

**ORDINANCE NO. 794**

**AN ORDINANCE OF THE TOWN OF MILLIKEN, COLORADO, AUTHORIZING  
RELEASE OF CERTAIN CONDITIONS AND RESTRICTIONS  
SET FORTH IN A DEED TO PETER HUNZIKER**

WHEREAS on October 25, 2017, the Board of Trustees for the Town of Milliken, Colorado, (“Board”) approved Ordinance No. 757, which authorized the sale of certain real property owned by the Town of Milliken (“Town”) to Mr. Peter Hunziker (“Mr. Hunziker”);

WHEREAS on March 7, 2018, a Special Warranty Deed was executed by the Town conveying to Mr. Hunziker the real property that was the subject of Ordinance No. 757, which deed was recorded in the real property records of Weld County, Colorado, on March 14, 2018, at reception number 4382737 (“Deed”);

WHEREAS by the Deed the Town conveyed to Mr. Hunziker a qualified fee interest dependent on compliance by Mr. Hunziker with certain conditions and restrictions and on exercise by the Town of certain specified procedures upon default;

WHEREAS unanticipated circumstances have arisen and Mr. Hunziker has been unable to complete anticipated improvements to the property that was conveyed to him by the Deed (“Property”);

WHEREAS Mr. Hunziker believes that he could successfully market the Property if the conditions and restrictions in the Deed were released;

WHEREAS the Board has considered a variety of options available, including recovery of ownership of the Property;

WHEREAS the Board does not believe a significant public benefit would be achieved by the Town if the Town were to recover complete control over the Property;

WHEREAS the Board believes that facilitating a market driven use of the Property would be the best way to obtain the greatest public benefit from the Property, and that the most prompt way to facilitate such a use would be for the Town to release the conditions and restrictions set forth in the Deed so that the Property can be marketed to potential buyers;

WHEREAS the Property was not previously served by Town sewer, but in contemplation of the 2018 sale of the Property to Mr. Hunziker and the benefits flowing to the Town from the anticipated development of the Property by Mr. Hunziker, the Town incurred a substantial cost to extend the sewer main line to permit Mr. Hunziker to install a commercial sewer tap to serve the Property;

WHEREAS the original benefits to the Town anticipated to result from the performance of the conditions and restrictions set forth in the Deed will not likely be realized;

WHEREAS as a condition to releasing the conditions and restrictions set forth in the Deed, the Board desires to obtain an assurance of reimbursement of \$20,000.00, which will partially reimburse the Town for the cost of the sewer line extension (“Reimbursement”);

WHEREAS Mr. Hunziker is unable at the present time to pay the Reimbursement but has agreed that it should be paid to the Town upon his re-sale of the Property;

WHEREAS the Board finds that the terms and conditions set forth in the Release Agreement, a copy of which is attached as Exhibit 1 to this Ordinance, ("Release Agreement") provide adequate assurance to the Town of recovery of the required reimbursement;

WHEREAS the Board further finds that the terms and conditions set forth in the Release Agreement provide a substantial public benefit in that they obtain an assurance of reimbursement to the Town, they provide the Town with security for that assurance, and they facilitate a future market driven use of the Property;

WHEREAS releasing the conditions and restrictions set forth in the Deed requires a conveyance of interests in real property;

WHEREAS section 31-15-713(b) of the Colorado Revised Statutes ("Statutes) authorizes the Board to approve by ordinance the conveyance of any real estate upon such terms and conditions as the Board may determine at a regular or special meeting;

WHEREAS section 38-30-141 of the Statutes authorizes the Board by order to appoint a commissioner to sell and convey any real estate belonging to the Town;

WHEREAS the Board desires to authorize approval and execution of the Release Agreement and performance of its obligations;

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF MILLIKEN, COLORADO, AS FOLLOWS:

Section 1. The Release Agreement is approved.

Section 2. The Town Administrator is authorized and directed:

- a. To execute the Release Agreement on behalf of the Town;
- b. To take any and all steps necessary and appropriate in his or her judgment to ensure that the obligations of the Town under the Release Agreement are timely performed;
- c. To execute in the name of the Town any closing or other documents that may in her discretion be necessary and appropriate to perform the obligations of the Town under the Release Agreement, including without limitation any required deed.
- d. To take any steps, and execute any documents, necessary and appropriate in order to obtain full compliance by Mr. Hunziker with the terms of the Release Agreement.

