

HERITAGE RIDGE METROPOLITAN DISTRICT

A RESOLUTION ESTABLISHING GUIDELINES FOR THE PROCESSING AND COLLECTION OF DELINQUENT FEES AND CHARGES

RECITALS

- A. The Heritage Ridge Metropolitan District (the “**District**”) is a quasi-municipal corporation and political subdivision of the State of Colorado and a duly organized and existing special district pursuant to Title 32, Article 1, C.R.S.
- B. Pursuant to Section 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 (each property individually referred to herein as a “**Property**”) within and without the District’s boundaries.
- C. Pursuant to Section 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.
- D. By this Resolution (this “**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 and, collectively, the “**Delinquent Fees and Charges**”).
- E. The guidelines set forth in this Resolution are intended to authorize all collection methods available to the District, including traditional collection services and pursuing legal remedies.
- F. 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 but any deviation from the guidelines shall not affect the status of the Lien (as defined below) in any way.
- G. On November 12, 2018, the Board adopted a Resolution Establishing a Fine Policy and Schedule (the “**Prior Policy**”), and the Board desires to adopt this Resolution to amend and replace the Prior Policy to the extent that the Prior Policy relates to the collection of delinquent fees and charges and to the extent of any provisions inconsistent with this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Heritage Ridge Metropolitan District as follows:

1. Incorporation of Recitals. The foregoing Recitals are incorporated herein by reference as the findings of the Board.

2. District's Manager Procedures.

(a) The District's Manager, Accountant, Billing Agent, or any other designated entity (any of which are referred to herein as the "**Manager**") is responsible for collecting Fees imposed by the District against each Property. If the payment of Fees is not made by their corresponding due date, such Fees are delinquent and the Manager may perform the procedures listed below to recover against such accounts (each a "**Delinquent Account**"), including but not limited to: (1) filing a statement of lien, (2) utilizing collection agencies, and (3) pursuing legal action in Small Claims Court.

3. Statement of Lien Guidelines.

(a) **Perpetual Lien.** Pursuant to Section 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) **Procedures for Lien Guidelines.**

(i) **Fifteen Calendar Days Past Due:** When any amount is at least 15 days past due, a delinquent payment "**Reminder Letter**" shall be sent to the address(es) of the last known owner of record of the Property on file with the Manager's records. In the event the above mailing is returned as undeliverable, the Manager may as a courtesy (but is not required to) send a second copy of the Reminder

Letter to 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 Owner 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.

(ii) *Fifteen Calendar Days from the Postmark Date of the Reminder Letter:* A "**Warning Letter**" may be sent to the Property Owner 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) *Delinquent Account Post Warning Letter:* Once the total amount of Delinquent Fees and Charges owing on the Property has reached or exceeded \$300, regardless of whether the Manager has performed all of the tasks outlined in Section 3(b)(i) and (ii) of this Resolution, 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 Section 3(b), 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) *Upon Referral of the Delinquent Account from the Manager:* A "**Demand Letter**" may be sent to the Property Owner Address, notifying the Property owner that the Property has been referred to General 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 Calendar Days from the Postmark 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 where the Property is located (the

“**Clerk and Recorder**”) within no sooner than ten days from the postmark date of the Notice of Intent to File a Statement of Lien.

(iii) *No Sooner than Ten Calendar Days from the Postmark 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 days from the postmark date of the Notice of Intent to File a Statement of Lien sent to the Property Owner Address. Notwithstanding the amount due and owing reflected on the Statement of Lien, all Delinquent Fees and 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 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 \$1,000 or greater, General Counsel is hereby authorized to commence foreclosure action against the Property. 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.

4. Utilizing Collection Agencies.

(a) Additionally, once the total amount of Delinquent Fees and Charges owing on the Property has exceeded \$300, the Manager may refer the Delinquent Account to a third-party collection agency to collect the Delinquent Fees and Charges on behalf of the District, in addition to any fees or charges incurred by the third-party collection agency, including but not limited to costs of collections as outlined in Section 9 below.

5. Pursuing Legal Action in Small Claims Court.

(a) Furthermore, once the total amount of Delinquent Fees and Charges owing on the Property has exceeded \$300, the Manager may pursue legal action in the Small Claims Division in Colorado County Court for Larimer County to enforce restrictive covenants on residential property pursuant to Colo. R. Sm. Clm. Ct. P. 521.

