEADWATERS OPTION TO PURCHASE

98. Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the averments set forth in paragraph 98 and therefore denies same.
99. Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the averments set forth in paragraph 99 and therefore denies same.
100. Based upon its current knowledge and understanding, and subject to verification from Headwaters, plaintiff admits.
101. Plaintiff denies.
102. Plaintiff denies.
103. Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 103 and therefore denies same.
104. Plaintiff denies.

**REPLY TO ALLEGATIONS REGARDING PLAINTIFF'S CLAIMS AGAINST
HEADWATERS**

105. Plaintiff admits that it filed its lawsuit in February 2021, as amended in May of 2021, and again in July of 2021, asserting among other things, that (i) Headwaters breached the Master IGA, the Granby Ranch IGA, and the Second Granby IGA; (ii) Headwaters breached a covenant of good faith and fair dealing under the LPA based on its failure to acquire the leased premises; and (iii) asking the Court to declare that the LPA continues to encumber the Leased Premises.
106. Plaintiff states that it asserts it is a third-party beneficiary to the LPA and it is entitled to recover approximately \$6 million in equity in the Leased Premises. Plaintiff denies the remainder of the allegations in paragraph 106.
107. Plaintiff admits.
108. Plaintiff denies.
109. Plaintiff admits to the extent that the allegations in paragraph 109 are consistent with the Court's January 28th Order.
110. Plaintiff lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 110 and therefore denies same.

COUNT I
(Breach of the Exclusion Agreement)

111. Plaintiff incorporates its responses to all of the allegations contained in the foregoing paragraphs as if the responses were fully restated herein.
112. Section 1.1 of the Exclusion Agreement states that “the purpose of this Agreement is to document the terms and conditions under which GRMD will exclude the Property from the boundaries of District; together with the maintenance, operations, and future obligations of each of the Parties.” Plaintiff denies any characterization of the Exclusion Agreement in paragraph 112 that is inconsistent with the terms thereof.
113. The allegations of paragraph 113 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the Exclusion Agreement inconsistent with the terms thereof.
114. The allegations of paragraph 114 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the Exclusion Agreement inconsistent with the terms thereof.
115. The allegations of paragraph 115 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the Exclusion Agreement inconsistent with the terms thereof.
116. The allegations of paragraph 116 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the Exclusion Agreement inconsistent with the terms thereof.
117. The allegations of paragraph 117 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the Exclusion Agreement inconsistent with the terms thereof.
118. The allegations of paragraph 118 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the Exclusion Agreement inconsistent with the terms thereof.
119. The allegations of paragraph 119 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the Exclusion Agreement inconsistent with the terms thereof.
120. The allegations of paragraph 120 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the Exclusion Agreement inconsistent with the terms thereof.

121. Plaintiff denies. GRMD is not seeking repayment of the Amenity Fee under the LPA. GRMD is seeking to enforce the terms of the LPA.
122. Plaintiff denies.
123. Plaintiff denies.
124. Plaintiff admits.
125. Plaintiff admits.
126. Plaintiff admits.
127. Plaintiff admits.
128. Plaintiff admits.
129. Plaintiff denies.
130. Plaintiff denies.
131. The allegations of paragraph 131 are characterizations of the referenced Exclusion Agreement. That document speaks for itself, and Plaintiff denies any characterization of the Exclusion Agreement inconsistent with the terms thereof. Plaintiff specifically denies any liability for attorney's fees and costs or that any breach of the Exclusion Agreement has taken place.
132. Plaintiff denies the allegation in paragraph 132 and Defendant's right to the relief requested therein.

COUNT II

(Breach of the Master IGA Termination)

133. Plaintiff incorporates its responses to all of the allegations contained in the foregoing paragraphs as if the responses were fully restated herein.
134. Plaintiff denies.
135. The allegations of paragraph 135 are characterizations of the referenced Master IGA Termination. That document speaks for itself, and Plaintiff denies any characterization of the Master IGA Termination inconsistent with the terms thereof.

136. The allegations of paragraph 136 are characterizations of the referenced Master IGA Termination. That document speaks for itself, and Plaintiff denies any characterization of the Master IGA Termination inconsistent with the terms thereof.
137. The allegations of paragraph 137 are characterizations of the referenced Master IGA Termination. That document speaks for itself, and Plaintiff denies any characterization of the Master IGA Termination inconsistent with the terms thereof.
138. Plaintiff denies that its breach of contract claim against Headwaters is in direct contravention with the Master IGA Termination. Plaintiff admits that its breach of contract claim alleges that Headwaters breached the Master IGA by failing to acquire the amenities and it seeks damages for this breach.
139. Plaintiff denies.
140. Plaintiff admits that its breach of contract claim against Headwaters alleges that Headwaters breached the Second Granby IGA by failing to acquire the Amenities and it seeks damages for this breach. Plaintiff denies that this claim is in violation of the Master IGA Termination.
141. Plaintiff denies.
142. Plaintiff denies.
143. Plaintiff denies.
144. Plaintiff denies.
145. Plaintiff denies.
146. Plaintiff denies the allegation in paragraph 146 and Defendant's right to the relief requested therein.

Count III
(Breach of the Waiver and Release Agreement)

147. Plaintiff incorporates its responses to all of the allegations contained in the foregoing paragraphs as if the responses were fully restated herein.
148. The allegations of paragraph 148 are characterizations of the referenced 2018 Waiver and Release Agreement. That document speaks for itself, and Plaintiff denies any

characterization of the 2018 Waiver and Release Agreement inconsistent with the terms thereof.

