

RESOLUTION NO. 09-78

INTRODUCED BY:

Councilperson Hoffman

Councilperson Havercroft

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF CASTLE PINES NORTH
APPROVING A SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS BETWEEN THE CITY
AND THE CASTLE PINES NORTH MASTER ASSOCIATION**

WHEREAS, the Castle Pines North Master Association (“Master Association”) is a Colorado nonprofit corporation formed to provide for maintenance, preservation, and architectural control of certain sites and common area within real property as identified in the Master Declaration of Covenants, Conditions, Restrictions and Easements for Castle Pines North recorded October 22, 1984, in the records of the Douglas County Clerk and Recorder (“Covenants”); and

WHEREAS, through the process of the City’s incorporation, the Master Association paid certain amounts to cover expenses related to the incorporation and initial operations of the City; and

WHEREAS, the City has over time reimbursed the Master Association for certain of those expenses; and

WHEREAS, the Master Association has asserted that the City owes the Master Association additional amounts not paid on behalf of the City during incorporation; and

WHEREAS, the reimbursement amounts claimed are for expenses incurred (1) in the conduct of the November, 2007 City incorporation election, (2) to fund activities necessary between the incorporation election and the March 10, 2008 swearing-in ceremony, and (3) expenditures for City activities incurred after the March 10, 2008 swearing-in ceremony; and

WHEREAS, City staff and the Master Association have negotiated and agreed to the terms of a Settlement Agreement and Release of Claims (“Settlement Agreement”) in full satisfaction of all amounts owed to the Master Association by the City; and

WHEREAS, the City Council finds that it is in the best interests of the citizens of the City to approve and enter into the Settlement Agreement.

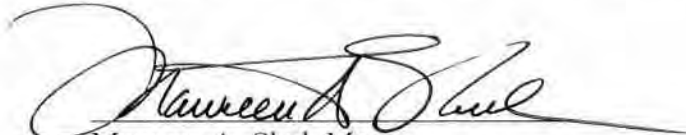
THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH, COLORADO:

Section 1. The City Council (a) approves the Settlement Agreement and Release of Claims between the City and the Castle Pines North Master Association, including any and all exhibits thereto, in the form attached hereto as **Exhibit A**, (b) authorizes the City Manager and the City Attorney, in consultation with the Mayor, to make such changes as may be needed to correct any nonmaterial errors or language that do not increase the obligations of the City, and (c) authorizes the Mayor to execute the same on behalf of the City.

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 be effective immediately upon approval of the City Council of the City of Castle Pines North.

INTRODUCED, READ AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH the 12th day of November, 2009.


Maureen A. Shul, Mayor

ATTEST:


Janie Berry, City Clerk

APPROVED AS TO FORM:


Linda C. Michow, City Attorney

Exhibit A
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims ("Settlement Agreement") is entered into as of this 19th day of November, 2009, by and between THE CITY OF CASTLE PINES NORTH, a Colorado statutory municipality (the "City") and THE CASTLE PINES NORTH ASSOCIATION, INC., a Colorado nonprofit corporation (the "Master Association"). The City and the Master Association are referred to jointly as the "Parties."

Recitals

WHEREAS, the City is a Colorado statutory city located in Douglas County, Colorado, and incorporated in February, 2008; and

WHEREAS, the Master Association is a Colorado nonprofit corporation formed in 1999 to provide for maintenance, preservation, and architectural control of the Privately owned Sites and Common Area within Property described in Exhibit A of the Master Declaration of Covenants, Conditions, Restrictions and Easements for Castle Pines North recorded October 22, 1984 in the records of the Douglas County Clerk and Recorder ("Covenants") as such terms are defined within the Covenants; and

WHEREAS, through the process of the City's incorporation, the Master Association paid on behalf of the Citizens to Preserve Castle Pines North, LLC, and the City, certain amounts to cover expenses incurred related to the incorporation and initial operations of the City; and

WHEREAS, the City has over time reimbursed the Master Association for certain of those expenses; and

WHEREAS, the Citizens to Preserve Castle Pines North, LLC, has been voluntarily dissolved and is no longer an ongoing entity; and

WHEREAS, on March 20, 2009, the Master Association submitted a letter and invoices to the City asserting that the City owes the Master Association certain amounts in reimbursement for amounts paid on behalf of the Citizens to Preserve Castle Pines North, LLC, and the City, which amounts had not already been reimbursed ("March 20, 2009 Invoices"); and

WHEREAS, as described and categorized by the Master Association, the March 20, 2009 Invoices were for expenses incurred (1) in the conduct of the November 2007 incorporation election; (2) to fund activities necessary between the incorporation election and the March 10, 2008, swearing-in ceremony; and (3) expenditures for City activities incurred after the March 10, 2008, swearing-in ceremony; and

WHEREAS, the City desires to make payment and the Master Association agrees to accept payment as outlined in this Settlement Agreement in full satisfaction of all amounts owed to the Master Association by the City as set forth in the March 20, 2009 Invoices and/or otherwise asserted to be owed to the Master Association by the City; and

WHEREAS, the Parties now desire to fully and completely settle all claims between and among them as of the date first written above.

