

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 6th Street Boulder, CO 80302 (303) 441-3750	<p style="text-align: center;">▲ COURT USE ONLY</p> <p style="text-align: center;">▲</p>
<p>Plaintiffs: DAVID RECHBERGER, NICOLETTE MUNSON, ROLF MUNSON, LAUREL HYDE BONI, DINAH MCKAY, DONALD SHERWOOD, WILLIAM B. SWAFFORD, JR., MARILYN KEPES, DONALD WREGE, and DOUGLAS JOHNSON,</p> <p>v.</p> <p>Defendants: BOULDER COUNTY BOARD OF COUNTY COMMISSIONERS and BOULDER COUNTY HOUSING AUTHORITY.</p>	
<p>Attorney for Plaintiffs:</p> <p>Name: David Chipman, #25784 Ben Delanghe, #43563</p> <p>Address: Chipman Glasser, LLC 2000 S. Colorado Blvd., Tower One Suite 7500 Denver, CO 80222</p> <p>Phone No.: (303) 578-5780</p> <p>Fax No.: (303) 578-5790</p> <p>Email: dchipman@chipmanglasser.com bdelanghe@chipmanglasser.com</p>	<p>Case Number:</p> <p>Division:</p>
<p>COMPLAINT</p>	

Plaintiffs David Rechberger, *et al.* hereby complain and allege as follows:

PARTIES

1. Plaintiffs David Rechberger, Nicolette Munson, Rolf Munson, Laurel Hyde Boni, Dinah McKay, Donald Sherwood, William B. Swafford, Jr., Marilyn Kepes, Donald Wrege, and Douglas Johnson are all individuals whose domiciles are in Colorado and who are or were real and/or personal property owners within the Gunbarrel Public Improvement District located in

Boulder County, Colorado, and who bring this lawsuit on behalf of themselves (“**Plaintiffs**” or individual “**Plaintiff**”).

2. Plaintiff David Rechberger is an individual whose domicile is in Colorado and who resides at 8756 Skyland Drive, Niwot, CO, 80503. Mr. Rechberger owned taxable real and/or personal property in Gunbarrel and lived at 4581 Tally Ho Trail, Boulder, CO, 80301 from 1994 to 2017.

3. Plaintiff Nicolette Munson is an individual whose domicile is in Colorado and who resides at 4554 Starboard Drive, Boulder, CO, 80301. Mrs. Munson owns taxable real and/or personal property in Gunbarrel and has lived at her current address since 1991.

4. Plaintiff Rolf Munson is an individual whose domicile is in Colorado and who resides at 4554 Starboard Drive, Boulder, CO, 80301. Mr. Munson owns taxable real and/or personal property in Gunbarrel and has lived at his current address since 1991.

5. Plaintiff Dinah McKay is an individual whose domicile is in Colorado and who resides at 4695 Portside Way, Boulder, CO, 80301. Ms. McKay owns taxable real and/or personal property in Gunbarrel and has lived at her current address since 1992.

6. Plaintiff Douglas Johnson is an individual whose domicile is in Colorado and who resides at 4596 Starboard Drive, Boulder, CO, 80301. Mr. Johnson owns taxable real and/or personal property in Gunbarrel and has lived at his current address since 1992.

7. Plaintiff Marilyn Kepes is an individual whose domicile is in Colorado and who resides at 4560 Starboard Drive, Boulder, CO, 80301. Ms. Kepes owns taxable real and/or personal property in Gunbarrel and has lived at her current address since 1994.

8. Plaintiff Donald Wrege is an individual whose domicile is in Colorado and who resides at 4632 Ashfield Drive, Boulder, CO, 80301. Mr. Wrege owns taxable real and/or personal property in Gunbarrel and has lived at his current address since 1995.

9. Plaintiff Laurel Hyde Boni is an individual whose domicile is in Colorado and who resides at 6762 Bugle Court, Boulder, CO, 80301. Ms. Boni owns taxable real and/or personal property in Gunbarrel and has lived at her current address since 1992.

