02/07/2024 07:17 AM RF: $43.00 DF: $0.00
Arapahoe County Clerk, CO
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Joan Lopez, Clerk & Recorder
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AFTER RECORDING, RETURN TO:
Megan Becher
McGeady Becher P.C.
450 E. 17th Avenue, Suite 400
Denver, CO 80203-1254

TITLE COMPANIES: PLEASE BE ON NOTICE THAT UNPAID FACILITIES FEES AND PARK DEVELOPMENT FEES CONSTITUTE A STATUTORY LIEN. CONTACT ABILENE STATION METROPOLITAN DISTRICT NO. 1 AND/OR ABILENE STATION METROPOLITAN DISTRICT NO. 2 AT 303-779-4525 TO VERIFY PAYMENT.

SECOND AMENDED AND RESTATED RESOLUTION OF ABILENE STATION METROPOLITAN DISTRICT NO. 1 AND ABILENE STATION METROPOLITAN DISTRICT NO. 2 REGARDING THE IMPOSITION OF FACILITIES FEES AND PARK DEVELOPMENT FEES

A. Abilene Station Metropolitan District No. 1 ("**District No. 1**") and Abilene Station Metropolitan District No. 2 ("**District No. 2**"), are each quasi-municipal corporations and political subdivisions of the State of Colorado located in the City of Aurora, Colorado (collectively, the "**Districts**").

B. On June 8, 2007, the Districts adopted Joint Resolution No. 2007-06-01 Regarding the Imposition of Facilities Fees and Park Development Fees, which Resolution was recorded in the real property records of Arapahoe County, Colorado, on August 3, 2007, at Reception No. B7100152 (the "**Original Resolution**").

C. On April 17, 2015, the Districts adopted Joint Resolution No. 2015-04-09; Amended and Restated Resolution Regarding the Imposition of Facilities Fees and Park Development Fees, which was recorded in the real property records of Arapahoe County, Colorado, on December 22, 2015, at Reception No. D5145131 (the "**Amended and Restated Resolution**"), which amended and restated the Original Resolution.

D. Pursuant to the Districts' respective Service Plans, which were approved by the City Council of the City of Aurora, Colorado (the "**City**"), on July 24, 2006 (the "**Service Plans**"), the Districts share a combined Service Area (as defined therein).

E. The Districts' combined Service Area boundaries are described in the legal description attached hereto as **Exhibit A**, which legal description may be amended from time to time pursuant to the inclusion and/or exclusion of property into or from the Service Area (as so amended, the "**Property**").

F. Pursuant to the Districts' respective Service Plans, the Districts are authorized to provide for the design, acquisition, construction, completion, installation, relocation, financing,

and operation and maintenance of certain water, sanitation, street, safety protection, transportation, television relay and translation, and mosquito control facilities, improvements, and services (the "**Facilities**"), as well as certain park and recreation facilities, improvements and services (the "**Park and Recreation Facilities**"), all located within and without the boundaries of the Property for the benefit of the inhabitants and taxpayers therein.

G. The Districts previously determined that it is in the best interest of their inhabitants and taxpayers to provide the Facilities and Park and Recreation Facilities.

H. Pursuant to their Service Plans, the Districts are authorized to finance the Facilities and Park and Recreation Facilities that benefit the Property.

I. Pursuant to their Service Plans, either District may issue bonds ("**Bonds**") to provide funding for the Facilities and Park and Recreation Facilities that benefit the Property.

J. The Districts are authorized pursuant to Section 32-1-1001(1)(j)(I), C.R.S., and the Service Plans to fix fees and charges for services, the Facilities, and the Park and Recreation Facilities provided by the Districts.

K. Pursuant to their Service Plans, the Districts are authorized to impose fees for the rights of their residents and property owners to connect or gain access to and operate and maintain the Facilities ("**Facilities Fees**"), and the Park and Recreation Facilities ("**Park Development Fees**").

