

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

THIS AGREEMENT was made and entered into this 3rd day of July, 2009, by and between the Master Homeowners Association for Green Valley Ranch, hereinafter referred to as “the HOA”, on the one part, and the GVR Metropolitan District, hereinafter referred to as “the District”, on the other. The HOA and the District are referred to collectively below as “the parties”.

RECITALS

WHEREAS, the HOA and the District were signatories to a contract entitled Covenant Enforcement, Design Review, Landscape Maintenance and Related Services Agreement (“Services Agreement”); and,

WHEREAS, on or about December 11, 2008, the HOA initiated an action against the District in the District Court for the City and County of Denver. State of Colorado, Master Homeowners Association for Green Valley Ranch v. GVR Metropolitan District, Case No. 08CV10651 (the “Litigation”); and

WHEREAS, the parties desire to save resources from the common community that both parties serve;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants hereinafter more specifically set forth, the receipt, adequacy and sufficiency of which the parties acknowledge, the parties do stipulate and agree as follows:

GENERAL RELEASE

1. Except as specifically set forth below in ¶ 2 with respect to the District’s First Counterclaim for Relief asserted in the Litigation seeking a declaration as to Ballot Measure 5A and the portion of the HOA’s Fifth Claim for Relief asserted in the Litigation seeking a declaration as to Ballot Measure 5A (specifically, subsections a., f., and g. to ¶ 50 of Plaintiff’s First Amended Verified Complaint Arising under C.R.C.P. 106 to Compel Official Act and for Other Relief filed in the Litigation) (hereinafter collectively referred to as “the Ballot Measure 5A Declaratory Judgment Claims”), the HOA and the District hereby release one another from any and all claims, causes of action, liability, expenses, and/or damages of any kind whatsoever, at law or in equity, whether known or unknown, which the parties may have or may assert against one another, or against either parties’ officers, directors, delegates, employees, elected and appointed officials, attorneys, insurers, and agents, which have accrued up to the date of this Agreement, including, but not limited to, any claims and causes of action by the parties against one another which have been or could have been pleaded in any lawsuit, arbitration or proceeding or were pleaded in the Litigation. The District’s waiver of claims against the HOA’s officers, directors, delegates, employees, elected and appointed officials, attorneys, insurers, and agents applies only to the extent the officers, directors, delegates, employees, elected and appointed officials, attorneys, insurers, and agents were acting on behalf of the HOA. Likewise, the HOA’s waiver of claims against the District’s officers, directors, delegates, employees,

elected and appointed officials, attorneys, insurers, and agents applies only to the extent the officers, delegates, employees, elected and appointed officials, attorneys, insurers, and agents were acting on behalf of the District. The parties warrant and represent that they have not assigned or otherwise transferred any claim, cause of action, liability, expenses, and/or damages released by this ¶ 1.

2. As to the Ballot Measure 5A Declaratory Judgment Claims, the District and the HOA will move to dismiss such claims without prejudice and without waiving any right to reassert such claim, or any defenses thereto, in the future. All other claims made by the HOA against the District and the District against HOA, accruing as of the date of this Agreement, shall be released as set forth in ¶ 1 above. The parties agree Ballot Measure 5A provides voter authorization to the District Board to impose mill levies and expend tax dollars and the parties agree in the absence of a written agreement between the District and the HOA, the District is not obligated to expend tax dollars on any HOA functions or provide any tax dollars to the HOA. The parties agree that the HOA shall not have any responsibility or liability for how said tax revenues are utilized by the District.

Further, the parties will file a joint stipulated motion with the Court in the case cited above asking that all claims, save the Ballot Measure 5A Declaratory Judgment Claims, be dismissed with prejudice and that the Ballot Measure 5A Declaratory Judgment Claims be dismissed without prejudice. All motions to dismiss referenced above will be filed on or before July 10, 2009.

