

**RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
HERITAGE TODD CREEK METROPOLITAN DISTRICT**

**Establishing Guidelines for the Processing and Collection of Delinquent Fees
Effective January 1, 2018**

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

WHEREAS, pursuant to § 32-1-1001(l)(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 to properties within and without (each property individually referred to herein as the “**Property**”) the District's boundaries; and

WHEREAS, the District has adopted various fees, rates and charges, including the District’s Common Area Maintenance and Management Fee related to the maintenance and management of District common areas imposed on residential units and vacant lots on a monthly basis and collected on a quarterly basis (the “**M&M Fee**”), pursuant to the Fourth Amended and Restated Resolution dated April 15, 2015 (as modified by Fee Resolution dated January 22, 2018), and other charges related to the collection of District accounts pursuant to the District’s Fee Resolution and its attached Fee Schedule adopted January 22, 2018 and recorded with the Adams County Clerk and Recorder at Reception No. 2018000009227 (referred to herein as District “**Fee**” or “**Fees**”); and

WHEREAS, by this Resolution (the “**Resolution**”), the District desires to set forth guidelines for the processing and collection of delinquent M&M Fees, and, the interest, late fees, and collection fees and costs referenced herein, (collectively, the “**Delinquent Fees**”); and

WHEREAS, notwithstanding anything in this Resolution to the contrary, the guidelines set forth in this Resolution are intended to create orderly, timely and fair procedures for the processing and collection of Delinquent Fees, in order to protect the health, safety, and welfare of the District and its constituents; however, any deviation from these guidelines shall not affect the status of the Lien (as defined herein) in any way; and

WHEREAS, the Board previously adopted a resolution regarding a policy for the collection of delinquent accounts dated January 20, 2016, and the Board now desires to make certain modifications to such policy; and

WHEREAS, by this Resolution the Board hereby desires to establish the revised guidelines for the processing and collection of Delinquent Fees (“**2018 Collections Policy**”), which shall supersede and replace any and all collections policies previously adopted.

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 attached to a Property served by the District shall constitute a perpetual lien on and against the Property (“**Lien**” or “**Liens**”). All such Liens shall, to the fullest extent permitted by law, have priority over all other liens of record affecting the Property, run with the Property, and remain in effect until the Delinquent Fees establishing such Liens are 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 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 (“**Manager**”) is responsible for collecting Fees imposed by the District against the Property. Fees are considered “delinquent” when they have not been paid by their corresponding due date, at which time the amount of such Fees shall be transferred to a delinquent account for the Property (“**Delinquent Account**”). The Manager shall perform the following procedures to effect collection of Delinquent Fees on a Delinquent Account:

i. ***Reminder Letter.*** Fifteen (15) calendar days after an M&M Fee is transferred to a Delinquent Account, the Manager shall send a delinquent payment “Reminder Letter” to the address of the last known owner or occupant of the Property per the Manager’s records. In the event the above mailing is returned undeliverable, the Manager shall send a second copy of the Reminder Letter to: (1) the Property address, and, (2) the address of the last known owner of the Property as found in the real property records of the Adams County Assessor’s Office. The Reminder Letter shall: (1) provide an invoice of the Property’s Delinquent Fees for the Delinquent Account; (2) request prompt payment of the Delinquent Fees; (3) notify the addressee(s) that a Late Fee, and, a fee for the Reminder Letter have been assessed to the Property’s Delinquent Account (the Late Fee and Reminder Letter fee shall be included on the attached invoice); and, (4) reference how the addressee may access a copy of this Resolution.

ii. ***Warning Letter.*** Fifteen (15) calendar days from the postmark date of a delivered Reminder Letter, the Manager shall send a “Warning Letter” to the same address(es). The Warning Letter shall: (1) provide an invoice of the Property’s Delinquent Fees for the Delinquent Account; (2) request prompt payment of all Delinquent Fees; (3) notify the addressee(s) that a fee for the Warning Letter has been assessed to the Property’s Delinquent Account (the Warning Letter fee shall be included on the attached invoice); (4) warn the

addressee(s) that further action by the District's legal counsel may be taken if the Property owner does not pay all Delinquent Fees on the Delinquent Account; and, (5) reference how the addressee(s) may access a copy of this Resolution.

