

CASTLE PINES NORTH



METROPOLITAN DISTRICT

Castle Pines North Metro District (CPNMD) Board of Directors

CLARIFIED & RESTATED RESOLUTION #2019-01(A)

Clarifying Certain Unauthorized-Fence Ownership, Maintenance, Replacement & Liability Responsibilities within the Castle Pines North Metro District, Douglas County, Colorado.

- WHEREAS,** The CPNMD Board of Directors has a fiduciary responsibility to all homeowners, property owners, and residents within its boundaries to serve as a responsible steward of specifically designated community assets, including drinking water, wastewater, stormwater, parks, trails, and open space services and in doing so minimize potential personal injury, private property damage, and unsafe conditions; and
- WHEREAS,** Homeowners frequently complain to CPNMD about the lack of maintenance on highly visible fencing located on the south side of Castle Pines Parkway, between Shoreham Drive & Yorkshire Drive in the Royal Hill and KnightsBridge neighborhoods; and
- WHEREAS,** In 1985, the original developer of the Royal Hill and KnightsBridge neighborhoods (Writer Corp, a Colorado corporation and major developer) or subsequent owners inadvertently constructed said fencing on what is now CPNMD property with no evidence of permission or acceptance of said fencing from either Douglas County or CPNMD; and
- WHEREAS,** CPNMD neither constructed, nor authorized the construction of, said fence and has no ownership, maintenance, replacement responsibility for said fence; and
- WHEREAS,** Said unauthorized fence is not now, nor has it ever been, part of any CPNMD service plan; and
- WHEREAS,** The existence of unauthorized fence segments on CPNMD property creates potential maintenance, personal injury, and private property damage liabilities for CPNMD, and by extension, for every homeowner and property owner CPNMD's boundaries; and

WHEREAS, Multiple homeowners adjacent to said unauthorized fence have repainted, repaired, and replaced various fence segments adjacent to their respective homes, which suggests that homeowners acknowledge their fence-related responsibilities; and

WHEREAS, CPNMD respects the needs of all homeowners immediately adjacent to said fencing to maintain any/all fence segments on and/or immediately adjacent to their respective properties and has neither interfered with — nor has any interest in interfering with — said fence ownership and maintenance; and

WHEREAS, Dated October 18, 1984, the **MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR CASTLE PINES NORTH, ARTICLE I, STATEMENT OF PURPOSE AND IMPOSITION OF COVENANTS, Section 1.2** states: *“Declarant intends to encourage the erection of attractive, permanent improvements appropriately located to preserve a harmonious appearance and function...”*; and

WHEREAS, Section 5.16 of that same October 18, 1984, document further states: *“If either the Master Association or the District should fail or refuse to provide the services which it is obligated to provide under its respective formative documents for any reason, then the other, permitted by law and to the best of its ability, shall assume said obligation... and may charge the other a reasonable fee for the provision of such services.”*

WHEREAS, In its legal opinion, dated September 18, 2015, the law firm of Collins, Cockrell & Cole, which specializes in Colorado special district law, indicates the fence in question delineates homeowner yards, provides homeowner privacy, and is primarily for the benefit of individual homeowners; and

WHEREAS, That same legal opinion states: *‘If both the sub-associations and homeowners are unwilling to take responsibility for fencing, the District may want to consider removing the fencing from District-owned property altogether to reduce any liability for potential injuries caused by dangerous conditions on District-owned property, regardless of who constructed or created the dangerous condition’*; and

WHEREAS, That same legal opinion further states: *‘Knowingly leaving rundown fencing on District-owned property subject to fall or otherwise injure persons nearby will open the District up to liability for such injuries’*; and

WHEREAS, CPNMD's existing legal counsel at the law firm of Seter & Vander Wall concurs with the above-referenced legal opinion and further advises, in the absence of the Master Association enforcing the **Castle Pines North Design Guidelines For Residential Development** (dated February 24, 1986), CPNMD may remove said fencing;

NOW THEREFORE BE IT RESOLVED, AS OF THIS DAY, NOVEMBER 18, 2019, THE CASTLE PINES NORTH METRO DISTRICT BOARD OF DIRECTORS HEREBY DETERMINES:

- I.** Where said fencing exists on CPNMD property — to further safeguard the public from potentially unsafe conditions and from potential personal injury, private property damage, and other liabilities, and to reaffirm CPNMD's recognition that said fence ownership, maintenance, and replacement are the exclusive responsibilities of all homeowners immediately adjacent to said fence — **CPNMD will promptly issue and officially record in the Douglas County Clerk & Records office a Property Access and Fence-Maintenance Easement** for the benefit of each fence-adjacent homeowner.
- II.** Said CPNMD Property Access & Fence-Maintenance Easement shall require conformance, first, with the laws of the State of Colorado; second, with the February 15, 1985, HOA 1 Supplemental Declaration of Covenants & Restrictions; and third, with the February 24, 1986, Castle Pines North Design Guidelines for Residential Development that have defined and governed — and continue to define and govern — said fencing.
- III.** Though CPNMD intends that said CPNMD Property Access & Fence-Maintenance Easement will be in effect in perpetuity, said easement may also include a formal notice that each fence-adjacent homeowner and/or HOA I (sub association) must repair fence-maintenance deficiencies by no later than **December 31, 2019**, as set out in the **AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR CASTLE PINES NORTH FILING NUMBER 1, SECTION 5.4.**
- IV.** Said fence-maintenance deficiencies and design-deficiencies that occur after December 31, 2019, shall prompt CPNMD staff and/or its contractors to remove all said fence segments from CPNMD property, at which point CPNMD will respectfully require HOA I (sub association) and/or the homeowner(s) adjacent to said fence segment(s) to position any/all desired replacement fencing and/or visual-screening vegetation exclusively on private homeowner property; and

- V. To avoid/preempt similar fence-related ownership, maintenance, replacement, and associated liability issues that may arise elsewhere within CPNMD, this **RESOLUTION** establishes a clear and unequivocal precedent that shall apply, in perpetuity, to all fences found to be on CPNMD property for which one or more HOAs and/or homeowners may seek to ignore or shift their respective fence-related responsibilities to CPNMD.
- VI. Upon CPNMD board passage of this **RESOLUTION**, CPNMD staff will promptly file this **RESOLUTION** with the Recording Division of the Douglas County Clerk & Recorder and disseminate copies:
- to the homepage of CPNMD’s website at www.cpnmd.org;
 - via certified mail, to HOA I and to each of the homeowners adjacent to the existing fence;
 - to the City of Castle Pines; and
 - via broadcast email to CPNMD’s customers.

Adopted and approved this 15th day of June 2020.



David McEntire
President
Castle Pines North Metro District



Robert Merritt
Vice President
Castle Pines North Metro District



Denise Crew
Director
Castle Pines North Metro District



Chuck Lowen
Director
Castle Pines North Metro District



Christopher Lewis
Director
Castle Pines North Metro District



Attest: **Jim Worley**
District Manager
Castle Pines North Metro District



Approved as to Form: **Kim J. Seter, Esq.**
Seter & Vander Wall, PC