

**RESOLUTION NO. 08-04**

**INTRODUCED BY:**

**Councilperson Havercroft**

**Councilperson Clark**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH REGARDING THE PROCEDURE FOR APPROVING CONTRACTS AND APPROPRIATING MONEY AND APPROVING AN AGREEMENT WITH CASTLE PINES NORTH ASSOCIATION, INC.**

WHEREAS, pursuant to Section 31-15-302(1)(a)-(b), C.R.S., the governing body of a municipality has the authority to control the finances and property of the corporation and to appropriate money for municipal purposes only and provide for payment of debts and expenses of the municipality; and

WHEREAS, the City Council of the City of Castle Pines North (the "City Council") wishes to hereby adopt a procedure for approving contracts of the City and appropriating money; and

WHEREAS, the City Council wishes to hereby approve an advance and reimbursement agreement with Castle Pines North Association, Inc. and finds that such approval promotes the public health and welfare.

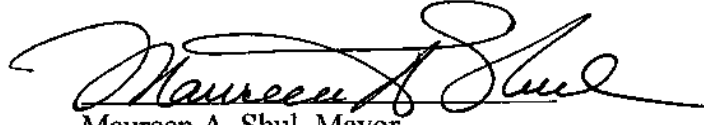
THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH, COLORADO:

Section 1. From and after the date of this Resolution, unless and until the City Council delegates contracting authority to any other officer or employee, the City Council retains the authority to approve all contracts entered into on behalf of the City of Castle Pines North.

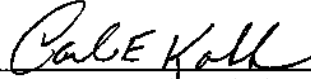
Section 2. The City Council hereby approves the Advance and Reimbursement Agreement with Castle Pines North Association, Inc. in substantially the form attached as Exhibit A and incorporated herein, subject to the City Attorney's approval as to final form, and authorizes the Mayor to execute the contract on behalf of the City.

Section 3. The City Council will appropriate money for the payment of contract obligations, professional services or other expenses at the time of approval of claims and warrants, for amounts which will be paid in 2008. For amounts which will be paid in 2009 or thereafter, the Council will appropriate money at the time of adopting an annual budget, and the Council may make supplemental or revised appropriations by resolution or ordinance in accordance with Section 29-1-109, C.R.S.

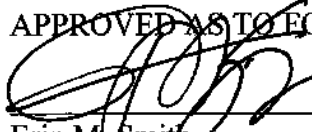
INTRODUCED, READ AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH the 14th day of May, 2008.

  
Maureen A. Shul, Mayor

ATTEST:

  
\_\_\_\_\_  
Carl E. Kollmar, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Erin M. Smith  
City Attorney

## Exhibit A

### ADVANCE AND REIMBURSEMENT AGREEMENT

This **ADVANCE AND REIMBURSEMENT AGREEMENT** (the "Agreement") is made and entered into on this \_\_\_\_\_ day of May, 2008, by and between the City of Castle Pines North, a statutory municipality of the State of Colorado, (the "City") and the Castle Pines North Association, Inc., a Colorado non-profit corporation (the "Association"), individually referred to herein as "Party" and collectively referred to herein as "Parties."

### RECITALS

**WHEREAS**, the City is a statutory municipality of the State of Colorado duly organized pursuant to section 31-2-101, et seq., C.R.S.; and

**WHEREAS**, the Association is a duly organized and operating Colorado non-profit corporation; and

**WHEREAS**, the Association has advanced certain money and will make future advances to or on behalf of the City to pay expenses of the City until such time as the City has sales and use tax revenue available to reimburse the Association; and

**WHEREAS**, the City wishes to hereby acknowledge the Advances from the Association and agree to reimbursement of the Advances on the terms set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

### COVENANTS AND AGREEMENTS

1. **Definition of Advances.** The terms "Advance" or "Advances" as used in this Agreement shall consist of the following:

A. **Past Advances.** Advances made by the Association to or on behalf of the City prior to the date of this Agreement, not including those items set forth in Section (1)(C) below, as set forth in **Exhibit A**, attached hereto and incorporated herein by this reference. The City hereby acknowledges and recognizes such Advances.

B. **Future Advances.** Future Advances of money to or on behalf of the City which are made in accordance with Section 2 of this Agreement.

C. **Incorporation and Election Expenses.** Advance or Advances, as defined in this Agreement, specifically exclude funds or monies paid by the Association for the

purpose of the incorporation of the City of Castle Pines North or for the purpose of elections relating to incorporation or for the first election of municipal officers and city council.

2. Future Advances.

A. The Association hereby agrees to advance money for or on behalf of the City, not to exceed twenty thousand dollars (\$20,000), for use by the City for any purposes allowed it under law. The City Clerk, the Deputy City Clerk or the City Treasurer, when duly authorized by the City, may submit a written request for an Advance to the Association when deemed necessary. The Association will then provide the requested Advance to the City Treasurer or such other party as directed by the City in the written request, up to the maximum amount set forth in this Section 2(A), within ten (10) days of receiving such a written request.

