

D8078213

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

**RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
POWHATON ROAD METROPOLITAN DISTRICT NO. 2**

CONCERNING THE IMPOSITION OF CAPITAL FACILITIES FEE

WHEREAS, the Powhaton Road Metropolitan District No. 2 (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 but are not limited to streets, water, sewer, landscape, and park and recreation improvements, facilities, appurtenances and rights-of-way (collectively, the "Facilities"); 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 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 and Commercial 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 Capital Facilities Fee (as defined below), as set forth in this Resolution, is reasonably related to the overall cost of providing the Facilities and paying the Capital Facilities Costs, and that imposition thereof is necessary and appropriate.



RECORDED TO BE A FULL, TRUE, AND CORRECT COPY OF THE ORIGINAL DOCUMENT IN MY CUSTODY, DATE 8-26-19
MATT CRANE, ARAPAHOE COUNTY CLERK & RECORDER

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 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, as may be amended from time to time without amending this Resolution in its entirety, until and unless otherwise amended and/or repealed.

"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.

2. **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 upon issuance of a building permit for any Residential Unit. The amount of each Capital Facilities Fee due hereunder shall be at the rate in effect at the time of payment.

c. The Board has determined, and does hereby determine, that the Capital Facilities Fee is reasonably related to the overall cost of providing the Facilities, and is imposed on those who are reasonably likely to benefit from or use the Facilities.

d. The revenues generated by the Capital Facilities Fee will be accounted for separately from other revenues of the District. The Capital Facilities Fee revenue will be

used solely for the purpose of paying Capital Facilities 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 Capital Facilities Fee revenue shall be absolute and without qualification.

e. The Board has determined, and does hereby determine, that the Capital Facilities Fee is calculated to defray the cost of funding construction of the Facilities and reasonably distributes the burden of defraying the Capital Facilities Costs in a manner based on the benefits received by persons paying the fees and using the Facilities.

3. LATE FEES AND INTEREST. Pursuant to § 29-1-1102(3), C.R.S., any 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 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.

4. 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 "Powhaton Road Metropolitan District No. 2" and sent to the address indicated on the Fee Schedule. The District may change the payment address from time and time and such change shall not require an amendment to this Resolution.

5. 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.

6. 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.

7. 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.

8. EFFECTIVE DATE. This Resolution shall become effective August 3, 2018.

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

ADOPTED this 3rd day of August, 2018.

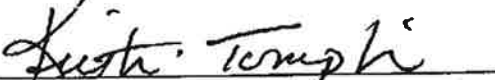
POWHATON ROAD METROPOLITAN
DISTRICT NO. 2, a quasi-municipal corporation
and political subdivision of the State of Colorado



Officer of the District

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 Capital Facilities Fee

EXHIBIT A

POWHATON ROAD METROPOLITAN DISTRICT NO. 2
Schedule of Fees
Effective August 3, 2018

Schedule of Fees		
Fee Type	Classifications	Rate
Capital Facilities Fee*	Single Family Residence	\$3,000 / Residential Unit
The Due Date for each Capital Facilities Fee is upon issuance of a building permit for any Residential Unit.		

PAYMENTS: Payment for each fee shall be made payable to the Powhaton Road Metropolitan District No. 2 and sent to the following address for receipt by the Due Date:

Powhaton Road Metropolitan District No. 2
 c/o Simmons & Wheeler, PC
 304 Inverness Way South, Suite 490
 Englewood, CO 80112

EXHIBIT B
POWHATON METROPOLITAN DISTRICT NO. 2
District Boundaries

LEGAL DESCRIPTION – POWHATON ROAD METROPOLITAN DISTRICT NO. 2

A PARCEL OF LAND BEING A PART OF THE SOUTH HALF OF SECTION 9, AND A PART OF THE NORTH HALF OF SECTION 16, TOWNSHIP 4 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF AURORA, COUNTY OF ARAPAHOE, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 9, TOWNSHIP 4 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, AND CONSIDERING THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 9, BEING MONUMENTED AS SHOWN ON THE ATTACHED EXHIBIT, TO BEAR NORTH 00°21'24" WEST, 2660.51 FEET, WITH ALL BEARINGS CONTAINED HEREIN BEING RELATIVE THERETO;

THENCE NORTH 00°21'24" WEST ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 9, A DISTANCE OF 2660.51 FEET TO A POINT BEING THE WEST QUARTER CORNER OF SAID SECTION 9;

THENCE NORTH 89°21'50" EAST ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 9, A DISTANCE OF 2646.25 FEET TO A POINT BEING THE CENTER QUARTER CORNER OF SAID SECTION 9;

