

RESOLUTION NO. 2014-06-01

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

**RESOLUTION ADOPTING THE POLICIES AND PROCEDURES GOVERNING THE
ENFORCEMENT OF THE PROTECTIVE COVENANTS AND EASEMENTS OF
CANDELAS AND THE LANDSCAPE COVENANTS OF
CERTAIN LOTS IN CANDELAS**

WHEREAS, the Cimarron Metropolitan District (the “**District**”) is a duly organized and validly existing special district, quasi-municipal corporation and political subdivision of the State of Colorado pursuant to Title 32, Colorado Revised Statutes; and

WHEREAS, pursuant to Section 32-1-1001(1)(m), C.R.S., the District has the power “to adopt, amend and enforce bylaws and rules and regulations not in conflict with the constitution and laws of this state for carrying on the business, objects, and affairs of the board and of the special district;” and

WHEREAS, pursuant to Section 32-1-1001(1)(j)(I), C.R.S., the District has the power “to fix and from time to time to increase or decrease fees, rates, tolls, penalties or charges for services, programs, or facilities furnished by the special district;” and

WHEREAS, Arvada Residential Partners, LLC (the “**Master Developer**”) has caused to be recorded those certain Protective Covenants and Easements of Candelas, dated March 23, 2012, recorded on March 26, 2012, at Reception No. 2012032029 of the Jefferson County, Colorado, real property records, as amended by the First Amendment to Protective Covenants and Easements of Candelas, dated September 10, 2012, recorded on September 10, 2012, at Reception No. 2012095878 of the Jefferson County, Colorado, real property records (the “**Protective Covenants**”); and

WHEREAS, the Master Developer has caused to be recorded those certain Landscape Covenants of Certain Lots in Candelas and Certain Snow Removal, dated January 28, 2013, recorded February 1, 2013, at Reception No. 2013012192 of the Jefferson County, Colorado, real property records (the “**Landscape Covenants**,” and collectively with the Protective Covenants, the “**Covenants**”); and

WHEREAS, pursuant to the Covenants, the Master Developer has the power to impose and enforce the Covenants and may contract with the metropolitan district that provides service to and governs the community commonly known as Candelas to furnish covenant enforcement services; and

WHEREAS, the Master Developer has contracted with Vauxmont Metropolitan District (“**Vauxmont**”) in order for Vauxmont to provide covenant enforcement services to Candelas; and

WHEREAS, Vauxmont has entered into an intergovernmental agreement with the District whereby Vauxmont has hired the District to perform covenant enforcement services within Candelas; and

WHEREAS, pursuant to Section 32-1-1004(8), C.R.S., the District may provide covenant enforcement services to Candelas;

WHEREAS, pursuant to the Covenants, the District has the right to send demand letters and notices, to levy and collect fines, to negotiate, to settle, and to take any other actions with respect to any violation(s) or alleged violation(s) of the Covenants; and

WHEREAS, the District desires to provide for the orderly and efficient enforcement of the Covenants by adopting policies and procedures governing the enforcement of the Covenants.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF CIMARRON METROPOLITAN DISTRICT:

1. The Board of Directors of the District hereby adopts the Policies and Procedures Governing the Enforcement of the Protective Covenants and Easements of Candelas and the Landscape Covenants of Certain Lots in Candelas as described in **Exhibit A**, attached hereto and incorporated herein by this reference (“**Policies and Procedures**”).

2. The Board of Directors declares that the Policies and Procedures are effective as of JUNE 17, 2014.

3. Judicial invalidation of any of the provisions of this Resolution or of any paragraph, sentence, clause, phrase or word herein, or the application thereof in any given circumstances, shall not affect the validity of the remainder of this Resolution, unless such invalidation would act to destroy the intent or essence of this Resolution.

APPROVED AND ADOPTED this 17th day of June, 2014.