iii. *Manager Demand Letter.* Fifteen (15) calendar days from the postmark date of the Warning Letter, the Manager shall send a "Manager Demand Letter" to the same address(es). Said Manager Demand Letter shall: (1) provide an invoice of the Property's Delinquent Fees for the Delinquent Account; (2) request prompt payment of all Delinquent Fees; (3) notify the addressee(s) that a fee for the Manager Demand Letter has been assessed to the Property's Delinquent Account (the Manager demand letter fee shall be included on the attached invoice); (4) notify the addressee(s) that the Delinquent Account will be referred to the District's general counsel for further legal action if all Delinquent Fees are not paid within fifteen (15) calendar days of the postmark of the Manager Demand Letter; and, (5) reference how the addressee(s) may access a copy of this Resolution.

c. *Transfer to General Counsel and General Counsel Procedures.* At least fifteen (15) calendar days after the date of the Manager Demand Letter, but no later than the occurrence of: (1) the total amount of Delinquent Fees in a Delinquent Account exceeding Three Hundred Dollars (\$300.00), (2) a Delinquent Account being two (2) quarters in arrears, or (3) under the circumstances outlined in Section 1(d) of this Resolution, the Manager shall transfer the Delinquent Account to the District's general counsel for further collection efforts. At the time of the transfer, the Manager shall provide general counsel with copies of all letters referenced above and a current invoice for the Delinquent Account. A fee for the transfer to general counsel shall be assessed to the Delinquent Account. Upon such transfer, general counsel shall perform the following procedures:

i. *Attorney Notice of Intent to Lien Letter.* Upon the transfer of a Delinquent Account to the District's general counsel, unless referred pursuant to Section 1(d) of this Resolution, the attorney shall send a "Notice of Intent to Lien" Letter to the same address(es) used for the Manager Demand Letter. The Notice of Intent to Lien Letter shall: (1) provide an invoice of the Delinquent Fees on the Delinquent Account; (2) notify the addressee(s) that a fee for the transfer of the Delinquent Account to the District's general counsel has been assessed to the Delinquent Account (the transfer fee shall be included on the attached invoice); (3) request prompt payment of all Delinquent Fees; (4) notify the addressee(s) that, if Delinquent Fees are not paid in full within thirty (30) calendar days of the postmark date of the Notice of Intent to Lien Letter, a Statement of Lien may be recorded against the Property (a draft copy of the Statement of Lien shall be attached to the letter); and, (5) reference how the addressee(s) may access a copy of this Resolution.

ii. *Statement of Lien.* If the Delinquent Fees and Charges for the Delinquent Account are not paid in full within thirty (30) days of the Notice of Intent to Lien Letter's postmark, general counsel may record with the Adams County Clerk and Recorder a "Statement of Lien" against the Property for the total amount of Delinquent Fees due and owing as of the date the Statement of Lien is recorded. Notwithstanding the amount due and owing reflected on the recorded Statement of Lien, all Delinquent Fees will continue to accrue on the Delinquent Account and constitute a perpetual Lien on the Property, which will run with the Property until all Delinquent Fees are paid in full.

In addition to the procedures set forth above, in the event that a payment on a Delinquent Account is returned due to insufficient funds, the Board may direct general counsel to immediately record a Statement of Lien for the total amount of the Delinquent Account's Delinquent Fees.

iii. *Release of Statement of Lien.* Upon payment in full of all Delinquent Fees for a Delinquent Account, including applicable recording fees, a release of the Statement of Lien may be recorded against the Property.

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 shall refer the Delinquent Account directly to the District's general counsel in order to avoid, costly and time consuming procedures. Upon referral, general counsel may immediately record a Statement of Lien against the Property, and the costs associated with recording the Statement of Lien shall be assessed to the Delinquent Account.