Section 3. In particular and pursuant to section 38-30-141 of the Colorado Revised Statutes, it is ordered that the Town Administrator is appointed commissioner to sell and convey the real property described in the Release Agreement and to affix to any conveyance thereof the seal of the Town of Milliken.

Section 4. Effective Date. Unless otherwise specified herein, this ordinance shall take effect thirty days after publication as provided by law.

INTRODUCED, READ, PASSED, AND ADOPTED THIS 8<sup>th</sup> DAY OF September 2021.


TOWN OF MILLIKEN

  
By: Elizabeth Austin, Mayor

ATTEST:

  
Caree Rinebarger, Town Clerk

APPROVED AS TO FORM:

  
Matthew T. Gould, Town Attorney

**EXHIBIT 1: RELEASE AGREEMENT**

## RELEASE AGREEMENT

This Release Agreement ("Agreement") is entered into by and between Peter Hunziker ("Releasee") and the Town of Milliken, Colorado ("Releasor") as of the date on which both such parties have signed ("Effective Date"). Releasee and Releasor may be referred to collectively as the "Parties."

### Recitals

A. This Agreement is in reference to the following real property ("Property"):

Lots 18, 19, 20, 21, and 22, Block 36

TOWN OF MILLIKEN,

County of Weld,

State of Colorado

- B. Releasee currently holds record title to the Property by virtue of a special warranty deed to Releasee from Releasor recorded on March 14, 2018, at reception number 4382737 in the records of the clerk and recorder for Weld County ("Special Warranty Deed").
- C. The title conveyed to Releasee was a qualified fee interest.
- D. Releasee has been unable to improve the Property due to unforeseen circumstances.
- E. Releasee believes that he could successfully market the Property to a third party willing to improve or develop it but cannot do so unless the Releasor releases conditions and restrictions set forth in the Special Warranty Deed.
- F. Releasor desires to release any claim to any interest in the Property reserved by the Special Warranty Deed in exchange for reimbursement of costs in the amount of \$20,000.00 ("Reimbursement Amount") incurred by Releasor in contemplation of performance by Releasee of obligations set forth in the Special Warranty Deed.

### Agreement

In light of the foregoing recitals, which are affirmed by the Parties, and for other good and valuable consideration the sufficiency of which is acknowledged, the Parties further agree as follows:

1. Releasor agrees to execute in favor of and deliver to Releasee a deed in the form attached as Exhibit A ("Releasing Deed") upon receipt of payment of the Reimbursement Amount in good funds.
2. Should payment of the Reimbursement Amount be arranged as part of the closing on Releasee's sale of the Property, Releasor and Releasee will cooperate in order to coordinate the execution and delivery of the Releasing Deed and payment of the Reimbursement Amount. Releasee agrees and warrants that any contract for the sale of

the Property shall specify that (a) closing shall be conducted only by a licensed title company and (b) Releasor shall be entitled to approve the closing instructions in order to ensure that its right to payment of the Reimbursement Amount is protected. Releasor may in Releasor's sole discretion execute the Releasing Deed and place it into escrow and not deliver it to Releasee pending payment of the Reimbursement Amount.

3. This Agreement shall be binding upon the Parties and their heirs, executors, administrators, successors and assigns.
4. In the event Releasor has not received payment of the Reimbursement Amount within two years of the Effective Date, this Agreement shall be null and void and of no further force or effect.
5. In the event litigation is deemed necessary by Releasor to enforce Releasor's rights under this Agreement, Releasor upon prevailing in such litigation shall be entitled to recover all of its costs incurred to enforce its rights, including reasonable attorneys' fees.

IN WITNESS WHEREOF, we have hereunto set our hands and seals hereto:

TOWN OF MILLIKEN, COLORADO:

By:

\_\_\_\_\_  
Cheryl Powell

\_\_\_\_\_  
Date

\_\_\_\_\_  
Peter Hunziker

\_\_\_\_\_  
Date

Town Administrator

