

RESOLUTION NO. 09-80

INTRODUCED BY:

Councilperson Havercroft

Councilperson Hoffman

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF CASTLE PINES NORTH
APPROVING A REIMBURSEMENT AGREEMENT
WITH A AND A INVESTMENTS, LLC
CONCERNING THE LAGAE SOUTH ANNEXATION**

WHEREAS, pursuant to Section 31-15-101, C.R.S., the City Council of the City of Castle Pines North has the authority to enter into contracts; and

WHEREAS, the City is authorized to charge reasonable application and processing fees for services associated with land use applications; and

WHEREAS, the City Council has received an annexation petition and expects to receive associated land use applications (collectively, the "Applications") from A and A Investments, LLC as the property owner of the property commonly known as Lagae South; and

WHEREAS, the City will utilize outside consultants to review and process the Applications and seeks reimbursement of such costs from the property owner; and

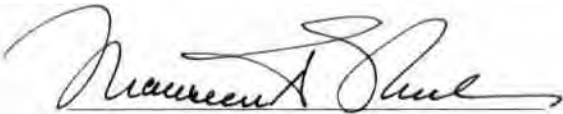
WHEREAS, the attached reimbursement agreement assures that the property owner will pay the costs of processing the Applications through the City.

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

Section 1. The City Council hereby approves a Consultant Reimbursement Agreement with A and A Investments, LLC, a Colorado limited liability company, in the form attached hereto as **Exhibit A**.

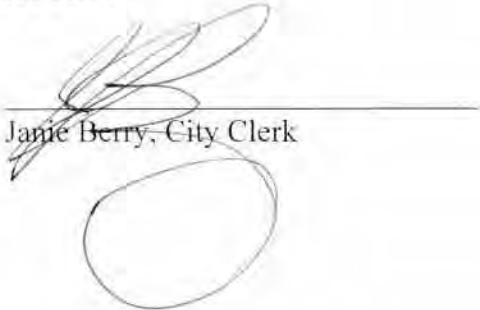
Section 2. Upon approval of this Resolution, the Mayor is authorized to sign the Agreement on behalf of the City.

INTRODUCED, READ AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH the 22nd day of October, 2009.



Maureen A. Shul, Mayor

ATTEST:



Janie Berry, City Clerk

APPROVED AS TO FORM:



Linda C. Michow, City Attorney

Exhibit A

CONSULTANT REIMBURSEMENT AGREEMENT

CONSULTANT REIMBURSEMENT AGREEMENT

THIS AGREEMENT is made and entered into as of the 19th day of OCTOBER, 2009, by and between A and A Investments, a Colorado limited liability company, hereinafter referred to as "Applicant", and the City of Castle Pines North, a body politic and municipal corporation of the State of Colorado, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, Applicant has submitted an application for annexation, initial zoning, vested property rights, and planned development approval (collectively, the "Application") for property commonly referred to as Lagae South, hereinafter referred to as the "Property", which is more fully described in the legal description attached hereto as **Exhibit A** and incorporated herein by this reference; and

WHEREAS, said Application requires review by the City; and

WHEREAS, given the nature of the Application and the City's limited staff resources, the City will employ outside contractors (the "Consultants") for part or all of the required review; and

WHEREAS, the cost incurred by the City for the services of the Consultants are reasonable and necessary expenses associated with the review of the application and therefore shall be reimbursed to the City by the Applicant; and

WHEREAS, both parties herein desire to execute this Agreement specifically defining the rights and obligations of each.

NOW THEREFORE, in exchange for the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which the parties hereby expressly acknowledge, the City and the Applicant agree as follows:

I.

FEES AND PAYMENTS

A. The Applicant will pay to the City a deposit in an amount of Ten Thousand Dollars (\$10,000) (the "Deposit") to cover the anticipated costs of the Consultants in reviewing and processing the Application. The Application includes and shall mean all documentation, data and information submitted to the City in order to seek approval of the aforementioned development approval processes, including but not limited to annexation maps, annexation petitions, annexation impact reports, planned development plans, vested property rights documentation, development and annexation agreements, public improvement agreements, site plans, engineering and surveying documentation, traffic impact reports, stormwater plans, and any required or requested documentation associated with the Application. Costs to be reimbursed under this Agreement shall also include fees reasonably incurred by the City for the Consultants' attendance at meetings requested by the Applicant or required for the processing of the Application. Costs