L. Real property located within the Service Area has since been included into the boundaries of each of the Districts, and the Districts' Boards of Directors (each a "**Board**" and, collectively, the "**Boards**") intend that all portions of the Property become subject to Facilities Fees and Park Development Fees upon inclusion into the boundaries of either of the Districts.

M. The Districts previously entered into a Facilities Funding, Construction and Operations Agreement dated June 8, 2007, as modified by an Amended and Restated Addendum dated September 11, 2008 (collectively, the "**FFCOA**"), whereby District No. 2 agreed to, among other things, provide for the construction, operation, and maintenance of the Facilities and Park and Recreation Facilities, as applicable.

N. The Districts previously determined that in order to meet the costs of providing, operating, and maintaining the Facilities, District No. 2 would impose Facilities Fees on the Property.

O. The Districts previously determined that in order to meet the costs of providing the Park and Recreation Facilities, District No. 2 would impose Park Development Fees on the Property.

P. The Districts have since determined that the relationship established pursuant to the FFCOA is no longer necessary and have terminated the FFCOA and entered into a Memorandum of Understanding (the "**MOU**") whereby District No. 1 will provide, among other things, for the construction, operation, and maintenance services related to the Facilities and the Park and Recreation Facilities on behalf of the Districts.

Q. The Districts desire to further amend and restate the Amended and Restated Resolution to authorize District No. 1 to impose the Facilities Fees and the Park Development Fees on the Property and authorize District No. 1 to utilize, a portion of the revenue from the Facilities Fees and Park Development Fees to pledge to the repayment of principal and interest on the Bonds.

R. Pursuant to this Joint Resolution (the "**Second Amended Joint Resolution**"), the Boards desire to amend and restate the Amended and Restated Resolution in its entirety.

S. This Second Amended Joint Resolution shall be recorded against the Property in order to put property owners on notice of the imposition of the Facilities Fees and Park Development Fees.

NOW, THEREFORE, be it resolved by the Boards of Directors of Abilene Station Metropolitan District No. 1 and Abilene Station Metropolitan District No. 2:

1. The Boards of the Districts hereby determine that it is in the best interests of the Districts and their inhabitants and property owners to exercise their powers by imposing the Facilities Fees and Park Development Fees on the Property within the boundaries of either of the Districts, and to utilize the revenues from the Facilities Fees and Park Development Fees for payment of the Districts' operation, maintenance, and capital costs, and/or to pledge the revenues derived therefrom to payment of Bonds to be issued by either District No. 1 or District No. 2.

2. District No. 2 hereby grants to District No. 1 the authority to impose and collect the Facilities Fees and Park Development Fees on behalf of District No. 2, and to pledge the revenues derived therefrom to the payment of the Bonds or any other indebtedness of the Districts.

3. For so long as District No. 1 imposes the Facilities Fees and Park Development Fees, District No. 2 covenants not to impose any fees, rates, tolls, or charges that would impair the ability of District No. 1 to collect sufficient Facilities Fees and Park Development Fees to finance the Facilities and the Park and Recreation Facilities, including payment of any debt service obligations under the Bonds.

4. District No. 1 hereby imposes the Facilities Fees on the Property as follows:

(a) The Facilities Fees shall be payable on a per-unit basis for residential property ("**Residential Unit**") at the rate of $1,900.15 per Residential Unit, subject to increase as provided herein. A Residential Unit is a residential unit intended for occupancy by one or more individuals and consisting of one self-contained living unit, whether attached or detached, as reasonably determined by District No. 1. Hotel uses, including those offering extended stay at weekly or monthly rates, are not included within the definition of a Residential Unit hereunder. The Districts reserve the right to amend this Second Amended Joint Resolution in the future to differentiate the Facilities Fees applicable to particular residential uses—whether attached or detached.

(b) The Facilities Fees shall be payable on a per square foot basis for commercial property ("**Commercial Unit**") at the rate of $0.94 per square foot, subject to

increase as provided herein. A Commercial Unit is comprised of the square footage of space intended for non-residential use and occupancy, as described on a development plan approved by the City, exclusive of any parking structure(s). Hotel uses, including those offering extended stay at weekly or monthly rates, are included within the definition of a Commercial Unit hereunder.