2. **Late Fee:**

a. *Late Fee.* Pursuant to the District's Fee Schedule, a late fee in the amount of fifteen dollars (\$15.00) shall be assessed on the Property's Delinquent Account for failure to timely pay an M&M Fee (the "Late Fee").

b. *Assessment of Late Fee.* The Late Fee shall be assessed on the Property's Delinquent Account fifteen (15) calendar days after an M&M Fee becomes delinquent.

3. **Interest:** "Interest" charges shall accrue on all delinquent M&M Fees at the maximum statutory rate of Eighteen Percent (18%) per annum. Interest shall be assessed and accrue on a delinquent M&M Fee amount due until the amount is paid in full. Interest shall not accrue and be charged on any Late Fee, Costs of Collection, or any other amount other than the delinquent M&M Fee amount due.

4. **Costs of Collection:**

a. *Costs of Collection.* The District has established a schedule of fees for various collection-related services related to Delinquent Accounts for performance by its Manager (the "Collection Services Fees"), and may further use its Manager and legal counsel services to assist in collection of Delinquent Accounts as may be necessary, (the Collection Services Fees and further use of Manager and legal counsel services are collectively, the "Costs of Collection"). The Board hereby identifies the following Costs of Collection for assessment to a Delinquent Account:

i. *Manager Collection Services Fees.* Through the services provided by its Manager, the District shall impose and collect the applicable Collection Services Fees set forth in the District's Fee Schedule for the collection-related activities conducted by the Manager pursuant to Section 1(b)(i) - (iii) and Section 1(c) of this Resolution.

ii. *Other Manager Costs of Collection.* The District may assess to a Delinquent Account other fees and charges to the District incurred via the Manager's efforts to collect or defend the Delinquent Account, including but not limited to the Returned Payment Fee set forth in the District's Fee Schedule.

iii. *Attorney Costs.* Actual fees and costs for extraordinary legal services provided by general counsel for the collection of Delinquent Accounts may be assessed to a Delinquent Account at the direction of the Board.

5. Waiver of Late Fee, Interest and/or Cost of Collection Fees:

a. *Waiver of Late Fee and/or Interest.* The Manager and general counsel each have authority to waive or reduce a Late Fee and/or Interest charges assessed to a Delinquent Account if either determines that such waiver or reduction will facilitate payment of all remaining Delinquent Fees for the Delinquent Account. In the event that a Delinquent Account's Delinquent Fees exceeds One Thousand Dollars (\$1,000.00), the Manager and general counsel shall not have discretion to waive or reduce any Late Fee or Interest charges on a Delinquent Account. The Property owner may make a written request for waiver or reduction of a Late Fee and/or Interest charges to the Board, and, the Board may determine, in its sole discretion, to waive or reduce a Late Fee and/or Interest charges.

b. *Waiver of Costs of Collection.* The Manager and general counsel shall have no authority to waive or reduce Costs of Collection assessed to a Delinquent Account. Upon a Property owner's written request to the Board, the Board may, in its sole discretion, waive or reduce any Costs of Collection assessed to a Delinquent Account.

c. *Waiver by Inaction.* If the Manager fails to perform a procedure pursuant to Section 1(b)(i) - (iii) or 1(c) of this Resolution within fifteen (15) calendar days of the date the Manager is instructed to perform the procedure, the Costs of Collection for the procedure may not be assessed to the Delinquent Account. For example, a Manager is instructed to send a Warning Letter fifteen (15) calendar days after the preceding Reminder Letter's postmark. If the Manager fails to send the Warning Letter within fifteen (15) calendar days (i.e. thirty (30) calendar days from the Reminder Letter's postmark), the associated Collection Services Fee shall be waived and shall not be assessed to the Delinquent Account. However, if the Manager fails to timely send a Warning Letter and the associated fee is waived, the Collections Services Fee for a subsequent Manager Demand Letter may be assessed if the Manager Demand Letter is sent within fifteen (15) days of the date the Manager is instructed to send the Manager Demand Letter.

d. *Effect of Waiver.* Any waiver or reduction of a Late Fee, Interest, or Costs of Collection granted pursuant to Section 5 (a) - (c) of this Resolution shall not be construed as a waiver or reduction of any other Late Fee, Interest, or Costs of Collection existing at that time or assessed subsequently. Any such waiver or reduction shall not be construed as a promise to waive or reduce existing or subsequent Late Fees, Interest, or Costs of Collection, 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 Property served by the District.