10. Plaintiff William Swafford, Jr. is an individual whose domicile is in Colorado and who resides at 4566 Starboard Drive, Boulder, CO, 80301. Dr. Swafford owns taxable real and/or personal property in Gunbarrel and has lived at his current address since 1991.

11. Plaintiff Donald Sherwood is an individual whose domicile is in Colorado and who resides at 7334 South Meadow Court, Boulder, CO, 80301. Mr. Sherwood owns taxable real and/or personal property in Gunbarrel and has lived at his current address since 1996.

12. Defendant Boulder County Board of County Commissioners represent Boulder County, which is a body corporate and politic in the state of Colorado with powers especially conferred by law pursuant to C.R.S. § 30-11-101, *et seq.* (“**Defendant**” or “**Boulder County**”).

13. A county is not an independent governmental entity; it is a political subdivision of the state, existing only for the convenient administration of the state government.

14. Defendant Boulder County Housing Authority is a body corporate and politic in the state of Colorado with powers especially conferred by law pursuant to C.R.S. § 29-4-501, *et seq.* (“**BCHA**”).

JURISDICTION AND VENUE

15. This Court has jurisdiction over this matter because the parties to the action all reside or are domiciled in Colorado and the allegations of this Complaint arise out of contracts and duties formed in and under the laws of the state of Colorado.

16. Venue is proper in Boulder County District Court.

NATURE OF THE ACTION

17. Gunbarrel is a developed area of Boulder County located northeast of Boulder and south of Longmont adjacent to Highway 119, but it is not itself an incorporated town or village. It is separated from the city of Boulder by a buffer area of private agricultural lands and publicly owned open space. Gunbarrel has a population of approximately 10,000 people.

18. By the early 1990s, Gunbarrel residents became alarmed at the sudden increase in nearby Boulder County development, city-generated traffic, and general urbanization in what had been a quiet residential area.

19. In 1993, Boulder County created a Gunbarrel public general improvement district and included two ballot initiatives in the General Election Notice to combat this rapid urbanization: (1) the improvement of local roads in the Gunbarrel subdivisions and (2) the reduction of residential development in Gunbarrel by purchasing land and dedicating it as “open space” that would be off limits to residential development (the “**Open Space Initiative**”).

20. In order to fund the Open Space Initiative, Gunbarrel residents were asked to vote on a property tax increase, for a period of 11 years, to underwrite a \$2,535,000 bond to be used to purchase and maintain open space.

21. Recognizing the importance of this initiative to Gunbarrel residents, Boulder County induced electors to tax themselves by committing to match the funds generated by the Gunbarrel residents up to \$1.9 million. To date, Gunbarrel residents—through this property tax increase—have expended \$2,300,340 for the acquisition of open space properties. On the other hand, Boulder County has only contributed \$1,305,634 to the acquisition of open space in

Gunbarrel, well below the \$1.9 million it committed to the residents. Moreover, the County has not contributed since 2007 and recently stated they believe they no longer have any remaining obligation to the residents of Gunbarrel.

22. With practically no open space remaining for purchase, and in light of the County's violation and disclaimer of its outstanding obligation to match the residents' contributions, Plaintiffs bring this action to compel Boulder County to fulfill their commitment and contribute the remaining funds owed for the purchase of designated open space in Gunbarrel.

23. Further, Plaintiffs have identified a property in Gunbarrel that is currently owned and controlled by Defendants that would satisfy, in part, Boulder County's remaining obligation to purchase open space. Instead of dedicating this property as open space, however, Plaintiffs intentionally *transferred* the property to the Boulder County Housing Authority—which is comprised of the same members as the Board of Commissioners—for no real consideration while providing insufficient notice to the community it serves.

24. Due to the non-existence of remaining open space in Gunbarrel, Plaintiffs seek specific performance of Defendant's commitment through the re-acquisition and open space dedication of the property that is already under their control.

