

**AMENDED AND RESTATED
RESOLUTION
OF THE BOARD OF DIRECTORS OF THE
WINTER FARM METROPOLITAN DISTRICT NO. 2**

Establishing Guidelines for the Processing and Collection of Delinquent Fees and Charges

WHEREAS, the Winter Farm Metropolitan District No. 2 (the “**District**”) is a quasi-municipal corporation and political subdivision of the State of Colorado; and

WHEREAS, pursuant to § 32-1-1001(1)(j)(I), C.R.S., the Board of Directors of the District (the “**Board**”) is authorized to fix and from time to time increase or decrease, fees, rates, tolls, penalties, or charges for services, programs, or facilities furnished by the District (collectively, the “**Fees**”) to properties within and without (each property individually referred to herein as the “**Property**”) the District’s boundaries; and

WHEREAS, the District, together with the Winter Farm Metropolitan District No. 1 (“**District No. 1**”) adopted that certain Amended and Restated Joint Resolution of the Boards of Directors Concerning the Imposition of Tap Fees and Water Usage Fees dated April 22, 2008, and subsequently amended by that First Amendment to Amended and Restated Joint Resolution of the Boards of Directors Concerning the Imposition of Tap Fees and Water Usage Fees dated December 8, 2011, and by that Second Amendment Amended and Restated Joint Resolution of the Boards of Directors Concerning the Imposition of Tap Fees and Water Usage Fees dated December 19, 2013 (the “**Fee Resolution**”); and

WHEREAS, the Fee Resolution designates District No. 1 as the party responsible for billing, collection, and enforcement of the Fee Resolution; and

WHEREAS, the District and District No. 1 have adopted a Joint Resolution Re Amended and Restated Joint Resolution of the Boards of Directors Concerning the Imposition of Tap Fees and Water Usage Fees dated May 14, 2020, designating District No. 2 as the party responsible for billing, collection, and enforcement of the Fee Resolution; and

WHEREAS, pursuant to § 32-1-1006(d), C.R.S, the Board is authorized to shut off or discontinue water or sanitation services for delinquencies and delinquencies in the payment of taxes or for any violation of the rules and regulations of the District; and

WHEREAS, pursuant to § 32-1-1001(1)(j)(I), C.R.S., until paid, the Fees shall constitute a perpetual lien on and against the property served, and any such lien may be foreclosed in the same manner as provided by the laws of the State of Colorado for the foreclosure of mechanics’ liens; and

WHEREAS, by this Resolution (the “**Resolution**”), the District desires to set forth guidelines for the processing and collection of unpaid and/or delinquent Fees imposed by the District, together with any and all Late Fees, Interest, Penalties and Costs of Collections (each defined separately in this Resolution), (collectively, the “**Delinquent Fees and Charges**”); and

WHEREAS, notwithstanding anything in this Resolution to the contrary, the guidelines set forth in this Resolution are intended to create orderly and fair procedures for the processing and collection of Delinquent Fees and Charges and any deviation from the guidelines shall not affect the status of the Lien (as defined below) in any way.

WHEREAS, on March 12, 2020, the Board adopted the Resolution of the Board of Directors Establishing Guidelines for the Processing and Collection of Delinquent Fees and Charges (the “**Prior Policy**”), and the Board desires to adopt this Resolution to amend and restate the Prior Policy in its entirety.

NOW, THEREFORE, the Board hereby RESOLVES:

1. **Statement of Lien Guidelines:**

a. ***Perpetual Lien.*** Pursuant to § 32-1-1001(1)(j)(I), C.R.S., all Delinquent Fees and Charges shall constitute a perpetual lien on and against the Property served by the District (the “**Lien**”). All such Liens shall, to the fullest extent permitted by law, have priority over all other liens of record affecting the Property and shall run with the Property and remain in effect until paid in full. All Liens contemplated herein may be foreclosed as authorized by law at such time as the District, in its sole discretion, may determine.

i. Notwithstanding the foregoing, the guidelines set forth in this Resolution are intended to create orderly and fair procedures for the processing and collection of Delinquent Fees and Charges and to provide additional notice to interested parties, including, but not limited to, title companies and the Property owner. In the event any or all of the guidelines set forth in this Resolution are not followed, such deviation shall not affect the status of the Lien in any way. Further, the Board may waive any guidelines set forth in this Resolution and may amend them from time to time as it deems necessary.