6. **Payment:**

a. ***Application of Payments.*** Payments made on a Delinquent Account shall be applied to the Delinquent Fees in the following order of priority: (1) Late Fee; (2) Interest; (3) Costs of Collection; and, (4) delinquent M&M Fee amount. If a Property has multiple Delinquent Accounts, a payment shall first be applied to the oldest Delinquent Account, in the order of priority listed above, with any remaining payment amount to be applied to the next oldest Delinquent Account in the order of priority listed above.

b. ***Partial Payment.*** A partial payment towards an outstanding Fee or Delinquent Fees for a Delinquent Account will not prevent the imposition of a Late Fee, Interest, or Cost of Collection Fees associated with the remaining amount due.

c. ***Prepayment.*** A Property owner may prepay a Fee. Any such prepayment shall create a credit balance on the Property's account and Fees imposed shall be deducted from the credit balance. If the credit balance is not sufficient to pay a Fee in full, the remaining balance of the Fee shall be paid prior to the Fee payment's due date. Any overpayment of an outstanding Fee or overpayment of a Delinquent Account's Delinquent Fees shall be considered as a prepayment and be credited to the Property's account.

d. ***Payment Plans.*** A Property owner may request a payment plan for payment of Delinquent Fees. The Manager and general counsel each have the authority to enter into or establish payment plans. The Manager may enter into a payment plan during the time it performs the procedures in Section 1(b) of this Resolution and general counsel may enter into a payment plan at any time after the Manager refers a Delinquent Account to general counsel pursuant to Section 1(c) of this Resolution. Should the Manager or general counsel elect not to grant a payment plan for a Property's Delinquent Account, the Property owner may submit a written request to the Board, and the Board, in its sole discretion, may determine whether to grant the payment plan. The Manager shall administer payment of all payment plans and the Payment Plan Agreement Fee set forth in the Fee Schedule. Upon the full performance of a payment plan, Interest charges that would have otherwise been charged during the payment plan period shall be waived.

7. **Foreclosure of Lien:** Upon the Board's official determination and written instruction to general counsel, which shall be at the Board's sole discretion, general counsel shall foreclose the Lien on a Property in accordance with Colorado Law. No foreclosure proceeding for a Lien on Property shall be initiated on behalf of the District without official Board action authorizing the same.

8. **Ratification of Past Action:** All acts, omissions, waivers and/or payment plans heretofore undertaken by the Manager or general counsel that would have otherwise been authorized by the preceding collection policies of the District are hereby affirmed, ratified and made effective as of the date said acts, omissions, waivers and/or payment plans occurred.

9. **Effect on Prior Resolutions:** This Resolution shall supersede and replace any other preceding resolutions regarding the District's collection of Delinquent Fees and Charges.

To the extent that this Resolution conflicts with any term or provision of a previously enacted resolution of the District, the term or provision in this Resolution shall prevail.

10. **Additional Actions:** The Board directs the District's 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. **Severability:** If any term, condition or provision of this Resolution is held to be illegal, invalid or unenforceable, the invalidity or unenforceability of such term, condition or provision shall not affect any other term, condition or provision contained in this Resolution, the intention being that the terms, conditions and provisions of this Resolution are severable. In addition, in lieu of such invalid or unenforceable term, condition or provision, there shall be automatically added as part of this Resolution, a replacement term, condition or provision as similar as possible to the illegal, invalid or unenforceable one but such that it results in the replacement being legal, valid and enforceable.

12. **Savings Provision:** The failure to comply with the procedures set forth herein shall not affect the status of properly assessed Delinquent Fees as a perpetual Lien subject to foreclosure in accordance with Colorado 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.

ADOPTED this 22nd day of January, 2018.

HERITAGE TODD CREEK METROPOLITAN DISTRICT:



President of the District

ATTEST:



Secretary/Assistant Secretary