

**RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
HAWTHORN METROPOLITAN DISTRICT**

Establishing Guidelines for the Processing and Collection of Delinquent Covenant Charges

WHEREAS, Hawthorn Metropolitan District (the “**District**”) is a quasi-municipal corporation and political subdivision of the State of Colorado; and

WHEREAS, Golden Peaks, LLC (the “**Developer**”) recorded those certain Covenants and Restrictions of Hawthorn, in the real property records of the Clerk and Recorder of Jefferson County, Colorado at Reception No. 2013012640, on February 1, 2013 (the “Covenants”); and

WHEREAS, via that certain Assignment of Rights Under Covenants and Restrictions between the District and Hawthorn Metropolitan District No. 1 (the “**District No. 1**”), dated as of December 7, 2015, and recorded in the real property records of the Clerk and Recorder of Jefferson County, Colorado on December 16, 2015, at Reception Number 2015133231 (the “**District Assignment**”), District No. 1 assigned its rights and obligations under the Covenants to the District; and;

WHEREAS, pursuant to that certain Assignment of Covenant Enforcement Authority between the Developer and the District, dated as of February 1, 2016 (the “**Developer Assignment**”), the Developer assigned enforcement authority under the Covenants to the District, as it relates to enforcement actions which would otherwise be taken by the ARC (as defined in the Covenants); and

WHEREAS, pursuant to the Covenants, the District is permitted to send demand letters and notices, levy and collect fines and interest, impose liens, and negotiate, settle and take any other actions with respect to any violations or alleged violations of the Governing Documents (as defined below), as more fully provided in the Covenants; and

WHEREAS, pursuant to the Covenants, the District Assignment and the Developer Assignment, collectively, the District is authorized to fully enforce all terms of the Governing Documents; and

WHEREAS, Hawthorn Metropolitan District No. 2 changed its name to Hawthorn Metropolitan District on July 8, 2022; and

WHEREAS, the Board of Directors (the “**Board**”) of the District is authorized to promulgate adopt, enact, modify, amend, repeal, and re-enact rules and regulations concerning and governing the Property (as that term is defined in the Covenants) (the “**Rules and Regulations**”); and

WHEREAS, the Board established policies, procedures and penalties for violations of the Covenants, any guidelines, rules and regulations, and other policies and procedures of the District,

as the same may be adopted, amended and supplemented from time to time (collectively, the “**Governing Documents**”).

WHEREAS, pursuant to the terms and conditions of the District’s Resolution Regarding Policies, Procedures and Penalties for the Enforcement of the Governing Documents, dated September 9, 2024, the District is permitted to send demand letters and notices, levy and collect fines and interest, impose liens, and negotiate, settle and take any other actions with respect to any violations or alleged violations of the Covenants and/or the District’s rules and regulations (any such fines imposed or other applicable charges or expenses incurred by the District in relation to any covenant or rule enforcement with respect to any owner collectively referred to herein as “**Covenant Charges**”); and

WHEREAS, by this Resolution (the “**Resolution**”), the District desires to set forth guidelines for the processing and collection of unpaid and/or delinquent Covenant Charges imposed by the District, together with any and all Late Fees, Interest, Penalties and Costs of Collections (each defined separately in this Resolution, and collectively, the “**Delinquency 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 Covenant Charges and Delinquency Charges and any deviation from the guidelines shall not affect the status of the Lien (as defined below) in any way; and

WHEREAS, on June 6th, 2022, the Board adopted the Third Amended and Restated Resolution of the Board of Directors of the Hawthorn Metropolitan District No. 2 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 adopts this Resolution and the following policies and procedures:

1. **Statement of Lien Guidelines:**

a. ***Perpetual Lien.*** Pursuant to § 32-1-1001(1)(j)(I), C.R.S., all delinquent Covenant Charges and Delinquency 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.

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 Covenant Charges and Delinquency 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. ***Manager Procedures.*** The District’s manager, accountant or billing agent (any of which are referred to herein as the “**Manager**”) is responsible for collecting Covenant Charges imposed by the District against the Property. In the event payment of any Covenant Charges is delinquent, the Manager may perform the procedures listed below. Covenant Charges are considered delinquent when they have not been paid within thirty (30) days of being imposed. (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 of the Property according to the Manager’s records, which may (1) request prompt payment; (2) notify the Property owner that a Reminder Letter Fee and a Late Fee 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. 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; (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**”). The Manager may deviate from the mailing destinations as included in the Property Address if requested by the Property owner in writing.

ii. *Fifteen (15) Calendar Days From the Date of the Reminder Letter:* A “Warning Letter” may be sent to the Property Address: (1) requesting prompt payment; (2) notify the Property owner that a Warning Letter Fee set forth in this Resolution has been assessed; (3) warning of further legal action should the Property owner fail to pay the total amount due and owing; and (4) 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. *Ten (10) Calendar Days from the Date of the Warning Letter:* Once the total amount of delinquent Covenant Charges and Delinquency Charges owing on the Property has exceeded \$400.00 regardless of whether the Manager has performed the tasks outlined in Section 1(b) of this Resolution, the Manager may refer the Delinquent Account to the District’s legal counsel engaged for covenant enforcement matters (“**Special Counsel**”). At the time of such referral, the Manager may be requested to provide Special Counsel with copies of all notices and letters sent pursuant to Section 1(b), if any, as well as a copy of the most recent ledger for the Delinquent Account.