b. ***District’s Manager Procedures.*** The District’s Manager, Accountant or Billing Agent (any of which are referred to herein as the “**Manager**”) is responsible for collecting Fees imposed by the District against the Property. In the event payment of Fees is delinquent, the Manager may perform the procedures listed below. The Fees are considered delinquent when they have not been paid by their corresponding due date (the “**Delinquent Account**”):

i. ***Fifteen (15) Calendar Days Past Due:*** A delinquent payment “Reminder Letter” may be sent to the address of the last known owner or occupant of the Property according to the Manager’s records. In the event the above mailing is returned as undeliverable, the Manager may send a second copy of the Reminder Letter to: (1) the Property; and (2) the address of the last known owner of the Property as found in the real property records of the County Assessor’s Office (the “**Assessor**”) for the County in which the District is located (collectively, the “**Property Address**”). Said Reminder Letter may: (1) request prompt payment; (2) notify the Property owner that a Reminder Letter Fee, and a Late Fee in the amounts set forth in this Resolution have been assessed; and (3) reference the url address of the District’s webpage where this Resolution is displayed, if available and requested by the Board.

ii. *Fifteen (15) Calendar Days From the Postmark Date of the Reminder Letter:* A “Warning Letter” may be sent to the Property Address: (1) requesting prompt payment; (2) warning of further legal action should the Property owner fail to pay the total amount due and owing; and (3) referencing the url address of the District’s webpage where this Resolution is displayed, if available. Along with the Warning Letter, a copy of the most recent account ledger reflecting the total amount due and owing to the District according to the records of the Manager may also be sent.

iii. The District may send a “Shut Off Notice” by Certified Mail, return receipt requested, to the Property Address: (1) requesting prompt payment; (2) warning of further legal action should the Property owner fail to pay the total amount due and owing (3) notifying the Property owner that the water service may be suspended or revoked if the Delinquent Charges are not paid in full within 30 days after the mailing date of the Shut Off Notice. Such Shut Off Notice shall also give notice of a hearing in accordance with the provisions set forth in then current Water Rules and Regulations (the “**Rules and Regulations**”). In addition to the District’s right to suspend or revoke service as provided in this paragraph, the District may enforce the Property owner’s payment obligation by any and all lawfully available means.

iv. Water service to the property may be shut off in accordance to the Rules and Regulations. Upon shut off of the water service, the applicable Turn Off Fee will be assessed to the Property. Should the owner request that the water service be turned on (after all outstanding Delinquent Fees and Charges are paid in full, including the Turn On Fee), the water service may be restored. Regardless of whether the Manager has performed the tasks outlined above, the Manager may refer the Delinquent Account to the District’s General Counsel (the “**General Counsel**”). At the time of such referral, the Manager may be requested to provide General Counsel with copies of all notices and letters sent pursuant to this Resolution, if any, as well as a copy of the most recent ledger for the Delinquent Account.

c. *General Counsel Procedures.* Upon referral of a Delinquent Account from the Manager, General Counsel may perform the following:

i. *Foreclosure or Bankruptcy.* In circumstances where the Property is being foreclosed upon or where the owner of the Property has declared or is declaring bankruptcy and notice of such bankruptcy action has been provided to the District, the Manager may be permitted, in his or her discretion, to refer the Delinquent Account directly to General Counsel in order to avoid unnecessary, costly and time consuming procedures. Upon referral of the Delinquent Account to General Counsel, General Counsel may, in his or her discretion, immediately file a Statement of Lien on the Property. Further, when a Delinquent Account has a balance of one thousand five hundred dollars (\$1,500.00) or greater, the Manager or General Counsel may submit the account to the Board for consideration of a foreclosure action. The District shall not proceed with a foreclosure action unless such action is authorized by the Board. The District may, at its option, forward a copy of the foreclosure warning letter to any and all deed of trust holders and/or counsel for any and all deed of trust holders of record.

ii.