FACTUAL BACKGROUND

A. The Gunbarrel Public Improvement District

25. Each year, the Boulder County Board of Commissioners considers whether to advance ballot issues to be included in the November election ballot.

26. C.R.S. §§ 30-20-501, *et seq.*, governs the process, rights, and obligations of Colorado counties that wish to create and use public improvement districts to further the purpose as outlined in the Act (the "**County Public Improvement District Act**" or "**Act**").

27. The Act confers the power to organize public improvement districts with the stated purpose that they serve a public use and will "promote the health, safety, prosperity, security, and general welfare of the inhabitants of said districts." C.R.S. § 30-20-502.

28. An "Elector" is defined as a person (A) who, at the designated time or event, is registered to vote in accordance with the "Uniform Election Code of 1992", articles 1 to 13 of title 1, C.R.S.; and (B) Who is a resident of the district or the area to be included in the district; or (C) Who or whose spouse or civil union partner owns taxable real or personal property within the district or the area to be included in the district whether or not said person resides within the district. C.R.S. § 30-20-503(1)(a)(I).

29. On September 2, 1993, Boulder County passed County Resolution 93-175, creating the Boulder County Gunbarrel General Improvement District, which was later renamed

the Gunbarrel Public Improvement District (“GPID”) (the “**GPID Resolution,**” attached as **Exhibit 1.**)

30. The GPID encompasses the area of Gunbarrel, within Boulder County, and more specifically is defined as:

All lots, tracts or other land within Sections 1, 2, 10, 11, 12, 13, 14, and 15, Township 1N, Range 70W, and Section 7, Township 1N, Range 69W which is included within Area IIA of the Boulder Valley Comprehensive Plan as designated on June 11, 1993; together with all of the lots, outlots, tracts and other land within the area of Gunbarrel Estates subdivision as indicated upon the recorded plats thereof, including Gunbarrel Estates, Gunbarrel Estates Replat, Gunbarrel Estates 2nd Replat, Gunbarrel Estates Replat Lots 44 & 45, Block 8, Gunbarrel Estates 3rd Replat, and Gunbarrel Estates 4th Replat; together with those lands identified as Tracts A-M on “Exhibit 1” and having the following recorded County Assessor Parcel Identification Numbers: #146315100011, #146315100009 in Section 15, Township 1N, Range 70W; #146314200008, #146314200012, #146314200010, #146314200011, #146314200009, #146314000032, #1463114000037, #146314000035, #146314000029 in Section 14, Township 1N, Range 70W; #14631240001, #14631210002; together with the full rights-of-way of County roads contiguous to the aforementioned Tracts A - M; together with what- ever sized tract of City of Boulder open space land situated at the northeast corner of the intersections of Lookout Road and North 75th Street considered sufficient by the City Council of the City of Boulder to achieve closure of contiguity for the territory to be included within said district.

(GPID Resolution, § 7.)

31. The purpose of the GPID is: “**to provide for the acquisition, construction and installation of open space areas and public parks**, including improvements as determined to be appropriate for the accommodation of public recreational uses, and grading, paving, curbing, guttering, draining or otherwise improving the whole or any party of any street or alley within the [GPID]”. (*Id.*, § 5, emphasis added.)

32. Per the Resolution, the estimated cost of the proposed improvements, including the acquisition of open space, is \$4,585,000. (*Id.*, § 6.)

33. The GPID Resolution states that Boulder County has a duty to “take all action necessary and appropriate to effectuate the provisions of the [GPID Resolution]”. (*Id.*, § 9.)

34. Concurrently, on September 2, 1993, the Board of the Directors of the GPID— which is composed of the same individual members as the Boulder County Board of Commissioners pursuant to C.R.S. § 30-20-510—called a special election to be held on November 2, 1993 to determine how to fund the \$4,585,000 required to effectuate the road improvements and acquisition of open space within the GPID.