6. 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 calendar days from the payment due date. Pursuant to Section 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 \$15 may be assessed on the Property per each assessment or installment of Fees not fully paid prior to the fifteenth calendar day following the payment due date; or

(ii) In lieu of Section 6(b)(i) above, a Late Fee of 5% per month, commencing on the fifteenth calendar day following the payment due date, and each month thereafter, may be charged on unpaid Fees until the Late Fee equals 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 3.

(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.

7. Interest: Interest charges accrue on all delinquent Fees at the maximum statutory rate of 18% per annum. Interest shall not accrue and be charged on Late Fees, Interest or Costs of Collections under Section 29-1-1102, C.R.S.

8. Penalties. Penalties may be charged on Delinquent Accounts shall include, but are not limited to, pro-rated costs associated with collection efforts on

behalf of the District for all Delinquent Accounts combined and may include additional reasonable amounts established by the Board.

9. Costs of Collections.

(a) Costs of collection 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.

(b) *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:

(i) *Reminder Letter Fee:* \$10 per Reminder Letter. This action is typically performed by the Manager.

(ii) *Warning Letter Fee:* \$10 per Warning Letter sent. This action is typically performed by the Manager.

(iii) *Return Check Fee:* \$35 per returned payment.

(iv) *Attorney Transfer Fee:* \$30 per Delinquent Account transferred from the Manager to General Counsel. This action is performed by the Manager.

(v) *Demand Letter Fee:* \$150 per Demand Letter sent. This action is performed by General Counsel.

(vi) *Follow up Demand Letter Fee:* \$50 per Follow up Demand Letter sent. This action is performed by General Counsel.

(vii) *Notice of Intent to File a Statement of Lien Fee:* \$120 per Notice of Intent to File a Statement of Lien sent. This action is performed by General Counsel.

(viii) *Lien Recording Fee:* \$150 per each lien recorded on the Property. This action is performed by General Counsel.

(ix) *Payment Plan Fee:* \$250 per Payment Plan prepared. This action is performed by General Counsel.

(x) *Default Letter Fee:* \$70 per Default Letter prepared. This action is performed by General Counsel.

(xi) *Monitoring Bankruptcy Fee:* \$100 for monitoring Chapter 7 bankruptcies and \$350 for monitoring Chapter 13 or Chapter 11 bankruptcies. These actions are performed by General Counsel.

(xii) *Monitoring Public Trustee Foreclosure Fee:* \$200 per Public Trustee Foreclosure action monitored. This action is performed by General Counsel.

(xiii) *Attorney Reminder Letter Fee:* \$100 per Reminder Letter. This action is performed by General Counsel.

(xiv) *Certificate of Status Fee:* \$100 per Status Letter prepared. This action is performed by General Counsel.

(xv) *Foreclosure Warning Letter Fee:* \$100 per Foreclosure Warning Letter prepared. This action is performed by General Counsel.

(xvi) *Lien Release Fee:* \$150 per lien that is released. This action is performed by General Counsel. It is recommended that the Lien Release Fee be charged to the Delinquent Account at the same time as the Lien Recording Fee.

(c) *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, 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. Such hourly attorneys' fees and costs may be reduced or waived by the General Counsel if the addition of those fees and costs would be overly burdensome in light of the amount of the delinquent Account.

(d) *Recovery of Costs of Collections.* In accordance with Section 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.

10. 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 their 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 \$1,000. In such case, the person or entity owing in excess of \$1,000 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, he or she 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 10(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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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. In particular, any provision in the Prior Policy which authorized the Board to consider matters related to Delinquent Fees and Charges and violations of covenants and rules and regulations of the District in executive session in contravention of the Colorado Open Meetings Law, Title 24, Article 6, Part 4, C.R.S., is superseded and replaced in its entirety. The Board may only consider matters related to Delinquent Fees and Charges and violations of covenants and rules and regulations of the District in executive session if authorized by said Colorado Open Meetings Law.

17. 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.

18. 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.

19. Effective Date. This Resolution shall take effect and be enforced immediately upon its approval by the Board.

ADOPTED this 1st day of December, 2021.

Heritage Ridge Metropolitan District

By Andrew Hrycyk
Andrew Hrycyk (Dec 8, 2021 12:45 EST)
Andrew Hrycyk, Chairman

Attest:



Alex Carlson, Secretary