

## RECORD OF PROCEEDINGS

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### MINUTES OF A REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE CONSERVATORY METROPOLITAN DISTRICT HELD MARCH 17, 2014

A regular meeting of the Board of Directors (referred to hereafter as "Board") of the Conservatory Metropolitan District, (referred to hereafter as "District"), was convened Monday, the 17<sup>th</sup> day of March, 2014, at 9:00 A.M., at the Conservatory Clubhouse, 2665 South Jebel Way, Aurora, Colorado. The meeting was open to the public.

#### ATTENDANCE

##### Directors In Attendance Were:

Ronald "Dick" R. Dailey  
Laverne Palmer  
Dan Staley  
Pedro L. Moczo, Jr. (for a portion of the meeting)  
Birgit Baldwin

##### Also In Attendance Were:

AJ Beckman; Special District Management Services, Inc.  
  
Jennifer Gruber Tanaka, Esq.; White, Bear & Ankele, P.C.  
  
Georgia Harland; Simmons & Wheeler, P.C.  
  
Dawn Schilling; Schilling and Company, Inc.  
  
Emily Hudson, Terracare Associates, LLC  
  
See sign-in sheet for additional attendees.

#### CALL TO ORDER

Director Dailey noted that a quorum of the Board was present and called the meeting to order.

#### DISCLOSURES OF POTENTIAL CONFLICTS OF INTEREST

Disclosures of Potential Conflicts of Interest: Attorney Tanaka advised the Board that, pursuant to Colorado law, certain disclosures might be required prior to taking official action at the meeting. The Board reviewed the Agenda for the meeting, following which Directors Dailey, Palmer, Staley, Baldwin and each consultant confirmed that they had no conflicts

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of interest in connection with any of the matters listed on the Agenda. Director Moczo arrived later in the meeting and did not report any conflicts.

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**ADMINISTRATIVE MATTERS** **Agenda:** Director Dailey reviewed with the Board the proposed Agenda for the District's regular meeting.

Following discussion, upon motion duly made by Director Staley, seconded by Director Palmer and, upon vote, unanimously carried, the Agenda was approved.

**Director Orientation:** The Board entered into a discussion regarding conducting a director orientation at the May 19, 2014 regular Board meeting. Director Palmer reported that she would like to hold two separate Board member orientations: one at the May meeting and one at the June meeting. In May, she would like to focus on the responsibilities of directors and the governance of the District, and in June focus on financial matters with particular emphasis on the District's debt. The Board directed staff to prepare materials for orientations in May and June.

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### **CONSENT AGENDA**

**Consent Agenda:** The Board considered the following actions:

- Review the Minutes of the January 27, 2014 regular meeting.
- Acknowledge Homeowners' Association ("HOA") Meeting Reports/Updates (if available).
- Determine Director on Duty for the months of June and July.
- Acknowledge Collections Report through February, 2014.
- Review water usage report.

Following discussion, upon motion duly made by Director Palmer, seconded by Director Baldwin and, upon vote, unanimously carried, the Board approved the Minutes of the January 27, 2014 regular meeting, acknowledged Director Staley as the Board Member on Duty for the month of June and Director Palmer as the Board Member on Duty for the month of July and acknowledged the Collections Report through February, 2014. The water usage report was not available and there were no reports or updates from the HOA.

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### COMMUNITY COMMENTS

**Community Comments:** Members of the Board and staff introduced themselves to the members of the public in attendance. The members of the public introduced themselves to the Board.

Sonya Pridmore addressed the Board. She explained that she met with the District Manager and Attorney previously regarding her account which is delinquent. She explained that her home has a balance for unpaid fees, carried forward from the time of purchase. Attorney Tanaka explained that she discussed the status of this account with the title company that was used for the transaction. The title company reported that they attempted to send payment for the fees due on the property at the time of sale but the payments were returned. The title company claims this occurred with the District, the HOA and another entity. Attorney Tanaka noted that the title company is unable to produce copies of returned checks or any documentation supporting their position. She noted that, bottom line, the District has not received the payments and, as a result, the account has continued to be delinquent. Attorney Tanaka noted that she is continuing to work with Ms. Pridmore and the title company to bring the matter to resolution.