B. Boulder County's \$1.9 Million Open Space Commitment

35. In order to fund the road improvements and acquisition of open space mandated by the GPID Resolution, Boulder County included two ballot initiatives aimed at Gunbarrel residents in the Election Notice for the 1993 General Election.

36. Question 1 asked electors residing within the GPID to incur \$2,535,000 in additional property taxes to be used to purchase open space (again, the “**Open Space Initiative**”) and Question 2 asked electors residing within the GPID to incur \$2,050,000 in additional property taxes to be put towards road improvements in Gunbarrel (totaling the \$4,585,000 as outlined in the GPID Resolution).

37. Specifically, Question 1 directed at Gunbarrel Residents—the Open Space Initiative—asked voters:

Shall Boulder County Gunbarrel General Improvement District debt be increased by not more than \$2,535,000 in principal amount, with a repayment cost of not more than \$3,695,115 total principal and interest by the issuance of negotiable interest bearing general obligation bonds for the purpose of financing and refinancing, if necessary or desirable, the acquisition, construction, and installation of open space areas and public parks, including improvements as determined to be appropriate for the accommodation of public recreational uses, together with all necessary, incidental and appurtenant properties, facilities, equipment and costs, such bonds to be payable from property taxes and any other legally available funds, to become due and payable within 12 years of the date or respective dates of such bonds, to bear interest at a net effective interest rate not exceeding 7% per annum, and to be callable for redemption with or without a premium not exceeding 3% of the principal thereof, as may later be determined by the Board of Directors, and in connection therewith shall Boulder County Gunbarrel General Improvement District property taxes be increased without regard to rate by not more than \$356,118 annually to pay principal, interest and premium, if any, on such bonds, and in connection therewith shall Boulder County Gunbarrel General Improvement District be authorized to receive and expend the proceeds of such bonds and receive and expend such property taxes and other legally available funds to the extent required to pay principal, interest and premium, if any, on such bonds or provide for reserves or administrative costs of the district, notwithstanding any revenue or expenditure limitation?

(1993 Boulder County Election Notice, “**Open Space Initiative**,” attached as **Exhibit 2**.)

38. The comments accompanying the Open Space Initiative—consistent with public statements and campaign information drafted by Boulder County—promised Gunbarrel electors

that: “The Boulder County Commissioners have indicated that, subject to the passage of this issue and the County Open Space tax, the *County will provide a matching contribution* towards open space purchase within the Gunbarrel General Improvement District up to a maximum amount of \$1,900,000.” (1993 Boulder County Election Notice, “**County Comments**”, attached as **Exhibit 3**.)

39. This commitment was consistent with campaign information and public hearing statements made by the County leading up to the election.

40. For example, as required by law, on or around September 21, 1993, Boulder County held a public hearing regarding the election. With respect to clarifying the Open Space Initiative, a Boulder County Commissioner stated that: “On the open space issue, I think it is very appropriate that we put in half should our [greater Boulder County] open space tax pass...for the purchase of the remainder of the [GPID] open space.”

41. The County Commissioner then went on to state that since Boulder County normally commits half of the funding source for improvements in its other districts, that “it is appropriate in Gunbarrel that we do the same thing.”

42. Further, prior to the election, authors of the Open Space Initiative, including Defendant, drafted and published campaign information to the voters. Such publications included similar commitments, stating, “if the County Sales Tax passes in November, **the County will pay half of the costs to acquire the Gunbarrel Open Space!**” (“**Vote to Preserve Gunbarrel’s Beauty**,” attached as **Exhibit 4** (emphasis added).)

43. The campaign flyer also instructed voters that:

“The Boulder County Sales Tax for Open Space (0.25% -- 25c on \$100 purchased) will raise funds that the County will use to purchase and maintain open space. **For Gunbarrel, those funds would provide the 50% match that the County Commissioners have promised to support Gunbarrel’s Open Space ballot item. If this item passes, Gunbarrel residents will directly see the benefits in open space purchased within Gunbarrel – to the tune of about \$1.9 million dollars.**” (*Id.* (emphasis added).)