OTHER CONSIDERATION AND AGREEMENTS

3. The following shall constitute additional consideration and agreements between the parties regarding this Agreement:

a. The Services Agreement shall be deemed terminated effective July 10, 2009. All covenant enforcement responsibilities, and any and all other services, functions, duties and responsibilities assigned by the HOA to the Metro District by the Services Agreement, (other than the responsibilities set forth in Section 1.(h) of the Services Agreement dealing with the conveyance and maintenance of certain real property) shall be transferred from the District to the HOA, effective that date. Likewise, all HOA accounts receivable collected by the District from May 22, 2009 forward shall be the full property of and under the sole control of the HOA, and the District shall relinquish any claim it has to HOA accounts receivable that date forward. The District shall keep account of and forward any HOA accounts receivable owed to the HOA and received by the District from May 22, 2009 forward. Any correspondence, communications or HOA matters which are received by or communicated to the District from July 10, 2009 forward, the District shall immediately forward said correspondence and refer such communication or HOA matters to the HOA through Joanne True, or any other manager of the HOA employed or retained directly by the HOA. Upon the effective termination of the Services Agreement as stated in this ¶ 3.a., the District shall have no responsibility for or control of the services, functions, duties and responsibilities of the HOA.

b. The District shall have no responsibility to provide any financial support or consideration to the HOA other than the consideration described in this Agreement below. Specifically, the District shall have no obligation to convey to the HOA any tax money generated by the District's mill levy or to otherwise pay any HOA expenses.

c. The District shall appoint Andrew Pimental and the HOA shall appoint Joanne True as representatives to work between the two parties to facilitate an orderly transition of the management administration of the covenant enforcement functions and any and all other services, functions, duties and responsibilities assigned by the HOA to the Metro District by the Services Agreement, other than Section 1.(h) of the Services Agreement dealing with the conveyance and maintenance of certain real property. Mr. Pimental and Ms. True will hereinafter be referred to as the "transition team".

d. The District shall turn over all HOA records to the HOA in the same useable format in which said records, whether in electronic or hard copy format, exist at the time of the termination at no cost to the HOA, including, but not limited to, electronic records, data, reports and the like. This turnover shall occur on or before July 10, 2009. Records delivered to Ms. True shall satisfy the District's requirement to turn over records to the HOA.

e. The HOA acknowledges that the District has audited financial statements and certain unaudited financial statements, cash position statements, check detail, lists of vouchers payable and related back up documentation which are public records. To the extent the HOA financial records are integrated and a part of these financial statements, cash position statements, check detail and lists of vouchers payable and related back up documentation they are a part of the public record. With regard to all other financial records of the HOA in the District's possession, the District may only disclose such information as necessary to the HOA's and District's respective directors, attorneys, accountants and/or tax advisors, or the respective member of the HOA but confidentiality still applies, without the prior express, written consent of the HOA, however the information may also be disclosed if the disclosure by the District is compelled by law. In the event the District is compelled by law to disclose what is not described herein to be a part of the public record, the District shall provide written notice to the HOA of the documentation compelling the disclosure prior to the release of the documentation.

f. The District shall pay to the HOA the sum of \$50,000.00 on or before July 10, 2009.

g. The District shall convey ownership, title and possession of the 2005 Mercury Grand Marquis, VIN # 2MEFM75W35X649576, to the HOA on or before July 10, 2009. Both parties understand that the vehicle is conveyed "as is", with no warranties.

h. The District and the HOA will meet to discuss proposed terms for a new covenant enforcement agreement for 2010 and thereafter. The parties will meet no later than September 1, 2009. If there is no concurrence on terms resulting in a new covenant enforcement agreement on or before October 1, 2009, then the commitment of the parties to meet to discuss or agree upon a future covenant enforcement agreement will expire with no liability from one party to the other.

i. The HOA specifically agrees to defend and indemnify the District from any claims which may be asserted by Westwind Management Group, Inc. ("Westwind") against the District related to covenant enforcement undertaken by Westwind as part of its contractual agreement with the HOA.