Mr. Garcia addressed the Board. He explained that he has been in contact with the office of the District's Attorney. He reported that he was originally quoted approximately \$904 in fees and was prepared to make payment arrangements. He explained that when he called back to set up a payment arrangement he was informed that the amount owing was approximately \$1,600. Attorney Tanaka explained that the amount was misquoted due to an administrative error which was later noted to Mr. Garcia with the corrected amount, which was lower. She further explained that this would not change the amount actually owing. Director Dailey discussed with the Board the process for calculating the total amount outstanding. Attorney Tanaka confirmed that the total owing is \$1,207.44. Director Palmer asked the owner if they had attempted to pay in prior years. They acknowledged that they had received the various notices but were unable to enter into a payment plan due to their financial constraints. Director Palmer requested that the matter be tabled for the time being and the Board review the facts of this account with all payment disputes later in the meeting. Director Dailey asked members of the Board if they would prefer to resolve the issue now or later in the Agenda. The Board determined to table the matter for the time being and advised Mr. and Mrs. Garcia that they would consider the facts related to the dispute and follow up with them after the meeting with their decision.

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### FINANCIAL MATTERS

**2013 Audit:** Ms. Schilling reviewed the 2013 draft Audited Financial Statements with the Board.

Director Palmer inquired as to when bond surety (insurance) may take over if the District missed a bond payment. Ms. Schilling explained that the purpose of the Reserve Fund, established at the time of the bond issuance, is to provide for shortfalls in payments in the event the debt service revenue is insufficient to meet the required payments. She reported that the Board could transfer funds from the General Fund to the Debt Service Fund if it desired but this is not required by the bond covenants. It was also noted that once such a transfer is made to the Debt Service Fund it could not subsequently be moved back to the General Fund.

Director Staley asked if the District's Financial Statements should reflect appreciating assets (specifically landscaping), and if Ms. Schilling was aware of standard accounting practices or policies booking this type of entry. Ms. Schilling reported that this would be very unusual. Director Staley asked if the District could begin tracking the trees in this way. Ms. Schilling reported that she would research the matter further and advise the Board as to her opinion regarding tracking certain landscaping improvements as appreciating assets.

Following review and discussion, upon motion duly made by Director Staley, seconded by Director Baldwin and, upon vote, unanimously carried, the Board accepted the 2013 Audited Financial Statements and authorized the execution of the Representations Letter.

**February 2014 Claims:** Ms. Harland distributed and reviewed with the Board a check register for the period ending February 28, 2014, including check numbers 2429 through 2439, in the total amount of \$20,762.39.

Ms. Harland reported that she accidentally over-drafted the checking account. She explained that the account balance has been corrected and any expense generated by Simmons and Wheeler, P.C. in relation to this matter will be waived.

Ms. Harland reported that a check in the amount of \$220 to Summit Services was removed from the check register at the request of Director Palmer. Director Palmer discussed the payment to Summit Services noting that the work they performed was due to the transition of services upon termination of the service contract, which is to be performed at no charge pursuant to the service contract. Mr. Beckman explained that the charge was for an irrigation system walk-through, which was performed long after the contract expired. The transition delay was caused by scheduling

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difficulties, due in large part to the weather. He recommended that the Board authorize payment to Summit Services for performing the irrigation walk through. Attorney Tanaka clarified that the work was performed outside the scope of the contract due to the timing of the walk through and explained that the service was therefore not subject to the contractual provisions requiring the transitional work to be performed at no cost to the District. She recommended the District pay the invoice accordingly.

Following discussion, upon motion duly made by Director Staley, seconded by Director Palmer and, upon vote, unanimously carried, the Board authorized a separate payment to Summit Services and directed Attorney Tanaka to add a 30 Day transitional period to the landscaping service contract upon renewal.

Following discussion, upon motion duly made by Director Staley, seconded by Director Baldwin and, upon vote, unanimously carried, the Board ratified approval of the payment of claims for the period ending February 28, 2014, including check numbers 2429 through 2439, in the total amount of \$20,762.39.

