

After Recording, Return to:
WHITE BEAR ANKELE TANAKA & WALDRON
2154 East Commons Avenue, Suite 2000
Centennial, Colorado 80122

Resolution No. 2017-05-01

**FIFTH AMENDED AND RESTATED RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
ESTANCIA METROPOLITAN DISTRICT**

**CONCERNING THE IMPOSITION OF OPERATIONS FEE AND CAPITAL
FACILITIES FEE**

WHEREAS, the Estancia Metropolitan District (the “**District**”) was formed pursuant to §§ 32-1-101, *et seq.*, C.R.S., as amended (the “**Special District Act**”), by order of the District Court for Arapahoe County, Colorado, and after approval of the District’s eligible electors at an election; 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 on-site detention ponds, on-site retention ponds, temporary and permanent water quality control improvements, streetscape improvements, mosquito and pest control improvements and individual sewage disposal systems (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 and snow removal, covenant enforcement and individual sewage disposal system services (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 such fees, rates, tolls, penalties and charges are 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, construction, installation, 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 Fees, 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 establishment of a fair and equitable fee (the “**Capital Facilities Fee**”) to provide a source of funding to pay for the initial capital direct and indirect costs associated with the construction, installation and acquisition of the Facilities (the “**Capital Facilities Costs**”), which Capital Facilities Costs are generally attributable to each Lot (defined below), is necessary to provide for the common good and for the prosperity and general welfare of the District and its inhabitants; and

WHEREAS, the District finds that the Operations Fee and Capital Facilities Fee (as defined below), 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 Capital Facilities Costs, and that imposition thereof is necessary and appropriate; and

[WHEREAS, on October 7, 2015, the Board adopted the Fourth Amended and Restated Resolution of the Board of Directors of Estancia Metropolitan District Regarding Imposition of District Operations and Development Fees (the “**Prior Fee Resolution**”), and the Board desires to adopt this Resolution to amend and restate the Prior Fee Resolution in its entirety.

NOW, THEREFORE, be it resolved by the Board 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:

“**District Boundaries**” means the legal boundaries of the District, as the same are established and amended from time to time pursuant to §§32-1-101, *et seq.*, C.R.S., as more particularly set forth in the map and legal description attached hereto as **Exhibit B** and incorporated herein by this reference.

“**Due Date**” means the date by which the Operations Fee and Capital Facilities Fee is due, which Due Date is reflected on the Schedule of Fees.

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

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

“**Lot**” means each parcel of land established by a recorded final subdivision plat and which is located within the District Boundaries.

“**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 District Boundaries 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 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. .

b. 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.

c. 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.

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. CAPITAL FACILITIES FEE.

a. A one-time Capital Facilities Fee is hereby established and imposed upon each Residential Unit within the District Boundaries.

b. The Capital Facilities Fee shall be first due and owing as of: 1) the date of Transfer to an End User; or 2) when a Residential Unit is occupied for residential use, whichever shall first occur. The amount of each Capital Facilities Fee due hereunder shall be at the rate in effect at the time of payment.

4. LATE FEES AND INTEREST. Pursuant to § 29-1-1102(3), C.R.S., any Operations Fee and Capital Facilities 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 and Capital Facilities Fee, exclusive of assessed late fees, penalties, interest and any other costs of collection, specially 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.

5. PAYMENT. Payment for all fees, rates, tolls, penalties, charges, interest and attorney fees shall be made by check or equivalent form acceptable to the District, made payable to "Estancia 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.

6. LIEN. The fees imposed hereunder, together with any and all late fees, interest, penalties and costs of collection, 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 Arapahoe County, Colorado.

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.

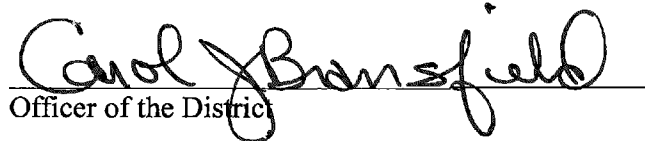
8. THE PROPERTY. This Resolution shall apply to all property within the District's boundaries, including, but not limited to, the property set forth in **Exhibit B**, attached hereto and incorporated herein by this reference, and any additional property included into the District after the date of this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

9. EFFECTIVE DATE. This Resolution shall become effective on January 1, 2017.

[Remainder of Page Intentionally Left Blank. Signature Page to Follow.]

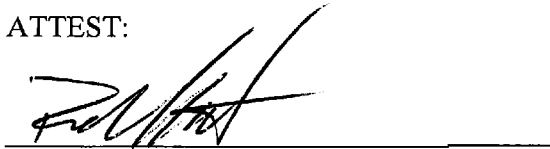
ADOPTED this 26th day of October, 2016.