Agreement

NOW THEREFORE, in consideration of the foregoing Recitals, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Remittance of Payment By The City.** The City shall remit to the Master Association at the address set forth below in the signature block the amount of Twelve Thousand Dollars (\$12,000.00) monthly for twelve (12) consecutive months commencing on January 1, 2010, and terminating following the payment made in December, 2010, for an aggregate payment of One Hundred and Forty Four Thousand Dollars (\$144,000.00) ("Reimbursement Amount"), which Reimbursement Amount shall be paid monthly in accordance with the regular monthly accounts payable processes and schedule of the City.
2. **Full Satisfaction and Release.** The Master Association shall accept the Reimbursement Amount in full satisfaction of the amounts claimed in the March 20, 2009 Invoices or otherwise asserted to be owed to the Master Association by the City for any and all costs paid by the Master Association for or on behalf of the City for or related to the City incorporation process or operations of the City to date of this Settlement Agreement; and shall release and discharge the City from any and all present or future claims for other expenses incurred prior to the date of this Settlement Agreement, whether known or unknown as of the date of this Settlement Agreement, that the Master Association may otherwise assert against the City or claim to have incurred on behalf of against the City. The foregoing release and discharge shall not apply to claims for future expenses incurred by the Master Association for or on behalf of the City, if any, after the date of this Settlement Agreement that is or becomes subject to written agreement between the City and the Master Association; provided, however, that as of the date of this Settlement Agreement, the Parties acknowledge there are no outstanding expenses incurred or claims asserted by the Master Association other than as provided for in this Settlement Agreement and no written or oral agreements for any such expenses exist by and between the Master Association and the City other than as provided for in this Settlement Agreement.
3. **Costs of Settlement Agreement.** Each Party shall bear its own attorneys' fees and costs related to negotiation and execution of this Settlement Agreement.

4. **Miscellaneous.**

- a. Except as specifically provided herein, neither the negotiation nor the execution of this Settlement Agreement shall constitute or be construed as an admission as to the correctness of any position asserted by any Party with respect to any of the claims released hereby or an admission of any liability or wrongdoing whatsoever by any of the Parties.
- b. This Settlement Agreement shall be construed and its performance governed by the laws of the State of Colorado.
- c. This Settlement Agreement may be executed in counterparts.
- d. It is understood and agreed that the general rule that ambiguities are to be construed against the drafter shall not apply to this Settlement Agreement. In the event that any language of this Settlement Agreement is found to be ambiguous, each Party shall have an opportunity, in any legal proceeding, to present evidence as to the actual intent of the Parties with respect to any such ambiguous language. The Parties acknowledge and represent that they each have carefully read and fully understand all of the terms and conditions set forth in this Settlement Agreement.
- e. The Parties further acknowledge and represent that they enter into this Settlement Agreement freely, knowingly and without coercion, based on their judgment, and not in reliance upon any representation or promise made by any Party or their respective attorneys not expressly contained herein.
- f. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the City, the Master Association or their officials, employees, contractors, or agents, or any other person acting on behalf of any Party and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.
- g. The Parties understand and acknowledge that the City is subject to Article X, § 20 of the Colorado Constitution ("**TABOR**"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of City of Centennial,

and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated, and neither Party shall be bound by its terms and each Party shall have and retain all claims and defenses it had prior to execution of this Settlement Agreement as if this Settlement Agreement had not been executed except that any amounts theretofore paid by the City to the Master Association shall be credited against any amounts claimed as due to the Master Association from the City.

- h. No failure to exercise, and no delay in exercising, any right, power or remedy under this Settlement Agreement shall impair any right, power or remedy that any Party may have, nor shall any such delay be construed to be a waiver of any such rights, powers, or remedies or an acquiescence in any breach or default under the Settlement Agreement, nor shall any waiver of any breach or default be deemed a waiver of any default or breach subsequently occurring.
- i. The Parties agree that if, for any reason, any provision, term or portion of any provision or term of this Settlement Agreement shall be held invalid, illegal or unenforceable, this Settlement Agreement shall automatically be conformed to such holding, and the validity, legality, and enforceability of the remaining terms, provisions or portions of provisions and terms of this Settlement Agreement shall not be impaired, but shall continue in full force and effect.
- j. This Settlement Agreement and any related agreements, once executed, constitute the entire understanding between the Parties with respect to their claims and supersede all other agreements, written and oral, between the Parties or their attorneys.
- k. Any and all controversies regarding this Settlement Agreement and any action or other proceeding which involves such controversy will be brought in the District Court for Douglas County, Colorado.
- l. If litigation is commenced concerning this Settlement Agreement or the enforcement of any of its provisions, the prevailing party shall be entitled to an award of reasonable attorneys' fees and expenses, court costs, experts' fees and expenses, all other expenses of litigation, and fees spent to collect fees.

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SIGNATURE PAGE TO FOLLOW