(c) The rates for Facilities Fees set forth in this Second Amended Joint Resolution shall increase by 3.0% per year over the prior year rate commencing on January 1, 2024, and each January 1 thereafter.

5. District No. 1 hereby imposes the Park Development Fees on the Property as follows:

(a) The Park Development Fee shall be payable for Residential Units at the then-current rate of Fee Schedule 6; Parks, Recreation & Open Space Department, established and collected by the City, as amended and/or supplemented by the City from time to time.

(b) The Park Development Fee shall not be imposed upon Commercial Units.

6. The Facilities Fees and the Park Development Fees shall be due and payable for each Residential Unit or Commercial Unit (collectively, each "**Unit**"), as applicable in accordance with Sections 4 and 5 above, on or before the date of issuance of a building permit for the Unit and shall be paid directly to District No. 1. District No. 2 shall assist in the collection of the Facilities Fees and the Park Development Fees, as requested by District No. 1.

7. The Facilities Fees and the Park Development Fees shall not be imposed on real property actually conveyed or dedicated to non-profit owners' associations, governmental entities, or utility providers.

8. The Facilities Fees and the Park Development Fees shall each constitute a statutory and perpetual charge and lien upon the Property pursuant to Section 32-1-1001(1)(j)(I), C.R.S., from the date the same become due and payable until paid. The lien shall be perpetual in nature as defined by the laws of the State of Colorado on each applicable Unit and shall run with the land and such lien may be foreclosed by the District in the same manner as provided by the laws of Colorado for the foreclosure of mechanics' liens. This Second Amended Joint Resolution shall be recorded against the Property in the real property records of the Clerk and Recorder of Arapahoe County, Colorado.

9. Failure to make payment of the Facilities Fees and/or Park Development Fees due hereunder shall constitute a default in the payment of such Facilities Fees and/or Park Development Fees. Upon a default, simple interest shall accrue on such total amount of Facilities Fees and/or Park Development Fees due at the rate of 18% per annum until paid. The Districts shall be entitled to institute such remedies and collection proceedings as may be authorized under Colorado law, including, but not limited to, foreclosure of its perpetual lien. The defaulting property owner shall pay all costs, including reasonable attorneys' fees, incurred by the Districts in connection with the foregoing. In foreclosing such lien, the Districts will enforce the lien only to the extent necessary to collect unpaid Facilities Fees and/or Park

Development Fees, accrued interest thereon, and costs of collection (including, but not limited to, reasonable attorneys' fees).

10. Judicial invalidation of any of the provisions of this Second Amended Joint 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 Second Amended Joint Resolution unless such invalidation would act to destroy the intent or essence of this Second Amended Joint Resolution.

11. Any inquiries pertaining to the Facilities Fees and/or the Park Development Fees may be directed to the Districts' Manager at: CliftonLarsonAllen LLP, 8390 E. Crescent Parkway, Suite 300, Greenwood Village, CO 80111, telephone (303) 779-4525.

12. This Second Amended Joint Resolution shall be effective as of January 1, 2023.

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE TO SECOND AMENDED AND RESTATED RESOLUTION OF ABILENE STATION METROPOLITAN DISTRICT NO. 1 AND ABILENE STATION METROPOLITAN DISTRICT NO. 2 REGARDING THE IMPOSITION OF FACILITIES FEES AND PARK DEVELOPMENT FEES]

APPROVED AND ADOPTED OCTOBER 27, 2022 AND RE-ADOPTED ON NOVEMBER 21, 2023.

ABILENE STATION METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado

By: _____
David J. Erb, President

Attest:

_____
Secretary or Assistant Secretary

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

By: _____
David J. Erb, President

Attest:

_____
Secretary or Assistant Secretary

EXHIBIT A

LEGAL DESCRIPTION

Abilene Station Subdivision Filing No. 1,

City of Aurora, County of Arapahoe, State of Colorado,

Recorded June 9, 2015, at Reception No. D5059964.