eligible for reimbursement also include all expenses, costs, fees and charges reasonably incurred by the Consultants that are directly related to the City's processing, review, consideration and inspection of the Application. In order to provide the Applicant with assurance as to the total cost of the City's review and processing of the Application, the City has estimated the total fees that will be payable by the Applicant in processing and reviewing the Application as follows, and as more fully detailed in **Exhibit B**, attached hereto and incorporated herein. It is the express intent of this paragraph that the Applicant shall bear and pay in full all reasonable expenses and costs of the City in the processing of the Application and, if such Application is approved, for the City's inspection and review of the project until such time that the development is complete in accordance with the Application and the City's adopted ordinances, resolutions, rules, and regulations; provided, however, that in no event shall the total amount required to be paid by Applicant under this Agreement exceed Thirty Five Thousand Dollars (\$35,000), unless agreed to in writing by Applicant.

B. The City shall send a statement to the Applicant for the total monthly amount invoiced from the Consultants. The City shall charge the costs of the Consultants against the Deposit and shall deduct for payment said costs from the Deposit. The Applicant shall be obligated to maintain a positive balance of at least Five Thousand Dollars (\$5,000) in the Deposit at all times. Subject to dispute resolution process set forth in Section II of this Agreement, failure by the Applicant to maintain a positive balance of at least Five Thousand Dollars (\$5,000) in the Deposit and to make an additional deposit within five (5) days of written notification from the City as necessary to maintain the minimum Deposit, shall constitute a material breach of this Agreement.

C. In the event of the Applicant's breach of this Agreement, all amounts owing shall be due and payable immediately and such amount shall accrue interest at an amount equal to 18% per annum until paid in full. In such event, the City shall be entitled to and may invoke one or more of the following remedies following the City's mailing of a letter demanding payment in full to the Applicant:

1. Postponement, cessation and/or termination of the processing of the Application;
2. Denial of the Application or any portion thereof;
3. Imposition of a condition that the Applicant pay all costs and expenses then due and owing for all or any portion of the Property prior to the issuance of any further approvals, including the issuance of any building permits;
4. Withholding, postponing, and/or denying: (1) any building permit(s) for any part or portion of the Property or for any improvement which serves or will provide service to the Property; (2) construction documentation review or approval; (3) grading, road cut, or other construction or permit approval; and/or (4) the submission, receipt, processing, or approval of any application or request by the Applicant or the Applicant's affiliate(s) for any form of land use or construction application related in any way to the Property;

5. Refusal or denial of the acceptance of any other application for land use approval or development of any kind for the Property submitted by the Applicant or any other person;
6. Revocation of approved vested property rights, subject to notice and hearing; and/or
7. Commencement of an action seeking recovery of the City's actual damages under this Agreement, which damages shall include default interest at the rate set forth above, if any.

D. At any time during the Application review process, the Applicant can withdraw the Application. Upon withdrawing the Application in writing, the Applicant shall pay any outstanding balance due the City, or the City shall refund any unused funds in the Deposit to the Applicant.

E. Prior to final disposition of the Application review process or any part thereof, the Applicant shall pay any outstanding balance due the City.

II. DISPUTES

In the event the Applicant disagrees with the monthly charges provided to the City by the Consultants, the Applicant will so notify the City Manager in a letter that specifies the particular charges being disputed. The City Manager will review the Consultants' invoice(s) and, in good faith, either concur with the charges as invoiced or make adjustments in the amount the City will bill to the Applicant. The Applicant shall pay the charges invoiced, as determined reasonable by the City Manager, within five (5) days of the City Manager's determination.

III. APPLICATION REVIEW PROCESS

A. The process covered by this Agreement shall be the full Application review process which shall begin with initial services provided by the Consultants through the final decision by the City concerning the Application, including post approval correspondence, post-approval inspections, review or meetings, and any time spent by the Consultants regarding any appeals of the City's decision. Final decision shall mean approval, conditional approval, or denial of the Application and the expiration of all appeal periods.

B. Within sixty (60) days of final decision on the Application, any funds remaining in the Deposit shall be paid to the Applicant or the Applicant's designee.

This Agreement, when executed, shall inure to the benefit of and be binding upon the heirs, successors, and assigns of the respective parties.