**March 2014 Claims:** Ms. Harland distributed and reviewed with the Board a check register for the period ending March 14, 2014, including check numbers 2440 through 2450, in the amount of \$46,241.00. Attorney Tanaka reported that her firm inadvertently charged the District for collections expenses that were not for this District. She will credit next month's bill in the same amount.

Following discussion, upon motion duly made by Director Staley, seconded by Director Palmer and, upon vote, unanimously carried, the Board approved the payment of claims for the period ending March 14, 2014, including check numbers 2440 through 2450, in the amount of \$46,241.00.

**Cash Position Schedule and Current Cash Flow Projection:** Ms. Harland reviewed the cash position schedule as of March 17, 2014 and current cash flow projection through July/August of 2015 with the Board.

**Financial Statements:** Ms. Harland presented the unaudited financial statements for the period ending February 28, 2014 for the Board's review.

Director Palmer requested that Ms. Harland add a separate revenue line item for salvaged fencing materials. It was also requested that a line item for the website be added.

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Following discussion, upon motion duly made by Director Staley, seconded by Director Palmer, and upon vote, unanimously carried, the Board accepted the unaudited financial statements for the period ending February 28, 2014.

### LANDSCAPING MATTERS

Monthly Report from Terracare Associates, LLC ("Terracare"): The Board reviewed the landscaping report by Terracare and discussed a recent line break located on Tract J where Lennar is currently under construction. It was noted that the line appears to be outside of the private lot lines and that Lennar should not have damaged this area. Mr. Beckman noted that the cost to repair the broken line is \$1,400. The Board discussed potentially rerouting the line. Attorney Tanaka recommended that Lennar Homes ("Lennar") be put on notice of the break and requested to repair the damage at its cost in the event it is confirmed that the line is located within the public area. Mr. Beckman reported that he would follow up with Lennar to put them on notice that the District will request that they pay for the damaged irrigation line. The Board directed Terracare to verify location. Director Staley recommended a not to exceed amount of \$3,000 for repairs and potential rerouting.

Following discussion, upon motion duly made by Director Staley, seconded by Director Dailey, and upon vote, unanimously carried, the Board approved the above-referenced repairs for an amount not to exceed \$3,000.

Ms. Hudson reviewed the report with the Board. She reported that Terracare will provide an estimate for cleaning out the detention pond in Tract V. Attorney Tanaka discussed the ownership of the detention pond, noting that it is not currently owned by the District. The Board directed Terracare to coordinate with Director Staley to conduct a walk-through to determine the scope of the work. Attorney Tanaka discussed creating a punch for the improvements located on Tract V. Mr. Beckman reported that he will prepare the punch list and provide it to Attorney Tanaka. Once the list has been prepared, Attorney Tanaka will provide it to the developer and discuss the corrections to be made prior to acceptance of the tract by the District.

Director Staley discussed upcoming projects with the Board. He noted that he and Director Dailey would like to meet with Terracare to discuss the replacement of approximately 1,000 sprinkler heads and turf reduction. Director Staley requested that Mr. Beckman schedule a meeting with Terracare for this purpose.

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### OPERATION AND MAINTENANCE MATTERS

**Manager's Report:** The Board reviewed the Manager's Report. Director Palmer requested that item 188 be updated to reflect 2014. The Board inquired into the status of the drainage repairs on Killarney Street and inquired into the cost of the repairs should the District determine to conduct them. Director Staley and Mr. Beckman agreed to walk the area to review the issue.

**Common Metal Fencing Project:** The Board discussed the status of the Common Metal Fencing Project. Director Dailey explained that the work is substantially complete. He has received three letters of appreciation from members of the community. He noted the need to address corner posts in a few locations where privately-owned and District fences intersect. He will report back on a recommendation to resolve the connection issue. He then reported that the contractor is working on a final section which should complete the scope of 6,400 linear feet. He will check the next invoices to be sure that the final invoice does not exceed the scope of the project.

Director Dailey discussed repairs to piers that will be necessary and discussed the proposal by Jack O'Rourke to make the repairs.

Director Dailey recommended adding a one foot rock border along the metal fence to prevent damage from lawn mowers.