B. Whenever the Association makes a new Advance to the City, the Parties shall record the same on the Outstanding Advance & Reimbursement Obligation form (the "Form"), in substantially the form attached hereto as **Exhibit B** and incorporated herein by this reference. Further, the City Treasurer will account for any Advances in such fashion that the amounts thereof, including the interest, principal and total amounts outstanding, shall be readily ascertainable.

3. Reimbursement of Advances. The City shall reimburse the Association for the Advances, together with an interest rate of 0% per annum on such sums advanced. The City shall make payment for the Advances, subject to annual appropriation and budget approval, from sales and use tax revenue available within any fiscal year and not otherwise required for operations and maintenance expenses of the City. This reimbursement obligation is and shall be subordinate to any bonded indebtedness of the City now in existence or hereafter created.

4. Term of Agreement. This Agreement shall be in effect until the end of the fiscal year of the date of execution and shall automatically renew for an additional one-year period at the end of that fiscal year and each fiscal year thereafter unless terminated by either party upon notice given at least (30) thirty days prior to the end of a fiscal year.

5. Agreement Not an Indebtedness or Multiple Fiscal Year Financial Obligation. The payment obligations under this Agreement shall be subject to annual appropriation by the City Council of the City in its sole discretion. The terms and conditions of this Agreement shall not be construed as a multiple-fiscal year direct or indirect district debt or other financial obligation within the meaning of Article X, Section 20 of the Colorado Constitution.

6. Notice and Place for Payments. Any notices, demands, requests for Advances, payments, or other communications required or permitted to be given in writing hereunder shall be delivered personally, sent by facsimile with a hard copy sent immediately by first class mail, or sent by first class mail, addressed to the Parties at the addresses set forth below, or at such address as either party may hereafter or from time to time designate by written notice to the other Party in accordance herewith.

To the City:

Douglas Gilbert, Treasurer  
City of Castle Pines North  
558 Castle Pines Parkway, Unit B4-208  
Castle Rock, CO 80108

With a copy to:

Erin M. Smith, City Attorney  
Icenogle, Norton, Smith, Blieszner, Gilida & Pogue P.C.  
1331 17<sup>th</sup> Street, Suite 500  
Denver, Colorado 80202

To the Association:

Castle Pines North Association, Inc.  
7404 Yorkshire Drive  
Castle Rock, CO 80108

With a copy to:

Winzenburg, Leff, Purvis & Payne, LLP  
1660 Lincoln Street  
Suite 1550  
Denver, CO 80264

7. Miscellaneous Provisions.

A. Amendments. This Agreement contains all of the terms agreed upon by and between the Parties. This Agreement may only be amended or modified by a writing executed by both Parties.

B. Successors and Assigns. This Agreement may not be assigned without the express written consent of the Parties hereto. This Agreement shall inure to and be binding on the successors and permitted assigns of the Parties.

C. Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to any advances of money to the City and the reimbursement of advances, and sets forth the rights, duties and obligations of each Party to the other as of this date. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect.

D. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

E. Governmental Immunity. Nothing herein shall be construed as a waiver of the rights and privileges of the City pursuant to the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S., as amended from time to time.

F. Severability. If any clause(s) or provision(s) of this Agreement shall be found to be invalid or unenforceable by a court of competent jurisdiction or by operation of any law, such clause(s) or provision(s) shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect as far as possible to give effect to the intent of the Parties.

G. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

H. Authority. By its execution hereof, each party hereto represents and warrants that its representative signing hereunder has full power and lawful authority to execute this document and bind the respective Party to the terms hereof.

**[Remainder of page intentionally left blank.]**

IN WITNESS WHEREOF, the Parties have duly executed this Agreement effective the day and year first written above.

CITY OF CASTLE PINES NORTH

By: Maureen A. Shul  
As: Mayor

ATTEST:

By: Carl E. Kollmar  
As: City Clerk

CASTLE PINES NORTH ASSOCIATION, INC.

By: \_\_\_\_\_  
As: Treasurer

**EXHIBIT A**

**Advances made to the City of Castle Pines North by the Castle Pines North Association, Inc.:**

Date: As of \_\_\_\_\_, 2008

**Total: \$ 20,000.00**

**EXHIBIT B**

**Outstanding Advance & Reimbursement Obligation Form**

**OUTSTANDING ADVANCE & REIMBURSEMENT OBLIGATION FORM**

In accordance with the Advance and Reimbursement Agreement between the City of Castle Pines North (the "City") and the Castle Pines North Association, Inc. (the "Association"), dated \_\_\_\_\_, 2008 the City and the Association agree that the information recorded below represents the outstanding Advances and reimbursable payment obligations as between the City and the Association on the date indicated.

DATE: \_\_\_\_\_

**ADVANCES:**

Total new Advances made by the Association to the City: \_\_\_\_\_

Total Advances made by the Association to the City (new Advances and prior Advances):

---

Total Advances which have not yet been reimbursed by the City to the Authority:

---

**[Remainder of page intentionally left blank.]**

CITY OF CASTLE PINES NORTH

By: Maureen A. Shul

As: Mayor

ATTEST:

By: Carl E. Kollmar

As: City Clerk

CASTLE PINES NORTH ASSOCIATION, INC.

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

As: Treasurer