



**BRADLEY HEIGHTS METROPOLITAN DISTRICT NOS. 1, 2 and 3**

Continued Board Meeting  
Tuesday, July 30, 2024, at 9:00 AM  
119 N. Wahsatch Ave.  
Colorado Springs, Colorado 80903

and  
Via tele/videoconference

<https://video.cloudoffice.avaya.com/join/109995525>

United States: [+1 \(213\) 463-4500](tel:+12134634500)

Access Code: 109-995-525

Board of Director	Title	Term
Randle W Case II	President	May 2027
Bryan T Long	Vice-President	May 2027
Ray O’Sullivan	Treasurer/ Secretary	May 2025
Robert Case	Assistant Secretary	May 2025
Jim Byers	Assistant Secretary	May 2027 (appointment to May 2025)

**AGENDA**

1. Call to order
2. Declaration of Quorum/Director Qualifications/ Disclosure Matters
3. Approval of Agenda
4. Approval of June 4, 2024, Continued Meeting Minutes (enclosed)
5. Financial Matters
  - a. Public Hearing on Bradley Heights Metropolitan District No. 2 – 2023 Budget Amendment
    - i. Review and consider adoption of Resolution to Amend Bradley Heights Metropolitan District No. 2 2023 Budget Amendment (enclosed)
  - b. Review and consider acceptance of 2023 Audit Presentation (under separate cover)
  - c. Approve Unaudited Financial Reports through June 30, 2024 (enclosed)
  - d. Ratify and Approve Payables through July 30, 2024 (enclosed)
  - e. Discuss Operations and Maintenance funding and establishment for new Agreements
6. District Manager Report
  - a. Assurance Update
  - b. Drainage Channel Financing concepts
7. President of the Board Report
8. Detailed Discussion of Development Status Review
  - a. Engineering Update
    - i. Schedule
    - ii. Cash Flow – Eric and Kevin
  - b. Plan Updates
    - i. Roadway/ Utility/ Storm Water
    - ii. Channel design
    - iii. 24” and 16” water line update
    - iv. Sanitary Sewer outfall update
  - c. Construction Schedule/Construction Contracts Approval/Ratify/Pre-approval
  - d. Update on Construction Budget

- e. Redemption Hill Church
  - f. Challenger Homes
  - g. Bradley Ridge
9. Legal Matters
- a. Review and consider approval of Lena Gail Funding and Reimbursement Agreement (enclosed)
  - b. Review and consider approval of Bradley Heights Metropolitan District No. 2 Declaration And Agreement For Payment In Lieu Of Taxes (enclosed)
  - c. Review and consider approval of Resolution Regarding Policies, Procedures and Penalties for the Enforcement of the Governing Documents (enclosed)
10. Other Business
- a. Next Regular Meeting scheduled: August 13, 2024, at 9:00 a.m.
11. Adjourn

## NOTICE OF REGULAR MEETINGS

NOTICE IS HEREBY GIVEN That the Board of Directors of **BRADLEY HEIGHTS METROPOLITAN DISTRICT NOS. 1, 2 and 3**, County of El Paso, State of Colorado, will hold a continued meeting at 9:00 AM on Tuesday, the 4<sup>th</sup> day of June, 2024, at 119 North Wahsatch Ave., Colorado Springs, CO 80903, and via tele/videoconferencing at the following: <https://video.cloudoffice.avaya.com/join/109995525> United States: [+1 \(213\) 463-4500](tel:+12134634500) Access Code: 109-995-525 for the purpose of conducting such business as may come before the Board including the business on the attached agenda. The meeting is open to the public.

BY ORDER OF THE BOARD OF DIRECTORS:  
BRADLEY HEIGHTS METROPOLITAN DISTRICT NOS. 1, 2 AND 3





**BRADLEY HEIGHTS METROPOLITAN DISTRICT NO. 2  
RESOLUTION TO AMEND 2023 BUDGET**

WHEREAS, the Board of Directors of Bradley Heights Metropolitan District No. 2 (the “District”) certifies that at a regular meeting of the Board of Directors of the District held date of meeting, a public hearing was held regarding the 2023 amended budget, and, subsequent thereto, the following Resolution was adopted by affirmative vote of a majority of the Board of Directors:

WHEREAS, the Board of Directors of the District adopted a budget and appropriated funds for fiscal year 2023 as follows:

Debt Service Fund	\$19,500
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and;

WHEREAS, the necessity has arisen for additional expenditures by the District due to additional costs which could not have been reasonably anticipated at the time of adoption of the budget, requiring the expenditure of funds in excess of those appropriated for fiscal year 2023; and

WHEREAS, funds are available for such expenditure.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the District does hereby amend the adopted budget for fiscal year 2023 as follows:

Debt Service Fund	\$41,517
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BE IT FURTHER RESOLVED, that such sums are hereby appropriated from the revenues of the District to the funds named above for the purpose stated, and that any ending fund balances shall be reserved for purposes of complying with Article X, Section 20 of the Colorado Constitution.

*[Remainder of Page Intentionally Left Blank]*

ADOPTED JULY 30, 2024.

**DISTRICT:**

**BRADLEY HEIGHTS METROPOLITAN DISTRICT NO. 2**, a quasi-municipal corporation and political subdivision of the State of Colorado

By: \_\_\_\_\_  
Officer of the District

Attest:

By: \_\_\_\_\_

**APPROVED AS TO FORM:**

WHITE BEAR ANKELE TANAKA & WALDRON  
Attorneys at Law

\_\_\_\_\_  
General Counsel to the District

STATE OF COLORADO  
COUNTY OF EL PASO  
BRADLEY HEIGHTS METROPOLITAN DISTRICT NO. 2

I hereby certify that the foregoing resolution constitutes a true and correct copy of the record of proceedings of the Board adopted at a meeting held via teleconference on July 30<sup>th</sup>, 2024, as recorded in the official record of the proceedings of the District.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 30<sup>th</sup> day of July, 2024.

\_\_\_\_\_





## Bradley Heights Metropolitan District No. 1

## Balance Sheet

As of June 30, 2024

	<u>Jun 30, 24</u>
<b>ASSETS</b>	
<b>Current Assets</b>	
<b>Checking/Savings</b>	
ECB - Checking	9,671.01
<b>Total Checking/Savings</b>	<u>9,671.01</u>
<b>Accounts Receivable</b>	
Accounts Receivable	36,886.80
<b>Total Accounts Receivable</b>	<u>36,886.80</u>
<b>Other Current Assets</b>	
Due From District 3	785.19
<b>Total Other Current Assets</b>	<u>785.19</u>
<b>Total Current Assets</b>	<u>47,343.00</u>
<b>TOTAL ASSETS</b>	<b><u>47,343.00</u></b>
<b>LIABILITIES &amp; EQUITY</b>	
<b>Liabilities</b>	
<b>Current Liabilities</b>	
Accounts Payable	
Accounts Payable	64,600.80
<b>Total Accounts Payable</b>	<u>64,600.80</u>
<b>Total Current Liabilities</b>	<u>64,600.80</u>
<b>Long Term Liabilities</b>	
Developer Advance - Randle Case	41,000.00
Marksheffel-Woodmen Investments	75,850.00
<b>Total Long Term Liabilities</b>	<u>116,850.00</u>
<b>Total Liabilities</b>	<u>181,450.80</u>
<b>Equity</b>	
Retained Earnings	-77,107.71
Net Income	-57,000.09
<b>Total Equity</b>	<u>-134,107.80</u>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b><u>47,343.00</u></b>

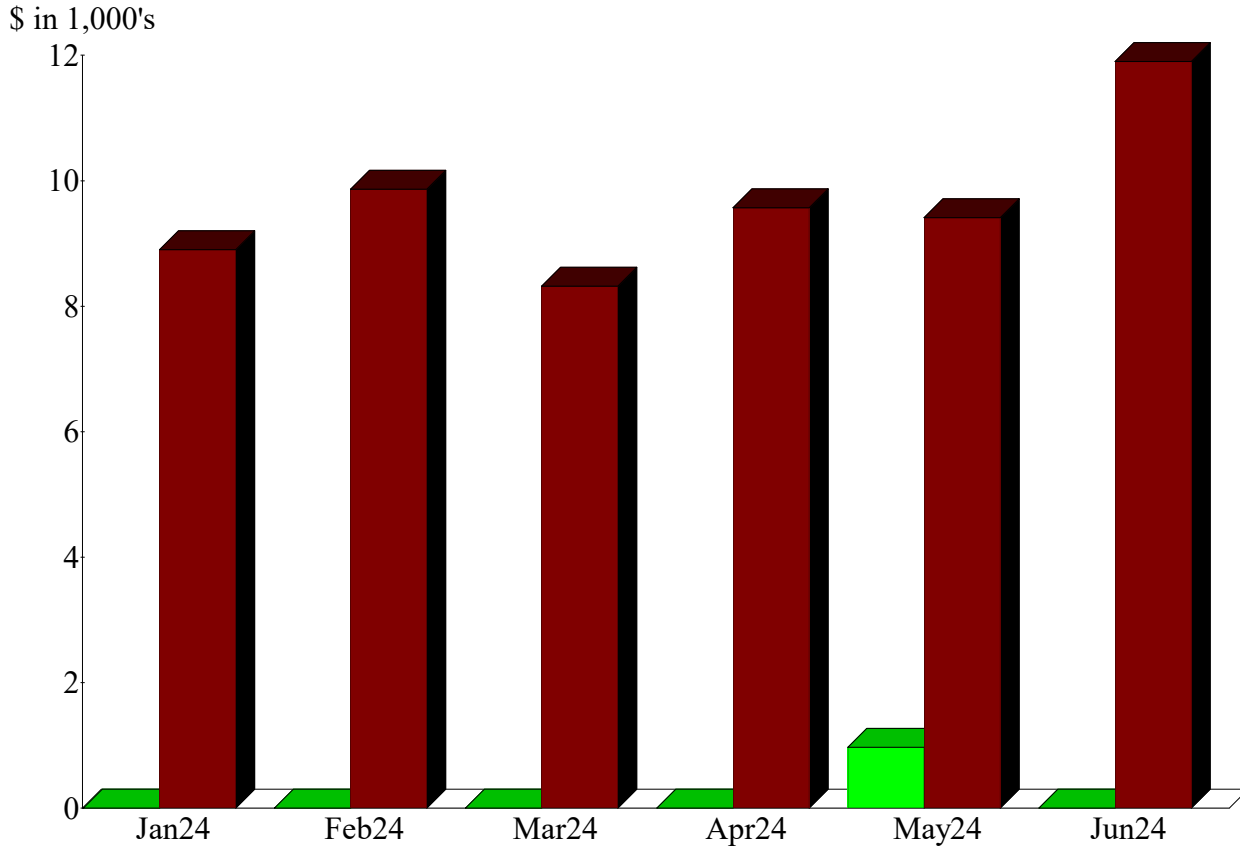
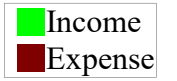
## Bradley Heights Metropolitan District No. 1

### Profit & Loss Budget vs. Actual

January through June 2024

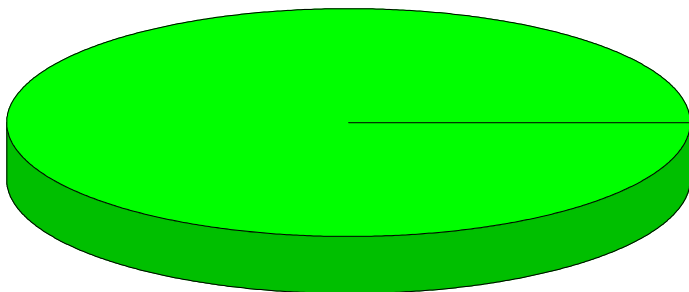
	TOTAL				
	Jun 24	Jan - Jun 24	Budget	\$ Over Budget	% of Budget
<b>Ordinary Income/Expense</b>					
<b>Income</b>					
Developer Advance	0.00	0.00	85,000.00	-85,000.00	0.0%
Transfer From District 2-O&M	0.00	973.13	2,413.00	-1,439.87	40.33%
<b>Total Income</b>	<u>0.00</u>	<u>973.13</u>	<u>87,413.00</u>	<u>-86,439.87</u>	<u>1.11%</u>
<b>Expense</b>					
Audit	0.00	0.00	15,375.00	-15,375.00	0.0%
Bank Service Charge	0.00	0.00	100.00	-100.00	0.0%
Contingency	0.00	0.00	10,000.00	-10,000.00	0.0%
Copies & Postage	117.10	350.06	500.00	-149.94	70.01%
District Management	5,000.00	30,000.00	60,000.00	-30,000.00	50.0%
Dues & Subscriptions (SDA) - D1	0.00	367.01	500.00	-132.99	73.4%
Dues & Subscriptions (SDA) - D2	0.00	1,237.50	1,500.00	-262.50	82.5%
Dues & Subscriptions (SDA) - D3	0.00	225.01	500.00	-274.99	45.0%
Insurance - D1	0.00	595.00	2,000.00	-1,405.00	29.75%
Insurance - D2	0.00	0.00	3,000.00	-3,000.00	0.0%
Insurance - D3	0.00	0.00	3,000.00	-3,000.00	0.0%
Legal	6,781.92	25,198.64	25,000.00	198.64	100.8%
<b>Total Expense</b>	<u>11,899.02</u>	<u>57,973.22</u>	<u>121,475.00</u>	<u>-63,501.78</u>	<u>47.72%</u>
<b>Net Ordinary Income</b>	<u>-11,899.02</u>	<u>-57,000.09</u>	<u>-34,062.00</u>	<u>-22,938.09</u>	<u>167.34%</u>
<b>Net Income</b>	<u><u>-11,899.02</u></u>	<u><u>-57,000.09</u></u>	<u><u>-34,062.00</u></u>	<u><u>-22,938.09</u></u>	<u><u>167.34%</u></u>