44. This fund matching commitment was included as an incentive for taxpayers to vote, meaning such expenditure was not discretionary.

45. Accordingly, GPID electors passed both ballot initiatives.

46. The \$1.9 million amount represents a specific ceiling to the commitment, so that the commitment would not be open ended or last in perpetuity. Any other reading of the commitment would render it illusory and it would be the equivalent to no commitment at all.

47. After resolving an outstanding lawsuit concerning the 1993 election, in August of 1994, consistent with the ballot initiatives, the GPID authorized the issuance of \$3.6 million worth of General Obligation Bonds at an interest rate of 5.279% to be paid off over a period of 11 years.

48. Consistent with its commitment, this \$3.6 million was dedicated to improving local roads (\$1.7 million) and the Open Space Initiative (\$1.9 million).

C. Boulder County's Partial Performance

49. In 1994, the County purchased its first parcel of open space within the GPID, 39 acres east of 75th Street for \$294,030, paid in full by GPID funds.

50. In 1995, a second parcel, 76 acres in the southeast corner of Lookout Road and 75th Street was purchased for \$568,200. Again, the GPID paid this amount in full.

51. In 1998, a 39 acre parcel at the northeast corner of Jay and Spine Roads was purchased for \$570,280. The GPID paid this price in full.

52. In 2002, a 36 acre parcel north of Jay Road between 63rd and 75th Street was purchased for \$680,000. The GPID paid \$300,000 and Boulder County paid the remaining \$380,000.

53. In 2003, a 38 acre parcel adjacent to the previously purchased property was purchased for \$785,170. The GPID paid \$300,000 and Boulder County paid the remaining \$485,170.

54. In late 2007, a 28 acre parcel adjacent to the property first purchased in 1998 was purchased for \$700,000. The GPID paid \$259,536 and Boulder County paid the remaining \$440,464.

55. By the end of 2007, then, six (6) open space properties within the GPID totaling \$3,606,974 in open space acquisitions had been purchased by the GPID and the County pursuant to the Open Space Initiative.

56. To date, per Boulder County Annual Financial Reports, Defendant's contribution towards these properties is \$1,305,634. To date, the GPID has committed \$2,300,340 towards the purchases.

57. In 2009, the remaining funds held in trust for the benefit of Gunbarrel residents, including Plaintiffs herein, was transferred into—and commingled with—Boulder County's general account.

58. C.R.S. § 30-20-510 requires that the district governing body keep accurate accounts of all money received by and disbursed on behalf of the GPID.

59. The County has a remaining obligation to GPID Residents to purchase \$594,366 of open space property.

D. The Twin Lakes Property

60. In 2013, The Archdiocese of Denver offered to sell a ~10-acre property located at 6655 Twin Lakes Road, Unincorporated Boulder County, Colorado 80301 (the “**Twin Lakes Property**”) to Boulder County Parks and Open Space for purchase as open space pursuant to the Open Space Initiative.

61. Boulder County Parks and Open Space is an arm of Boulder County and the Director reports to and takes direction from the Boulder County Commissioners.

62. Defendant knew or should have known that the County had an outstanding obligation to the GPID.

63. Instead, using funds from its general account, which included GPID commingled funds, Boulder County purchased the Twin Lakes Property from the Archdiocese of Denver but refused to dedicate it as open space.

64. The Twin Lakes Property is located within GPID boundaries, and was purchased for the modest sum of \$470,000.

65. Plaintiffs believed this acquisition was an opportunity to fulfill, in part or possibly in full, the County’s remaining commitment to purchase open space under the terms of the GPID Resolution and Open Space Initiative.

66. Instead, on October 1, 2015, the County transferred the Twin Lakes Property to co-defendant Boulder County Housing Authority (“**BCHA**”) for the same purchase price it paid to acquire the property in 2013.