THENCE SOUTH 06°43'56" WEST, A DISTANCE OF 94.84 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 250.00 FEET, A CENTRAL ANGLE OF 11°53'39", AN ARC LENGTH OF 51.90 FEET, THE CHORD OF WHICH BEARS SOUTH 00°47'06" WEST, 51.80 FEET;

THENCE SOUTH 05°09'43" EAST, A DISTANCE OF 71.45 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 2000.00 FEET, A CENTRAL ANGLE OF 04°45'49", AN ARC LENGTH OF 166.28 FEET, THE CHORD OF WHICH BEARS SOUTH 02°46'49" EAST, 166.23 FEET;

THENCE SOUTH 00°23'54" EAST, A DISTANCE OF 127.37 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 400.00 FEET, A CENTRAL ANGLE OF 30°49'47", AN ARC LENGTH OF 215.23 FEET, THE CHORD OF WHICH BEARS SOUTH 15°48'48" EAST, 212.64 FEET;

THENCE SOUTH 31°13'41" EAST, A DISTANCE OF 306.54 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 800.00 FEET, A CENTRAL ANGLE OF 30°49'42", AN ARC LENGTH OF 430.45 FEET, THE CHORD OF WHICH BEARS SOUTH 15°48'50" EAST, 425.27 FEET;

THENCE SOUTH 00°23'59" EAST, A DISTANCE OF 345.88 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 450.00 FEET, A CENTRAL ANGLE OF 27°41'42", AN ARC LENGTH OF 217.52 FEET, THE CHORD OF WHICH BEARS SOUTH 13°26'52" WEST, 215.40 FEET;

THENCE SOUTH 27°17'43" WEST, A DISTANCE OF 481.35 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 450.00 FEET, A CENTRAL ANGLE OF 27°46'54", AN ARC LENGTH OF 218.20 FEET, THE CHORD OF WHICH BEARS SOUTH 13°24'16" WEST, 216.07 FEET;

THENCE SOUTH 00°29'11" EAST, A DISTANCE OF 551.09 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 2000.00 FEET, A CENTRAL ANGLE OF 07°55'38", AN ARC LENGTH OF 276.71 FEET, THE CHORD OF WHICH BEARS SOUTH 04°26'59" EAST, 276.49 FEET TO A POINT OF REVERSE CURVATURE;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 200.00 FEET, A CENTRAL ANGLE OF 18°41'59", AN ARC LENGTH OF 65.27 FEET, THE CHORD OF WHICH BEARS SOUTH 00°56'11" WEST, 64.98 FEET;

THENCE SOUTH 10°17'10" WEST, A DISTANCE OF 93.61 FEET;

THENCE NORTH 74°42'50" WEST, A DISTANCE OF 65.99 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 250.00 FEET, A CENTRAL ANGLE OF 19°04'42", AN ARC LENGTH OF 83.25 FEET, THE CHORD OF WHICH BEARS NORTH 84°15'11" WEST, 82.86 FEET;

THENCE SOUTH 86°12'28" WEST, A DISTANCE OF 18.63 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 685.00 FEET, A CENTRAL ANGLE OF 48°13'30", AN ARC LENGTH OF 576.56 FEET, THE CHORD OF WHICH BEARS NORTH 69°40'47" WEST, 559.69 FEET;

THENCE NORTH 45°34'02" WEST, A DISTANCE OF 558.07 FEET TO A POINT OF CURVATURE;

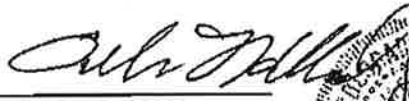
THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 955.00 FEET, A CENTRAL ANGLE OF 45.000, AN ARC LENGTH OF 750.06 FEET, THE CHORD OF WHICH BEARS NORTH 68°04'02" WEST, 730.93 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 9;

THENCE SOUTH 89°25'58" WEST ALONG SAID SOUTH LINE, A DISTANCE OF 889.65 FEET TO THE POINT OF BEGINNING,

SAID PARCEL CONTAINING A CALCULATED AREA OF 8,277,436 SQUARE FEET OR 190.024 ACRES, MORE OR LESS.