Income and Expense by Month  
January through June 2024



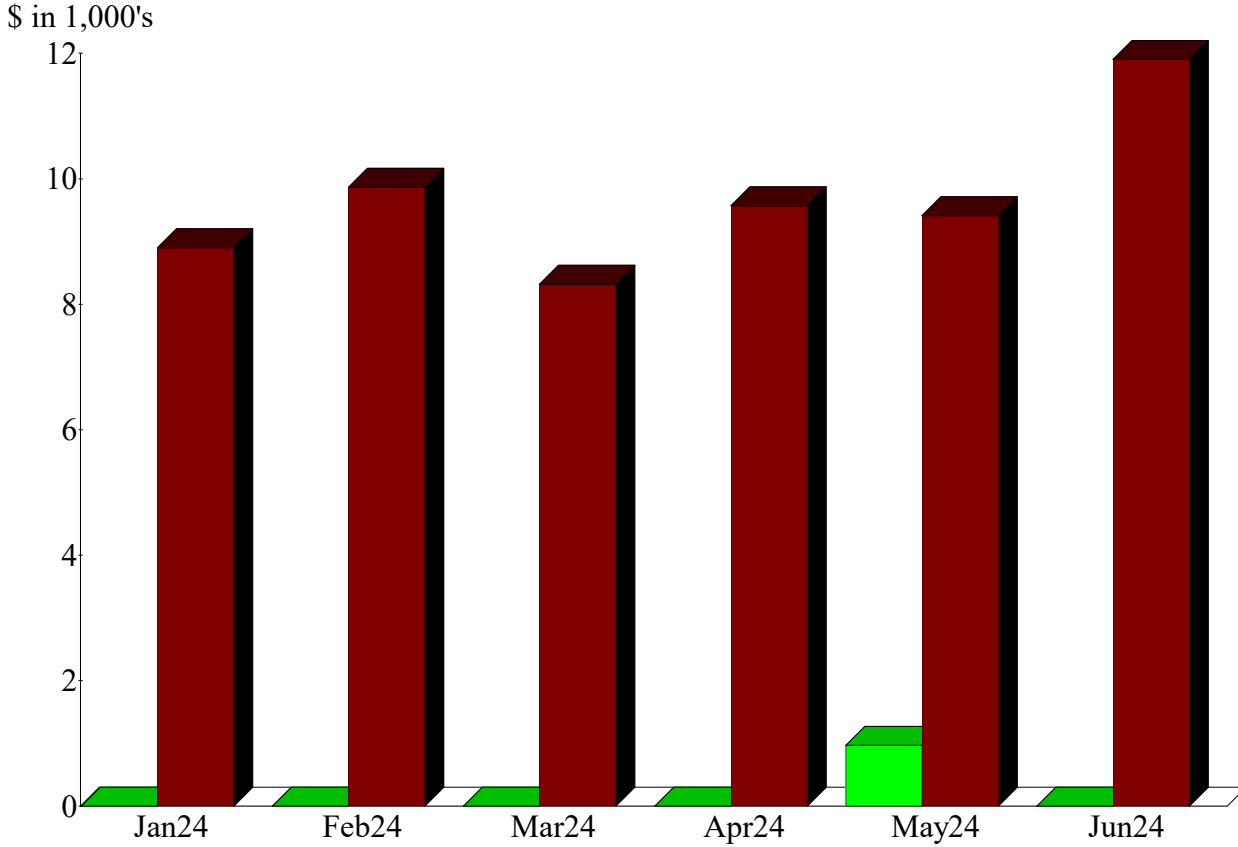
Income Summary  
January through June 2024

Transfer From District 2-O&M	100.00%
Total	\$973.13



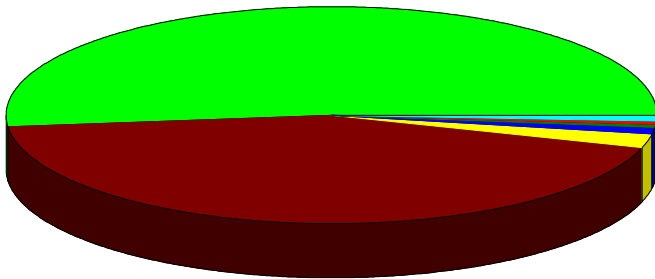
By Account

Income and Expense by Month  
January through June 2024



Expense Summary  
January through June 2024

District Management	51.75%
Legal	43.47
Dues & Subscriptions (SDA) - D2	2.13
Insurance - D1	1.03
Dues & Subscriptions (SDA) - D1	0.63
Copies & Postage	0.60
Dues & Subscriptions (SDA) - D3	0.39
<b>Total</b>	<b>\$57,973.22</b>



By Account

## Bradley Heights Metropolitan District No. 2

## Balance Sheet

As of June 30, 2024

	<u>Jun 30, 24</u>
<b>ASSETS</b>	
<b>Current Assets</b>	
<b>Checking/Savings</b>	
ECB Checking	70,926.42
UMB Bond Account 156470.1	97,834.47
UMB - Project Fund 156470.2	2,491,573.01
<b>Total Checking/Savings</b>	<u>2,660,333.90</u>
<b>Other Current Assets</b>	
Due from District No 3	9.00
Accounts Receivable Other	39.00
Property Tax Receivable	5,955.20
<b>Total Other Current Assets</b>	<u>6,003.20</u>
<b>Total Current Assets</b>	<u>2,666,337.10</u>
<b>Fixed Assets</b>	
Construction in Progress	8,622,891.24
<b>Total Fixed Assets</b>	<u>8,622,891.24</u>
<b>TOTAL ASSETS</b>	<u><u>11,289,228.34</u></u>
<b>LIABILITIES &amp; EQUITY</b>	
<b>Liabilities</b>	
<b>Current Liabilities</b>	
Accounts Payable	
Accounts Payable	442,041.68
<b>Total Accounts Payable</b>	<u>442,041.68</u>
<b>Other Current Liabilities</b>	
Accrued Interest	2,267,035.00
Deferred Property Tax Revenue	5,955.20
<b>Total Other Current Liabilities</b>	<u>2,272,990.20</u>
<b>Total Current Liabilities</b>	<u>2,715,031.88</u>
<b>Long Term Liabilities</b>	
Series 2021A Bonds	35,000,000.00
<b>Total Long Term Liabilities</b>	<u>35,000,000.00</u>
<b>Total Liabilities</b>	<u>37,715,031.88</u>
<b>Equity</b>	
Retained Earnings	-25,906,776.50
Net Income	-519,027.04
<b>Total Equity</b>	<u>-26,425,803.54</u>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<u><u>11,289,228.34</u></u>

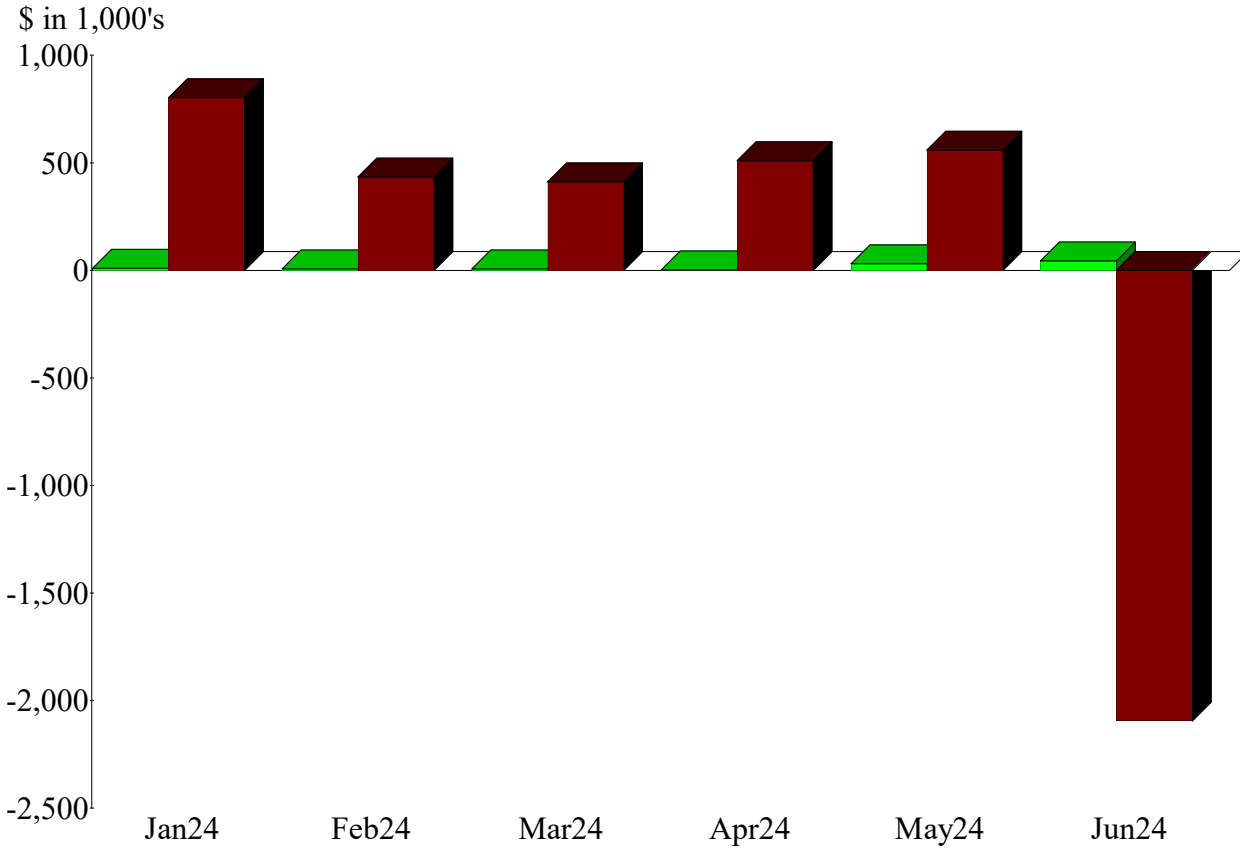
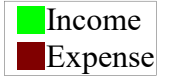
## Bradley Heights Metropolitan District No. 2

### Profit & Loss Budget vs. Actual

January through June 2024

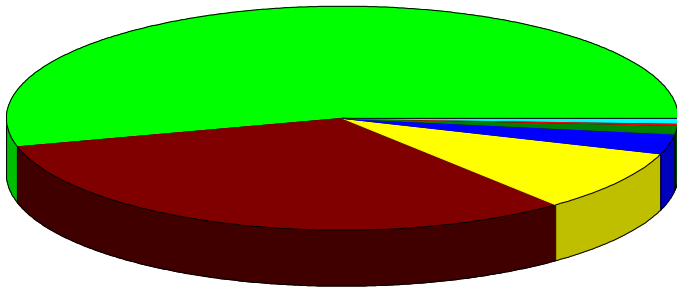
	TOTAL				
	Jun 24	Jan - Jun 24	Budget	\$ Over Budget	% of Budget
<b>Ordinary Income/Expense</b>					
<b>Income</b>					
Trash Service	780.00	1,501.00			
Transfer From D3 DS Taxes	0.00	0.00	523.00	-523.00	0.0%
CY Property Tax - O&M	2,349.26	3,242.80	4,712.00	-1,469.20	68.82%
Specific Ownership Tax - O&M	24.82	123.82	330.00	-206.18	37.52%
CY Property Tax - Debt	7,047.79	9,728.41	8,397.00	1,331.41	115.86%
Specifice Ownership Tax - Debt	74.45	371.43	588.00	-216.57	63.17%
<b>Impact Fees</b>					
Capital Facility Fees-Platting	29,990.00	58,980.00	119,960.00	-60,980.00	49.17%
<b>Total Impact Fees</b>	<u>29,990.00</u>	<u>58,980.00</u>	<u>119,960.00</u>	<u>-60,980.00</u>	<u>49.17%</u>
<b>Total Income</b>	<u>40,266.32</u>	<u>73,947.46</u>	<u>134,510.00</u>	<u>-60,562.54</u>	<u>54.98%</u>
<b>Expense</b>					
<b>Bond Expense</b>					
Bank Fees	90.55	2,252.97			
Debt Service Interest	0.00	0.00	119,960.00	-119,960.00	0.0%
Paying Agent Fee	0.00	0.00	4,000.00	-4,000.00	0.0%
<b>Total Bond Expense</b>	<u>90.55</u>	<u>2,252.97</u>	<u>123,960.00</u>	<u>-121,707.03</u>	<u>1.82%</u>
<b>Capital Outlay</b>					
Construction Coordination	0.00	427,380.10			
Capital Construction	-2,106,021.61	-221,762.92	2,076,963.00	-2,298,725.92	-10.68%
Engineering/Planning	10,542.50	367,671.02			
Project Management	0.00	50,915.85			
<b>Total Capital Outlay</b>	<u>-2,095,479.11</u>	<u>624,204.05</u>	<u>2,076,963.00</u>	<u>-1,452,758.95</u>	<u>30.05%</u>
Trash Expense	60.68	90.91			
Treasurer Collection Fee - O&M	34.87	48.27	71.00	-22.73	67.99%
Treasurer Collection Fee - Debt	104.60	144.81	126.00	18.81	114.93%
<b>Total Expense</b>	<u>-2,095,188.41</u>	<u>626,741.01</u>	<u>2,201,120.00</u>	<u>-1,574,378.99</u>	<u>28.47%</u>
<b>Net Ordinary Income</b>	<u>2,135,454.73</u>	<u>-552,793.55</u>	<u>-2,066,610.00</u>	<u>1,513,816.45</u>	<u>26.75%</u>
<b>Other Income/Expense</b>					
<b>Other Income</b>					
Interest Income - Debt	4,836.73	34,739.64	100,000.00	-65,260.36	34.74%
<b>Total Other Income</b>	<u>4,836.73</u>	<u>34,739.64</u>	<u>100,000.00</u>	<u>-65,260.36</u>	<u>34.74%</u>
<b>Other Expense</b>					
<b>Other Expense</b>					
Transfer to Dist 1 - Gen Fund	0.00	973.13	2,413.00	-1,439.87	40.33%
<b>Total Other Expense</b>	<u>0.00</u>	<u>973.13</u>	<u>2,413.00</u>	<u>-1,439.87</u>	<u>40.33%</u>
<b>Total Other Expense</b>	<u>0.00</u>	<u>973.13</u>	<u>2,413.00</u>	<u>-1,439.87</u>	<u>40.33%</u>
<b>Net Other Income</b>	<u>4,836.73</u>	<u>33,766.51</u>	<u>97,587.00</u>	<u>-63,820.49</u>	<u>34.6%</u>
<b>Net Income</b>	<u><u>2,140,291.46</u></u>	<u><u>-519,027.04</u></u>	<u><u>-1,969,023.00</u></u>	<u><u>1,449,995.96</u></u>	<u><u>26.36%</u></u>