j. Each party shall be responsible for their own attorney fees and costs incurred through the date of this Agreement.

k. In the event of a dispute under this Agreement, the parties agree to submit the same to Daniel Himelspach, Esq. as an arbitrator under the Colorado Uniform Arbitration Act to make a full and binding decision as to any controversy, with the arbitrator being charged to hold as prompt a hearing as possible, however, to allow some discovery between the parties, but with the goal of having a decision rendered within 45 days of the filing of any Demand. Each party shall equally share the costs and fees of the arbitrator. Each party shall bear its own attorney's fees and costs, except if the arbitrator finds that a non-prevailing party's overall claim or defense is frivolous, in which case attorneys fees and costs may be awarded against the non-prevailing party. If Daniel Himelspach, Esq., is unable or unwilling to serve, the parties shall use as an arbitrator, a retired judge from the Judicial Arbiter Group in Denver, Colorado.

GENERAL PROVISIONS

4. No promise, inducement or agreement has been offered, negotiated or accepted, except as more specifically set forth herein and this Agreement is not executed in reliance upon any statements or representations not contained herein.

5. This Agreement may be executed in one or more counterparts, any one of which need not contain the signature of more than one party and all of which taken together shall constitute one and the same Agreement. This Agreement shall not be effective until officially approved by the parties' respective Board of Directors and executed by representatives approved by the parties' respective Board of Directors.

6. By approving and executing this Agreement, each party is stating and affirming that it understands and agrees to all terms and covenants herein and that each party has consulted with legal counsel of its own choosing prior to executing this Settlement Agreement.

7. Each party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any party.

8. Each person executing this Agreement on behalf of a party hereto represents and warrants that he, she or it has received all necessary power and authority to do so.

9. The covenants of this Agreement are contractual in nature and not mere recitals. The acceptance of the terms and conditions of this Agreement are in accord and satisfaction of disputed matters related to the relationship between the parties, and neither of the parties'

acceptance of the terms of this Agreement shall be construed in any way as an admission of guilt or liability on the part of any party to this Agreement.

10. This Agreement is and shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

11. If any provision of this Agreement should be declared to be unenforceable, then the remainder of this Agreement shall continue to be binding upon the parties hereto.

12. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all claim or causes of action relating thereto, shall be strictly reserved to the District and the HOA, and nothing contained in this Agreement shall give or allow any such claim or cause of action by any other entity or third person on such Agreement. It is the expressed intention of the District and the HOA that no entity or person other than the District and HOA shall be deemed an intended beneficiary under this Agreement.

13. This Agreement embodies the sole and entire Agreement of the parties with respect to the subject matter hereof. No verbal statement, agreement, promise, undertaking, understanding, or arrangement made prior to or contemporaneously with the execution of this Agreement shall be binding on any of the parties, unless expressly set forth herein. Nor shall any verbal agreement, statement, promise, undertaking, understanding, arrangement, act or omission of any party, occurring subsequent to the date hereof be deemed an amendment or modification of the Agreement unless reduced to writing and signed by the parties hereto or their respective successors or assigns.


14. This Agreement shall be governed by the laws of the State of Colorado and shall be enforceable in accordance with its terms in the State of Colorado, District Court for the City and County of Denver, Second Judicial District.

16. The parties agree time is of the essence in the execution and performance of this Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned have executed the above and foregoing Agreement upon the day and year first written above.

MASTER HOA FOR GREEN VALLEY RANCH

By 
Trenton J. Stone, President

Date: JUL - 8 2009

Attest:


Marlene Martin, Secretary/Treasurer

Date: 7-8-09

GVR METROPOLITAN DISTRICT

By 
Michael E. George, Vice-President

Date: 7-7-9-

Attest:


Anthony Noble, Director


Approved as to form:



Eldon Silverman

Lee Freedman

Attorneys for Master HOA for Green Valley Ranch



Andrew J. Fisher

Attorneys for GVR Metropolitan District