CIMARRON METROPOLITAN DISTRICT

By: 

President

Attest:


Secretary or Assistant Secretary

EXHIBIT A

**POLICIES AND PROCEDURES GOVERNING THE ENFORCEMENT OF THE
PROTECTIVE COVENANTS AND EASEMENTS OF CANDELAS AND THE
LANDSCAPE COVENANTS OF CERTAIN LOTS OF CANDELAS**

**POLICIES AND PROCEDURES GOVERNING THE ENFORCEMENT OF THE
PROTECTIVE COVENANTS AND EASEMENTS OF CANDELAS AND THE
LANDSCAPE COVENANTS OF CERTAIN LOTS IN CANDELAS**

*Adopted and Enforced By
the Board of Directors of
Cimarron Metropolitan District*

Effective: _____

Preamble

The Board of Directors of Cimarron Metropolitan District (the “**District**”) has adopted the following Policies and Procedures Governing the Enforcement of the Protective Covenants and Easements of Candelas and the Landscape Covenants of Certain Lots in Candelas (“**Policies and Procedures**”) pursuant to Sections 32-1-1001(1)(j)(I), 32-1-1001(1)(m), and Section 32-1-1004(8), C.R.S., as well as by Resolution No. 2014-06-01. These Policies and Procedures provide for the orderly and efficient enforcement of the Protective Covenants and Easements of Candelas, dated March 23, 2012, and recorded on March 26, 2012, at Reception No. 2012032029 of the Jefferson County, Colorado real property records, as amended by the First Amendment to Protective Covenants and Easements of Candelas, dated September 10, 2012, and recorded on September 10, 2012, at Reception No. 2012095878 of the Jefferson County, Colorado real property records (the “**Protective Covenants**”); and the Landscape Covenants of Certain Lots in Candelas and Certain Snow Removal, dated January 28, 2013, and recorded February 1, 2013, at Reception No. 2013012192 of the Jefferson County, Colorado real property records (the “**Landscape Covenants**”); the contents of which are incorporated herein by reference (collectively, the “**Covenants**”).

Pursuant to the Covenants, Arvada Residential Partners, LLC (the “**Master Developer**”) is the named enforcement entity and may contract with the metropolitan district that provides service to and governs the community commonly known as Candelas to furnish covenant enforcement services. The Master Developer has contracted with Vauxmont Metropolitan District (“**Vauxmont**”) so that Vauxmont may provide covenant enforcement services to Candelas. Vauxmont has subsequently entered into an intergovernmental agreement with the District, whereby Vauxmont has hired the District to provide such services.

The District, pursuant to the provisions of its Service Plan, which was approved by the City of Arvada on March 1, 2004, as it has been and may be amended from time to time, and pursuant to the Covenants, may enforce the Covenants through any proceeding in law or in equity against any Person(s) violating or attempting to violate any provision therein. Possible remedies include all of those available at law or in equity. In addition, the District has the right to send demand letters and notices, to levy and collect fines, to negotiate, to settle, and to take any other actions, with respect to any violation(s) or alleged violation(s) of the Covenants.

Unless otherwise specified, all references to the “District” made herein shall refer to Cimarron Metropolitan District and its Board of Directors. The District has retained a

management company (the “**District Manager**”) to assist it in managing its affairs, including the assessment and collection of penalties for violations of the Covenants under these Policies and Procedures.

ARTICLE 1. SCOPE OF POLICIES AND PROCEDURES

1.1 Scope. These Policies and Procedures shall apply to the enforcement of the Protective Covenants, including the Design Review Guidelines adopted pursuant thereto, and the Landscape Covenants, as well as any reimbursable costs incurred by the District for enforcing the Covenants and for correction of noncompliance with the Covenants, including but not limited to, abatement of unsightly conditions, towing and storage of improperly parked vehicles, removal of trash, and removal of non-complying landscaping or improvements.

ARTICLE 2. VIOLATIONS OF THE COVENANTS

2.1 Violations. Any Person violating any provisions of the Covenants shall be liable to the District for any expense, loss, or damage occasioned by reason of such violation and shall also be liable to the District for the penalties set forth in Article 2.3 below.