Income and Expense by Month  
January through June 2024



Income Summary  
January through June 2024

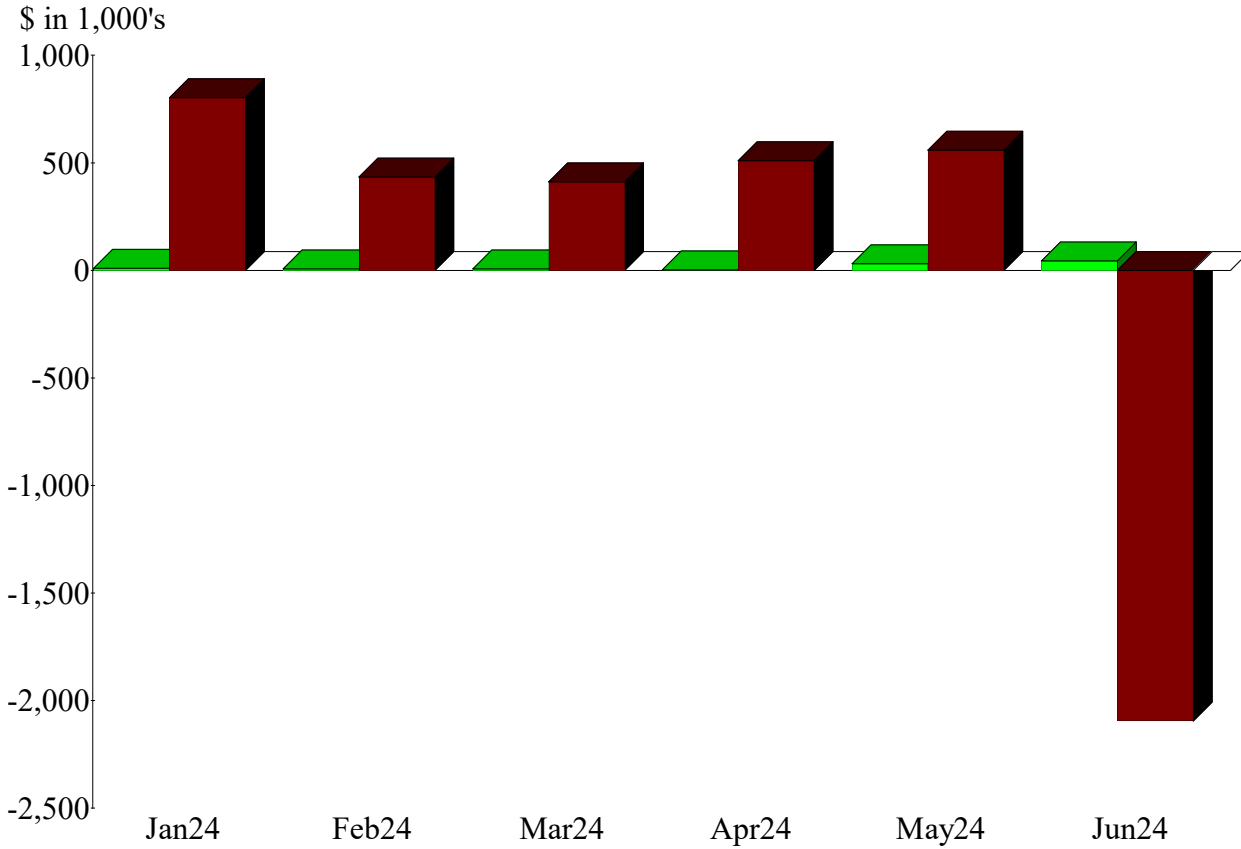
Impact Fees	54.27%
Interest Income - Debt	31.96
CY Property Tax - Debt	8.95
CY Property Tax - O&M	2.98
Trash Service	1.38
Specific Ownership Tax - Debt	0.34
Specific Ownership Tax - O&M	0.11
<b>Total</b>	<b>\$108,687.10</b>



By Account

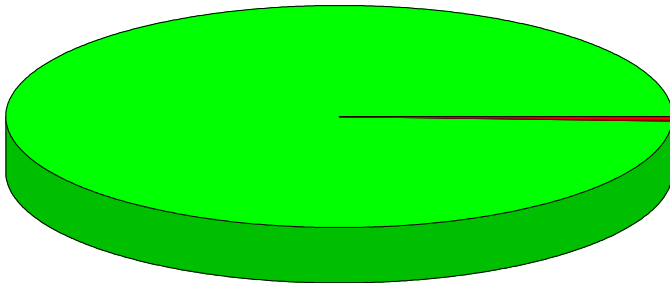
Income and Expense by Month  
January through June 2024

Income  
Expense



Expense Summary  
January through June 2024

Capital Outlay	99.44%
Bond Expense	0.36
Other Expense	0.16
Treasurer Collection Fee - Debt	0.02
Trash Expense	0.01
Treasurer Collection Fee - O&M	0.01
<b>Total</b>	<b>\$627,714.14</b>



By Account



**Balance Sheet**

As of June 30, 2024

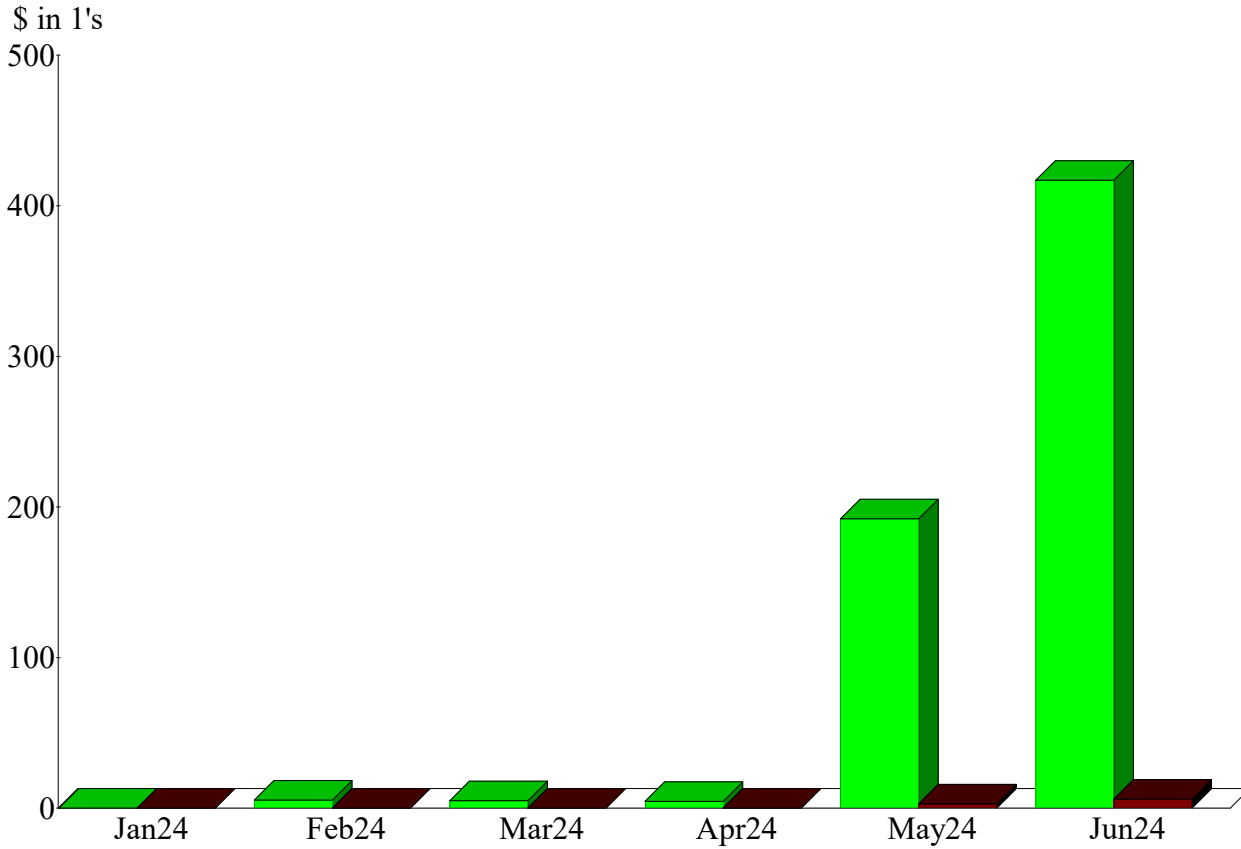
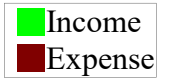
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	<u>Jun 30, 24</u>
<b>ASSETS</b>	
<b>Current Assets</b>	
Checking/Savings	
ECB Checking	985.92
<b>Total Checking/Savings</b>	<u>985.92</u>
<b>Total Current Assets</b>	<u>985.92</u>
<b>TOTAL ASSETS</b>	<b><u>985.92</u></b>
<b>LIABILITIES &amp; EQUITY</b>	
<b>Liabilities</b>	
<b>Current Liabilities</b>	
Other Current Liabilities	
Due To District 1	794.19
<b>Total Other Current Liabilities</b>	<u>794.19</u>
<b>Total Current Liabilities</b>	<u>794.19</u>
<b>Total Liabilities</b>	794.19
<b>Equity</b>	
Retained Earnings	-423.47
Net Income	615.20
<b>Total Equity</b>	<u>191.73</u>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b><u>985.92</u></b>

**Bradley Heights Metropolitan District No. 3**  
**Profit & Loss Budget vs. Actual**  
 January through June 2024

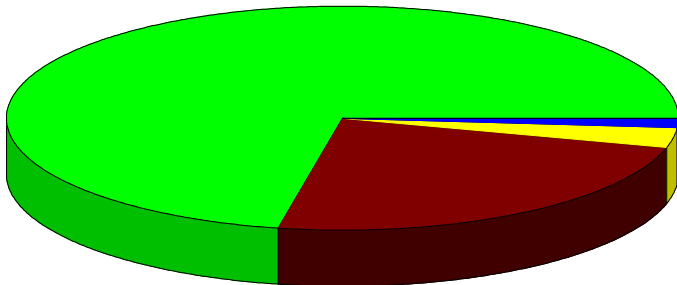
	TOTAL				
	<u>Jun 24</u>	<u>Jan - Jun 24</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
<b>Ordinary Income/Expense</b>					
<b>Income</b>					
CY Property Tax - O&M	103.00	149.74	249.00	-99.26	60.14%
Specific Ownership Tax - O&M	1.25	6.22	17.00	-10.78	36.59%
CY Property Tax - Debt	308.98	449.49	746.00	-296.51	60.25%
Specifice Ownership Tax - Debt	3.74	18.64	52.00	-33.36	35.85%
<b>Total Income</b>	<u>416.97</u>	<u>624.09</u>	<u>1,064.00</u>	<u>-439.91</u>	<u>58.66%</u>
<b>Expense</b>					
Transfer to D2 DS Taxes	0.00	0.00	787.00	-787.00	0.0%
Treasurer Collection Fee - O&M	1.52	2.22	4.00	-1.78	55.5%
Treasurer Collection Fee - Debt	4.56	6.67	11.00	-4.33	60.64%
<b>Total Expense</b>	<u>6.08</u>	<u>8.89</u>	<u>802.00</u>	<u>-793.11</u>	<u>1.11%</u>
<b>Net Ordinary Income</b>	<u>410.89</u>	<u>615.20</u>	<u>262.00</u>	<u>353.20</u>	<u>234.81%</u>
<b>Net Income</b>	<u><u>410.89</u></u>	<u><u>615.20</u></u>	<u><u>262.00</u></u>	<u><u>353.20</u></u>	<u><u>234.81%</u></u>

Income and Expense by Month  
January through June 2024



Income Summary  
January through June 2024

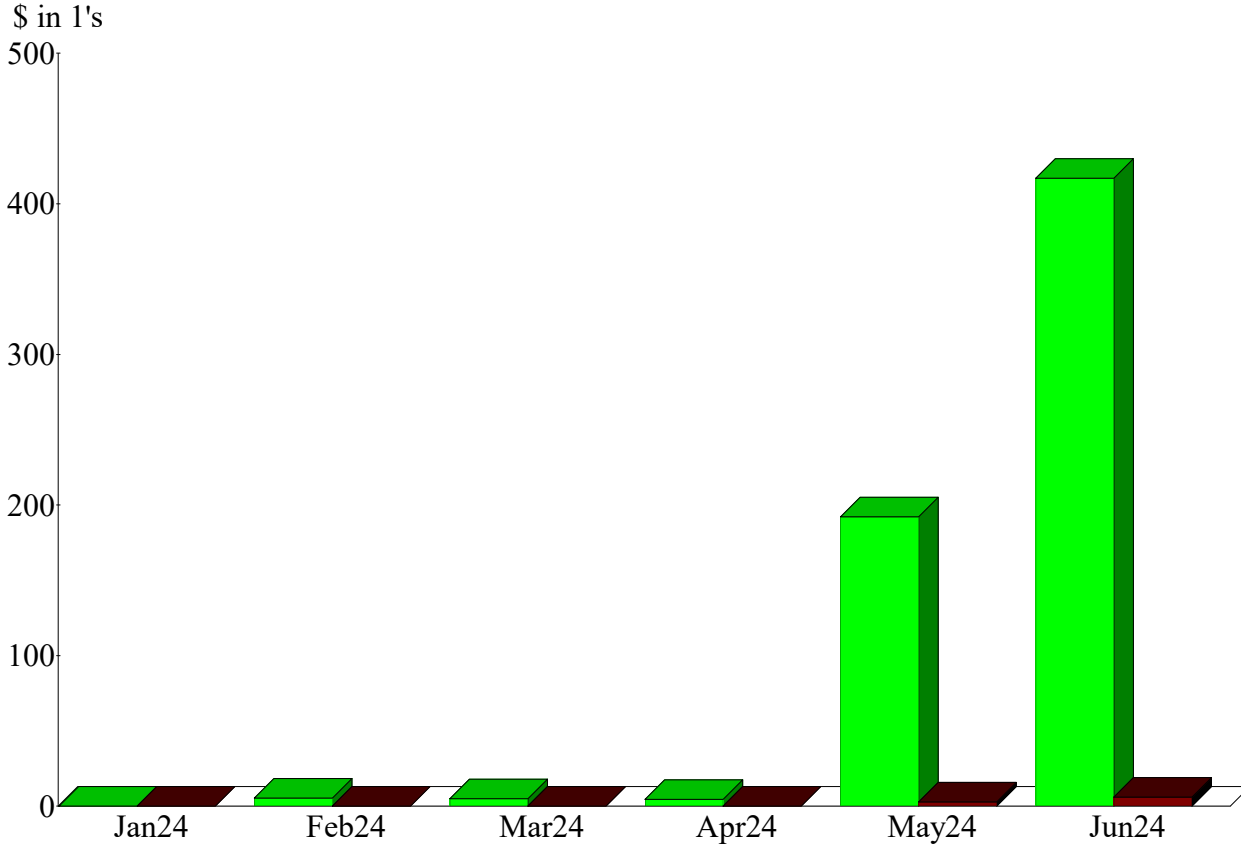
CY Property Tax - Debt	72.02%
CY Property Tax - O&M	23.99
Specifice Ownership Tax - Debt	2.99
Specific Ownership Tax - O&M	1.00
<b>Total</b>	<b>\$624.09</b>



By Account

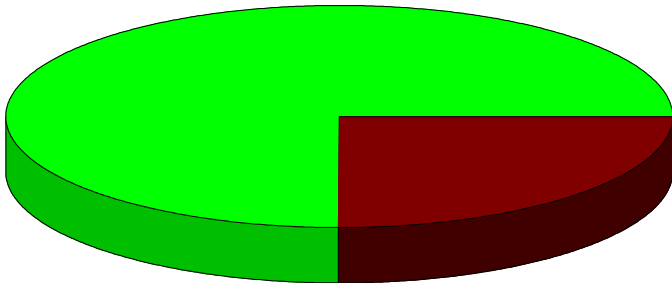
Income and Expense by Month  
January through June 2024

Income  
Expense



Expense Summary  
January through June 2024

Treasurer Collection Fee - Debt	75.03%
Treasurer Collection Fee - O&M	24.97
Total	\$8.89



By Account



# Bradley Heights Metropolitan District No. 1

## PAYMENT REQUEST

7/30/2024

### GENERAL FUND ACCOUNT

Company	Invoice	Date	Amount	Comments
White Bear Anekele	34977	5/31/2024	\$ 4,363.94	
White Bear Anekele	35491	6/30/2024	\$ 6,781.92	
WSDM District Managers	8057	6/30/2024	\$ 5,117.10	
<b>TOTAL</b>			<b>\$ 16,262.96</b>	

\$16,262.96

\_\_\_\_\_  
Bradley Heights Metropolitan District

Balance Per Bank 7/30	539.00
Current Payables	(16,262.96)
Prior Months Payables	(48,337.84)
<b>Outstanding Dev Advance</b>	<b>36,886.30</b>
Funds Needed	(27,175.50)

# Bradley Heights Metropolitan District #2

## PAYMENT REQUEST

7/30/2024

### GENERAL FUND ACCOUNT

Company	Invoice	Date	Amount	
HBS	FR4357168	6/30/2024	\$ 60.68	
UMB	7	5/1/2024	\$ 26,991.00	
UMB	9	6/3/2024	\$ 29,990.00	
UMB	62824	6/28/2024	\$ 385,000.00	
<b>TOTAL</b>			\$ 442,041.68	

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Bradley Heights





**FUNDING AND REIMBURSEMENT AGREEMENT  
(PILOT Agreement)**

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This **FUNDING AND REIMBURSEMENT AGREEMENT** (the “**Agreement**”) is made and entered into as of July 1, 2024, by and between BRADLEY HEIGHTS METROPOLITAN DISTRICT NO. 2, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), and LENA GALE (“**Land Seller**”). The District and Land Seller are collectively referred to herein as the “**Parties**.”