67. To effect the sale, the same members of the Board of Commissioners “sat as the Housing Authority Board” and accepted title to the Twin Lakes Property in exchange for the issuance of a \$0 down, 0% interest loan in the amount of \$470,000, with a maturity date of September 1, 2025 (the “**Promissory Note**”).

68. The individuals who control the BCHA and Defendant are one and the same, and/or have acted so as to be considered the same entity. Because of the nature of the relationship between Defendants, the favorable terms of the purchase price and Promissory Note,

69. Defendant provided hardly any public notice—less than 48 hours—before transferring title of the Twin Lakes Property to the BCHA.

70. On or around September 30, 2015, a group of interested Gunbarrel citizens, including certain Plaintiffs, sent a letter to Defendant requesting that the County delay the transfer in order to conduct a public review process.

71. Upon information and belief, the County and BCHA disregarded the letter and no response was received.

72. The acquisition of the Twin Lakes Property was the first and remains the only County purchase of open land within the GPID since 2007.

73. The Twin Lakes Property is almost certainly the only parcel of remaining land within the GPID boundary that satisfies the open space conditions under the Open Space Initiative, that could have been purchased with the remaining funds owed to and controlled by the GPID, and for which a willing seller and buyer could complete the transaction.

E. Recent History

74. The following represents but a sliver of the significant amount of public commentary and dialogue between certain Plaintiffs and other interested citizens and Defendant regarding the Open Space Initiative since Defendant's 2015 refusal to dedicate the Twin Lakes Property as open space.

75. On or around October 24, 2016, Plaintiff Nikki Munson sent a letter to Defendant outlining some of Plaintiffs' concerns about Defendant's obligation under the Open Space Initiative and GPID Resolution, and requesting that the County fulfill its obligations to match the GPID's contribution towards open space acquisition.

76. On or around November 4, 2016, Boulder County responded, stating that "the county agreed to match *up to* [\$1.9 million]; it does not state that the county's match would equal that amount." ("**County Response Letter**," dated November 4, 2016, attached as **Exhibit 5**.)

77. The County Response Letter, while affirming the existence of the contract and commitment to Plaintiffs, disclaimed its duty to fulfill its obligation on the grounds that the \$1,305,634 it had expended satisfied its obligation to "match" GPID's contribution.

78. Boulder County's interpretation of its obligation to match GPID's contribution would render the commitment illusory, as it could have equally satisfied the terms of the commitment by only spending \$1.00 (or nothing at all).

79. On or around May 16, 2017, counsel for Plaintiffs sent a letter to Defendant outlining the terms of the commitment and formally requesting that the Twin Lakes Property be acquired with the remaining County funds owed under the contract.

80. On or around June 17, 2017, undersigned counsel received a response from the County, dated May 17, 2017.¹ In its response, the County further disclaimed its obligation under the Open Space Initiative and GPID Resolution, directing counsel to the November 4, 2016 County Response Letter, and further stating that “Boulder County does not owe any obligation to the GPID for future open space acquisitions.” (“**Open Space Letter**,” attached as **Exhibit 6**.)

81. On or around June 22, 2017, a Colorado Open Records Act (“**CORA**”) requested that Boulder County provide “All records regarding BCHA’s repayment of the \$470,000 promissory note for 6655 Twin Lakes Road, including, non-exhaustively, any meeting documents, transactional records, and records on the funding sources.”

82. According to the public documents provided under the CORA request, on or around May 25, 2017—9 days after receiving undersigned counsel’s May 16, 2017 letter—the BCHA “paid” its \$470,000 zero-down/no interest loan in full to Boulder County.

83. Upon information and belief, this loan payoff constituted little more than a transfer of funds from one Boulder County bank account to another, both within Defendant’s control.

