

After Recording, Return to:
White Bear Ankele Tanaka & Waldron
2154 East Commons Avenue, Suite 2000
Centennial, Colorado 80122

**AMENDED AND RESTATED
RESOLUTION
OF THE BOARD OF DIRECTORS OF THE
ORCHARD FARMS METROPOLITAN DISTRICT
CONCERNING THE ONGOING IMPOSITION OF AN OPERATIONS FEE**

WHEREAS, the Big Dry Creek Metropolitan District (the “**BDC**”) was formed pursuant to Colorado Revised Statutes §32-1-101 *et seq.*, as amended (the “**Special District Act**”), by order of the District Court for Adams County, Colorado, and after approval of the District’s eligible electors at a regular election; and

WHEREAS, the Board of Directors of the BDC (the “**BDC Board**”) adopted a Resolution Concerning the Imposition of an Operations Fee on September 23, 2015 which was recorded with the Adams County Clerk and Recorder on October 7, 2015 at Reception No. 2015000083849 (the “**Prior Fee Resolution**”); and

WHEREAS, the Prior Fee Resolution imposed a monthly operations fee of \$47.00 on residential units and a transfer fee of \$500.00 on apartment and residential units; and

WHEREAS, at a duly noticed public meeting of the BDC, the BDC Board determined to change the name of the BDC to Orchard Farms Metropolitan District (the “**District**”) in order to provide consistency with respect to the current marketing name of the development, to lessen confusion and administrative burdens and to eliminate inefficiencies; and

WHEREAS, on July 9, 2019 the District Court for Adams County entered an Order granting the requested name change of the BDC to the District (the “**Order**”); and

WHEREAS, the Order did not alter the imposition of the fees imposed by the Prior Fee Resolution or alter the obligation for property owners to pay the fees imposed pursuant to the Prior Fee Resolution; and

WHEREAS, pursuant to § 32-1-1001(1)(h) C.R.S., the Board of Directors of the District (the “**Board**”) shall have the management, control and supervision of all the business and affairs of the District; and

WHEREAS, the Board has determined it to be in the best interests of the District, and the property owners, taxpayers, and residents of the District, to acquire, construct, operate and

maintain certain amenities and facilities benefitting property and inhabitants within the District, which amenities generally include trails, parks, open space and other recreational improvements, facilities, appurtenances and right-of-way (collectively, the “**Facilities**”); and

WHEREAS, the Board has determined it to be in the best interests of the District, and the property owners, taxpayers, and residents of the District, to provide certain services to property and inhabitants within the boundaries of the District, including without limitation landscape maintenance, snow removal, and covenant enforcement (collectively, the “**Services**”); and

WHEREAS, pursuant to § 32-1-1001(1)(j), C.R.S., the District is authorized to fix and impose fees, rates, tolls, charges and penalties for services or facilities provided by the District which, until such fees, rates, tolls, charges and penalties are paid, shall constitute a perpetual lien on and against the property served; and

WHEREAS, the District incurs certain costs associated with the acquisition, upkeep, repair, operation, maintenance, improvement, replacement and reconstruction of the Facilities, as necessary, inclusive of the costs of utilities and capital replacement costs (collectively, the “**Facility Costs**”) in order that the Facilities may be properly provided and maintained; and

WHEREAS, the District incurs certain costs associated with the provision of the Services in order that the Services may be properly provided, the property within the District maintained, and that the health, safety, and welfare of the District and its inhabitants may be safeguarded (collectively, the “**Service Costs**”); and

WHEREAS, the establishment and continuation of a fair and equitable fee (the “**Operations Fee**”) to provide a source of funding to pay for the Facility Costs and the Service Costs, (collectively, the “**Operations Costs**”), which costs are generally attributable to the persons subject to such fees and charges, is necessary to provide for the common good and for the prosperity and general welfare of the District and its inhabitants and for the orderly and uniform administration of the District’s affairs; and

WHEREAS, the District finds that the Operations Fee as set forth in this Resolution is reasonably related to the overall cost of providing the Facilities and Services and paying the Operations Costs, and that imposition thereof is necessary and appropriate; and

WHEREAS, the District wishes to reiterate the continuation of the Operations Fee.

NOW, THEREFORE, be it resolved by the Board of Directors of the District as follows:

1. Definitions. Except as otherwise expressly provided or where the context indicates otherwise, the following capitalized terms shall have the respective meanings set forth below:

“**Apartment Unit**” means a unit within an apartment building which unit is held for lease or rent for residential occupancy and for which a final certificate of occupancy has been issued.

“**End User**” means any third-party homeowner or tenant of any homeowner occupying or intending to occupy a Residential Unit. End User specifically excludes a tenant occupying an Apartment Unit.

“**Residential Unit**” means each residential dwelling unit (including, without limitation, condominiums, townhomes, and any other attached dwelling unit, and detached single family dwelling units) located within the boundaries of the District which has been Transferred to an End User.