APPLICANT:

A and A Investments, LLC,
a Colorado limited liability company

By: *[Signature]*
Name: JACK A. VICKERS III
Title: MANAGER

STATE OF COLORADO)
) ss.
COUNTY OF DOUGLAS)

The foregoing Agreement was acknowledged before me this 15th day of OCTOBER, 2009, by Jack A. Vickers, III, as Manager of A and A Investments LLC, a Colorado limited liability company.

Witness my hand and official seal.

My Commission expires: 3/28/2012



[Signature]
Notary Public My Commission Expires 03/28/2012

CITY:
THE CITY OF CASTLE PINES NORTH

By: *[Signature]*
Maureen A. Shul, Mayor

ATTEST:

By: *[Signature]*
Deputy City Clerk

EXHIBIT A

(Legal Description)

EXHIBIT A
"Property"

LEGAL DESCRIPTION:

A PARCEL OF LAND LYING IN THE EAST 1/2 OF SECTION 9 AND SECTION 10 OF TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, DOUGLAS COUNTY, COLORADO, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 10, AND CONSIDERING THE SOUTH LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 10 TO BEAR SOUTH 89°09'17" EAST WITH ALL BEARINGS CONTAINED HEREIN, RELATIVE THERETO; THENCE WESTERLY ALONG THE EXISTING FENCELINE AS DESCRIBED IN THAT QUIT CLAIM DEED RECORDED IN BOOK 539, PAGE 598 THE FOLLOWING TWO (2) COURSES:

- 1) NORTH 89°08'57" WEST, 1080.47 FEET;
- 2) THENCE NORTH 01°28'54" WEST, 3606.79 FEET

TO A POINT ON THE SOUTH SUBDIVISION BOUNDARY OF LAGAE RANCH FILING 1, ACCORDING TO THE RECORDED PLAT THEREOF, THENCE DEPARTING SAID FENCELINE, AND ALONG SAID SUBDIVISION BOUNDARY THE FOLLOWING TWO (2) COURSES:

- 1) NORTH 86°45'40" EAST, 2928.23 FEET;
- 2) THENCE NORTH 71°00'10" EAST, 1527.60 FEET

TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF U.S. INTERSTATE NO. 25, THENCE DEPARTING SAID LAGAE RANCH FILING 1 SUBDIVISION BOUNDARY AND ALONG SAID WEST RIGHT-OF-WAY LINE OF U.S. INTERSTATE NO. 25 THE FOLLOWING EIGHT (8) COURSES:

- 1) SOUTH 01°01'24" WEST, 14.01 FEET;
- 2) THENCE SOUTH 07°31'24" WEST, 1546.10 FEET;
- 3) THENCE ALONG A CURVE TO THE LEFT, HAVING A DELTA OF 05°02'01", A RADIUS OF 11,620.00 FEET, AN ARC OF 1020.85 FEET AND A CHORD WHICH BEARS SOUTH 04°59'54" WEST, 1020.52 FEET;
- 4) THENCE SOUTH 02°28'54" WEST, 832.00 FEET;
- 5) THENCE SOUTH 16°41'54" WEST, 773.70 FEET;
- 6) THENCE NORTH 87°31'06" WEST, 60.00 FEET;
- 7) THENCE SOUTH 43°44'54" WEST, 199.50 FEET;
- 8) THENCE SOUTH 01°33'24" WEST, 43.20 FEET

TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 10;

THENCE DEPARTING SAID U.S. INTERSTATE NO. 25 RIGHT-OF-WAY LINE AND ALONG SAID SOUTH LINE OF SECTION 10, NORTH 89°09'17" WEST, 2445.46 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION;

CONTAINING 354.14 ACRES, MORE OR LESS.

