

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

**FIRST AMENDED AND RESTATED
RESOLUTION OF THE
BOARD OF DIRECTORS OF THE
CUNDALL FARMS METROPOLITAN DISTRICT**

CONCERNING THE IMPOSITION OF AN OPERATIONS FEE

WHEREAS, the Cundall Farms Metropolitan District (the “**District**”) is a quasi-municipal corporation and political subdivision of the State of Colorado, organized pursuant to §§ 32-1-101, *et seq.*, C.R.S., as amended (the “**Special District Act**”), by order of the District Court for Adams County, Colorado; 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 and facilities generally include landscaping, monuments, trails, parks, open space and other improvements, facilities, appurtenances and rights-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 benefitting property and inhabitants within the District, which services generally include, without limitation, landscape maintenance, snow removal, covenant enforcement, and operation and maintenance of the Facilities (collectively, the “**Services**”); and

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

WHEREAS, the District incurs certain direct and indirect costs associated with the acquisition, repair, replacement, improvement, reconstruction, operation and maintenance 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 direct and indirect 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 Operations Costs are generally attributable to the persons and/or properties subject to such Operations Fee, 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 Board 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, on November 26, 2014, the Board adopted the Resolution of the Board of Directors of Cundall Farms Metropolitan District Concerning the Imposition of an Operations Fee, which was recorded in the real property records of the Adams County Clerk and Recorder’s Office on December 19, 2014, at Reception No. 2014000089153 (the “**Prior Fee Resolution**”), and the Board desires to adopt this Resolution to amend and restate the Prior Fee Resolution in its entirety; and

WHEREAS, any fees, rates, tolls, penalties or charges 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.

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.

“**Due Date**” means the date by which the Operations Fee is due, which date is reflected on the Fee Schedule.

“**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.

“**Fee Schedule**” means the schedule of fees set forth in **Exhibit A**, attached hereto and incorporated herein by this reference, until and unless such schedule is otherwise amended and/or repealed.

“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 and for which a final certificate of occupancy has been issued.

“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.

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 from the initial builder to an End User, and on all Transfers by and 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 Transfer Payment:

i. 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.

ii. 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.

iii. 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.

iv. 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.

v. Any decree or order of a court of record quieting, determining or resting title, except for a decree of foreclosure.

vi. Transfers to secure a debt or other obligation, or releases other than by foreclosure, which is security for a debt or other obligation.

vii. 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 in the amount of Fifteen Dollars (\$15.00) or up to five percent (5%) per month, or fraction thereof, not to exceed a total of twenty-five percent (25%) of the amount due. Interest will also accrue on any outstanding Operations Fees, exclusive of assessed late fees, penalties, interest and any other costs of collection, specifically including, but not limited, to attorney fees, at the rate of 18% per annum, pursuant to § 29-1-1102(7), C.R.S. The District may institute such remedies and collection procedures as authorized under Colorado law, including, but not limited to, foreclosure of its perpetual lien. The defaulting property owner shall pay all fees and costs, specifically including, but not limited to, attorneys' fees and costs, and costs associated with the collection of delinquent fees, incurred by the District and/or its consultants in connection with the foregoing (collectively, the "**Collections Costs**").

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

5. Fees Constitute Lien. The fees imposed hereunder, together with any and all late fees, interest, penalties and Collection Costs, 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)(I), C.R.S. Said lien may be foreclosed at such time 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 boundaries, 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. Effective Date. This Resolution shall become effective immediately upon its adoption.

Signature page to follow.

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

APPROVED AND ADOPTED this 27th day of October, 2016.

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

President

ATTEST:

Secretary

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys At Law

General Counsel to the District

***Signature page to First Amended and Restated Resolution Concerning the Imposition of an
Operations Fee.***

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

EXHIBIT A

**CUNDALL FARMS METROPOLITAN DISTRICT
 Schedule of Fees
 Effective May 1, 2016**

Schedule of Fees		
Fee Type	Classifications	Rate
Operations Fee – Recurring Payment	Apartment Unit	N/A
	Residential Unit	\$47.00 per unit per month
	Vacant Lot	\$11.75 per unit per month*
<p>The Due Date for each Operations Fee – Recurring Payment is the 1st day of each month. *The Operations Fee – Recurring Payment payable by a Vacant Lot shall be due and payable at such time as the infrastructure serving said Vacant Lot has received preliminary acceptance from the City of Thornton.</p>		
Operations Fee – Payment Due Upon a Transfer	Apartment Unit	N/A
	Residential Unit	\$500 per Transfer
<p>The Due Date for each Operations Fee—Payment Due Upon Transfer is the date upon which the Transfer occurs.</p>		

PAYMENTS: Payment for each fee shall be made payable to Cundall Farms Metropolitan District and sent to the following address for receipt by the Due Date:

Cundall Farms Metropolitan District
 c/o Stillwater Community Management
 5690 Webster Street
 Arvada, CO 80002

EXHIBIT B

CUNDALL FARMS METROPOLITAN DISTRICT District Boundaries

LEGAL DESCRIPTION FOR CUNDALL FARMS METROPOLITAN DISTRICT

A PORTION OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 1 SOUTH, RANGE 88 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 12, WHENCE THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 12 BEARS SOUTH 00°00'00" WEST, WITH ALL BEARINGS HEREIN BEING REFERENCED TO THIS LINE;

THENCE ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 12, SOUTH 89°11'28" EAST 30.00 FEET;

THENCE SOUTH 00°00'00" EAST 75.01 FEET TO THE POINT OF INTERSECTION OF THE EAST RIGHT-OF-WAY OF YORK STREET, AS CREATED BY ROAD PETITION NO. 501 AND THE SOUTH RIGHT-OF-WAY OF 160TH AVENUE (U.S. HIGHWAY NO. 7), AS RECORDED IN BOOK 1140 AT PAGE 280 OF THE RECORDS OF ADAMS COUNTY AND THE POINT OF BEGINNING;

THENCE ALONG SAID SOUTH RIGHT-OF-WAY OF 160TH AVENUE SOUTH 89°11'28" EAST 2654.99 FEET TO THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 12;

THENCE ALONG SAID EAST LINE SOUTH 00°11'43" WEST 2533.18 FEET TO THE NORTH RIGHT-OF-WAY OF 156TH AVENUE AS CREATED BY ROAD PETITION NO. 561;

THENCE ALONG SAID NORTH RIGHT-OF-WAY NORTH 89°28'02" WEST 1405.89 FEET;

THENCE CONTINUING ALONG SAID NORTH RIGHT-OF-WAY SOUTH 66°39'58" WEST, 74.15 FEET TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 12;

THENCE ALONG SAID SOUTH LINE NORTH 89°28'02" WEST 346.20 FEET TO THE NORTH RIGHT-OF-WAY OF SAID 156TH AVENUE;

THENCE ALONG SAID NORTH RIGHT-OF-WAY NORTH 71°04'02" WEST 95.04 FEET;

THENCE CONTINUING ALONG SAID NORTH RIGHT-OF-WAY NORTH 89°28'02" WEST 738.13 FEET TO THE POINT OF INTERSECTION OF SAID NORTH RIGHT-OF-WAY AND THE EAST RIGHT-OF-WAY OF SAID YORK STREET;

THENCE ALONG SAID EAST RIGHT-OF-WAY NORTH 00°00'00" WEST 2546.05 FEET TO THE POINT OF BEGINNING,

CONTAINING 154.818 ACRES (6,743,889 SQUARE FEET), MORE OR LESS.

KENNETH D. BAKER
COLORADO LICENSED PROFESSIONAL LAND SURVEYOR No. 15606
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.