“**Transfer**” or “**Transferred**” shall include a sale, conveyance, or transfer by deed, instrument, writing, lease, or any other documents or otherwise by which real property is sold, granted, let, assigned, transferred, exchanged or otherwise vested in a tenant, tenants, purchaser or purchasers.

“**Vacant Lot**” means each parcel of land within the District established by a recorded final subdivision plat (but specifically excluding any parcel upon which one or more Residential Units or Apartment Units is situated and specifically excluding any parcel owned by the District) for which parcel the infrastructure serving said parcel has received preliminary acceptance from the City of Thornton.

2. Operations Fee.

- a. The Board has determined, and does hereby determine, that it is in the best interests of the District and its respective residents and property owners to impose, and does hereby impose an Operations Fee to fund the Operations Costs. The Operations Fee is hereby established and imposed in an amount as set forth by the District from time to time pursuant to an annual “Fee Schedule” and shall constitute the rate in effect until such schedule is amended or repealed. The initial Fee Schedule is set forth in **Exhibit A**, attached hereto and incorporated herein by this reference. The Operations Fee shall consist of a recurring payment (the “**Recurring Payment**”) and a separate payment imposed on Transfers of a Residential Unit (the “**Transfer Payment**”), which together shall comprise the Operations Fee.
- b. The Transfer Payment shall be imposed on all Transfers of a Residential Unit by an End User. The Transfer Payment shall not apply to any of the following, except to the extent the District determines that such exception is being undertaken for the purpose of improperly avoiding the Operations Fee:
 1. Any Transfer wherein the United States, or any agency or instrumentality thereof, the State of Colorado, any county, city and county, municipality, district or other political subdivisions of this State, is either the grantor or the grantee.
 2. Any Transfer by document, decree or agreement partitioning, terminating or evidencing termination of a joint tenancy, tenancy in common or other co-ownership; however, if additional consideration or value is paid in connection

with such partition or termination the Transfer Payment shall apply and be based upon such additional consideration.

3. Any Transfer of title or change of interest in real property by reason of death, pursuant to a will, the law of descent and distribution, or otherwise.
 4. Any Transfer made and delivered without consideration for the purpose of: confirming, correcting, modifying or supplementing a Transfer previously made; making minor boundary adjustments; removing clouds of title; or granting easements, rights-of-way or licenses.
 5. Any decree or order of a court of record quieting, determining or resting title, except for a decree of foreclosure.
 6. Transfers to secure a debt or other obligation, or releases other than by foreclosure, which is security for a debt or other obligation.
 7. Transfers pursuant to a decree or separation of divorce.
- c. The Board has determined, and does hereby determine that the Operations Fee is reasonably related to the overall cost of providing the Facilities and Services, and is imposed on those who are reasonably likely to benefit from or use the Facilities and Services.
- d. The Board has determined, and does hereby determine that the Operations Fee is calculated to defray the cost of funding Operations Costs and reasonably distributes the burden of defraying the Operations Costs in a manner based on the benefits received by persons paying the fees and using the Facilities and Services.

3. Late Fees and Penalty Interest. Any Operations Fee not paid in full within fifteen (15) days after the scheduled due date will be assessed a late fee of Fifteen Dollars (\$15.00) or up to five percent per month, or fraction thereof, not to exceed a total of twenty-five percent of the amount due, pursuant to § 29-1-1102(3), C.R.S. Interest will also accrue on any outstanding Operations Fees, exclusive of assessed late fees and interest, at the rate of 18% per annum, pursuant to § 29-1-1102(7), C.R.S. The District may institute such remedies and collection proceedings as authorized under Colorado law including but not limited to foreclosure of its perpetual lien. The defaulting property owner shall pay all costs, including attorneys' fees, incurred by the District in connection with the foregoing.

4. Payment. Payment for all fees, interest and delinquent charges shall be by check or equivalent form acceptable to the District, made payable to "Orchard Farms Metropolitan District" and sent to the address indicated on the Fee Schedule. The District may change the payment address from time and time and such change shall not require an amendment to this Resolution.

5. Fees Constitute Lien. The fees imposed hereunder shall, until paid, constitute a statutory, perpetual lien on and against the property served, and any such lien may be foreclosed in the manner provided by the laws of the State of Colorado for the foreclosure of mechanic's liens, pursuant to § 32-1-1001(1)(j), C.R.S., such lien being a charge imposed for the provision of services and facilities to the property. Said lien may be foreclosed at such times as the District in its sole discretion may determine. The lien shall be perpetual in nature (as defined by the laws of the State of Colorado) on the property and shall run with the land. This Resolution shall be recorded in the offices of the Clerk and Recorder of Adams County, Colorado.

6. Use of Operations Fees. The revenues generated by the Operations Fee will be accounted for separately from other revenues of the District. The Operations Fee revenue will be used solely for the purpose of paying Operations Costs, and may not be used by the District to pay for general administrative costs of the District. This restriction on the use of the Operations Fee revenue shall be absolute and without qualification.

7. Severability. If any portion of this Resolution is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion of this Resolution, which shall remain in full force and effect. 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.