2.2 Notice of Violation. A Notice of Violation shall be sent upon a determination, following investigation, by the District Manager that a violation is likely to exist. Such Notice of Violation shall set forth the specifics of the alleged violation and the time period within which the alleged violation must be corrected, pursuant to the following classification guidelines:

a. Class I Violation: a violation that, in the sole discretion of the Board, can be corrected immediately and/or does not require submission to, and approval by, the Board of any plans and specifications. Class I Violations include, but are not limited to, parking violations, trash violations and other violations of the Covenants concerning annoying lights, sounds or odors. Class I Violations can in most cases be corrected within seven (7) days of notification. If the violation is not corrected within seven (7) days of notification, the District may take any appropriate action necessary to remedy the violation, including but not limited to, abatement of unsightly conditions, towing and storage of improperly parked vehicles, and removal of trash, etc.

b. Class II Violation: a violation that, in the sole discretion of the Board, cannot be corrected immediately and/or require plans and specifications to be submitted to, and approval by, the Board prior to any corrective action. Class II Violations include, but are not limited to, violations of the Covenants related to landscaping and construction of, or modification to, improvements. Class II Violations can in most cases be corrected within thirty (30) days of notification. If the violation is not corrected within thirty (30) days of notification, the District may take any appropriate action necessary to remedy the violation, including but not limited to, removing the non-complying landscaping or improvement.

2.3 Penalties. Penalties for violations of the Covenants shall be assessed as follows. Any penalties that have not been paid by the applicable due date shall be considered delinquent (the “**Delinquent Account**”).

- a. First Offense – Notice of Violation, no penalty
- b. Second Offense –Fee of up to \$100.00
- c. Third Offense – Up to \$250.00
- d. Continuing Violation – Up to \$500 each day violation continues (each day constitutes a separate violation).

**ARTICLE 3.
INTEREST**

3.1 Interest. Interest charges shall accrue and shall be charged on all amounts not paid by the applicable due date, including delinquent penalties and any amounts expended by the District to cure a violation of the Covenants or amounts expended by the District to repair damages caused as a result of a violation of the Covenants. Interest charges shall accrue and shall be charged at the maximum statutory rate of eighteen percent (18%) per annum.

**ARTICLE 4.
LIEN FILING POLICIES AND PROCEDURES**

4.1 Perpetual Lien. Pursuant to Section 32-1-1001(1)(j)(I), C.R.S., all Fees and Charges, until paid, shall constitute a perpetual lien on and against the Property to be served by the District. Except for the for the lien against the Property created by the imposition of property taxes by the District and other taxing jurisdictions pursuant to Section 32-1-1202, C.R.S., all liens for unpaid Fees and Charges 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. Notwithstanding the foregoing, the lien policies and procedures set forth herein shall be implemented in order to ensure an orderly and fair execution of the lien filing and collections process.

4.2 District Manager’s Procedures. The District Manager shall be responsible for collecting Fees and Charges imposed by the District against the Property. In the event payment of Fees and Charges is delinquent, the District Manager shall perform the procedures listed below. Any Fees and Charges which have not been paid by the applicable due date are considered delinquent:

a. Fifteen (15) Business days Past Due. A delinquent payment “Reminder Letter” shall be sent to the address of the last known owner of the Property according to the District Manager’s records. In the event the above mailing is returned as undeliverable, the District Manager shall send a second copy of the Reminder Letter to: (i) the Property; and (ii) the address of the last known owner of the Property as found in the real property records of the Jefferson County Clerk and Recorder (collectively the “**Property Address**”). Said Reminder Letter shall request prompt payment of amounts due.

b. On the Fifteenth (15) Business day of the Month Following the Scheduled Due Date for Payment. A “Warning Letter” shall be sent to the Property Address requesting

prompt payment and warning of further legal action should the Property owner fail to pay the total amount owing. Along with the Warning Letter, a summary of these Policies and Procedures, and a copy of the most recent account ledger reflecting the total amount due and owing to the District according to the records of the District Manager shall also be sent.