**RECITALS**

WHEREAS, the District is a quasi-municipal corporation and political subdivision of the State of Colorado, organized in accordance with the provisions of Article 1, Title 32, Colorado Revised Statutes (the “**Special District Act**”), with the power to provide certain public infrastructure, improvements and services, as described in the Special District Act, within and without its boundaries (collectively, the “**Public Infrastructure**”), as authorized and in accordance with the Service Plan for the District (the “**Service Plan**”); and

WHEREAS, the District will incur costs in furtherance of the District’s permitted purposes, including, but not limited to costs of consultants providing services in connection with the provision and financing of public improvements being provided by the District such as the creation of a Declaration and Agreement for Payment In Lieu of Taxes (the “**PILOT Costs**”); and

WHEREAS, the Land Seller is under contract to sell a certain parcel of land within the District to a buyer that intends to build affordable housing making owner and/or the parcel tax-exempt, and by the terms of land sale agreement the buyer is obligated to enter into a Declaration and Agreement for Payment In Lieu of Taxes (“**PILOT**”) with the District whereby the buyer agrees to pay a fair amount to the District in recognition of the District’s provision of public improvements benefitting the parcel which payment would otherwise not occur due the tax-exemption nature; and

WHEREAS, the District does not presently have financial resources to provide funding for payment of PILOT Costs that are projected to be incurred prior to the anticipated availability of funds; and

WHEREAS, the Land Seller is willing, in her sole discretion, to advance funds to the District from time to time (collectively, the “**Advances**”); and

WHEREAS, the District is willing to reimburse the Land Seller for Advances made, in accordance with the terms hereof; and

WHEREAS, the District anticipates repaying moneys advanced by the Land Seller hereunder with funds available from future ad valorem taxes, fees, or other legally available revenues of the District determined to be available therefor; and

WHEREAS, in addition, the District is willing to execute one or more reimbursement notes, bonds, or other instruments (“**Reimbursement Obligations**”), which may be multiple fiscal

year obligations that are not subject to annual appropriation, in an aggregate principal amount not to exceed the Maximum Loan Amount (as defined below) and accrued interest, to be issued to or at the direction of the Land Seller upon its request, subject to the terms and conditions of this Agreement, to further evidence the District's obligation to repay the Advances hereunder; and

WHEREAS, the District and the Land Seller desire to enter into this Agreement for the purpose of consolidating all understandings and commitments between them relating to Advances made by the Land Seller to fund PILOT Costs, and the repayment by the District of such amounts; and

WHEREAS, the Board of Directors of the District (the "**Board**") has determined that the best interests of the District and its property owners and taxpayers will be served by entering into this Agreement in order to allow the District to effectuate the purposes for which the District was organized; and

WHEREAS, the Parties have authorized their officers to execute this Agreement and to take all other actions necessary and desirable to effectuate the purposes of this Agreement.

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the District and the Land Seller agree as follows:

### COVENANTS AND AGREEMENTS

1. Advances. The Land Seller, in its sole discretion, is willing to advance funds from time to time to the District for the payment PILOT Costs of the District one or more sums of money, not to exceed the aggregate of **\$15,000** (as the same may be subsequently increased by agreement of the parties hereto and execution of a supplement or addendum to this Agreement) (the "**Maximum Loan Amount**"). The Land Seller shall have no obligation to incur such PILOT Costs or advance funds to the District therefor, it being the intent of this Agreement to establish the terms under which the procedures by which Advances to the District for PILOT Costs would be made by the Land Seller and reimbursed by the District.

2. Use of Funds. Where the Land Seller makes cash advances to the District hereunder, the District agrees that it shall apply all such funds advanced by the Land Seller under this Agreement solely to PILOT Costs of the District. The Land Seller shall be entitled to a quarterly accounting of the expenditures made by the District, upon request, and otherwise may request specific information concerning such expenditures at reasonable times and upon reasonable notice to the District.

3. Manner for Requesting Advances.

a. The District may request cash advances from the Land Seller hereunder at such times and in such amounts as may be necessary to fund PILOT Costs of the District. Any such request shall be in writing and shall identify the specific uses for such advances, in such detail as the Land Seller may require. To the extent agreed to by the Land Seller, the Land Seller shall thereupon transfer funds to the District for use.

b. Upon receipt of advances hereunder, the District shall keep a record of such advances made. Failure to record such advances shall not affect inclusion of such amounts as reimbursable pursuant to this Agreement.

4. Periodic Advances/Obligations Irrevocable. To the extent the Land Seller agrees to make Advances for PILOT Costs in one or more installments, rather than in full, for a given request, then the Land Seller's obligation to make subsequent transfers to the District shall be absolute, unconditional, and are not subject to setoff or counterclaim.

5. Interest Prior to Issuance of Reimbursement Obligations. With respect to Advances made under this Agreement prior to the earlier of payment in full thereof, or the issuance of any Reimbursement Obligation reflecting such Advances, interest shall accrue on such amounts, as simple interest with no compounding at the rate of 2% per annum from the date any such Advance is made to the earlier of the date the Reimbursement Obligation is issued to evidence such advance, or the date of repayment of such amount (the "**Interest Rate**"). Repayments of such advances will apply first to accrued and unpaid interest and second to principal. Upon issuance of a Reimbursement Obligation, unless otherwise consented to by the Land Seller, any interest then accrued on any previously advanced amount shall be added to the amount of the loan advance and reflected as principal of the Reimbursement Obligation, and shall thereafter accrue interest as provided in such Reimbursement Obligation.

6. Terms of Repayment; Source of Revenues.

a. Any funds advanced under this Agreement shall be repaid in accordance with the terms of this Agreement. The District intends to repay any advances made under this Agreement to the extent that funds are available from ad valorem taxes, fees, or other legally available revenues of the District, net of any debt service obligations or annual operations and maintenance costs of the District. Any mill levy certified by the District for the purpose of repaying advances made hereunder shall be subject to any restrictions provided in the District's Service Plan, outstanding debt instruments, including subordination to the same, electoral authorization, or any applicable laws. Any payments made by the District shall be credited first, to any interest then due and payable under this Agreement, and second, to the outstanding principal balance of amounts advanced to the District.

b. The provision for repayment of advances, as set forth in Section 7(a) hereof, shall be at all times subject to annual appropriation by the District. To the extent required by Article X, Section 20 of the Colorado Constitution, the District's failure to appropriate funds in any given fiscal year will not be deemed or construed to constitute a default by the District under Section 7(b). The District's failure to appropriate funds in any given fiscal year will not be deemed or construed to effect a discharge of the District's obligation to pay in any subsequent fiscal year, and interest will continue to accrue on any unpaid principal as provided in Section 6 above.

c. At such time as the District issues Reimbursement Obligations to evidence an obligation to repay advances made under this Agreement, the repayment terms of such Reimbursement Obligations shall control and supersede any otherwise applicable provision of this Agreement, except for the Maximum Reimbursement Obligation Repayment Term (as defined

below). Such Reimbursement Obligations may be issued as multi-fiscal-year financial obligations, not subject to annual appropriation.

7. Issuance of Reimbursement Obligations.

a. Subject to any limitations or restrictions contained in any loan or bond documents or other multi-fiscal-year instruments, and the conditions of this Section 8 and Section 9 hereof, upon request of the Land Seller, the District hereby agrees to issue to or at the direction of the Land Seller one or more Reimbursement Obligations to evidence any repayment obligation of the District then existing with respect to advances made, and interest accrued, under this Agreement. Such Reimbursement Obligations shall be payable solely from the sources identified in the Reimbursement Obligations, including, but not limited to, ad valorem property tax revenues of the District, and shall be secured by the District's pledge to apply such revenues as required thereunder, unless otherwise consented to by the Land Seller. Such Reimbursement Obligations shall mature on a date or dates, subject to the limitations set forth herein, and bear interest at a market rate to be determined at the time of issuance of such Reimbursement Obligations, subject to compliance with the provisions of Section 32-1-1101(7), C.R.S.

b. The issuance of any Reimbursement Obligations shall be subject to the availability of an exemption from the registration requirements of §11-59-106, C.R.S., and shall be subject to such prior filings with the Colorado State Securities Commissioner as may be necessary to claim such exemption, in accordance with §11-59-110, C.R.S., and any regulations promulgated thereunder.

c. In connection with the issuance of any such Reimbursement Obligations, the District shall make such filings as it may deem necessary to comply with the provisions of §32-1-1604, C.R.S., as amended.

d. The terms of this Agreement may be used to construe the intent of the Parties in connection with issuance of any Reimbursement Obligations, and shall be read as nearly as possible to make the provisions of any Reimbursement Obligations and this Agreement fully effective. Should any irreconcilable conflict arise between the terms of this Agreement and the terms of any Reimbursement Obligations, the terms of such Reimbursement Obligations shall prevail.

e. If, for any reason, any Reimbursement Obligations are determined to be invalid or unenforceable, the District shall issue new Reimbursement Obligations that are legally enforceable, subject to the provisions of this Section 8.

f. In the event that it is determined that payments of all or any portion of interest on any Reimbursement Obligations may be excluded from gross income of the holder thereof for federal income tax purposes upon compliance with certain procedural requirements and restrictions that are not inconsistent with the intended uses of funds contemplated herein and are not overly burdensome to the District, the District agrees, upon request of the Land Seller, to take all action reasonably necessary to satisfy the applicable provisions of the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder.

8. No Debt. It is hereby agreed and acknowledged that this Agreement evidences the District's good faith intent to repay the Land Seller for advances made in accordance with the terms of this Agreement. However, this Agreement shall not constitute a debt or indebtedness by the District within the meaning of any constitutional or statutory provision, nor shall it constitute a multiple-fiscal-year financial obligation. Further, the provision for repayment of advances made, as set forth in Section 7 hereof, and the agreement to issue Reimbursement Obligations as set forth in Section 8 hereof, shall be at all times subject to annual appropriation by the District, in its absolute discretion. The Land Seller expressly understands and agrees that the District's obligations under this Agreement shall extend only to monies appropriated for the purposes of this Agreement by the District's Board and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. By acceptance of this Agreement, the Land Seller agrees and consents to all of the limitations with respect to the payment of the principal and interest due under this Agreement, and as may be limited by the District's Service Plan.

9. Termination.

a. The Land Seller's obligations to advance funds to the District in accordance with this Agreement shall terminate on December 31, 2024 (subject to the extension terms above), except to the extent advance requests have been made to the Land Seller that are pending by this termination date, in which case said pending request(s) will be honored notwithstanding the passage of the termination date.

b. The District's obligations under this Agreement shall terminate at the earlier of the repayment in full of the Maximum Loan Amount (or such lesser amount advanced hereunder if it is determined by the District that no further advances shall be required hereunder) and accrued interest or ten (10) years from the execution date hereof. After ten (10) years from the execution of this Agreement, the Parties hereby agree and acknowledge that any obligation created by this Agreement which remains due and outstanding under this Agreement, including accrued interest, is forgiven in its entirety, generally and unconditionally released, waived, acquitted and forever discharged, and shall be deemed a contribution to the District by the Land Seller, and there shall be no further obligation of the District to pay or reimburse the Land Seller with respect to such amounts. For the avoidance of any doubt, Reimbursement Obligations are not considered "due and outstanding" under this Agreement, but are payable in accordance with their terms.

c. Notwithstanding any provision in this Agreement to the contrary, the District's obligation to reimburse the Land Seller for any and all funds advanced or otherwise payable to the Land Seller under and pursuant to this Agreement (whether the Land Seller has already advanced or otherwise paid such funds or intends to make such advances or payments in the future) shall terminate automatically and be of no further force or effect upon the occurrence of Land Seller's death. The termination of the District's reimbursement obligation as set forth in this section shall be absolute and binding upon the Land Seller, its successors and assigns. The Land Seller, by its execution of this Agreement, waives and releases any and all claims and rights, whether existing now or in the future, against the District relating to or arising out of the District's reimbursement obligations under this Agreement in the event that any of the occurrences described in this section occur.

10. Time Is of the Essence. Time is of the essence hereof; provided, however, that if the last day permitted or otherwise determined for the performance of any required act under this Agreement falls on a Saturday, Sunday, or legal holiday, the time for performance shall be extended to the next succeeding business day, unless otherwise expressly stated.

11. Notices and Place for Payments. All notices, demands and communications (collectively, “**Notices**”) under this Agreement shall be delivered or sent by: (a) first class, registered or certified mail, postage prepaid, return receipt requested; (b) nationally recognized overnight carrier, addressed to the address of the intended recipient set forth below or such other address as either party may designate by notice pursuant to this Section 12; or (c) sent by confirmed facsimile transmission, PDF, or email. Notices shall be deemed given either one (1) business day after delivery BY the overnight carrier, three (3) days after being mailed as provided in clause (a) above, or upon confirmed delivery as provided in clause (c) above.

District: Bradley Heights Metropolitan District No. 2  
c/o WSDM  
614 N. Tejon St.  
Colorado Springs, CO 80903  
Attention: Rebecca Harris  
(719) 447-1777  
Rebecca.h@wsdistricts.co

with a copy to: WHITE BEAR ANKELE TANAKA & WALDRON  
Attorneys at Law  
2154 East Commons Avenue, Suite 2000  
Centennial, Colorado 80122  
Attention: Sean Allen, Esq.  
(303) 858-1800 (phone)  
sallen@wbapc.com

Land Seller: Lena Gale  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. Amendments. This Agreement may only be amended or modified by writing executed by the Parties.