**Website Proposal Review Committee Recommendations:** Mr. Beckman discussed the proposals for website creation and maintenance from Essentia Web Works ("Essentia") and reported that, in his opinion, Essentia will provide a more user-friendly platform and a more professional looking website. Mr. Beckman noted that SDMS would upload the documents to the website each month at the rate of \$60 per hour.

Following discussion, upon motion duly made by Director Staley, seconded by Director Palmer, and upon vote, unanimously carried, the Board approved a contract with Essentia for website creation and maintenance.

**GIS Mapping Project:** Mr. Beckman reported that this is a long standing action item that has not been acted upon. Directors Dailey and Staley agreed that the item can be removed from the action items list.

**Pocket Mole Activity:** The Board entered into discussion regarding Pocket Mole activity in the area of Hampden and Conservatory Parkway and considered the potential need for mitigation. Director Staley reported

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that he has observed the Pocket Mole activity. He does not see an immediate need for action. He believes treatment will be beneficial, but is not critically important at this time. The Board requested that Director Palmer get a proposal in May when Orkin is on site for scheduled maintenance. Director Palmer will check with various pest control service providers for Prairie Dog and Pocket Mole control service in May.

**New Information regarding Underdrain Systems:** Director Dailey reported that he met with Jack O'Rourke and Mr. Degenhart to discuss the fencing project. He then provided to the Board a detail sketch created by Mr. Degenhart showing a standard "clean-out" located in the street, in front of each property. Director Dailey explained that it appears that the clean-outs have been paved over. He further explained that the HOA Management Company, MSI, is familiar with the systems and maintenance procedures and noted that it is common for the HOA to maintain these systems. Attorney Tanaka reported that Lennar and Carapace reported that the homes they are constructing will have underdrain systems. She will request that Lennar and Carapace contact the HOA with the information on the underdrain systems within their areas. Director Dailey suggested that the matter be addressed by the HOA going forward.

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**LEGAL MATTERS** **May 6, 2014 Directors' Election:** Mr. Beckman noted for the Board that the May 6, 2014 Directors' Election was cancelled, as allowed under Colorado law, by the Designated Election Official because there were no more candidates than positions available on the Board of Directors. Directors Degenhart, Baldwin and Moczo were deemed elected by acclamation to 4-year terms ending in May, 2018. Their terms will begin May 7, 2014.

**Discussions with Lennar Homes on Responsibilities, Obligations and Coordinated Efforts for New Development:** The Board entered into discussion regarding the following issues:

1. Ownership and maintenance responsibilities for public improvements in Tracts I, J, and K.
2. Quality Control for Landscape and Irrigation Improvements.
3. Consider Approval of Assignment of Agreement Regarding Public Art Funds to Lennar Colorado, LLC.
4. To consider Assignment of Agreement Regarding Construction, Operation and Maintenance of Certain Landscape Improvements, including all amendments thereto, to Lennar Colorado, LLC



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5. To consider Approval of a License Agreement with Lennar Colorado, LLC for Development Signs on Tract G.
6. To discuss Underdrain System in Lennar area.
7. Miscellaneous.

Director Staley discussed liability issues for Tracts I, J and K and stated that it would be his preference for the City of Aurora (“City”) to own and maintain the tracts and associated improvements. Attorney Tanaka reported that she will inquire with the City whether they originally intended for the City to take ownership of these tracts and/or are willing to accept them now. It was noted that Tract I appears to be appropriate for the District to maintain.

Attorney Tanaka reported Lennar has demonstrated the willingness to work with the District to install landscape and irrigation improvements in cooperation with District’s standards.

Assignment of Agreement Regarding Public Art Funds to Lennar Colorado, LLC: Attorney Tanaka reported that the public arts obligation is with the developer. She reported that she has verified that Lennar will assume the obligation. Director Staley commented that Lennar is looking for input from the District’s Board on the appropriate location for the art. He reported that he is concerned that the opportunity for the Board’s participation may be closing due to Lennar’s timing for finalization of the landscape plans. It was noted that the ideal location would be Tract I. Attorney Tanaka will request that Lennar designate an area for the artwork and check to see if the City will designate the artist or design and will further research the process to identify the extent to which the District will have input in the selection process. Directors Staley and Palmer agreed that the HOA should be involved if the District has control.