c. First (1) Business day of the Month Following the Postmark Date of the Warning Letter. Once the total amount owing on the Property, inclusive of Interest and Costs of Collections as defined below, has exceeded One Hundred Twenty Dollars (\$120.00) and the District Manager has performed its duties outlined in Section 4.2 of these Policies and Procedures, the District Manager shall refer the Delinquent Account to the District's General Counsel (the "**General Counsel**"). However, if the amount owing on the Delinquent Account is less than One Hundred Twenty Dollars (\$120.00), the District Manager shall continue to monitor the Delinquent Account until the amount owing on such account is One Hundred Twenty Dollars (\$120.00) or greater, at which point the Delinquent Account shall be referred to General Counsel. At the time of such referral, the District Manager shall provide General Counsel with copies of all notices and letters sent pursuant to Section 4.2 and a copy of the most recent ledger for the Delinquent Account.

4.3 General Counsel Procedures. Upon referral of a Delinquent Account from the District Manager, General Counsel shall perform the following:

a. Upon Referral of the Delinquent Account from the District Manager. A "Demand Letter" shall be sent to the Property Address, notifying the Property owner that his/her Property has been referred to General Counsel for further collections enforcement, including the filing of a 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 District Manager shall also be sent.

b. No Earlier Than Thirty (30) Business days from the Date of the Demand Letter. A Notice of Intent to File Lien Statement, along with a copy of the lien to be filed, shall be sent to the Property Address of the Delinquent Account notifying the Property owner that a lien will be filed within thirty (30) days of the Notice of Intent to File Lien Statement postmark date.

c. No Earlier Than Ten (10) Business days from the Postmark Date of the Notice of Intent to File Lien Statement. A lien for the total amount owing as of the date of the lien shall be recorded against the Property with the County Clerk and Recorder's Office; all Fees and Charges, Interest, and Costs of Collection (as defined below) 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.

ARTICLE 5. COSTS OF COLLECTIONS

"Costs of Collections" are generated by the District Manager and General Counsel's collection efforts. They consist of the following fixed rates and hourly fees and costs:

5.1 Action Fees. The following fixed rate fees shall be charged to a Delinquent Account once the corresponding action has been taken by either the District Manager or General Counsel:

a. Reminder Letter Fee. No charge for the Reminder Letter. This action is performed by the District Manager.

b. Warning Letter Fee. Ten Dollars (\$10.00) per Warning Letter sent. This action is performed by the District Manager.

c. Demand Letter Fee. Sixty Dollars (\$60.00) per Demand Letter sent. This action is performed by General Counsel.

d. Notice of Intent to File Lien Fee. One Hundred Twenty Dollars (\$120.00) per Notice of Intent to File Lien Statement sent. This action is performed by General Counsel.

e. Lien Recording Fee. One Hundred Fifty Dollars (\$150.00) per each lien recorded on the Property. This action is performed by General Counsel.

f. Lien Release Fee. One Hundred Fifty Dollars (\$150.00) per each lien recorded on the Property. This action is performed by General Counsel.

5.2 Attorney Hourly Fees and Costs. After a lien has been filed, all hourly fees and costs generated by General Counsel to collect unpaid Fees and Charges shall also be assessed to the Delinquent Account.

5.3 Recovery of Costs of Collections. In accordance with Section 29-1-1102(8), C.R.S., nothing in these Policies and Procedures shall be construed to prohibit the District from recovering all the Costs of Collections whether or not outlined above.

ARTICLE 6. WAIVER OF INTEREST AND COSTS OF COLLECTIONS

6.1 Waiver of Interest. The District Manager and General Counsel shall each have authority and discretion to waive or reduce portions of the Delinquent Account attributable to Interest. Such action shall be permitted if either the District Manager or General Counsel, in its discretion, determines that such waiver or reduction will facilitate the payment of the penalties due. Notwithstanding, if the cumulative amount due and owing the District on the Delinquent Account exceeds One Thousand Dollars (\$1,000.00), neither the District Manager nor General Counsel shall have any authority to waive or reduce any portion of the Interest. In such case, the person or entity owing in excess of One Thousand Dollars (\$1,000.00) shall first submit a request for a waiver or reduction, in writing, to the Board, and the Board shall make the determination in its sole discretion.