13. Severability. If any portion of this Agreement 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 Agreement, 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 Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

14. Applicable Laws. This Agreement and all claims or controversies arising out of or relating to this Agreement shall be governed and construed in accordance with the law of the State of Colorado, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado. Venue for all actions arising from this Agreement shall be in the District Court in and for the county in which the District is located.

15. Assignment. In no event shall either party assign, transfer or convey all or any portion of its rights or obligations under this Agreement. Any purported assignment, transfer or conveyance is void.

16. Authority. By execution hereof, the Parties represent and warrant that their respective representatives signing hereunder have full power and authority to execute this Agreement and to bind the respective party to the terms hereof.

17. Entire Agreement. This Agreement constitutes and represents the entire, integrated agreement between the Parties with respect to the matters set forth herein and hereby supersedes any and all prior negotiations, representations, agreements, or arrangements of any kind with respect to those matters, whether written or oral. This Agreement shall become effective upon the date of full execution hereof.

18. Legal Existence. The District will maintain its legal identity and existence so long as any of the advanced amounts contemplated herein remain outstanding. The foregoing statement shall apply unless, by operation of law, another legal entity succeeds to the liabilities and rights of the District without materially adversely affecting the Land Seller's privileges and rights under this Agreement.

19. Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the District, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the District and, in particular, governmental immunity afforded or available to the District, pursuant to the Colorado Governmental Immunity Act, §§24-10-101, *et seq.*, C.R.S.

20. Negotiated Provisions. This Agreement shall not be construed more strictly against one party than against another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being acknowledged that each party has contributed substantially and materially to the preparation of this Agreement.

21. Parties Interested Herein/No Third Party Beneficiaries. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the Parties any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties. Nothing contained in this Agreement shall give or allow any such claim or right of action by any other third parties. It is the express intention of the Parties

that any person other than the Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

22. Electronic Storage and Execution. The Parties agree that the transactions described in this Agreement may be conducted, and related documents may be signed and stored by electronic means. Copies, telecopies, facsimiles, electronic files, and other reproductions of electronically signed and stored documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action, or suit in the appropriate court of law. Any electronic signature affixed to this Agreement or any amendments or consents thereto shall carry the full legal force and effect of any original, handwritten signature.

23. Counterpart Execution. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings.

*[Signature Page Follows]*



IN WITNESS WHEREOF, the Parties have executed this Agreement on the date and year first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

**DISTRICT:**

**BRADLEY HEIGHTS METROPOLITAN DISTRICT NO. 2**, a quasi-municipal corporation and political subdivision of the State of Colorado

By: \_\_\_\_\_  
Officer of the District

Attest:

By: \_\_\_\_\_

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON  
Attorneys at Law

\_\_\_\_\_  
General Counsel to the District

**LAND SELLER:**  
**LENA GALE**

\_\_\_\_\_

*[Signature page to Funding and Reimbursement Agreement (PILOT Agreement)]*



When Recorded Return To:  
WSDM  
614 N. Tejon St.  
Colorado Springs, CO 80903  
Attn: Rebecca Harris

## DECLARATION AND AGREEMENT FOR PAYMENT IN LIEU OF TAXES

### PHASE NO. 1

THIS DECLARATION AND AGREEMENT FOR PAYMENT IN LIEU OF TAXES (this "**Declaration**") is made as of [\_\_\_\_\_], by and between [\_\_\_\_\_] ("**Declarant**") and **BRADLEY HEIGHTS METROPOLITAN DISTRICT NO. 2**, a quasi-municipal corporation and political subdivision of the state formed pursuant to C.R.S. §§32-1-101, et seq., and its successors and assigns (the "**District**") for the benefit of the District.

### RECITALS

A. Except as otherwise expressly provided herein or unless the context requires otherwise, capitalized terms used in this Declaration shall have the meanings set forth in Section 1 of this Declaration, and references to Sections and Exhibits shall refer to Sections and Exhibits of this Declaration unless expressly stated otherwise.

B. As of the Effective Date of this Declaration, Declarant owns a fee interest in all of the real property described in Exhibit A, attached hereto and incorporated herein (the "**Property**"), which is located within the District boundaries.

C. Declarant intends to develop the Property for affordable residential housing together with related amenities and facilities and uses on the Property (the "**Project**"). Declarant, pursuant to its purchase and sale agreement for the Property, is required to enter into this Declaration.

D. Significant investment in Eligible Improvements is required and necessary for the benefit of the entire Bradley Heights community and development as a whole, which includes the Project and the Property.

E. The District is organized pursuant to Colorado law in order to provide for the financing, construction, and completion of the Eligible Improvements.

F. The District's completion of the Eligible Improvements and the ongoing Operations and Maintenance for the Eligible Improvements will benefit the Project and the Property. The District has the authority, under the laws of the State, its Service Plan, and its electoral authorizations to impose property taxes to provide revenues (a) to pay debt service on bonds and other indebtedness (including bonds and other obligations for the refinancing of such

indebtedness) issued by the District or by Bradley Heights Metropolitan District Nos. 1 and/or 3 on its behalf, if any, to which the District has pledged revenues for the repayment thereof, for the purpose of, among other things, paying the costs to acquire, finance, refinance, construct, complete, operate and maintain the Eligible Improvements and (b) to pay the District's Operation Expenses.

G. For the purpose of financing (or refinancing) the costs of the acquisition, construction, completion, and provision of the Eligible Improvements, along with the acquisition of real property to be owned or managed by the District, the District issued its General Obligation Limited Tax Bonds, Series 2021A, which are payable, in part, from revenue derived from taxation of the Property.

H. Repayment of the District Bonds and payment of the District's Operation Expenses therefore is dependent, in part, on property tax revenue derived from the Property. A sale or transfer of any Interest in the Property, or any portion thereof, to an entity which is exempt from property taxation (or an entity eligible to apply for such exemption) would result in a reduction of the property tax revenue, including the property taxes which would otherwise be paid to the District, on which the District is relying in order to pay the District Bonds and the District's Operation Expenses benefiting the Property.

I. Subject to and in accordance with the terms of this Declaration, the District and Declarant desire to establish the terms and conditions under which PILOTs are made and the Declarant further desires to impose upon the Property the covenants and restrictions set forth below to secure the payment of the repayment of the District Bonds and the payment of the District's Operation Expenses and the costs for Eligible Improvements benefiting the Property.

## DECLARATION

NOW THEREFORE, for and in consideration of the foregoing, Declarant declares and grants, as follows:

1. Defined Terms. Except as otherwise expressly provided herein or unless the context requires otherwise, the singular of any term includes the plural of such term, and any reference herein to a Section is to a Section of this Declaration. The following terms, when used in this Declaration, shall have the following meanings:

- (a) "**Act**" shall have the meaning set forth in Section 13 below.
- (b) "**Administration**" means the conduct of routine clerical and administrative activities and the maintenance of records required by law for Statutory Compliance.
- (c) "**Change in Taxable Status**" shall have the meaning set forth in Section 3 below.
- (d) "**City**" means the City of Colorado Springs, Colorado, a home rule municipal corporation.

(e) “**District**” means the Bradley Heights Metropolitan District No. 2, which was formed pursuant to C.R.S. §§32-1-101, *et seq.*, and each or all of its successors and assigns.

(f) “**District Bond Documents**” means, collectively, the District Bond Indenture, resolution, loan agreement, and any other documents pursuant to which the District Bonds are issued and secured as to repayment.

(g) “**District Bond Indenture**” means any indenture or similar documents pursuant to which the District Bonds are issued and secured as to repayment.

(h) “**District Bond Trustee**” means the trustee and/or lender in connection with the issuance of any District Bonds, and currently UMB Bank, n.a., relative to the District’s General Obligation Limited Tax Bonds, Series 2021A.

(i) “**District Bonds**” means, collectively, one or more series of bonds including its outstanding General Obligation Limited Tax Bonds, Series 2021A, or other evidences of indebtedness, which may be in the form of a note, loan, or other financial obligation, issued or incurred by the District, or on behalf of the District, to finance or refinance the Eligible Costs, including any bonds, notes, loans, or other financial obligations issued by the District or on behalf of the District to refund District Bonds.

(j) “**District Debt Service Mill Levy**” means the property tax mill levy to be levied by the District pursuant to the District Bond Documents on the taxable property within the District for the purpose of paying the District’s debt.

(k) “**District Operations and Maintenance Mill Levy**” means the property tax mill levy to be levied by the District on the taxable property within the District for the purpose of paying the District’s Operation Expenses; provided, however, that such rate may be adjusted to take into account legislative or constitutionally imposed adjustments in assessed values or their method of calculation so that, to the extent possible, the revenue produced by such levy is neither diminished nor enhanced as a result of such changes.

(l) “**District’s Operation Expenses**” means the anticipated reasonable, ordinary, and necessary Eligible Costs and expenses of Administration, Statutory Compliance, and Operations and Maintenance, as each is defined herein, including but not limited to attorneys’ fees, management costs, accounting costs, and fees of other consultants relating to any and all of the foregoing.

(m) “**Eligible Costs**” shall mean any costs eligible to be paid by the District from proceeds of District Bonds or other revenues pursuant to the Special District Act.

(n) “**Effective Date**” means the date on which this Declaration is recorded with the Office of the Clerk and Recorder of El Paso County, State of Colorado.

(o) “**Eligible Improvements**” means a part of all of the improvements authorized to be planned, designed, acquired, constructed, installed, relocated, redeveloped and

financed as generally described in the Special District Act, except as specifically limited in the Service Plan.

(p) “**Interest**” means any and all partial or total legal right to property or for the use of property, including a fee interest, leasehold or other right to use, possess or occupy.

(q) “**Operations and Maintenance**” means Administration and the ordinary and necessary maintenance of Eligible Improvements necessary to maintain the Eligible Improvements to all applicable standards and specifications, to the extent specifically budgeted and appropriated for as operations and maintenance expenses in the District’s annual budgetary process.

(r) “**Owner(s)**” means a Person that has an Interest in any portion of the Property, whether by contract or otherwise, including without limitation Declarant and its successors and assigns, and such Person has the legal obligation to pay property tax on such Interest. If more than one Person owns an Interest in a particular portion of the Property and the legal obligation to pay property tax is allocated among such Persons, for purposes of this Declaration, such Persons shall be jointly and severally liable for the payments required under this Declaration with regard to such Interest.

(s) “**Payment in Lieu**” means an annual amount equal to the revenue that would be derived from the imposition by the District Debt Service Mill Levy and the District Operations and Maintenance Mill Levy, on that portion of the taxable real and personal property within the Property where a Tax-Exempt Entity is the Owner thereof were such Owner not a Tax-Exempt Entity, or if a portion of the Property is a Tax-Exempt Property, were the Property not determined by the assessor to be exempt from taxation, computed based on the District Debt Service Mill Levy and the District Operations and Maintenance Mill Levy most recently certified by the District and the most recent final certified assessed value of the subject portion of the taxable real and personal property within the Property.

(t) “**Person(s)**” means an individual, firm, corporation, partnership, company, association, joint stock company, trust, body politic, or any other incorporated or unincorporated organization, or any trustee, receiver, assignee, or other similar representative thereof.

(u) “**PILOT**” shall have the meaning set forth in Section 6 below.

(v) “**PILOT Receiving Party**” means the District.

(w) “**Project**” means the development of the Property to include affordable residential housing together with related amenities and uses.

(x) “**Service Plan**” means that certain Consolidated Service Plan for Bradley Heights Metropolitan District Nos. 1, 2 and 3, approved by the City Council of the City, as amended from time to time.

(y) “**Special District Act**” means C.R.S. §§32-1-101 *et seq.*

(z) “**State**” means the State of Colorado.

(aa) “**Statutory Compliance**” means those actions required by law to be taken by the District to maintain its corporate existence, including but not limited to the preparation and filing of annual reports, adoption and filing of the annual budget and certification of an annual mill levy and holding of public meetings in connection therewith, preparation and filing of financial statements (including annual audits or audit exemptions), and preparation of annual funding agreements.

(bb) “**Tax-Exempt Entity or Tax-Exempt Entities**” means any organization or other Person that is legally exempt from paying ad valorem property taxes in the State.

(cc) “**Tax-Exempt Property**” means any property which the county assessor has deemed to be exempt from the payment of ad valorem taxes.

(dd) “**Users**” means a Tax-Exempt Entity that builds, constructs or improves any building, structure or improvement on any portion of the Property for which use tax would be due to the City or State were the entity not tax-exempt.

2. Use Restriction. Except as hereinafter provided, any Person that is a Tax-Exempt Entity and that acquires an Interest in the Property, or any portion thereof, and any Tax-Exempt Property, effective on the date that such Person becomes the Owner of such Interest, or that such Tax-Exempt Property becomes tax exempt, shall be subject to the payment of PILOTs in accordance with this Declaration.

3. Change in Taxable Status to Tax-Exempt. Any Owner that, during the period of its ownership, is or becomes a Tax-Exempt Entity shall, as of the date that it becomes a Tax-Exempt Entity, or Owner who receives a determination that its property is Tax-Exempt Property, be subject to the payment of PILOTs. Further, immediately upon the happening of any event, act, omission or other occurrence (whether voluntary or involuntary) that results in the Property or any portion thereof being exempt from taxation, the Owner of such Tax-Exempt Property shall be subject to the payment of PILOTs in accordance with this Declaration.

3.1 Reclassification of Property to Taxable Property. In the event that, after payment of the PILOTs due and owing pursuant to this Declaration has been made and received by the District, all or any portion of the Property is subsequently converted to, reverts to or is otherwise reclassified as taxable property by the El Paso County Assessor prior to the District Bonds’ December 2, 2053 discharge date, the then Owner of the Property shall immediately become subject to the District’s then-current annual *ad valorem* property tax on that portion of the Property which has become taxable, and the District agrees, for so long as any portion of the Property remains classified as taxable, and the Owner actually pays its annual property tax obligation relative to the taxable Property, within thirty (30) days of the District’s receipt of the taxes, levies or assessments paid with respect to the Property from El Paso County, the District shall remit to the Owner the net amount of the Property’s tax revenue received by the District through the District Bonds’ December 2, 2053 discharge date. After the December 2, 2053 discharge date, no further remittance will be made.

3.2 Tax-Exempt Status After District Bonds' December 2, 2053 Discharge. If, and so long as the Property remains tax-exempt after the December 2, 2053 Bond discharge date, and there are no outstanding District Bonds, the then Owner of the Property and the District shall negotiate in good faith and enter into a similar declaration and agreement for the payment of PILOTs relative to the ongoing District's Operation Expenses.

The terms of Section 3 and 3.1 shall collectively be referred to herein as a "**Change in Taxable Status**".

4. Notice. ANY OWNER TRANSFERRING AN INTEREST IN ANY PORTION OF THE PROPERTY TO A TAX-EXEMPT ENTITY SHALL PROVIDE NOTICE OF SUCH TRANSFER TO THE DISTRICT, IN WRITING, IDENTIFYING THE PORTION OF THE PROPERTY BEING TRANSFERRED. ANY OWNER THAT BECOMES A TAX-EXEMPT ENTITY DURING THE PERIOD OF ITS OWNERSHIP, OR WHO HAS AN INTEREST IN PROPERTY THAT BECOMES EXEMPT FROM TAXATION, SHALL PROVIDE NOTICE TO THE DISTRICT, IN WRITING, OF THE CHANGE IN TAXABLE STATUS. SUCH NOTICES SHALL BE DELIVERED TO THE DISTRICT, AT THE ADDRESS SET FORTH BELOW, NOT LATER THAN THE DATE SUCH TRANSFER OF INTEREST OR CHANGE IN TAXABLE STATUS IS EFFECTIVE.

