



## POST ACTION AGENDA NOTICE

### NOTICE OF THE SPECIAL SESSION OF THE FOUNTAIN HILLS TOWN COUNCIL

**Mayor Linda M. Kavanagh**

**Councilmember Dennis Brown**  
**Councilmember Nick DePorter**  
**Councilmember Cassie Hansen**

**Vice Mayor Henry Leger**  
**Councilmember Alan Magazine**  
**Councilmember Cecil A. Yates**

**TIME: 5:15 P.M. – SPECIAL SESSION**

**WHEN: MONDAY, FEBRUARY 22, 2016**

**WHERE: FOUNTAIN HILLS COUNCIL CHAMBERS**  
**16705 E. AVENUE OF THE FOUNTAINS, FOUNTAIN HILLS, AZ**

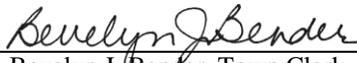
Councilmembers of the Town of Fountain Hills will attend either in person or by telephone conference call; a quorum of the Town's various Commission, Committee or Board members may be in attendance at the Council meeting.

Notice is hereby given that pursuant to A.R.S. § 1-602.A.9, subject to certain specified statutory exceptions, parents have a right to consent before the State or any of its political subdivisions make a video or audio recording of a minor child. Meetings of the Town Council are audio and/or video recorded and, as a result, proceedings in which children are present may be subject to such recording. Parents, in order to exercise their rights may either file written consent with the Town Clerk to such recording, or take personal action to ensure that their child or children are not present when a recording may be made. If a child is present at the time a recording is made, the Town will assume that the rights afforded parents pursuant to A.R.S. § 1-602.A.9 have been waived.

### SPECIAL SESSION AGENDA

- **CALL TO ORDER AND ROLL CALL** – Mayor Linda M. Kavanagh **5:19 PM**
- 1. **CONSIDERATION** of approving a **SETTLEMENT OFFER** relating to a tax enforcement action. **APPROVED**
- 2. **ADJOURNMENT. 5:21 PM**

**DATED** this 19<sup>th</sup> day of February, 2016.

  
Bevelyn J. Bender, Town Clerk

The Town of Fountain Hills endeavors to make all public meetings accessible to persons with disabilities. Please call 480-816-5100 (voice) or 1-800-367-8939 (TDD) 48 hours prior to the meeting to request a reasonable accommodation to participate in this meeting or to obtain agenda information in large print format. *Supporting documentation and staff reports furnished the Council with this agenda are available for review in the Clerk's office.*



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## MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This Mutual Release and Settlement Agreement (the “**Agreement**”) is entered into February 22, 2016 by and among **CM Realty Holdings, LLC**, an Arizona limited liability company (“**Holdings**”), **Connie Martin**, an unmarried woman (“**Martin**”) and **The Town of Fountain Hills**, an Arizona municipal corporation (the “**Town**”). Holdings, Martin, and the Town may be referred to individually as a “**Party**” and collectively as the “**Parties.**”

### RECITALS:

- A. Martin owns or controls Holdings.
- B. Holdings is in the business of owning, developing, renting, and otherwise profiting from real estate projects and certain business ventures in Maricopa County, Arizona.
- C. Holdings was and is required to, among other things, pay certain transaction privilege taxes to the Town.
- D. On or about March 14, 2013, the Town, through its agents, sent a notice of audit to Holdings, care of Martin, regarding underpayment of transaction privilege taxes. The Town subsequently conducted an audit.
- E. On or about April 3, 2014, the Town, through its agents, sent certified letters to Holdings, care of Martin, regarding the results of the audit. The Town subsequently revised its audit findings.
- F. On or about August 7, 2014, the Town, through its agents, sent certified letters to Holdings, care of Martin, regarding its revised audit findings. The outstanding transaction privilege taxes identified in the Town’s audits are collectively referred to as the “**Unpaid Taxes.**”
- G. On or about August 11, 2014, the Town filed seven liens against various pieces of real property in which Holdings and/or Martin have an interest.

H. On or about November 13, 2014, the Town filed revised liens as to two of the pieces of real property in which Holdings and/or Martin have an interest.

I. On or about February 3, 2015, the Town filed a revised lien as to one piece of real property in which Holdings and/or Martin have an interest. The liens described above are collectively referred to as the "Tax Liens."

J. To date, Holdings and Martin have breached their respective obligations to the Town by, among other things, failing to pay the Unpaid Taxes, despite receiving written demand from the Town.

K. Each Party desires to resolve the claims arising from the Unpaid Taxes and all other disputes between them without further dispute or litigation.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties have made this Agreement in order to resolve the disputes among them according to the terms, conditions and provisions hereof.

#### AGREEMENT

1. Incorporation of Recitals. All of the foregoing recitals are incorporated by reference as though fully set forth herein.