6.2 Waiver of Delinquent Penalties and Costs of Collections. Neither the District Manager nor General Counsel shall have the authority to waive any portion of delinquent penalties or Costs of Collections. Should the Property owner desire a waiver of such costs,

she/he shall submit a written request to the Board, and the Board shall make the determination in its sole discretion.

6.3 No Waiver of Future Interest. Any waiver or reduction of Interest or other costs granted pursuant to Sections 6.1 and 6.2 hereof shall not be construed as a waiver or reduction of future Interest, or as the promise to waive or reduce future Interest. Nor shall any such waiver or reduction be deemed to bind, limit, or direct the future decision making power of the Board, District Manager, or General Counsel, whether related to the Property in question or other properties within the District.

ARTICLE 7. OPPORTUNITY TO BE HEARD

7.1 Opportunity to be Heard. Individuals who receive any notice or demand pursuant to these Policies and Procedures may request a hearing in accordance with the procedures set forth herein, or in the alternative, may elect to follow the Alternative Dispute Resolution procedures set forth in Article 5 of the Protective Covenants.

7.2 Hearing Process. The hearing and appeal procedures established by this Article shall apply to all complaints concerning the interpretation, application, or enforcement of the Covenants, as each now exists or may hereafter be amended.

a. Complaint. Complaints concerning the interpretation, application, or enforcement of the Covenants must be presented in writing to the District Manager, or such representative as he or she may designate. Upon receipt of a complaint, the District Manager or designated representative, after a full and complete review of the allegations contained in the complaint, shall take such action and/or make such determination as may be warranted and shall notify the complainant of the action or determination by mail within fifteen (15) business days after receipt of the complaint. Decisions of the District Manager which impact the District financially will not be binding upon the District unless approved by the Board of Directors of the District at a special or regular meeting of the Board.

b. Hearing. In the event the decision of the District Manager or his representative is unsatisfactory to the complainant, the complainant may submit to the Board a written request for formal hearing before a hearing officer (“**Hearing Officer**”), which may be a member of the Board of Directors or such other Person as may be appointed by the Board of Directors. Such request for a formal hearing must be submitted within twenty (20) business days from the date written notice of the decision of the District Manager or designated representative was mailed.

Upon receipt of the request, if it be timely and if any and all other prerequisites prescribed by these Policies and Procedures have been met, the Hearing Officer shall conduct a hearing at the District’s convenience but in any event not later than fifteen (15) business days after the submission of the request for formal hearing. The formal hearing shall be conducted in accordance with and subject to all pertinent provisions of these Policies and Procedures. Decisions of the Hearing Officer which impact the District financially will not be

binding upon the District unless approved by the Board of Directors at a special or regular meeting of the Board.

c. Rules. At the hearing, the Hearing Officer shall preside. The complainant and representatives of the District shall be permitted to appear in person, and the complainant may be represented by any Person (including legal counsel) of his or her choice.

The complainant or his or her representative and the District representatives shall have the right to present evidence and arguments; the right to confront and cross-examine any Person; and the right to oppose any testimony or statement that may be relied upon in support of or in opposition to the matter complained of. The Hearing Officer may receive and consider any evidence which has probative value commonly accepted by reasonable and prudent Persons in the conduct of their affairs.