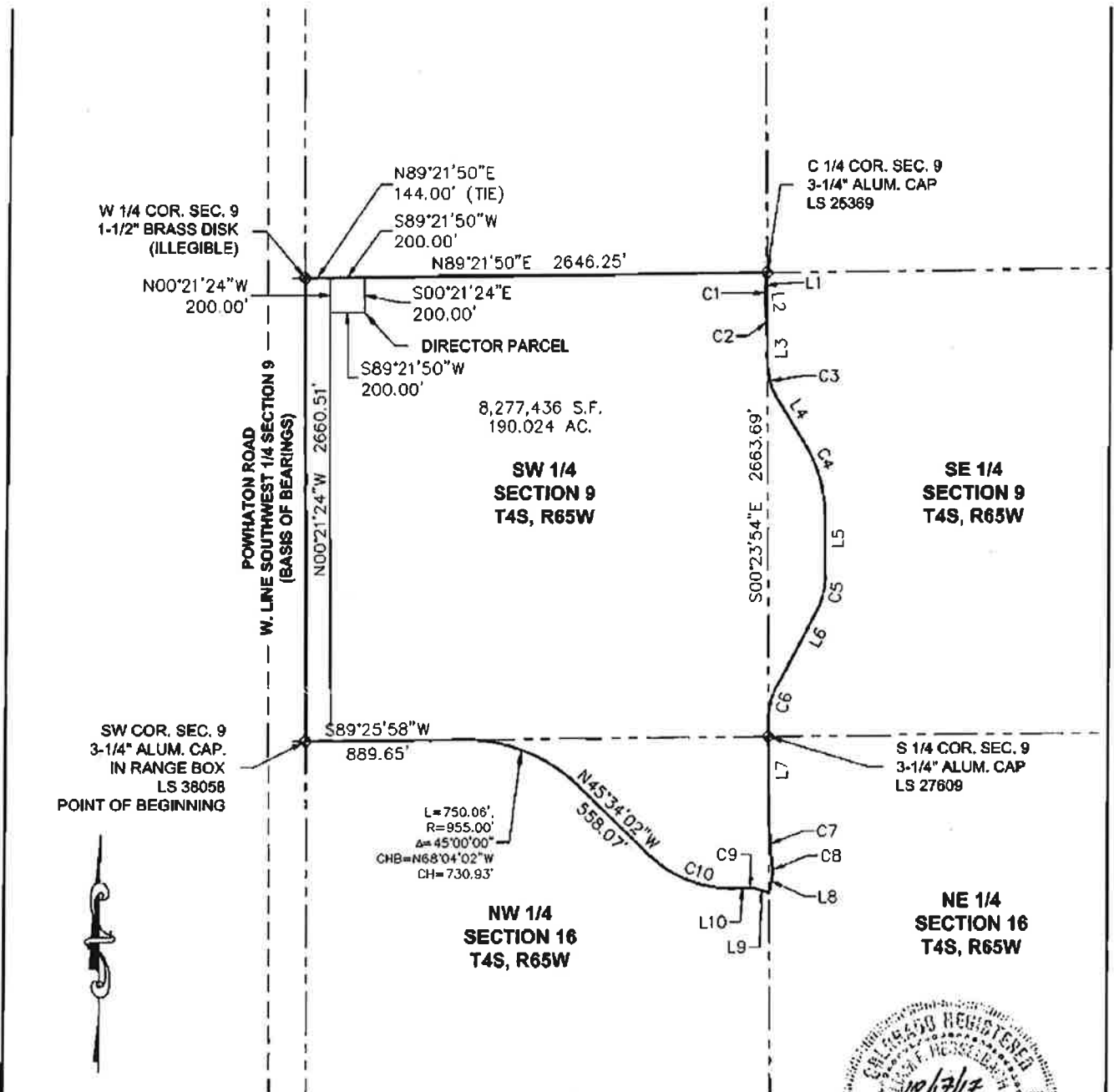
THE LINEAL UNIT USED IN THE PREPARATION OF THIS LEGAL DESCRIPTION IS THE U.S. SURVEY FOOT AS DEFINED BY THE UNITED STATES DEPARTMENT OF COMMERCE, NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

I, WILLIAM F. HESSELBACH JR., A SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THE ABOVE LEGAL DESCRIPTION AND ATTACHED EXHIBIT WERE PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND CHECKING.



WILLIAM F. HESSELBACH JR., P.L.S. 25369
FOR AND ON BEHALF OF
CVL CONSULTANTS OF COLORADO, INC.





SCALE: 1" = 800

THE ABOVE DESCRIBED PARCEL CONTAINS 8,277,436 SQUARE FEET OR (190.024 ACRES) MORE OR LESS.

This illustration does not represent a monumented survey. It is intended only to depict the attached legal description.



POWATHON ROAD
METROPOLITAN DISTRICT NO. 2

OCTOBER 16, 2017



10333 E. Dry Creek Rd.
Suite 240
Englewood, CO 80112
Tel: (720) 482-9526
Fax: (720) 482-9546