To the District: Bradley Heights Metropolitan District No. 2  
c/o WSDM  
614 N. Tejon Street  
Colorado Springs, CO 80903  
Attention: Rebecca Harris  
Rebecca.h@wsdistricts.co

With a copy to: White Bear Ankle Tanaka & Waldron  
2154 E. Commons Avenue, Suite 2000  
Centennial, Colorado 80122  
Attention: Sean Allen, Esq.  
Email: sallen@wbapc.com

5. Failure to Give Notice. Failure of an Owner to give notice as required by Section 4, shall in no way affect or eliminate the requirement of a Tax-Exempt Entity or an Owner of a Tax-Exempt Property to pay PILOTs pursuant to Section 6.

6. Payment of PILOTs. The payment in lieu of taxes ("**PILOTs**") required by this Declaration shall be made to the District by the Owner in the amount set forth on **Exhibit B** attached hereto as a one-time in full payment within thirty (30) days of the Owner's receipt of written confirmation from the El Paso County Assessor of the Property's classification as Tax-Exempt Property.

It is understood by the Declarant and District that the PILOTs were calculated based upon mutually agreed assumptions as to the number of residential units to be constructed in each phase of the



Property, when development/construction of each phase will begin, average market value per unit, 2% biennial unit value reassessment, net present value discount rate, residential assessment rate, and that the total PILOTs amount coincides with there being a Tax-Exempt Entity owning the Property and/or the Property being Tax-Exempt Property through the District Bonds' current December 2, 2053 discharge date without interruption. The calculation of the PILOTs shall be final unless otherwise agreed to in writing by the Owner and the District.

The PILOTs payable hereunder associated with the District Debt Service Mill Levy shall be paid to the District Bond Trustee, so long as the District Bonds are outstanding. Once all of the District Bonds are paid and/or defeased, the PILOTs payable hereunder associated with the District Debt Service Mill Levy, if any, shall be paid to the PILOT Receiving Party.

The PILOTs payable hereunder associated with the District Operations and Maintenance Mill Levy shall at all times be paid to the PILOT Receiving Party.

PILOTs required to be paid hereunder and not paid when due shall accrue interest at the same rate at which unpaid property taxes accrue interest, in accordance with State law. Any Owner required to pay a PILOT hereunder specifically authorizes the pledge of revenues derived from the PILOT to payment of debt service on the District Bonds. Revenue derived from the PILOTs may be used for any purpose which the District is authorized to use the revenue under State law.

It is understood by the Declarant and District that any District imposition of fees, rates, tolls, penalties, or charges for services, programs, or facilities furnished by the District pursuant to Section 32-1-1001(1)(j), C.R.S., as may be amended, including the District's current Drainage Fees (Platting Fees) in the current amount of \$10,283 per acre and Capital Facilities Fees for High Density Apartments in the current amount of \$1,999 per apartment unit are exclusive to and due to the District separately from the PILOTs payable hereunder.

7. Enforcement. A PILOT that is required to be paid hereunder and not paid in full when due shall constitute a lien against the Tax-Exempt Property with respect to which such PILOT was due and unpaid. The lien shall attach from the date that a PILOT required to be paid hereunder was not paid when due and may, but need not be, evidenced by the recordation of a statement of lien in connection therewith and shall be enforceable in any judicial or non-judicial proceeding allowed by law, including without limitation, suit in the nature of a suit to foreclose a mortgage, deed of trust or mechanic's lien under the applicable provisions of the laws of the State. The District and the District Bond Trustee, subject to the provisions of the District Bond Documents, shall have the right and authority to enforce this Declaration by proceedings at law or in equity against any Person or Persons violating or attempting to violate the covenants set forth herein. Such right and authority of the District or the District Bond Trustee includes the ability to enforce this Declaration by restraining such violation, compelling compliance or recovering damages. In the event that the District fail to enforce this Declaration against any Person or Persons violating or attempting to violate the covenants set forth herein, the District Bond Trustee shall have the right, but not the obligation to enforce this Declaration in the same manner and with the same rights and authority as if the District were acting directly, subject to the District Bond Documents.

8. Governing Law and Venue. This Declaration will be governed by, and enforced in accordance with, the laws of the State. Venue for legal proceedings shall be proper in the jurisdiction where the Property is located.

9. Termination. This Declaration shall automatically terminate upon the later of dissolution of the District or repayment of all obligations under the District Bonds.

10. Run with the Land: Reasonableness. This Declaration, as recorded, shall run with the land, and shall be binding upon all Owners and Users of the Property and their respective successors and assigns. If and to the extent that any of the restrictions or covenants herein would otherwise be unlawful or void for violation of (i) the rule against perpetuities, (ii) the rule restricting restraints on alienation, or (iii) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provisions concerned will continue and endure only until the expiration of a period of ninety (90) years after the Effective Date. The covenants set forth herein are reasonable and necessary to effect the financing, provision, and maintenance of the Eligible Improvements benefitting the Property and the Owners and Users thereof and the payment of the District's Operation Expenses. Declarant, on behalf of itself and its successors and assigns, covenants that it will not contest the effectiveness or enforceability of this Declaration by any legal proceedings in any forum.

11. Severability. Invalidation of any of the provisions contained in this Declaration, or of the application thereof to any Person by judgment or court order, will in no way affect any of the other provisions of this Declaration or the application thereof to any other Person or circumstance, and the remainder of this Declaration will remain in effect; provided, however, that in the event such invalidation would render the remaining portions of this Declaration ineffective to carry out the intentions of the Declarant as expressed or implied by this Declaration, then the objectionable provision(s) hereof will be construed, and this Declaration will be presumed amended, as if such provision was replaced with an enforceable provision which effectuates, as nearly as possible, the intent of the Declarant, which includes the payment of property tax revenue (or the payment of the PILOTs in lieu thereof), to or at the direction of the District as applicable for payment of District Bonds issued to finance or refinance the Eligible Improvements and for payment of the District's Operation Expenses associated with such costs for the Eligible Improvements.

12. No Common Interest Community. This Declaration does not create a "common interest community," as defined in §§38-33.3-101, et seq., C.R.S., commonly known as the Colorado Common Interest Ownership Act (the "Act"). Therefore, the Act does not apply to this Declaration or to the Declarant or the Districts, and the terms of this Declaration shall be read, construed and interpreted accordingly. Accordingly, Declarant is not a "declarant," and this Declaration is not a "declaration," as such terms are used and defined in the Act.

13. No Third Party Beneficiary. It is expressly understood and agreed that enforcement of the terms and conditions of this Declaration, and all rights of action relating to such enforcement, shall be strictly reserved to the District and the District Bond Trustee, and their duly authorized

successors and assigns, and nothing contained in this Declaration shall give or allow any claim or right of action by any other Person with respect to this Declaration.

14. Amendment by Declarant. Declarant may make amendments to the provisions of this Declaration only with the prior written consent of the District, but without the consent of any Owner, User, or other Person, and Declarant may record any such amendments in the real property records of El Paso County, Colorado even if Declarant does not own all of the Property at the time of such recording; provided, however, that no amendment shall obligate the City to pay any PILOTs hereunder without the prior written consent of the City, which shall be evidenced by a resolution of the City council. Additionally, subject to the prior written consent of the District, Declarant may take the necessary and appropriate action to cause additional real property to be subject to this Declaration without the prior consent of any other Person.

[SIGNATURES ON FOLLOWING PAGE]



The District, its successors, and its assigns, are beneficiaries of the restrictions and covenants set forth in this Declaration and the District hereby acknowledges its enforcement rights provided herein.

**Bradley Heights Metropolitan District No. 2,**  
a quasi-municipal corporation and political  
subdivision of the state formed pursuant to C.R.S.  
§§32-1-101, et seq.

By: \_\_\_\_\_  
Name: Randle W. Case II  
Its: President

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF EL PASO    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2024, by Randle W. Case II as President of Bradley Heights Metropolitan District No. 2, a quasi-municipal corporation and political subdivision of the state formed pursuant to C.R.S. §§32-1-101, et seq.

Witness my hand and official seal.

My commission expires:

\_\_\_\_\_  
Notary Public

**EXHIBIT A**

LEGAL DESCRIPTION OF THE PROPERTY  
(PHASE NO. 1)

**EXHIBIT B**

PILOT PAYMENT SCHEDULE

	<b>Debt</b>	<b>O&amp;M</b>	<b>Total</b>
<b>Phase 1:</b>	\$906,711.95	\$527,776.22	\$1,434,488.17

29409864v2

When Recorded Return To:  
WSDM  
614 N. Tejon St.  
Colorado Springs, CO 80903  
Attn: Rebecca Harris

## DECLARATION AND AGREEMENT FOR PAYMENT IN LIEU OF TAXES

### PHASE NO. 2

THIS DECLARATION AND AGREEMENT FOR PAYMENT IN LIEU OF TAXES (this “**Declaration**”) is made as of [\_\_\_\_\_], by and between [\_\_\_\_\_] (“**Declarant**”) and **BRADLEY HEIGHTS METROPOLITAN DISTRICT NO. 2**, a quasi-municipal corporation and political subdivision of the state formed pursuant to C.R.S. §§32-1-101, et seq., and its successors and assigns (the “**District**”) for the benefit of the District.

### RECITALS

A. Except as otherwise expressly provided herein or unless the context requires otherwise, capitalized terms used in this Declaration shall have the meanings set forth in Section 1 of this Declaration, and references to Sections and Exhibits shall refer to Sections and Exhibits of this Declaration unless expressly stated otherwise.

B. As of the Effective Date of this Declaration, Declarant owns a fee interest in all of the real property described in Exhibit A, attached hereto and incorporated herein (the “**Property**”), which is located within the District boundaries.

C. Declarant intends to develop the Property for affordable residential housing together with related amenities and facilities and uses on the Property (the “**Project**”). Declarant, pursuant to its purchase and sale agreement for the Property, is required to enter into this Declaration.

D. Significant investment in Eligible Improvements is required and necessary for the benefit of the entire Bradley Heights community and development as a whole, which includes the Project and the Property.

E. The District is organized pursuant to Colorado law in order to provide for the financing, construction, and completion of the Eligible Improvements.

F. The District’s completion of the Eligible Improvements and the ongoing Operations and Maintenance for the Eligible Improvements will benefit the Project and the Property. The District has the authority, under the laws of the State, its Service Plan, and its electoral authorizations to impose property taxes to provide revenues (a) to pay debt service on bonds and other indebtedness (including bonds and other obligations for the refinancing of such



indebtedness) issued by the District or by Bradley Heights Metropolitan District Nos. 1 and/or 3 on its behalf, if any, to which the District has pledged revenues for the repayment thereof, for the purpose of, among other things, paying the costs to acquire, finance, refinance, construct, complete, operate and maintain the Eligible Improvements and (b) to pay the District's Operation Expenses.

G. For the purpose of financing (or refinancing) the costs of the acquisition, construction, completion, and provision of the Eligible Improvements, along with the acquisition of real property to be owned or managed by the District, the District issued its General Obligation Limited Tax Bonds, Series 2021A, which are payable, in part, from revenue derived from taxation of the Property.

H. Repayment of the District Bonds and payment of the District's Operation Expenses therefore is dependent, in part, on property tax revenue derived from the Property. A sale or transfer of any Interest in the Property, or any portion thereof, to an entity which is exempt from property taxation (or an entity eligible to apply for such exemption) would result in a reduction of the property tax revenue, including the property taxes which would otherwise be paid to the District, on which the District is relying in order to pay the District Bonds and the District's Operation Expenses benefiting the Property.

I. Subject to and in accordance with the terms of this Declaration, the District and Declarant desire to establish the terms and conditions under which PILOTs are made and the Declarant further desires to impose upon the Property the covenants and restrictions set forth below to secure the payment of the repayment of the District Bonds and the payment of the District's Operation Expenses and the costs for Eligible Improvements benefiting the Property.

## DECLARATION

NOW THEREFORE, for and in consideration of the foregoing, Declarant declares and grants, as follows:

1. Defined Terms. Except as otherwise expressly provided herein or unless the context requires otherwise, the singular of any term includes the plural of such term, and any reference herein to a Section is to a Section of this Declaration. The following terms, when used in this Declaration, shall have the following meanings:

- (a) "**Act**" shall have the meaning set forth in Section 13 below.
- (b) "**Administration**" means the conduct of routine clerical and administrative activities and the maintenance of records required by law for Statutory Compliance.
- (c) "**Change in Taxable Status**" shall have the meaning set forth in Section 3 below.
- (d) "**City**" means the City of Colorado Springs, Colorado, a home rule municipal corporation.

(e) “**District**” means the Bradley Heights Metropolitan District No. 2, which was formed pursuant to C.R.S. §§32-1-101, *et seq.*, and each or all of its successors and assigns.

(f) “**District Bond Documents**” means, collectively, the District Bond Indenture, resolution, loan agreement, and any other documents pursuant to which the District Bonds are issued and secured as to repayment.

(g) “**District Bond Indenture**” means any indenture or similar documents pursuant to which the District Bonds are issued and secured as to repayment.

(h) “**District Bond Trustee**” means the trustee and/or lender in connection with the issuance of any District Bonds, and currently UMB Bank, n.a., relative to the District’s General Obligation Limited Tax Bonds, Series 2021A.

(i) “**District Bonds**” means, collectively, one or more series of bonds including its outstanding General Obligation Limited Tax Bonds, Series 2021A, or other evidences of indebtedness, which may be in the form of a note, loan, or other financial obligation, issued or incurred by the District, or on behalf of the District, to finance or refinance the Eligible Costs, including any bonds, notes, loans, or other financial obligations issued by the District or on behalf of the District to refund District Bonds.

(j) “**District Debt Service Mill Levy**” means the property tax mill levy to be levied by the District pursuant to the District Bond Documents on the taxable property within the District for the purpose of paying the District’s debt.

(k) “**District Operations and Maintenance Mill Levy**” means the property tax mill levy to be levied by the District on the taxable property within the District for the purpose of paying the District’s Operation Expenses; provided, however, that such rate may be adjusted to take into account legislative or constitutionally imposed adjustments in assessed values or their method of calculation so that, to the extent possible, the revenue produced by such levy is neither diminished nor enhanced as a result of such changes.

(l) “**District’s Operation Expenses**” means the anticipated reasonable, ordinary, and necessary Eligible Costs and expenses of Administration, Statutory Compliance, and Operations and Maintenance, as each is defined herein, including but not limited to attorneys’ fees, management costs, accounting costs, and fees of other consultants relating to any and all of the foregoing.