The Hearing Officer shall determine whether clear and convincing grounds exist to alter, amend, defer, or cancel the interpretation, application, and/or enforcement of the Policies and Procedures that are the subject of the complaint. The Hearing Officer's decision shall be based upon evidence presented at the hearing. The burden of showing that the required grounds exist to alter, amend, defer, or cancel the action shall be upon the complainant.

d. Findings. Subsequent to the formal hearing, the Hearing Officer shall make written findings and an order disposing of the matter and shall mail a copy thereto to the complainant not later than fifteen (15) business days after the date of the formal hearing.

e. Appeals. In the event the complainant disagrees with the findings and order of the Hearing Officer, the complainant may, within fifteen (15) business days from the date such findings and order were mailed, file with the District a written request for an appeal thereof to the Board of Directors. The request for an appeal shall set forth with specificity the facts or exhibits presented at the formal hearing upon which the complainant relied and shall contain a brief statement of the complainant's reasons for the appeal. The District shall compile a written record of the appeal consisting of (1) a transcript of the recorded proceedings at the formal hearing, (2) all exhibits or other physical evidence offered and reviewed at the formal hearing, and (3) a copy of the written findings and order. The Board shall consider the complainant's written request and the written record on appeal at its next regularly scheduled meeting held not earlier than ten (10) days after the filing of the complainant's request for appeal. The Board's consideration of the appeal shall be limited exclusively to a review of the record on appeal and the complainant's written request for appeal. No further evidence shall be presented by any Person or party to the appeal, and there shall be no right to a hearing de novo before the Board of Directors.

f. Board Findings. The Board of Directors shall make written findings and an order concerning the disposition of the appeal presented to it and shall cause notice of the decision to be mailed to the complainant within thirty (30) days after the Board of Directors' meeting at which the appeal was considered. The Board of Directors will not reverse the decision of the Hearing Officer unless it appears that such decision was contrary to the manifest weight of the evidence made available at the formal hearing.

g. Notices. A complainant shall be given notice of any hearing before the District Manager, the hearing officer, or before the Board of Directors, by certified mail at last seven (7) business days prior to the date of the hearing, unless the complainant requests or agrees to a hearing in less time. When a complainant is represented by an attorney, notice of any action, finding, determination, decision, or order affecting the complainant shall also be served upon the attorney.

**ARTICLE 8.
PAYMENT PLANS**

8.1 Payment Plans. Neither the District Manager nor General Counsel shall have the authority to enter into or establish payment plans for the repayment of a Delinquent Account. Should the Property owner desire to enter into a payment plan with the District, such owner shall first submit a written request to the Board and the Board shall make the determination in its sole discretion.

**ARTICLE 9.
RATIFICATION OF PAST ACTIONS**

9.1 Ratification of Past Actions. All waivers and payment plans heretofore undertaken by the District Manager or General Counsel that would otherwise have been authorized by these Policies and Procedures are hereby affirmed, ratified, and made effective as of the date said actions occurred.

**ARTICLE 10.
ADDITIONAL ACTIONS**

10.1 Additional Actions. The Board directs and authorizes 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 these Policies and Procedures.

**ARTICLE 11.
COLORADO AND FEDERAL FAIR DEBT COLLECTIONS ACTS**

11.1 Statutory Compliance. To the extent required by law, the District Manager, General Counsel, and the Board shall comply with both the Colorado Fair Debt Collection Practices Act and the Federal Fair Debt Collections Practices Act.

**ARTICLE 12.
SUPERSEDES PRIOR RESOLUTIONS, POLICIES, AND PROCEDURES**

12.1 Supersedes Prior Resolutions, Policies, and Procedures. To the extent that any term or provision in these Policies and Procedures conflicts with any term or provision in a previously enacted and valid resolution of the District imposing Fees and Charges, the term or provision in these Policies and Procedures shall prevail.

**ARTICLE 13.
SEVERABILITY**

13.1 Severability. If any term or provision of these Policies and Procedures is found to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable term or provision shall not affect the validity of these Policies and Procedures as a whole but shall be severed herefrom, leaving the remaining terms or provisions in full force and effect.

**ARTICLE 14.
SAVINGS PROVISION**

14.1 Savings Provision. The failure to comply with the procedures set forth herein shall not affect the status of the Fees and Charges as a perpetual lien subject to foreclosure in accordance with law. Failure by the District Manager, General Counsel, or other authorized representative to take any action in accordance with the requirements as specifically provided herein shall not invalidate subsequent efforts to collect the Fees and Charges.