Assignment of Agreement Regarding Construction, Operation and Maintenance of Certain Landscape Improvements, including amendments thereto, to Lennar Colorado, LLC: Attorney Tanaka explained that Lennar has indicated that it is willing to agree to the assignment with the District continuing to maintain portions of Tracts I and J and Lennar funding these costs until the development is complete and the improvements are dedicated to the District for perpetual maintenance. It was noted that the obligations associated with Tract V are not expected to be taken on by Lennar.

Upon motion, duly seconded, the Board unanimously approved the Assignment of Agreement Regarding Construction, Operation and Maintenance of Certain Landscape Improvements, including amendments

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thereto, to Lennar Colorado, LLC, subject to final review by legal counsel. Underdrain System – Attorney Tanaka will communicate to Lennar that they need to notify the HOA regarding the existence of underdrains and any recommended maintenance.

Prairie Dog Mitigation – The Board discussed migration of Prairie Dogs from the Plains Conservation Center. Attorney Tanaka reported that Lennar is not currently prepared to take on this extra cost at this time. The Board directed Attorney Tanaka to forward the District's contract for the barrier so that they have better cost information.

Faux Stone – Attorney Tanaka reported that Lennar is willing to use the same top caps used by the District and will ensure that the stones for the piers and monuments are properly installed. Attorney Tanaka noted that she requested a warranty from Lennar for these improvements.

Metal Fencing – Attorney Tanaka reported that she advised Lennar of the new fencing design and requested that they install the same fencing. She noted that Lennar indicated they are willing to use the new specifications and details provided the pricing is reasonable. Attorney Tanaka will forward this information to Lennar.

**Foreclosure Procedures and Delinquent Accounts:** The Board entered into discussion regard the status of the foreclosure procedures and delinquent accounts.

**Requests from Property Owners Related to Outstanding Fees and Foreclosure Process:** Attorney Tanaka discussed the process undertaken for collection of amounts due from Mr. Garcia. She explained that the property owner was not billed for time associated with corrections associated with an administrative error that occurred in the collections process, and verified that the total amount due currently is \$1,207.44. She then reviewed the process for calculating collections fees with the Board.

The Board denied the request from Mr. Garcia and directed Attorney Tanaka to notify Mr. Garcia of the amount due and enter into a payment plan, if necessary, by the end of the month.

Attorney Tanaka presented the Board with a request from Ms. Wilkerson for a payment plan which will extend through May 2015. The Board approved the payment plan.

Director Dailey excused himself from the meeting at 11:52 a.m. He reported that he will be available to attend the May meeting as an observer.

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Attorney Tanaka discussed a request from the owner of 3063 Jericho Street. She reported that owner has a renter and that the owner never updated their address with the Assessor for property notices. As a result, the notices were sent to the property address. Attorney Tanaka noted that some invoices sent by SDMS were addressed to "Current Resident" because they were returned by the Post Office despite the name and address matching what was on record with the County Assessor. Once this change was made, the letters were not returned. For the past several years, all correspondences and notices sent were addressed to the owners' name and the address on file with the County Assessor, none of which were returned. The property owner requested that the District waive \$400 because they did not receive the notices. The Board denied the request.

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### **BOARD MEMBER INPUT**

**Board Member Input:** Director Palmer reported that the City is in the process of trying to get funding to assist with projects such as the Prairie Dog mitigation. She further reported that the City has indicated to her that if the District wants to extend the barrier they have no concerns.

Director Staley discussed the Board member orientation and suggested a short version of the District's purpose and functions. Attorney Tanaka discussed the creation of a FAQ (frequently asked questions) document for the District. She reported that preparation of such document would require approximately one hour and that it has been useful with other districts she represents.

The Board discussed the orientations and the need to focus more specifically on this particular District. Attorney Tanaka also discussed doing the financial portion separately. The Board discussed conducting the orientation off site, perhaps following regular business. The Board determined to hold the orientations at the clubhouse but to order in lunch.

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### **NEW BUSINESS**

**New Business:** There was no new business to discuss.

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### **CONTRACT APPROVALS**

**Landscape Expenditure Budget Tracking Matrix:** Mr. Beckman reviewed the matrix with the Board. No action was taken.

**First Addendum to the Independent Contractor Agreement between the District and Terracare Associates, LLC to Trim Back Plant Material:** The Board entered into discussion regarding the First Addendum to the Independent Contractor Agreement between the District and Terracare Associates, LLC to trim back plant material.