(m) “**Eligible Costs**” shall mean any costs eligible to be paid by the District from proceeds of District Bonds or other revenues pursuant to the Special District Act.

(n) “**Effective Date**” means the date on which this Declaration is recorded with the Office of the Clerk and Recorder of El Paso County, State of Colorado.

(o) “**Eligible Improvements**” means a part of all of the improvements authorized to be planned, designed, acquired, constructed, installed, relocated, redeveloped and

financed as generally described in the Special District Act, except as specifically limited in the Service Plan.

(p) “**Interest**” means any and all partial or total legal right to property or for the use of property, including a fee interest, leasehold or other right to use, possess or occupy.

(q) “**Operations and Maintenance**” means Administration and the ordinary and necessary maintenance of Eligible Improvements necessary to maintain the Eligible Improvements to all applicable standards and specifications, to the extent specifically budgeted and appropriated for as operations and maintenance expenses in the District’s annual budgetary process.

(r) “**Owner(s)**” means a Person that has an Interest in any portion of the Property, whether by contract or otherwise, including without limitation Declarant and its successors and assigns, and such Person has the legal obligation to pay property tax on such Interest. If more than one Person owns an Interest in a particular portion of the Property and the legal obligation to pay property tax is allocated among such Persons, for purposes of this Declaration, such Persons shall be jointly and severally liable for the payments required under this Declaration with regard to such Interest.

(s) “**Payment in Lieu**” means an annual amount equal to the revenue that would be derived from the imposition by the District Debt Service Mill Levy and the District Operations and Maintenance Mill Levy, on that portion of the taxable real and personal property within the Property where a Tax-Exempt Entity is the Owner thereof were such Owner not a Tax-Exempt Entity, or if a portion of the Property is a Tax-Exempt Property, were the Property not determined by the assessor to be exempt from taxation, computed based on the District Debt Service Mill Levy and the District Operations and Maintenance Mill Levy most recently certified by the District and the most recent final certified assessed value of the subject portion of the taxable real and personal property within the Property.

(t) “**Person(s)**” means an individual, firm, corporation, partnership, company, association, joint stock company, trust, body politic, or any other incorporated or unincorporated organization, or any trustee, receiver, assignee, or other similar representative thereof.

(u) “**PILOT**” shall have the meaning set forth in Section 6 below.

(v) “**PILOT Receiving Party**” means the District.

(w) “**Project**” means the development of the Property to include affordable residential housing together with related amenities and uses.

(x) “**Service Plan**” means that certain Consolidated Service Plan for Bradley Heights Metropolitan District Nos. 1, 2 and 3, approved by the City Council of the City, as amended from time to time.

(y) “**Special District Act**” means C.R.S. §§32-1-101 *et seq.*

(z) “**State**” means the State of Colorado.

(aa) “**Statutory Compliance**” means those actions required by law to be taken by the District to maintain its corporate existence, including but not limited to the preparation and filing of annual reports, adoption and filing of the annual budget and certification of an annual mill levy and holding of public meetings in connection therewith, preparation and filing of financial statements (including annual audits or audit exemptions), and preparation of annual funding agreements.

(bb) “**Tax-Exempt Entity or Tax-Exempt Entities**” means any organization or other Person that is legally exempt from paying ad valorem property taxes in the State.

(cc) “**Tax-Exempt Property**” means any property which the county assessor has deemed to be exempt from the payment of ad valorem taxes.

(dd) “**Users**” means a Tax-Exempt Entity that builds, constructs or improves any building, structure or improvement on any portion of the Property for which use tax would be due to the City or State were the entity not tax-exempt.

2. Use Restriction. Except as hereinafter provided, any Person that is a Tax-Exempt Entity and that acquires an Interest in the Property, or any portion thereof, and any Tax-Exempt Property, effective on the date that such Person becomes the Owner of such Interest, or that such Tax-Exempt Property becomes tax exempt, shall be subject to the payment of PILOTs in accordance with this Declaration.

3. Change in Taxable Status to Tax-Exempt. Any Owner that, during the period of its ownership, is or becomes a Tax-Exempt Entity shall, as of the date that it becomes a Tax-Exempt Entity, or Owner who receives a determination that its property is Tax-Exempt Property, be subject to the payment of PILOTs. Further, immediately upon the happening of any event, act, omission or other occurrence (whether voluntary or involuntary) that results in the Property or any portion thereof being exempt from taxation, the Owner of such Tax-Exempt Property shall be subject to the payment of PILOTs in accordance with this Declaration.

3.1 Reclassification of Property to Taxable Property. In the event that, after payment of the PILOTs due and owing pursuant to this Declaration has been made and received by the District, all or any portion of the Property is subsequently converted to, reverts to or is otherwise reclassified as taxable property by the El Paso County Assessor prior to the District Bonds’ December 2, 2053 discharge date, the then Owner of the Property shall immediately become subject to the District’s then-current annual *ad valorem* property tax on that portion of the Property which has become taxable, and the District agrees, for so long as any portion of the Property remains classified as taxable, and the Owner actually pays its annual property tax obligation relative to the taxable Property, within thirty (30) days of the District’s receipt of the taxes, levies or assessments paid with respect to the Property from El Paso County, the District shall remit to the Owner the net amount of the Property’s tax revenue received by the District through the District Bonds’ December 2, 2053 discharge date. After the December 2, 2053 discharge date, no further remittance will be made.

3.2 Tax-Exempt Status After District Bonds' December 2, 2053 Discharge. If, and so long as the Property remains tax-exempt after the December 2, 2053 Bond discharge date, and there are no outstanding District Bonds, the then Owner of the Property and the District shall negotiate in good faith and enter into a similar declaration and agreement for the payment of PILOTs relative to the ongoing District's Operation Expenses.

The terms of Section 3 and 3.1 shall collectively be referred to herein as a "**Change in Taxable Status**".

4. Notice. ANY OWNER TRANSFERRING AN INTEREST IN ANY PORTION OF THE PROPERTY TO A TAX-EXEMPT ENTITY SHALL PROVIDE NOTICE OF SUCH TRANSFER TO THE DISTRICT, IN WRITING, IDENTIFYING THE PORTION OF THE PROPERTY BEING TRANSFERRED. ANY OWNER THAT BECOMES A TAX-EXEMPT ENTITY DURING THE PERIOD OF ITS OWNERSHIP, OR WHO HAS AN INTEREST IN PROPERTY THAT BECOMES EXEMPT FROM TAXATION, SHALL PROVIDE NOTICE TO THE DISTRICT, IN WRITING, OF THE CHANGE IN TAXABLE STATUS. SUCH NOTICES SHALL BE DELIVERED TO THE DISTRICT, AT THE ADDRESS SET FORTH BELOW, NOT LATER THAN THE DATE SUCH TRANSFER OF INTEREST OR CHANGE IN TAXABLE STATUS IS EFFECTIVE.

To the District: Bradley Heights Metropolitan District No. 2  
c/o WSDM  
614 N. Tejon Street  
Colorado Springs, CO 80903  
Attention: Rebecca Harris  
Rebecca.h@wsdistricts.co

With a copy to: White Bear Ankle Tanaka & Waldron  
2154 E. Commons Avenue, Suite 2000  
Centennial, Colorado 80122  
Attention: Sean Allen, Esq.  
Email: sallen@wbapc.com

5. Failure to Give Notice. Failure of an Owner to give notice as required by Section 4, shall in no way affect or eliminate the requirement of a Tax-Exempt Entity or an Owner of a Tax-Exempt Property to pay PILOTs pursuant to Section 6.

6. Payment of PILOTs. The payment in lieu of taxes ("**PILOTs**") required by this Declaration shall be made to the District by the Owner in the amount set forth on **Exhibit B** attached hereto as a one-time in full payment within thirty (30) days of the Owner's receipt of written confirmation from the El Paso County Assessor of the Property's classification as Tax-Exempt Property.

It is understood by the Declarant and District that the PILOTs were calculated based upon mutually agreed assumptions as to the number of residential units to be constructed in each phase of the

Property, when development/construction of each phase will begin, average market value per unit, 2% biennial unit value reassessment, net present value discount rate, residential assessment rate, and that the total PILOTs amount coincides with there being a Tax-Exempt Entity owning the Property and/or the Property being Tax-Exempt Property through the District Bonds' current December 2, 2053 discharge date without interruption. The calculation of the PILOTs shall be final unless otherwise agreed to in writing by the Owner and the District.

The PILOTs payable hereunder associated with the District Debt Service Mill Levy shall be paid to the District Bond Trustee, so long as the District Bonds are outstanding. Once all of the District Bonds are paid and/or defeased, the PILOTs payable hereunder associated with the District Debt Service Mill Levy, if any, shall be paid to the PILOT Receiving Party.

The PILOTs payable hereunder associated with the District Operations and Maintenance Mill Levy shall at all times be paid to the PILOT Receiving Party.

PILOTs required to be paid hereunder and not paid when due shall accrue interest at the same rate at which unpaid property taxes accrue interest, in accordance with State law. Any Owner required to pay a PILOT hereunder specifically authorizes the pledge of revenues derived from the PILOT to payment of debt service on the District Bonds. Revenue derived from the PILOTs may be used for any purpose which the District is authorized to use the revenue under State law.

It is understood by the Declarant and District that any District imposition of fees, rates, tolls, penalties, or charges for services, programs, or facilities furnished by the District pursuant to Section 32-1-1001(1)(j), C.R.S., as may be amended, including the District's current Drainage Fees (Platting Fees) in the current amount of \$10,283 per acre and Capital Facilities Fees for High Density Apartments in the current amount of \$1,999 per apartment unit are exclusive to and due to the District separately from the PILOTs payable hereunder.

7. Enforcement. A PILOT that is required to be paid hereunder and not paid in full when due shall constitute a lien against the Tax-Exempt Property with respect to which such PILOT was due and unpaid. The lien shall attach from the date that a PILOT required to be paid hereunder was not paid when due and may, but need not be, evidenced by the recordation of a statement of lien in connection therewith and shall be enforceable in any judicial or non-judicial proceeding allowed by law, including without limitation, suit in the nature of a suit to foreclose a mortgage, deed of trust or mechanic's lien under the applicable provisions of the laws of the State. The District and the District Bond Trustee, subject to the provisions of the District Bond Documents, shall have the right and authority to enforce this Declaration by proceedings at law or in equity against any Person or Persons violating or attempting to violate the covenants set forth herein. Such right and authority of the District or the District Bond Trustee includes the ability to enforce this Declaration by restraining such violation, compelling compliance or recovering damages. In the event that the District fail to enforce this Declaration against any Person or Persons violating or attempting to violate the covenants set forth herein, the District Bond Trustee shall have the right, but not the obligation to enforce this Declaration in the same manner and with the same rights and authority as if the District were acting directly, subject to the District Bond Documents.

8. Governing Law and Venue. This Declaration will be governed by, and enforced in accordance with, the laws of the State. Venue for legal proceedings shall be proper in the jurisdiction where the Property is located.

9. Termination. This Declaration shall automatically terminate upon the later of dissolution of the District or repayment of all obligations under the District Bonds.

10. Run with the Land: Reasonableness. This Declaration, as recorded, shall run with the land, and shall be binding upon all Owners and Users of the Property and their respective successors and assigns. If and to the extent that any of the restrictions or covenants herein would otherwise be unlawful or void for violation of (i) the rule against perpetuities, (ii) the rule restricting restraints on alienation, or (iii) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provisions concerned will continue and endure only until the expiration of a period of ninety (90) years after the Effective Date. The covenants set forth herein are reasonable and necessary to effect the financing, provision, and maintenance of the Eligible Improvements benefitting the Property and the Owners and Users thereof and the payment of the District's Operation Expenses. Declarant, on behalf of itself and its successors and assigns, covenants that it will not contest the effectiveness or enforceability of this Declaration by any legal proceedings in any forum.

11. Severability. Invalidation of any of the provisions contained in this Declaration, or of the application thereof to any Person by judgment or court order, will in no way affect any of the other provisions of this Declaration or the application thereof to any other Person or circumstance, and the remainder of this Declaration will remain in effect; provided, however, that in the event such invalidation would render the remaining portions of this Declaration ineffective to carry out the intentions of the Declarant as expressed or implied by this Declaration, then the objectionable provision(s) hereof will be construed, and this Declaration will be presumed amended, as if such provision was replaced with an enforceable provision which effectuates, as nearly as possible, the intent of the Declarant, which includes the payment of property tax revenue (or the payment of the PILOTs in lieu thereof), to or at the direction of the District as applicable for payment of District Bonds issued to finance or refinance the Eligible Improvements and for payment of the District's Operation Expenses associated with such costs for the Eligible Improvements.

12. No Common Interest Community. This Declaration does not create a "common interest community," as defined in §§38-33.3-101, et seq., C.R.S., commonly known as the Colorado Common Interest Ownership Act (the "Act"). Therefore, the Act does not apply to this Declaration or to the Declarant or the Districts, and the terms of this Declaration shall be read, construed and interpreted accordingly. Accordingly, Declarant is not a "declarant," and this Declaration is not a "declaration," as such terms are used and defined in the Act.

13. No Third Party Beneficiary. It is expressly understood and agreed that enforcement of the terms and conditions of this Declaration, and all rights of action relating to such enforcement, shall be strictly reserved to the District and the District Bond Trustee, and their duly authorized

successors and assigns, and nothing contained in this Declaration shall give or allow any claim or right of action by any other Person with respect to this Declaration.

14. Amendment by Declarant. Declarant may make amendments to the provisions of this Declaration only with the prior written consent of the District, but without the consent of any Owner, User, or other Person, and Declarant may record any such amendments in the real property records of El Paso County, Colorado even if Declarant does not own all of the Property at the time of such recording; provided, however, that no amendment shall obligate the City to pay any PILOTs hereunder without the prior written consent of the City, which shall be evidenced by a resolution of the City council. Additionally, subject to the prior written consent of the District, Declarant may take the necessary and appropriate action to cause additional real property to be subject to this Declaration without the prior consent of any other Person.

[SIGNATURES ON FOLLOWING PAGE]





The District, its successors, and its assigns, are beneficiaries of the restrictions and covenants set forth in this Declaration and the District hereby acknowledges its enforcement rights provided herein.

**Bradley Heights Metropolitan District No. 2,**  
a quasi-municipal corporation and political  
subdivision of the state formed pursuant to C.R.S.  
§§32-1-101, et seq.

By: \_\_\_\_\_  
Name: Randle W. Case II  
Its: President

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF EL PASO    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2024, by Randle W. Case II as President of Bradley Heights Metropolitan District No. 2, a quasi-municipal corporation and political subdivision of the state formed pursuant to C.R.S. §§32-1-101, et seq.

Witness my hand and official seal.

