

RESOLUTION NO. 20-23

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO APPROVING AN AGREEMENT FOR RELEASE OF LIABILITY AND WAIVER OF CLAIMS AND WRITTEN CONFIRMATION OF REFUSAL TO ACCEPT DISTRIBUTION FROM MASTER ASSOCIATION UPON DISSOLUTION

WHEREAS, the City of Castle Pines, Colorado is a home rule municipal corporation authorized under its home rule charter and the laws of the state of Colorado to enter into contracts; and

WHEREAS, the Castle Pines North Association, Inc. (“Master Association”) is a non-profit corporation located within the City of Castle Pines (“City”), in Douglas County, Colorado; and

WHEREAS, the Board of Directors of the Master Association has approved a Proposal to Dissolve Castle Pines North Association, Inc. (the “Proposal to Dissolve”), which is subject to various contingencies; and

WHEREAS, on June 26, 2020, the Delegates of the Master Association cast a sufficient number of votes to approve the Proposal to Dissolve which contains two contingencies relating to the City; and

WHEREAS, the first contingency in the Proposal to Dissolve relating to the City, requires the City to provide written confirmation to the Master Association that it will refuse to accept any funds, proceeds or other assets of the Master Association prior to or upon its dissolution; and

WHEREAS, the second contingency in the Proposal to Dissolve relating to the City, requires the City to waive and hold the Master Association and its past and present directors, officers, members, delegates, managing agents, employees, legal counsel and insurers harmless from any and all past, present and future claims, disputes, actions, causes of action, damages or reimbursements which are known or unknown and which the City believes it may have or does have against or from the Master Association; and

WHEREAS, the Master Association, through its legal counsel, has presented an Agreement for Release of Liability and Waiver of Claims and Written Confirmation of Refusal to Accept Distribution from Master Association upon Dissolution (“Agreement”); and

WHEREAS, on November 19, 2019 at a regular City Council meeting, the City Council acknowledged by majority vote of Council that if the Master Association dissolved, the City would not accept any funds or proceeds from the dissolution; and

WHEREAS, the City, through its legal counsel, has informed the Master Association’s legal counsel, that the City is not authorized under Colorado law to enter into contractual indemnity

clauses and, accordingly, the proposed indemnification language in the original proposed Agreement was removed; and

WHEREAS, the Agreement, as attached hereto as Exhibit A, is presented to City Council for approval; and

WHEREAS, the City Council has evaluated and considered the Agreement and determines that such Agreement is in the best interests of the residents of the City.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO THAT:

Section 1. The City Council hereby: (1) approves the Agreement for Release of Liability and Waiver of Claims and Written Confirmation of Refusal to Accept Distribution from Master Association upon Dissolution in the form attached hereto and incorporated herein as **Exhibit A**, and (2) authorizes the Mayor to execute the Agreement.

Section 2. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining issues of this Resolution.

Section 3. This Resolution shall take effect upon its approval by the City Council.

INTRODUCED, READ AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES BY A VOTE OF 6 IN FAVOR, 0 AGAINST, AND 1 ABSENT THIS 28TH DAY OF JULY 2020.



ATTEST:

DocuSigned by:
Tobi Basile
AD03A3B02032499...

Tobi Basile, CMC, City Clerk

DocuSigned by:
Tera Stave Radloff
6E0C8E8279DC479
Tera Stave Radloff, Mayor

APPROVED AS TO FORM:

DocuSigned by:
Linda C. Michow
5241DE99B8FF444

Linda C. Michow, City Attorney

EXHIBIT A

**AGREEMENT FOR RELEASE OF LIABILITY AND WAIVER OF CLAIMS AND
WRITTEN CONFIRMATION OF REFUSAL TO ACCEPT DISTRIBUTION FROM
MASTER ASSOCIATION UPON DISSOLUTION**