Portion of above-described Property owned by Petitioner (A&A Investments, LLC, a Colorado limited liability company)

PARCEL 1

A PARCEL OF LAND LYING IN THE EAST 1/2 OF SECTION 9 AND SECTION 10 OF TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, DOUGLAS COUNTY, COLORADO, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 10, AND CONSIDERING THE SOUTH LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 10 TO BEAR SOUTH 89°09'17" EAST WITH ALL BEARINGS CONTAINED HEREIN, RELATIVE THERETO; THENCE WESTERLY ALONG THE EXISTING FENCELINE AS DESCRIBED IN THAT QUIT CLAIM DEED RECORDED IN BOOK 539, PAGE 598 THE FOLLOWING TWO (2) COURSES:

- 1) NORTH 89°08'57" WEST, 1080.47 FEET;
- 2) THENCE NORTH 01°28'54" WEST, 2588.09 FEET

TO A POINT ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF LAGAE ROAD AS DESCRIBED IN BOOK 2326, PAGE 1152, THENCE DEPARTING SAID FENCELINE AND ALONG SAID LAGAE ROAD RIGHT-OF-WAY THE FOLLOWING FIVE (5) COURSES:

- 1) ALONG A NON-TANGENT CURVE TO THE LEFT, HAVING A DELTA OF 89°39'00", A RADIUS OF 65.00 FEET, AN ARC OF 101.68 FEET AND A CHORD WHICH BEARS NORTH 73°17'48" EAST, 91.64 FEET;
- 2) THENCE ALONG A NON-TANGENT CURVE TO THE LEFT, HAVING A DELTA 46°56'20", A RADIUS OF 490.00 FEET; AN ARC OF 401.43 FEET AND A CHORD WHICH BEARS NORTH 53°57'42" EAST, 390.30 FEET;
- 3) THENCE NORTH 30°29'32" EAST, 559.10 FEET;
- 4) THENCE ALONG A TANGENT CURVE TO THE RIGHT, HAVING A DELTA OF 15°35'49", A RADIUS OF 1160.00 FEET, AN ARC OF 315.77 FEET AND A CHORD WHICH BEARS NORTH 38°17'26" EAST, 314.80 FEET;
- 5) THENCE NORTH 46°05'21" EAST, 130.14 FEET

TO A POINT ON THE SOUTH SUBDIVISION BOUNDARY OF LAGAE RANCH FILING 1, ACCORDING TO THE RECORDED PLAT THEREOF, THENCE DEPARTING SAID

LAGAE ROAD RIGHT-OF-WAY, AND ALONG SAID SUBDIVISION BOUNDARY THE FOLLOWING TWO (2) COURSES:

- 3) NORTH 86°45'40" EAST, 1924.39 FEET;
- 4) THENCE NORTH 71°00'10" EAST, 1527.60 FEET

TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF U.S. INTERSTATE NO. 25, THENCE DEPARTING SAID LAGAE RANCH FILING 1 SUBDIVISION BOUNDARY AND ALONG SAID WEST RIGHT-OF-WAY LINE OF U.S. INTERSTATE NO. 25 THE FOLLOWING EIGHT (8) COURSES:

- 1) SOUTH 01°01'24" WEST, 14.01 FEET;
- 2) THENCE SOUTH 07°31'24" WEST, 1546.10 FEET;
- 3) THENCE ALONG A CURVE TO THE LEFT, HAVING A DELTA OF 05°02'01", A RADIUS OF 11,620.00 FEET, AN ARC OF 1020.85 FEET AND A CHORD WHICH BEARS SOUTH 04°59'54" WEST, 1020.52 FEET;
- 4) THENCE SOUTH 02°28'54" WEST, 832.00 FEET;
- 5) THENCE SOUTH 16°41'54" WEST, 773.70 FEET;
- 6) THENCE NORTH 87°31'06" WEST, 60.00 FEET;
- 7) THENCE SOUTH 43°44'54" WEST, 199.50 FEET;
- 8) THENCE SOUTH 01°33'24" WEST, 43.20 FEET

TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 10; THENCE DEPARTING SAID U.S. INTERSTATE NO. 25 RIGHT-OF-WAY LINE AND ALONG SAID SOUTH LINE OF SECTION 10, NORTH 89°09'17" WEST, 2445.46 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION;

CONTAINING 340.50 ACRES, MORE OR LESS.