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Following discussion, upon motion duly made by Director Staley, seconded by Director Baldwin and, upon vote, unanimously carried, the Board ratified approval of the First Addendum to the Independent Contractor Agreement between the District and Terracare Associates, LLC to trim back plant material.

**Second Addendum to Independent Contractor Agreement (Project Management Services – Fence Project) between the District and John J. O’Rourke:** The Board entered into discussion regarding the Second Addendum to Independent Contractor Agreement (Project Management Services – Fence Project) between the District and John J. O’Rourke.

Following discussion, upon motion duly made by Director Staley, seconded by Director Baldwin and, upon vote, unanimously carried, the Board approved the Second Addendum to Independent Contractor Agreement (Project Management Services – Fence Project) between the District and John J. O’Rourke.

**Independent Contractor Agreement for Doggie Pot Station and Mail Kiosk Maintenance Services between the District and The Grand Poobah:** The Board entered into discussion regarding the Independent Contractor Agreement for Doggie Pot Station and Mail Kiosk Maintenance Services between the District and The Grand Poobah. Director Palmer reviewed the scope of work and noted several discrepancies with the quantities and totals included in the proposal.

Following discussion, upon motion duly made by Director Staley, seconded by Director Baldwin and, upon vote, unanimously carried, the Board approved the Independent Contractor Agreement for Doggie Pot Station and Mail Kiosk Maintenance Services between the District and The Grand Poobah, subject to revision of the scope of work and fees and final review by Director Palmer.

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**OTHER BUSINESS** **Community Outreach:** The Board discussed the following items as information to be included in the April 2014 Community Update. It was noted that when available, this information will be posted on the District’s new website.

- Status of the common metal fence project.
- Status of the 2013 Audit.
- Information on the May 6, 2014 Directors’ Election.
- Information regarding use of the Doggie Pot Stations.
- Notice that the irrigation system is being charged.

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### ADJOURNMENT


There being no further business to come before the Board at this time, upon motion duly made, seconded and, upon vote, unanimously carried, the meeting was adjourned.

Respectfully submitted,

By: 

Secretary for the Meeting

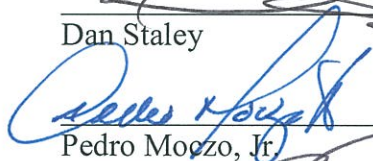
THESE MINUTES WERE APPROVED AS THE OFFICIAL  
MARCH 17, 2014 MINUTES OF THE CONSERVATORY  
METROPOLITAN DISTRICT BY THE BOARD OF DIRECTORS  
SIGNING BELOW:



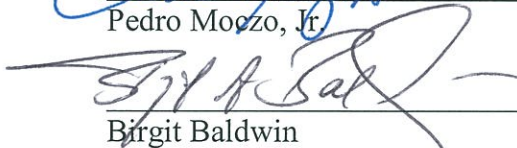
Laverne Palmer



Dan Staley



Pedro Moczo, Jr.



Birgit Baldwin



Ronald Degenhart

# CONSERVATORY METROPOLITAN DISTRICT

March 17, 2014

Please **print** your name and address (Optional: please print your phone number and email) and summarize the issue(s) you are interested in addressing at this meeting.

NAME	ADDRESS	TELEPHONE	EMAIL	ISSUE(S) TO BE ADDRESSED
REYMON & LAURA GARCIA	20509 E. DOWNE DR. AURORA CO 80013	303.693.8488	REYMON.GARCIA@TENTECH.COM lgarcia@care4dancer.org	COLLECTION DISPUTE
SONJA FRIDMORE	21241 E. FLORA PL. AURORA, Co. 80013	3. 589-9103	SPRINGMORE65@ GMAIL.COM	COLLECTION DISPUTE
Eloie Lewis	21331 E. Flora P Aurora. Co 80013	303-451-7069		
Lynn Siml	2964 S. Jericho Ct. Aurora 80013	720-870-2066	simlly14@yahoo.com	