**AGREEMENT FOR RELEASE OF LIABILITY AND WAIVER OF CLAIMS
AND WRITTEN CONFIRMATION OF REFUSAL TO ACCEPT DISTRIBUTION
FROM MASTER ASSOCIATION UPON DISSOLUTION**

THIS AGREEMENT for Release of Liability and Waiver of Claims and Written Confirmation of Refusal to Accept Distribution from Master Association Upon Dissolution (Agreement) is entered into as of the ___ day of _____, 2020 by and between Castle Pines North Association, Inc. (hereinafter “Master Association”) and the City of Castle Pines (hereinafter “City”) (the parties are collectively referred to as the “Parties”). City does hereby freely, voluntarily, and without duress execute this Agreement under the following terms:

RECITALS

- A. Master Association is a non-profit corporation located in Douglas County, Colorado; and
- B. The Board of Directors of the Master Association has approved a Proposal to Dissolve Castle Pines North Association, Inc. (the “Proposal to Dissolve”), which is subject to various contingencies; and
- C. On June 26, 2020, the Delegates of the Master Association cast a sufficient number of votes to approve the Proposal to Dissolve which contains two contingencies relating to the City; and
- D. The first contingency in the Proposal to Dissolve relating to the City, requires the City to provide written confirmation to the Master Association that it will refuse to accept any funds, proceeds or other assets of the Master Association prior to or upon its dissolution; and
- E. The second contingency in the Proposal to Dissolve relating to the City, requires the City to waive and hold the Master Association and its past and present directors, officers, members, delegates, managing agents, employees, legal counsel and insurers harmless from any and all past, present and future claims, disputes, actions, causes of action, damages or reimbursements which are known or unknown and which the City believes it may have or does have against or from the Master Association.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby agree as follows:

Release and Waiver. The City shall waive and release from liability the Master Association and its past and present directors, officers, members, delegates, managing agents, employees, legal counsel and insurers from any and all past, present and future claims, disputes, actions, causes of action, damages or reimbursements which are known or unknown and which the City of Castle

Pines believes it may have or does have against or from the Master Association. This release and waiver shall not be interpreted in such a manner as to infer or specifically assign to the City any responsibility to indemnify the Master Association or any third party relating to any of the claims, disputes, causes of action, damages or reimbursements which are released and waived pursuant to this provision. By executing this Agreement, Master Association understands and affirms that under Colorado law the City is prohibited from providing any such indemnification.

Written Confirmation. The City hereby provides this written confirmation that the City will refuse to accept any funds, proceeds or other assets of the Master Association prior to or upon its dissolution.

Attorney's Fees and Costs. City agrees that in the event that City commences litigation as against the Master Association in contravention of the release and waiver as set forth herein or relating to the terms of this Agreement and Master Association is the prevailing party, regardless of whether litigation was commenced before or after formal dissolution of the Master Association, that the City shall be responsible to reimburse the Master Association or its insurance carrier which provides a defense to the Master Association, its reasonable costs and attorney fees.

No Admission of Liability. The Parties agree that nothing contained herein, and no action taken with regard to this Agreement, shall be construed as an admission of liability regarding any and all past, present and future claims, disputes, actions, causes of action, damages or reimbursements which are known or unknown and which either Party may or does believe that it has against the other Party.

Other. The Parties expressly agree that this Agreement is intended to be broad and inclusive as permitted by the laws of the State of Colorado, and that this Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado. The Parties agree that in the event that any clause or provision of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not otherwise affect the remaining provisions of this Agreement which shall continue to be enforceable.

Governmental Immunity. Nothing contained in this Agreement constitutes a waiver of sovereign immunity or governmental immunity by the City under applicable state law.

IN WITNESS THEREOF, the Parties have executed this Agreement as of the date and year first written above.

For and on behalf of the City of Castle Pines

Name: Tera Stave Radloff

Title: Mayor

ATTEST:

Tobi Basile, CMC, City Clerk

For and on behalf of the Castle Pines North Association, Inc.

Kristy Buirge, President