149. Plaintiff states that paragraph 149 states a legal conclusion to which no response is required; to the extent a response is required, Plaintiff denies.

150. Plaintiff admits that its breach of contract claim against Headwaters alleges that Headwaters breached the Master IGA by failing to acquire the Amenities and it seeks damages for the breach. Plaintiff denies all other allegations in paragraph 150.

151. Plaintiff denies.

152. Plaintiff admits that its breach of contract claim against Headwaters alleges that Headwaters breached the Second Granby IGA. Plaintiff denies all other allegations in paragraph 152.

153. Plaintiff states that paragraph 153 states a legal conclusion to which no response is required; to the extent a response is required, Plaintiff denies.

154. Plaintiff denies.

155. Plaintiff denies.

156. Plaintiff denies.

157. Plaintiff denies.

158. Plaintiff denies the allegation in paragraph 158 and Defendant's right to the relief requested therein.

Count IV
(Alternative Claim for Breach of the Second Granby IGA)

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

160. Plaintiff denies it is liable for breach of the Second Granby IGA and any obligation thereunder to acquire the Leased Premises.

161. The allegations of paragraph 161 are characterizations of the referenced Second Granby IGA. That document speaks for itself, and Plaintiff denies any characterization of the Second Granby IGA inconsistent with the terms thereof.
162. Plaintiff admits that it has never sought to acquire the Amenities and has never tendered the Purchase Price of the Leased Premises to the Landlord or Headwaters.
163. The allegations of paragraph 163 are characterizations of the referenced Second Granby IGA. That document speaks for itself, and Plaintiff denies any characterization of the Second Granby IGA inconsistent with the terms thereof.
164. The allegations of paragraph 164 are characterizations of the referenced Second Granby IGA. That document speaks for itself, and Plaintiff denies any characterization of the Second Granby IGA inconsistent with the terms thereof.
165. Plaintiff denies.
166. Plaintiff denies the allegation in paragraph 166 and Defendant's right to the relief requested therein.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Headwaters' Answer and each claim contained therein fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Headwaters' claims for declaratory relief against GRMD fail because the LPA is a covenant running with the land and thus was not extinguished through the foreclosure.

THIRD DEFENSE

Headwaters' claims are barred, in whole or in part, under a theory of equitable estoppel.

FOURTH DEFENSE

None of the events or conditions giving rise to termination under the LPA have taken place. This is a complete defense to all of Defendant's claims.

FIFTH DEFENSE

Headwaters' claims are precluded by the express language of the LPA, which may not be varied by parole evidence to the contrary, should any exist.

SIXTH DEFENSE

The LPA provides that "Tenant shall pay as rent for the Original Term and all of the Renewal Terms of this Lease, upon receipt, an amount equal to the proceeds of all Amenity Fees collected by Tenant." The Tenant is Headwaters under the LPA. Headwaters continues to collect the Amenity Fee to finance the acquisition, construction, and installation of Amenities through the date of this Reply to Counterclaims. The use of these Amenity Fees is subject to the terms of the LPA, the 2013 Fee Agreement, the 2013 Fee Resolution, and the Second Granby IGA. The Amenity Fees may also be deemed appropriated under the Local Government Budget Law of Colorado, section 29-1-101 et seq., C.R.S.

SEVENTH AFFIRMATIVE DEFENSE

The LPA is a separate contract, which stands on its own terms independent of the Exclusion Agreement, Master IGA Termination Agreement, Waiver and Release Agreement, or Second Granby IGA. None of those documents released any obligations of Headwaters under the LPA.

EIGHTH AFFIRMATIVE DEFENSE

If any waiver of future breaches of the LPA is actually set forth in the Exclusion Agreement, Master IGA Termination Agreement, Waiver and Release Agreement, or Second Granby IGA (which Plaintiff denies) then such waiver is void as against public policy.

NINTH AFFIRMATIVE DEFENSE

Counts II and III of the Counterclaims are contrary to the express terms of section 23 of the LPA, which defines the terms and conditions under which the Tenant may acquire the Leased Premises.

TENTH AFFIRMATIVE DEFENSE

Defendant's claims are barred by its own breach of contract, including without limitation the fact that it continues to collect Amenities Fees under the 2013 Fee Resolution while refusing to pay them as rent under the LPA.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant's damages, if any, are speculative and cannot be measured with reasonable certainty.

TWELFTH AFFIRMATIVE DEFENSE

Defendant's claims for attorney's fees and costs have no basis in statute, contract, or law.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendant’s claims are barred, in whole or in part, by Defendant’s failure to mitigate any damages allegedly sustained.

FOURTEENTH AFFIRMATIVE DEFENSE

Upon information and belief, material actions in connection with the events that are the basis of this Lawsuit, including without limitation the decision to file Headwater’s counterclaims, were made without Headwaters having the requisite Board of Directors composed of electors of Headwaters.

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

- A. Dismissing Headwaters’ counterclaims, Counts I through IV, with prejudice.
- B. Awarding GRMD its attorney’s fees and costs, to the extent permitted by law.

Dated this 4th day of March, 2022.

NORTON & SMITH,
A Professional Corporation

s/ Charles E. Norton

Charles E. Norton, #10633
Alicia M. Garcia, #53860
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I certify that on the 4th day of March, 2022, a true and correct copy of the foregoing **REPLY TO HEADWATER’S COUNTERCLAIMS** was served electronically and/or sent via U.S. Mail, postage prepaid to the following:

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