2. **Late Fees:**

a. Late Fees are assessed on the Property for failure to make timely payments of Fees. Late Fees are applied, regardless of whether the Fees are assessed on a one-time, monthly, quarterly, semi-annual, annual, or any other basis.

b. Late Fees are assessed on the Property **Fifteen (15) calendar days from the payment due date**. Pursuant to § 29-1-1102, C.R.S., such Late Fee may be charged by either of the following two methods, whichever is greater:

i. One Late Fee of Fifteen Dollars (\$15.00) may be assessed on the Property per each assessment or installment of Fees not fully paid prior to the Fifteenth (15) calendar day following the payment due date; or

ii. In lieu of Section 2(b)(i) above, a Late Fee of Five Percent (5%) per month, commencing on the Fifteenth (15) calendar day following the payment due date, and each month thereafter, may be charged on unpaid Fees until the Late Fee equals Twenty Five Percent (25%) of all outstanding Fees.

c. Partial payment of any outstanding Delinquent Fees and Charges will not prevent the imposition of Late Fees pursuant to this Section 2.

d. Payments received will be applied to the balance due in the following order of priority: (1) Late Fees; (2) Interest; (3) Costs of Collections; (4) Legal Fees and Costs; (5) the earliest imposed and unpaid Fees; (6) any successive unpaid Fees in chronological order from the earliest unpaid Fees to the most recently imposed Fees.

e. No penalty will be assessed on the Property for a credit balance resulting from the prepayment and/or overpayment of Fees. Such credit balances will be carried forward on the account with all subsequent Fees and Delinquent Fees and Charges being deducted until such time as the credit balance is depleted. A Property carrying a credit balance may be assessed Late Fees as provided herein at such time as the credit balance is insufficient to pay the entire amount of Fees due and owing the District.

3. **Interest:** Interest charges accrue on all delinquent Fees at the maximum statutory rate of One Percent (1%) per month or fraction thereof. Interest shall not accrue and be charged on Late Fees, Interest or Costs of Collections. §32-1-1006(d), C.R.S.

4. **Penalties:** May be charged on Delinquent Accounts at a rate determined by the Board and may include, but are not limited to, pro-rated costs associated with collection efforts on behalf of the District for all Delinquent Accounts combined.

5. **Costs of Collections:**

a. Include, but are not limited to, attorneys' fees and all costs, fees and charges associated with the processing and/or collection of Delinquent Fees and Charges, including the following fixed rates and hourly fees and costs:

i. *Action Fees.* The following fixed rate fees are charged to a Delinquent Account once the corresponding action has been taken by either the Manager or General Counsel:

- ◆ *Reminder Letter Fee:* Ten Dollars (\$10.00) per Reminder Letter. This action is typically performed by the Manager.
- ◆ *Warning Letter Fee:* Ten Dollars (\$10.00) per Warning Letter sent. This action is typically performed by the Manager.
- ◆ *Shut Off Notice Fee:* Ten Dollars (\$10.00) per Shut Off Notice sent. This action is typically performed by the Manager.
- ◆ *Return Check Fee:* Twenty Dollars (\$20.00) per returned payment.
- ◆ *Attorney Transfer Fee:* Thirty Dollars (\$30.00) per Delinquent Account transferred from the Manager to General Counsel. This action is performed by the Manager.
- ◆ *Monitoring Bankruptcy Fee:* One Hundred Dollars (\$100.00) for monitoring Chapter 7 bankruptcies. Three Hundred and Fifty Dollars (\$350.00) for monitoring Chapter 13 or Chapter 11 bankruptcies. These actions are performed by General Counsel.
- ◆ *Monitoring Public Trustee Foreclosure Fee:* Two Hundred Dollars (\$200.00) per Public Trustee Foreclosure action monitored. This action is performed by General Counsel.
- ◆ *Certificate of Status Fee:* One Hundred Dollars (\$100.00) per Status Letter prepared. This action is performed by General Counsel.

ii. *Account Certification Costs.* In accordance with § 32-1-1101(e), C.R.S., the Treasurer is authorized to charge a just and reasonable amount for certification and collection of a Delinquent Account on the District's behalf (the "**Treasurer's Collection Fee**"). The District may charge a Certification Fee in an amount equal to the anticipated Treasurer's Collection Fee to be charged to a Delinquent Account before such account has been certified. The Certification Fee may be charged to a Delinquent Account after all District collections fees and hourly attorney fees, as set forth herein, have been charged to the account, and before certification of Delinquent Account to the Treasurer.

iii. *Attorney Hourly Fees and Costs.* Upon transfer of a Delinquent Account to General Counsel, all hourly attorneys' fees and costs, including, but not limited to,

account certification review, litigation and expert witness fees and costs, litigation guarantees, service of process and/or publications incurred by the District to collect or defend the Delinquent Fees and Charges are assessed to the Delinquent Account and become part of the perpetual Lien on the Property. All such hourly attorneys' fees and costs shall be reasonable.

iv. *Recovery of Costs of Collections.* In accordance with § 29-1-1102(8), C.R.S., nothing in this Resolution shall be construed to prohibit the District from recovering all Costs of Collections whether or not outlined above.