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



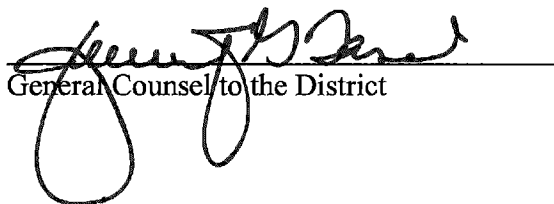
Officer of the District

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 Operations Fee and Capital
Facilities Fee*

EXHIBIT A

ESTANCIA METROPOLITAN DISTRICT

Schedule of Fees

Effective January 1, 2017

Schedule of Fees		
Fee Type	Classifications	Rate
Operations Fee	Residential Unit	\$875 twice annually
The Due Date for each Operations Fee is the 1 st day of January and July of each year. The Operations Fee for each Lot shall commence upon the initial transfer of a Lot to a builder and is 50% of the rate until the Lot is transferred to an End User at which point going forward 100% of the Operations Fee is due and owing.		
Capital Facilities Fee*	Single Family Residence	\$5,775 / Residential Unit
*As of October 26, 2016. Amount to increase by 5% on January 1, 2017, rounded to the nearest twenty-five dollars (\$25.00), and increased by 5%, compounded, on each January 1 thereafter until no Residential Units remain to be constructed within the District.		
The Due Date for each Capital Facilities Fee is: 1) the date of Transfer to an End User; or 2) when a Residential Unit is occupied for residential use, whichever shall first occur.		

PAYMENTS:

Payments for the Operations Fee shall be made payable to the Estancia Metropolitan District and sent to the following address for receipt by the Due Date:

Summit Management and Consulting, LLC
 4950 S. Yosemite St. F2-506
 Greenwood Village, CO 80111
 Phone: (303) 459-4919
 Fax: (303) 484-9742

Payments for the Capital Facilities Fee shall be made payable to the Estancia Metropolitan District and sent to the following address for receipt by the Due Date:

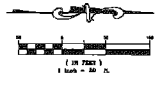
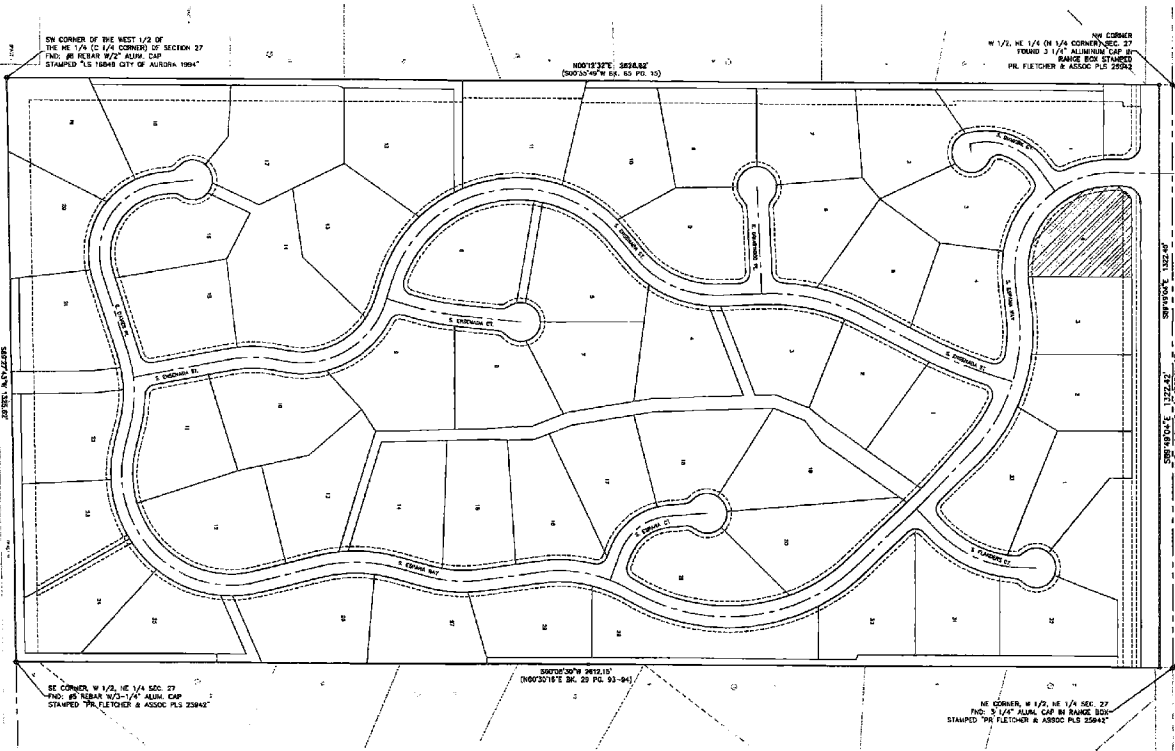
Simmons & Wheeler, P.C.
 304 Inverness Way South, Suite 490
 Englewood, CO 80112
 Phone: (303) 689-0833
 Fax: (303) 689-0834

EXHIBIT B
ESTANCIA METROPOLITAN DISTRICT
District Boundaries

ESTANCIA METROPOLITAN DISTRICT

BOUNDARY MAP

A PART OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 27,
TOWNSHIP 5 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN,
COUNTY OF ARAPAHOE, STATE OF COLORADO



NOTE: THIS MAP WAS CREATED USING THE BOUNDARY AND DATA USED IN THE SURVEY OF ESTANCIA SUBDIVISION PLANS NO. 1, KNOWN AS ESTANCIA SUBDIVISION PLANS NO. 2, LOT 4, BLOCK 1 OF ESTANCIA PLANS NO. 2 IS EXCLUDED FROM THE DISTRICT BOUNDARY.

LEGEND
 LOT 4 NOT INCLUDED IN DISTRICT BOUNDARY

SHEET 1 OF 1

2008 N. SUPER BLVD., SUITE 200
 DENVER, COLORADO 80202
 (303) 733-1100
 WWW.PEAKSURVEYING.COM

LGID# 6535 DATE: 12/22/08