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

i. *Upon Referral of the Delinquent Account From the Manager:* A “Demand Letter” may be sent to the Property Address, notifying the Property owner that the Property has been referred to Special Counsel for further collections enforcement, including the filing of a statement of lien against the Property. Along with the Demand Letter, a copy of the most recent account ledger reflecting the total amount due and owing the District according to the records of the Manager may also be sent.

ii. *No Sooner than Thirty (40) Calendar Days from the Date of the Demand Letter:* A Notice of Intent to File a Statement of Lien, along with a copy of the statement of lien to be filed, may be sent to the Property Address of the Delinquent Account notifying the Property owner that a statement of lien will be recorded with the clerk and recorder of the county (the “**Clerk and Recorder**”) within no sooner than ten (10) days from the postmark date of the Notice of Intent to File a Statement of Lien.

iii. *No Sooner than Ten (10) Calendar Days from the Date of the Notice of Intent to File a Statement of Lien:* A Statement of Lien for the total amount due and owing as of the date of the Statement of Lien may be recorded against the Property with the Clerk and Recorder no sooner than ten (10) days from the postmark date of the Notice of Intent to File a Statement of Lien is sent to the Property. Notwithstanding the amount due and owing reflected on the Statement of Lien, all delinquent Covenant Charges and Delinquency Charges will continue to accrue on the Delinquent Account and will run with the Property until the total amount due and owing the District is paid in full.

d. ***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 Special Counsel in order to avoid unnecessary, costly and time-consuming procedures. Upon referral of the Delinquent Account to Special Counsel, Special Counsel may, in his or her discretion, immediately file a Statement of Lien on the Property.

2. **Late Fees:**

a. Late Fees are assessed on the Property for failure to make timely payments of Covenant Charges.

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 Covenant Charge 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 Covenant Charges until the Late Fee equals Twenty Five Percent (25%) of all outstanding Covenant Charges.

c. Partial payment of any outstanding delinquent Covenant Charges and Delinquency 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 Covenant Charges; (6) any successive unpaid Covenant Charges in

chronological order from the earliest unpaid Fees to the most recently imposed Covenant Charges.

3. **Interest:** Interest charges accrue on all delinquent Covenant Charges at the maximum statutory rate of Eighteen Percent (18%) per annum. Interest shall not accrue and be charged on Late Fees, Interest or Costs of Collections. § 29-1-1102, C.R.S.

4. **Penalties:** “**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:** “**Costs of Collection**” include, but are not limited to, attorneys’ fees and all other costs, fees and charges associated with the processing and/or collection of delinquent Fees, Covenant Charges, including fixed and/or hourly rates imposed by the management company for associated work and hourly and fixed fees imposed by Special Counsel. 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 Special 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 Special Counsel, in its discretion, determines that such waiver or reduction will facilitate the payment of delinquent Covenant Charges and Delinquency Charges. Notwithstanding the foregoing, neither the Manager nor Special Counsel shall have the authority to waive Late Fees and Interest which, in the aggregate, exceed 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 Special Counsel is authorized to waive any portion of the Costs of Collections. Should the Property owner desire a waiver of 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, the District’s general legal counsel (“**General Counsel**”) or Special Counsel, whether related to the Property in question or other properties within the District.

7. **Payment Plans:** The Manager and Special Counsel each have the authority to enter into or establish payment plans for the repayment of a Delinquent Account. Should the Manager or Special 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 § 32-1-1004.5(3)(b)(III), C.R.S., the Board may elect to certify any delinquent Covenant Charges and related Delinquency Charges satisfying the criteria established therein to the county Treasurer's Office for collection with the District's ad valorem property taxes. The certification process may be performed by the Manager, Special Counsel or General Counsel in addition to or in lieu of any procedures set forth in this Resolution in the Board's sole discretion. The fees for the certification process shall be in accordance with Colorado law and the county's policy.

9. **Ratification of Past Actions:** All acts, omissions, waivers and/or payment plans heretofore undertaken by the Manager or Special 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.

10. **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.

11. **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.

12. **Prior Outstanding Fees:** Any fees, rates, tolls, penalties or charges due under the Prior Policy, to the extent outstanding and unpaid, shall remain in effect until fully paid and shall not be eliminated hereby

13. **Supersedes Prior Resolutions:** This Resolution shall supersede and replace in their entirety all prior resolutions addressing the processing and/or collection of delinquent Covenant Charges and Delinquency Charges. 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.

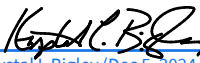
14. **Severability:** If any term, condition or provision of this Resolution shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such term, condition or provision shall not affect any other provision contained in this Resolution, the intention being that 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 Covenant Charges and Delinquency Charges as a perpetual Lien. Failure by the Manager, General Counsel or Special 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 Covenant Charges and Delinquency Charges.

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APPROVED AND ADOPTED this December 2, 2024.

Hawthorn Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado

By: 
Krystal L. Bigley (Dec 5, 2024 07:15 MST)
Officer of the District

Attest:

By: 
Stephen Daniels (Dec 3, 2024 17:02 MST)

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law



General Counsel to the District