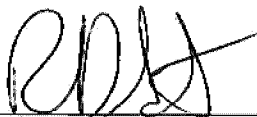
8. The Property. This Resolution shall apply to all property within the District's boundary, including but not limited to the property set forth in **Exhibit B**, attached hereto and incorporated herein by this reference, and any additional property included into the District after the date of this Resolution.

9. Prior Fee Resolution. Any fees, rates, tolls, penalties, charges, attorney fees and attorney costs due under the Prior Fee Resolution, to the extent outstanding and unpaid, shall remain in effect until fully paid and shall not be eliminated hereby.

10. Effective Date. This Resolution shall become effective March 12, 2020.

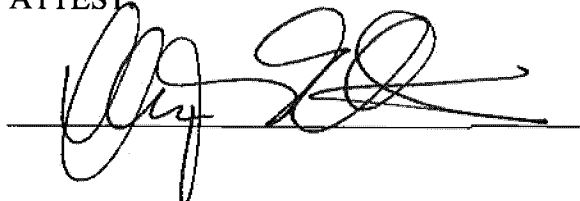
APPROVED and ADOPTED this 12th day of March, 2020.

ORCHARD FARMS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado



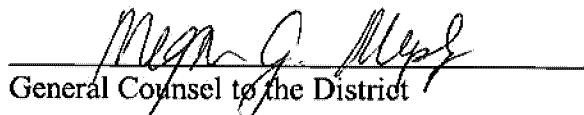
Officer of the District

ATTEST:



APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys At Law



General Counsel to the District

(Signature page to Resolution Concerning the Imposition of an Operations Fee)

EXHIBIT A

**ORCHARD FARMS METROPOLITAN DISTRICT
Schedule of Fees
Effective March 12, 2020**

FEE TYPE	CLASSIFICATION	RATE
OPERATIONS FEE – RECURRING PAYMENT	Apartment Unit	N/A
	Residential Unit	\$47.00 per month per unit
	Vacant Lot	\$0.00 per month per unit
OPERATIONS FEE – PAYMENT DUE UPON A TRANSFER	Apartment Unit	N/A
	Residential Unit	\$500.00 per Transfer

Due Date: Fees are due on the first day of each month.

Payments: Payment for each fee shall be made payable to Orchard Farms Metropolitan District and sent to CliftonLarsonAllen, LLP at the following address for receipt by the due date:

Orchard Farms Metropolitan District
c/o CliftonLarsonAllen, LLP
8390 E Crescent Parkway, Suite 300
Greenwood Village, Colorado 80111

EXHIBIT B

ORCHARD FARMS METROPOLITAN DISTRICT

EXHIBIT A

Legal Description

LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 68 WEST OF THE 6th PRINCIPAL MERIDIAN, CITY OF THORNTON, COUNTY OF ADAMS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 1 WHENCE THE CENTER QUARTER CORNER OF SAID SECTION BEARS N89°48'11"E, A DISTANCE OF 2,672.16 FEET; THENCE N89°48'11"E A DISTANCE OF 30.00 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF YORK STREET AS DESCRIBED IN ADAMS COUNTY ROAD PETITION NO. 627, SAID POINT BEING THE POINT OF BEGINNING; THENCE N89°48'11"E, ALONG THE NORTH LINE OF THE SOUTH HALF OF SAID SECTION 1, A DISTANCE OF 2,642.16 FEET TO THE CENTER QUARTER CORNER OF SAID SECTION 1; THENCE ALONG THE NORTH LINE OF THE SOUTH HALF OF SAID SECTION 1, N89°47'52"E A DISTANCE OF 220.03 FEET, THENCE S00°16'34"E A DISTANCE OF 1141.96 FEET TO A POINT OF CURVE, THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 90°00'00", A RADIUS OF 20.50 FEET, AN ARC LENGTH OF 32.20 FEET AND WHOSE CHORD BEARS S45°16'34"E A DISTANCE OF 28.60 FEET, THENCE S00°16'34"E A DISTANCE OF 80.00 FEET, THENCE S89°43'26"W A DISTANCE OF 20.50 FEET; THENCE S00°16'34"E A DISTANCE OF 300.78 FEET, THENCE S89°47'55"W A DISTANCE OF 304.93 FEET; THENCE S00°18'34"E A DISTANCE OF 957.27 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF COLORADO STATE HIGHWAY NO. 7 AS DESCRIBED IN BOOK 1145 AT PAGE 384 IN THE OFFICE OF THE ADAMS COUNTY CLERK AND RECORDER, THENCE N89°33'38"W ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 2,569.82 FEET TO A POINT ON SAID EAST RIGHT-OF-WAY LINE OF YORK STREET; THENCE ALONG SAID EAST RIGHT-OF-WAY LINE N00°00'37"E, A DISTANCE OF 2,471.99 FEET TO THE POINT OF BEGINNING

SAID PARCEL CONTAINS 0,845,741 SQUARE FEET OR 19.71 ACRES MORE OR LESS