FIRST CLAIM FOR RELIEF
(Breach of Contract Against Boulder County– Specific Performance)

84. Plaintiffs incorporate by reference each of the foregoing paragraphs.

85. Plaintiffs are taxpayers and real and personal property owners who reside or resided within the GPID.

86. Defendant, through its Open Space Initiative, GPID Resolution, public statements and hearing comments, partial performance and affirmations, entered into an agreement with Plaintiffs to match up to \$1.9 million of GPID residents’ contributions towards the purchase and maintenance of open space within the GPID.

87. Plaintiffs paid property taxes within the effective funding period of the Open Space Initiative, *i.e.* 1993-2005.

88. In its November 4, 2016 letter to Plaintiff Mrs. Munson, Defendant affirmed the contract by stating “the county agreed to match up to [\$1.9 million].”

89. Defendant has partially performed the contract by expending \$1,305,634 towards the purchase of open space properties.

¹ The County had originally sent its response to the wrong email address, hence the inconsistent dates.

90. Defendant breached the contract by failing to match the contribution from Gunbarrel residents.

91. Defendant breached the contract by publicly disclaiming its remaining obligations thereunder.

92. Defendant's actions in refusing to purchase and dedicate the Twin Lakes Property as open space, in the absence of other alternatives, constitutes a breach of the contract.

93. Defendant's breaches are continuous and ongoing.

94. Plaintiffs have been damaged by the breaches.

95. Upon information and belief, there are no more open space properties available for purchase within the GPID.

96. Money damages are an insufficient remedy.

97. Plaintiffs seek specific performance of the contract for Boulder County to acquire the only remaining open space—one that is already owned by the Boulder County controlled BCHA—the Twin Lakes Property and dedicate it as open space.

98. In the alternative, Plaintiffs have been injured by Defendant's breach of contract, and are entitled to money damages in an amount to be determined at trial.

SECOND CLAIM FOR RELIEF
(Fraudulent Conveyance Against Both Defendants)

99. Plaintiffs incorporate by reference each of the foregoing paragraphs.

100. The Twin Lakes Property was offered to Boulder County to be dedicated as open space pursuant to the Open Space Initiative.

101. Boulder County purchased the Twin Lakes Property with general funds, which included GPID commingled funds.

102. GPID and Plaintiffs received no benefit from the use of their funds in acquiring the Twin Lakes Property.

103. For this reason and those stated above—and pursuant to the Open Space Initiative—GPID residents, including Plaintiffs, are creditors of Boulder County.

104. Alternatively, Boulder County held the Twin Lakes Property in trust for the benefit of GPID residents, including Plaintiffs herein.

105. Boulder County, acting in their capacity as BCHA, transferred the County owned Twin Lakes Property to BCHA for no real consideration.

106. BCHA and Boulder County are controlled by the same individuals or act in concert so as to be considered the same entity.

107. By extension, the Twin Lakes Property is still controlled by Boulder County.

108. Defendants Boulder County and BCHA knew or should have known the Twin Lakes Property was purchased, or being held in trust, for the benefit of the GPID and Plaintiffs pursuant to the Open Space Initiative.

109. Gunbarrel residents, including certain Plaintiffs, sent Defendant a letter on or around September 30, 2015 indicating that such a transfer was improper and that a public hearing needed to be held to determine the fate of the Twin Lakes Property.

110. Moreover, Plaintiffs expressed their belief that the Twin Lakes Property should be dedicated as open space under the Open Space Initiative.

111. Defendants disregarded the letter.

112. Defendants knew or should have known that disregarding this letter could result in legal action.

113. The transfer of the Twin Lakes Property from Defendant to BCHA was intended to hinder, delay, or defraud GPID residents, including Plaintiffs.

114. The transfer of the Twin Lakes Property to BCHA constitutes a fraudulent transfer under the Colorado Uniform Fraudulent Transfer Act.

115. In the alternative, Defendant and its related entity BCHA have been unjustly enriched by the transfer of the Twin Lakes Property.