6. Waiver of Late Fees, Interest and Costs of Collections:

a. The Manager and General Counsel each have authority and discretion to waive or reduce portions of the Delinquent Account attributable to Late Fees and Interest. Such action is permitted if either the Manager or General Counsel, in its discretion, determines that such waiver or reduction will facilitate the payment of Delinquent Fees and Charges. Notwithstanding the foregoing, neither the Manager nor General Counsel shall have the authority to waive Late Fees and Interest which, in the aggregate, exceeds One Thousand Dollars (\$1,000.00). In such case, the person or entity owing in excess of One Thousand Dollars (\$1,000.00) in Late Fees and Interest combined and requesting such a waiver shall first submit a request, in writing, to the Board, and the Board may make the determination in its sole discretion.

b. Neither the Manager nor General Counsel is authorized to waive any portion of the Fees or Costs of Collections. Should the Property owner desire a waiver of such Fees and/or Costs of Collections, s/he may submit a written request to the Board and the Board may make the determination in its sole discretion.

c. Any waiver or reduction of Late Fees or Interest granted pursuant to Sections 6(a) or (b) hereof shall not be construed as a waiver or reduction of future Late Fees and Interest, or as the promise to waive or reduce future Late Fees or Interest. Nor shall any such waiver or reduction be deemed to bind, limit, or direct the future decision making power of the Board, Manager, or General Counsel, whether related to the Property in question or other properties within the District.

7. **Payment Plans:** The Manager and General Counsel each have the authority to enter into or establish payment plans for the repayment of a Delinquent Account. Should the Manager or General Counsel elect not to enter into a payment plan with the Property owner, the Property owner may submit a written request to the Board and the Board may make the determination in its sole discretion.

8. **Certification of Account to County Treasurer.** Pursuant to § 32-1-1101(e), C.R.S., the Board may elect to certify and Delinquent Fees and Charges satisfying the criteria established therein to the County Treasurer for collection with the District *ad valorem* property taxes. The certification process may be in addition to or in lieu of any procedures set forth in this Resolution the Board's sole discretion. The fees for the certification process shall be in accordance with Colorado law and County policy.

9. **Acceleration and Decelerations of Fees:** The District reserves the right to accelerate and call due an entire unpaid annual Fee on any delinquent account. Such acceleration

shall result in the entire unpaid annual Fee being due to the District immediately. The District also reserves the right to decelerate any accelerated Fee.

10. **Ratification of Past Actions:** All acts, omissions, waivers and/or payment plans heretofore undertaken by the Manager or General Counsel that would otherwise have been authorized by or not required by this Resolution are hereby affirmed, ratified and made effective as of the date said acts, omissions, waivers and/or payment plans occurred.

11. **Additional Actions:** The Board directs its officers, staff and consultants to take such additional actions and execute such additional documents as are necessary to give full effect to the intention of this Resolution.

12. **Deviations:** The District may deviate from the procedures set forth in this Resolution if in its sole discretion such deviation is reasonable under the circumstances.

13. **Supersedes Prior Resolutions:** This Resolution shall supersede and replace in their entirety all prior resolutions addressing the processing and/or collection of Delinquent Fees and Charges, including the Prior Policy. To the extent that any term or provision in this Resolution conflicts with any term or provision in a previously enacted and valid resolution of the District, the term or provision in this Resolution shall prevail.

14. **Severability:** If any term, condition or provision of this Resolution shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such term, condition or provision shall not affect any other provision contained in this Resolution, the intention being that such provisions are severable. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Resolution a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

15. **Savings Provision:** The failure to comply with the procedures set forth herein shall not affect the status of the Delinquent Fees and Charges as a perpetual Lien subject to foreclosure in accordance with law. Failure by the Manager, General Counsel or other authorized representative to take any action in accordance with the guidelines provided herein shall not invalidate subsequent efforts to collect the Delinquent Fees and Charges.

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ADOPTED this 1st day of September, 2022.

WINTER FARM METROPOLITAN
DISTRICT NO. 2

By: 
Officer of the District

Attest:
By: 

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law


General Counsel to the District