2. Payment by Martin. On or before March 1, 2016, Martin shall pay the Town the sum of \$140,000 in full and final satisfaction of the Unpaid Taxes. This Agreement and the settlement it encompasses are entirely conditioned upon approval of the Town Council of the Town, as to which no promises, representations or warranties of any kind have been made. It shall be in the sole and unfettered discretion of the Town Council whether to approve or not approve of the Agreement and no such refusal or failure to approve the Agreement shall give rise to any damages or claims of any nature on the part of Martin or Holdings, but the Parties shall

continue to hold the same positions and interests as they did prior to entering into this Agreement; nor may any such refusal or failure to approve this Agreement be used for any purpose at trial or on the merits of the Lawsuit.

3. Release of Claims. Upon execution and full performance of this Agreement, and in consideration of the mutual covenants and promises contained in this Agreement, and the other consideration provided by the mutual covenants and releases in this Agreement, the Parties shall be deemed to release and forever discharge each other, together with their predecessors and successors, attorneys, and all persons who acted on their behalf, of and from any and all liability, claims, demands, and causes of action arising out of the Unpaid Taxes. This release includes all unknown claims, matured or unmatured, in addition to the claims of which the Parties are presently aware, but only relating to the Unpaid Taxes. This release does not release the Parties from their respective obligations to each other created within this Agreement, nor does it release Martin or Holdings from any obligations to pay transaction privilege taxes otherwise due to the Town, other than the Unpaid Taxes.

4. Release of Liens. If this Agreement is approved by the Town Council, within 10 days of receiving the payment referenced in Section 2 above, the Town will record all documents necessary to release the Tax Liens arising from the Unpaid Taxes against Holdings and Martin.

5. Attorneys' Fees. In the event any Party hereto finds it necessary to employ legal counsel to bring an action at law or other proceedings against any other Party to enforce any of the terms, covenants, or conditions hereof, the Party prevailing in such action or proceeding shall be paid all reasonable attorneys' fees by the other Party, and in the event any judgment is secured by such prevailing Party, all such reasonable attorneys' fees shall be included in any such

judgment. The amount of reasonable attorneys' fees shall be determined by the court and not by a jury.

6. Authority; Fair Interpretation. The Parties expressly represent and warrant that they are authorized and competent to execute the Agreement. Further, the Parties expressly acknowledge that they have been represented by their respective attorneys in connection with the preparation and execution of this Agreement. This Agreement has been drafted jointly by the Parties and their respective attorneys, and the terms, conditions and provisions of this Agreement shall be construed only according to their fair import.

7. Further Actions. The Parties agree that each of them shall take such further action and execute such further documents, if any, which may be necessary or appropriate to implement this Agreement according to its terms. This Agreement may be specifically enforced by any Party.

8. Governing Law. This Agreement shall be governed by the internal laws of the State of Arizona, without regard to conflicts of laws principles.

9. Entire Agreement. With respect to its subject matter, including without limitation, all matters incorporated by reference herein, this Agreement is a complete integration and final expression of the Parties' rights and duties. Conversely, except as expressly set forth herein, this Agreement does not grant any rights, nor affect the liabilities of any person or entity not a party hereto.

10. Time of the Essence. Time is of the essence of this Agreement.

11. Severability. Should any term, provision, covenant or condition of this Agreement be held to be void or invalid, the same shall not affect any other term, provision,

covenant or condition of this Agreement, but the remainder hereof shall be effective as though such term, provision, covenant or condition had not been contained herein.

12. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Unless and until this Agreement is signed by all Parties, it shall be of no force or effect. The Parties agree that signatures transmitted by facsimile or other commercially acceptable electronic means (including but not limited to “pdf”) shall be deemed to be original signatures and fully enforceable.

13. No Influence. The Parties agree and acknowledge that no representation of any kind concerning any subject has been made to them by any other Party hereby released or by any agent, representative, or attorney of any such Party, which has in any way influenced the undersigned's decision to enter into this Agreement, other than as expressly set forth in this Agreement.

14. No Third-Party Beneficiaries. This Agreement is entered into for the mutual benefit of the Parties hereto only. Nothing herein shall be construed to be for the benefit of any third party, nor is it intended that any provision shall be for the benefit of, or enforceable by, any third party.

**[SIGNATURE PAGES FOLLOW]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

**“Town”**

TOWN OF FOUNTAIN HILLS,  
an Arizona municipal corporation

\_\_\_\_\_  
Grady E. Miller, Town Manager

ATTEST:

\_\_\_\_\_  
Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

On \_\_\_\_\_, 2016, before me personally appeared Grady E. Miller, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the Town of Fountain Hills.

\_\_\_\_\_  
Notary Public

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

**“Holdings”**

CM REALTY HOLDINGS, LLC, an  
Arizona limited liability company

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Connie Martin, Member

(ACKNOWLEDGMENT)

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

On \_\_\_\_\_, 2016, before me personally appeared Connie Martin, the Member of CM Realty Holdings, LLC, an Arizona limited liability company, whose identity was proven to me on the basis of satisfactory evidence to be the person who she claims to be, and acknowledged that she signed the above document on behalf of the company.

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Notary Public

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