My commission expires:

\_\_\_\_\_  
Notary Public

**EXHIBIT A**

LEGAL DESCRIPTION OF THE PROPERTY  
(PHASE NO. 2)

**EXHIBIT B**

PILOT PAYMENT SCHEDULE

	<b>Debt</b>	<b>O&amp;M</b>	<b>Total</b>
<b>Phase 2:</b>	\$804,871.51	\$468,497.24	\$1,273,368.75

29276620v7



**RESOLUTION  
OF THE BOARD OF DIRECTORS OF  
BRADLEY HEIGHTS METROPOLITAN DISTRICT NO. 2  
Regarding Policies, Procedures and Penalties for the Enforcement of the Governing  
Documents**

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WHEREAS, Bradley Heights Metropolitan District No. 2 (the “**District**”) is a quasi-municipal corporation and political subdivision of the State of Colorado; and

WHEREAS, pursuant to the terms and conditions of the Covenants and Restrictions of Century at Bradley Heights, recorded in the real property records of the Clerk and Recorder of El Paso County, Colorado at Reception No. 223101445, on December 13, 2023 (the “**Covenants**”), the District is permitted to send demand letters and notices, charge interest and/or late charges, levy and collect fines, and negotiate, settle and/or take any other actions with respect to any violations or alleged violations of the Governing Documents (as defined in the Covenants); and

WHEREAS, the Board of Directors (the “**Board**”) of the District is authorized to promulgate adopt, enact, modify, amend, repeal, and re-enact rules and regulations concerning and governing the Property (as that term is defined in the Covenants); and

WHEREAS, pursuant to § 32-1-1001(1)(j)(I), C.R.S., 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; and

WHEREAS, such fees, rates, tolls, penalties, or charges, until paid, shall constitute a perpetual lien on and against the property served; and

WHEREAS, the Board desires to set establishing policies, procedures and penalties for violations of the Governing Documents.

NOW THEREFORE, the Board hereby adopts this Resolution and the following policies and procedures:

1. Intent of District. This Resolution is adopted to ensure the protection of the health, safety and welfare of the residents and property owners of the District, to preserve property values, enhance the quality of life for all District residents, and provide a fair and consistent enforcement process of the Governing Documents.

2. Enforcement Policy. The District may enforce the Governing Documents through administrative proceedings or judicial action. Any non-compliance with the Governing Documents by any owner, renter or guest will be the responsibility of the owner of the respective property subject to this Resolution (the “**Owner**”). This Resolution is intended to serve as guidance to the Board and the District’s authorized representative(s) (the “**District Representative**”) and does not limit or restrict the authority of the Board. The Board may intervene at any time with respect to any authority granted to or action undertaken by the District Representative. In addition, this

Resolution shall not supersede the procedures for approval, disapproval, or notice of noncompliance related to improvements as set forth in the Governing Documents.

3. Investigative Procedure. Upon receipt of a written complaint alleging a violation of the Governing Documents, the District Representative will conduct an investigation to determine whether a violation of the Governing Documents has occurred. The submitter of the complaint shall provide a statement describing the alleged violation, shall identify themselves, the alleged violator, if known, the date on which the violation exists or occurred, and provide any other pertinent information. Non-written complaints or written complaints failing to include any information required by this provision may not be investigated or prosecuted at the discretion of the District.

4. Enforcement Process for Continuous Violations. Upon determining that a “**Continuous Violation**” (defined as a violation that is ongoing, uninterrupted by time and may take time to cure, such as installing an unapproved structure on a property or neglecting to maintain the exterior appearance of a property) has occurred, the District Representative and the Board shall take the following steps:

a. Continuous Violation Warning Letter. If the District Representative determines that a Continuous Violation of the Governing Documents exists, either through the investigative process as set forth above, or through independent inspections or observations of the District Representative, the District Representative will send an “**Continuous Violation Warning Letter**” via first-class United States mail to the last known Owner of the Property according to the District’s records notifying the Owner of: (i) the restriction violated and the nature of the violation, (ii) that the Owner must have the Continuous Violation corrected within 15 calendar days of the date of the Continuous Violation Warning Letter (or, as set forth in Sections 2.10 and 2.11 of the Covenants, 45 days for violations related to Improvements being done without the prior approval of the ARC, being completed in a manner not in substantial compliance with ARC approval or not in compliance with the Governing Documents, or not being completed in the required time (each an “**ARC Approval Violation**”)), and (iii) that failure to timely cure the Continuous Violation may result in potential fines or other sanctions. If, in the discretion of the District Representative, a Continuous Violation which is not an ARC Approval Violation requires more than 15 days to cure, the District Representative may extend the cure period or require the Owner to commence such cure within 15 days of the date of the Continuous Violation Warning Letter and diligently prosecute the same to completion. In the event the above mailing is returned as undeliverable, the District may send a second copy of the Continuous Violation Warning Letter to: (1) the Property; and (2) the address of the last known owner of the Property as found in the real property records of the county Assessor’s Office (the “**Assessor**”) for the county in which the District is located (collectively, the “**Property Address**”). The District Representative may deviate from the mailing destinations as included in the Property Address if requested by the Owner in writing. Upon receipt of any notice regarding a Continuous Violation, an Owner may propose arrangements to cure the violation to the District Representative. A District Representative may approve or deny arrangements to cure a Continuous Violation based on what is reasonable under the circumstances. If a District Representative denies arrangements for curing a Continuous Violation they must provide the Owner notice in

writing prior to imposing any fines (“**Denial Letter**”). The Denial Letter shall further state the reasoning for the denial and that the Owner is entitled to a hearing on the merits of the matter provided that such hearing is requested in writing by the Owner within 15 days of the date of the Denial Letter.

b. Notice of Complaint and Opportunity to Be Heard. If the Owner has not cured the Continuous Violation or made arrangements to cure the Continuous Violation and communicated such arrangements to the District Representative in writing within the time set forth in the Continuous Violation Warning Letter, this shall be considered a second violation for which a fine may be imposed. The District Representative shall send a notice of complaint and opportunity to be heard (“**Fine Notice**”) to the Owner at the Owner’s address notifying the Owner of the Continuous Violation and that a fine will be imposed on the Owner’s account pursuant to the fine schedule set forth in Paragraph 9 if the violation is not cured or no hearing is requested as set forth below. The Fine Notice shall further state that the Owner is entitled to a hearing on the merits of the matter provided that such hearing is requested in writing by the Owner within 30 days of the date of the Fine Notice. The District may impose additional fines with each notice sent after the Fine Notice without the necessity of providing the Owner with the opportunity for additional hearings thereafter.

c. Notices of Ongoing Violation and Fine. If the Owner has not requested a hearing, cured the Continuous Violation or made arrangements to cure the Continuous Violation and communicated such arrangements to the District Representative in writing within 30 days of the Fine Notice, the first fine set forth in Paragraph 9 shall then be imposed, and this shall be considered a third violation for which an additional fine will be imposed. The District Representative shall send a notice of ongoing violation (“**Ongoing Violation and Fine Notice**”) to the Owner at the Owner’s Address demanding that the Owner cure the ongoing Continuous Violation and providing notice that the first fine has been imposed, and that an additional fine is being imposed on the Owner’s account pursuant to the fine schedule set forth in Paragraph 9 below. If the Continuous Violation remains uncured 30 days after the date of the first Ongoing Violation and Fine Notice or the Owner has not made arrangements to cure the Continuous Violation and communicated such arrangements to the District Representative in writing within 30 days of the first Ongoing Violation and Fine Notice, this shall be considered a fourth violation for which an additional fine will be imposed. A second Ongoing Violation and Fine Notice shall be sent to the Owner and shall advise the Owner of the imposition of an additional fine, pursuant to the fine schedule set forth in Paragraph 9 of this Resolution.

d. Continuing Violation. In the event that a Continuing Violation continues to exist uninterrupted 30 days after the date of the second Ongoing Violation and Fine Notice, the District may in its discretion, in addition to any other remedy, send the Owner a notice of monthly fines (“**Monthly Fine Notice**”) and thereafter impose a fine of up to \$100 for each 30 days that a Continuous Violation so continues.



5. Enforcement Process for Repetitious Violations. Upon determining that a **“Repetitious Violation”** (defined as a violation that occurs at a set point in time and does not require time to cure, such as the parking of a restricted vehicle in the community or leaving trash cans out beyond the time allowed) has occurred, the District Representative and Board shall take the following steps:

a. Repetitious Violation Warning Letter. If the District Representative determines that a Repetitious Violation of the Governing Documents has occurred, either through the investigative process as set forth above, or through independent inspections or observations of the District Representative, the District Representative will send an **“Repetitious Violation Warning Letter”** via first-class United States mail to the last known owner of the Property according to the District’s records notifying the Owner of: (i) the restriction violated and the nature of the Repetitious Violation, and (iii) that any subsequent violations of the same restriction within 180 days of the date of the Repetitious Violation Warning Letter may result in the imposition of fines. In the event the above mailing is returned as undeliverable, the District may send a second copy of the Repetitious Violation Warning Letter to the Property Address.

b. Notices of Repetitious Violations. If an Owner subsequently violates the same covenant or rule within 180 days of date of the Repetitious Violation Warning Letter, each such instance shall constitute a separate Repetitious Violation for which fines may be imposed pursuant to the fine schedule set forth in Paragraph 9. Upon the occurrence of each subsequent Repetitious Violation, the District Representative shall send the Owner a notice advising the Owner of the Repetitious Violation and of the fine to be imposed (**“Repetitious Violation and Fine Notice”**). The first such Repetitious Violation and Fine Notice shall further state that the Owner is entitled to a hearing on the merits of the matter provided that such hearing is requested in writing by the Owner within 15 days of such first Repetitious Violation and Fine Notice. The District may impose additional fines with each Repetitious Violation and Fine Notice sent after the first Repetitious Violation and Fine Notice without the necessity of providing the Owner with the opportunity for a hearing thereafter.

6. Hearing on Violation. If a hearing is requested by the Owner pursuant to Paragraph 4.b or 5.b above, the District Representative shall notify the Owner of the date, time and place of the hearing at least 10 days prior to the hearing. Hearings regarding violations of the Governing Documents shall be conducted by the Board, or a tribunal consisting of District residents or other persons as selected by the Board.

7. Failure to Attend or Request Hearing. In the event any Owner fails to request a hearing within 15 days of the date of the Fine Notice or the first Repetitious Violation and Fine Notice, no hearing shall be required. Failure to request a hearing or to appear at a requested hearing will result in the Owner being deemed to have admitted and acknowledged the violation and the Owner will thereafter be subject to all fines and penalties assessed in connection with the violation. After offering an Owner the opportunity for a hearing in the Fine Notice or the first Repetitious Violation and Fine Notice, as applicable, regardless of whether the Owner then requests a hearing or not, the District need not offer the opportunity for a hearing for any additional fines to be

imposed for failure to cure a Continuous Violation or for subsequent instances of a Repetitious Violation

8. Decision. After the District has taken the hearing steps as outlined above, and in the event a hearing is requested and held, upon a finding being reached, the District Representative shall send notice of determination (“**Notice of Determination**”) to the Owner’s Address informing the Owner of the Board’s findings. If the Board finds the Owner is in violation of the Governing Documents the District may revoke or suspend the Owner’s privileges, impose fines in accordance with the fine schedule set forth in paragraph 9 below and take such other actions as it may deem necessary or appropriate to assure compliance with the Governing Documents.

9. Fine Schedule. The following fine schedule is adopted for any and all violations of the Governing Documents.

*Continuous Violations*

First Violation (Continuous Violation Warning Letter):	\$ 0.00
Second Violation (Fine Notice):	\$ 25.00
Third Violation (First Ongoing Violation and Fine Notice):	\$ 50.00
Fourth Violation (Second Ongoing Violation and Fine Notice):	\$ 100.00
Monthly Fine Notice:	\$100.00 per month

*Repetitious Violations:*

First Violation (Repetitious Violation Warning Letter):	\$ 0.00
Second Violation (First Repetitious Violation and Fine Notice):	\$ 25.00
Subsequent Violations (Repetitious Violation and Fine Notice):	\$ 50.00 per offense

10. Violations or Offenses that Constitute a Present Danger. If a violation concerns a serious or immediate risk to the health, safety, or welfare of person or property, the District Representative shall seek to obtain prompt action by the Owner to correct the violation and avoid any reoccurrence, and the procedural requirements under this Resolution may be waived by the Board and a hearing scheduled as soon as possible. The Board may impose sanctions as necessary to abate any threat to health, safety or welfare of any person or property.

11. Waiver of Fines and Other Amounts. The District may determine enforcement actions on a case by case basis, and take other actions as it may deem necessary or appropriate to assure compliance with the Governing Documents. The District Representative and/or the Board may, either in its sole discretion, waive all or any portion of any fines and other amounts levied under this Resolution. Additionally, the District Representative and/or the Board may condition waiver of any fine or other amount(s), upon the Owner coming into and staying in compliance with the Governing Documents.

12. Other Enforcement Means. The provisions of this Resolution shall be in addition to all other enforcement means which are available to the District through the Governing Documents, or by law. Application of this Resolution does not preclude the District from using any other enforcement means, including, but not limited to the recording of liens, certification to

the county Treasurer's Office of delinquent fees, rates, tolls, fines, penalties, charges, or assessments related to enforcement, and any other legal or equitable remedies available to the District.

13. Legal Action. Any violation of the Governing Documents may, in the discretion of the Board, be turned over to legal counsel engaged for covenant enforcement matters ("Special Counsel") to take appropriate legal action either in lieu of, or in addition to, the imposition of any fines or other penalties under this Resolution, and Owners shall be responsible for all attorneys' fees and costs incurred in enforcing this Resolution and in collecting amounts due and owing the District.

14. Certification of Account to County Treasurer. Pursuant to § 32-1-1004.5(3)(b)(III), C.R.S., the Board may elect to certify any delinquent fees, rates, tolls, fines, penalties, charges, or assessments made or levied for covenant enforcement and design review services satisfying the criteria established therein to the county Treasurer's Office for collection with the District's ad valorem property taxes. The certification process may be performed by the District Representative, Special Counsel or general counsel to the District in addition to or in lieu of any procedures set forth in this Resolution in the Board's sole discretion. The fees for the certification process shall be in accordance with Colorado law and the county's policy.

15. Deviations. The District may deviate from the procedures set forth herein if, in its sole discretion, such deviation is reasonable under the circumstances.

16. Amendment. The policies, procedures and fine schedule set forth in this Resolution may be supplemented and/or amended from time to time by the District, in its sole and absolute discretion.

17. Payment. Payment for all fines shall be by check or equivalent form acceptable to the District, made payable to Bradley Heights Metropolitan District No. 2, mailed to the District, c/o WSDM District Manager, 614 Tejon Street, Colorado Springs, CO 80903. The District may change the payment address from time and time and such change shall not require an amendment to this Resolution.

18. 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.

19. Effective Date. This Resolution shall become effective immediately and shall supersede in its entirety any prior resolution.

***[Remainder of page intentionally left blank, signature page follows.]***

APPROVED AND ADOPTED this \_\_\_\_\_, 2024.

**Bradley Heights Metropolitan District No. 2**, a  
quasi-municipal corporation and political  
subdivision of the State of Colorado

By: \_\_\_\_\_  
Officer of the District

ATTEST:

By: \_\_\_\_\_

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON  
Attorneys at Law

\_\_\_\_\_  
General Counsel to the District