PARCEL 2

A PARCEL OF LAND LYING IN THE EAST 1/2 OF SECTION 9 OF TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, DOUGLAS COUNTY, COLORADO, BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 10, AND CONSIDERING THE SOUTH LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 10 TO BEAR SOUTH 89°09'17" EAST WITH ALL BEARINGS CONTAINED HEREIN, RELATIVE THERETO; THENCE WESTERLY ALONG THE EXISTING FENCELINE AS DESCRIBED IN THAT QUIT CLAIM DEED RECORDED IN BOOK 539, PAGE 598 THE FOLLOWING TWO (2) COURSES:

- 1) NORTH 89°08'57" WEST, 1080.47 FEET
- 2) THENCE NORTH 01°28'54" WEST, 2701.12 FEET

TO A POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF LAGAE ROAD AS DESCRIBED IN BOOK 2326, PAGE 1152 AND THE POINT OF BEGINNING OF THIS DESCRIPTION,

THENCE CONTINUING ALONG SAID FENCELINE, NORTH 01°28'54" WEST, 905.67 FEET TO A POINT ON THE SOUTH SUBDIVISION BOUNDARY OF LAGAE RANCH FILING 1, ACCORDING TO THE RECORDED PLAT THEREOF, THENCE DEPARTING SAID FENCELINE AND ALONG SAID SUBDIVISION BOUNDARY, NORTH 86°45'40" EAST, 881.09 FEET TO A POINT ON SAID NORTHWESTERLY RIGHT-OF-WAY LINE OF LAGAE ROAD, THENCE DEPARTING SAID LAGAE RANCH FILING 1 SUBDIVISION BOUNDARY AND ALONG SAID LAGAE ROAD RIGHT-OF-WAY THE FOLLOWING FIVE (5) COURSES:

- 1) SOUTH 46°05'21" WEST, 37.04 FEET,
- 2) THENCE ALONG A TANGENT CURVE TO THE LEFT, HAVING A DELTA OF 15°35'49", A RADIUS OF 1240.00 FEET, AN ARC OF 337.55 FEET AND A CHORD WHICH BEARS SOUTH 38°17'26" WEST, 336.51 FEET;
- 3) THENCE SOUTH 30°29'32" WEST, 559.10 FEET;
- 4) THENCE ALONG A TANGENT CURVE TO THE RIGHT, HAVING A DELTA OF 46°21'19", A RADIUS OF 410.00 FEET; AN ARC OF 331.71 FEET AND A CHORD WHICH BEARS SOUTH 53°40'11" WEST, 322.74 FEET;
- 5) THENCE ALONG A NON-TANGENT CURVE TO THE LEFT, HAVING A DELTA OF 73°27'03", A RADIUS OF 65.00 FEET, AN ARC OF 83.31 FEET AND A CHORD WHICH BEARS NORTH 84°21'34" WEST, 77.74 FEET

TO THE POINT OF BEGINNING OF THIS DESCRIPTION, CONTAINING 10.96 ACRES, MORE OR LESS.

**EXHIBIT B
(LEGAL REVIEW FEES)**

**City of Castle Pines North – Lagae South Annexation
Lagae South Development**

Estimated Legal Fees based on rate of \$225 per hour (blended rate) and based on the following time allocations:

| | |
|---------------------------------------|--------------------|
| Annexation | |
| Petition review | 2 HRS |
| Mapping review | 4 HRS |
| Title/ownership | 2 HRS |
| Resolutions (2) | 4 HRS |
| Ordinance | 5 HRS |
| Notices/publications | 4 HRS |
| Annexation Agreement | 30 HRS |
| Vested Property Rights | |
| Ordinance | 5 HRS |
| Notices/publications | 4 HRS |
| Meetings | |
| Coordination meetings | 20 HRS |
| Public Hearings | No charge |
| Miscellaneous | |
| Drafting memoranda; timelines; emails | 20 HRS |
| SUBTOTAL: | \$22,500.00 |
| 10% CONTINGENCY | \$ 2,250.00 |
| TOTAL LEGAL FEES: | \$24,750.00 |

(PLANNING AND ENGINEERING FEES)

| | |
|---|--------------------|
| Vested Property Rights | |
| Zoning Code Amendment | \$ 400 |
| Vested Property Rights | \$1,000 |
| Annexation Petition & Agreement | |
| Mapping Fee | \$2,500 |
| SUBTOTAL: | \$3,900.00 |
| 10% CONTINGENCY | \$ 390.00 |
| TOTAL PLANNING AND ENGINEERING FEES: | \$4,290.00 |
| TOTAL ESTIMATE: | \$29,040.00 |

The above fees are based on the assumption that the Lagae South annexation will include one annexation map with associated petition. Serial annexations will require an adjustment in the estimate of fees.