116. In the further alternative, the acquisition of the Twin Lakes Property created a constructive trust for the benefit of GPID residents, including Plaintiffs.

**THIRD CLAIM FOR RELIEF
(Promissory Estoppel)**

117. Plaintiffs incorporate by reference each of the foregoing paragraphs.

118. Defendant, through various means described above, promised Plaintiffs that it would match the GPID resident's tax contribution under the terms of the Open Space Initiative up to \$1.9 million.

119. Defendant should have reasonably expected that the promise would induce electors, including Plaintiffs, to vote in favor of the tax increase. Indeed, that was the purpose of the language used in the supporting statement accompanying the Open Space Initiative.

120. But for the Open Space Initiative, including the County match, GPID residents would not have agreed to tax themselves millions of dollars over a period of 11 years.

121. GPID residents, including Plaintiffs, reasonably relied on the promise to their own detriment.

122. GPID residents, including Plaintiffs, have been harmed by Defendant's breach of the promise.

123. Defendant's promise to GPID residents, including Plaintiffs, must be enforced to prevent injustice.

FOURTH CLAIM FOR RELIEF (Declaratory Judgment)

124. Plaintiffs incorporate by reference each of the foregoing paragraphs.

125. Plaintiffs are taxpayers and owners of property whose rights, status, and legal relations are affected by the resolutions, commitments, actions and failures to act pursuant to statute of the Board of County Commissioners.

126. A case and controversy exists as to whether Boulder County has breached its obligation to match the GPID Residents' contribution to be used for purchasing and maintaining open space within the GPID.

127. Plaintiffs are entitled to a declaratory judgment that, by only partially funding the \$1.9 million commitment to purchase and maintain open space within the GPID out of public funds, the County is in violation of Colorado law.

FIFTH CLAIM FOR RELIEF (Mandamus)

128. Plaintiffs incorporate by reference each of the foregoing paragraphs.

129. The Boulder County Board of County Commissioners, by its actions, inaction, and public statements, has refused to perform its duty to match GPID Residents' \$1.9 million contribution towards the purchase and maintenance of open space within the GPID.

130. In the alternative, should there be no other remedy available, Plaintiffs' seek a Writ of Mandamus from this Court ordering that the County fulfill its obligation to match the GPID residents' \$1.9 million contribution in full.

WHEREFORE, the Plaintiffs respectfully request that the Court enter judgment as follows:

A. Declaring that the Boulder County Board of County Commissioners have an obligation to match the GPID residents' contribution of \$1.9 million as outlined in the Open Space Initiative and GPID Resolution;

B. Declaring that the Boulder County Board of County Commissioners' actions and/or inactions in failing to fulfill its commitment to match GPID residents' contributions to purchase open space within the GPID breaches its obligation to Plaintiffs;

C. Declaring that the use of general funds—in which GPID funds were commingled—to purchase the Twin Lakes Property constituted the purchase of open space within the GPID boundaries on behalf of and for the benefit of the GPID;

D. Ordering specific performance of the contractual obligations created by its commitment to Plaintiffs by purchasing back the Twin Lakes Property with the remaining funds owed to the GPID and dedicating it as open space;

E. Alternatively, issuing a Writ of Mandamus requiring the Boulder County Board of County Commissioners to satisfy its remaining funding obligation to the GPID in order to purchase open space within the GPID, within one year;

F. In the alternative, awarding Plaintiffs damages for breach of contract, including pre and post judgment interest;

G. Awarding Plaintiffs their costs, expenses of litigation, and attorney fees to the full extent allowed under Colorado law; and

H. Any and all such further relief as the Court deems proper.

Plaintiffs hereby request a trial by jury on all issues so triable.

DATED this 15th day of August 2017.

CHIPMAN GLASSER, LLC

s/ David Chipman
David Chipman, # 25784
Ben Delanghe, #43563
2000 S. Colorado Blvd., Suite 7500
Tower One, Suite 7500
Denver, CO 80222

Attorneys for Plaintiffs