

RESOLUTION NO. 20-22

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO, RESCINDING APPROVAL OF A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT BETWEEN THE CITY OF CASTLE PINES, COLORADO AND LS PARTNERS, LLC PREVIOUSLY ADOPTED BY RESOLUTION NO. 20-07 AND APPROVING A NEW PUBLIC-PRIVATE PARTNERSHIP AGREEMENT

WHEREAS, by Resolution No. 20-07, the recitals of which are incorporated herein by reference, the City Council approved a public private partnership agreement with LS Partners LLC (“LS”) to assist the City in funding and acquiring certain property to design and construct a future City administration building (“City Hall”) and a recreational facility (“City Recreation Facility”); and

WHEREAS, through the Initial Agreement, the City and LS memorialized their mutual understanding of the sale of property owned by LS consisting of approximately 20.25 acres, located within the City, legally described as Tract I, Castle Pines Town Center Filing No. 2 (“Tract I”) and the purchase of property known as the Lagae Family Parcel with the proceeds of the sale of Tract I; and

WHEREAS, the City’s purpose in approving the Initial Agreement was to design and construct the City Hall and a City Recreation Facility on portions of the Lagae Family Parcel; and

WHEREAS, after the City’s approval of the Initial Agreement but prior to LS executing the same, LS and the City acknowledged the need for certain revisions, including but not limited to, addressing: (1) LS’s tax consequences through a tax-free exchange under Section 1031 of the Internal Revenue Code (“1031 Exchange”); and (2) the City’s option to purchase an additional platted lot within the Lagae Family Parcel if needed for the City Recreational Facility; and

WHEREAS, the City desires to rescind its previous approval of the Initial Agreement and enter into a new public-private partnership agreement with LS to document their mutual understanding of the Tract I and Lagae Family Parcel transactions through LS’s 1031 Exchange; and

WHEREAS, the City Council finds that the successful development of a City Hall and City Recreation Facility will benefit the residents and taxpayers of the City of Castle Pines.

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

Section 1. The City Council hereby: (a) rescinds approval of the Initial Agreement adopted through Resolution No. 20-07; (b) approves the Public-Private Partnership Agreement between the City of Castle Pines, Colorado and LS Partners, LLC, in substantially the form attached to this Resolution as Exhibit A; (c) authorizes the City Attorney, in consultation with the City Manager, to make non-material changes that do not increase the obligations of the City; and (d) authorizes the Mayor to execute the Agreement in final form.

Section 2. Effective Date. This Resolution shall take effect upon its approval by the City Council.

INTRODUCED, READ, AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES BY A VOTE OF 6 IN FAVOR AND 0 AGAINST THIS 28TH DAY OF JULY, 2020.

DocuSigned by:

Tera Stave Radloff

6E0C8EB279DC479...

Tera Stave Radloff, Mayor



ATTEST:

APPROVED AS TO FORM:

DocuSigned by:

Tobi Basile

AD03A1B02032499...

Tobi Basile, CMC, City Clerk

DocuSigned by:

Linda C. Michow

5241DE99B8FF444...

Linda C. Michow, City Attorney

EXHIBIT A

[see attached agreement]

**PUBLIC-PRIVATE PARTNERSHIP AGREEMENT BETWEEN THE CITY OF
CASTLE PINES, COLORADO AND LS PARTNERS, LLC**

THIS PUBLIC-PRIVATE PARTNERSHIP AGREEMENT (this "Agreement") is made as of the ___ day of _____, 2020, by and between the **CITY OF CASTLE PINES, COLORADO**, a Colorado home rule municipal corporation ("City"), and **LS PARTNERS, LLC**, a Colorado limited liability company ("LS Partners"). LS Partners and the City are collectively referred to herein as the "Parties".

Recitals

A. LS Partners owns real property consisting of approximately 20.25 acres, located within the City, legally described as Tract I, Castle Pines Town Center Filing No. 2, City of Castle Pines, recorded in the Clerk and Record's Office of Douglas County, Colorado (the "Official Records") at Reception No. 2017035484 ("Tract I");

B. Tract I is designated as Planning Area 12 ("PA-12") on the Castle Pines Town Center Planned Development, First Amendment, recorded in the Official Records at Reception No. 2012043270 ("CPTC PD"), and was zoned for park uses;

C. The CPTC PD contemplated that Tract I would be dedicated and conveyed to the City for park uses at the time of final plat;

D. LS Partners is currently under contract to purchase a parcel of land located in the southwest corner of Castle Pines Parkway and Lagae Road in the City comprised of 10.056 acres ("Lagae Family Parcel");

E. The City and LS Partners have initiated and processed a rezoning of Tract I based on their joint interest in and to Tract I (which, for purposes of this Agreement, means LS Partners' fee title interest in and the City's interest in and entitlements in and to Tract I pursuant to the CPTC PD) to allow residential uses in order to permit LS Partners to market Tract I to qualified third-party purchasers;

F. The City and LS desire to enter into this Agreement to document that the proceeds from the sale of the Parties' joint interest in and to Tract I will be allocated and utilized by LS Partners and the City to enable LS Partners and the City to acquire and develop the Lagae Family Parcel, it being the intent that the City will utilize its allocated proceeds to help finance, design and construct a new City administration building containing a minimum of 10,000 square feet ("New City Hall") and a recreational facility ("City Recreation Facility") on portions of the Lagae Family Parcel acquired by the City;

G. The 2016 Comprehensive Plan specifically identifies a "recreation center public-private partnership" arrangement as a specific strategy to be explored and employed by the City;

H. The 2016 Comprehensive Plan identifies Goal LU-3 as "*Establish public space or gathering places in new and existing neighborhoods*" and Goal LU-3.2 specifically encourages the development of neighborhood gathering spaces for residents, including a recreation center or other public facility;

I. The City Council finds that the development of New City Hall and the City Recreation Facility, as contemplated in this Agreement, will assist with achieving Goal LU-3 and Goal LU-3.2 as set forth in the 2016 Comprehensive Plan; and

J. The City Council further finds that the successful development of the New City Hall and City Recreation Facility will benefit the residents and taxpayers of the City of Castle Pines.

Agreement

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

1. Purpose; Recitals Incorporated. The language contained in the recitals to this Agreement are fully incorporated in this Agreement by reference, and the Parties hereby acknowledge the accuracy thereof. The Parties desire to cooperate in a public-private partnership to allow for the sale of the Parties' joint interest in and to Tract I, the acquisition of the Lagae Family Parcel and the ultimate siting and construction of the New City Hall and City Recreation Facility on portions of the Lagae Family Parcel, through the rezoning and use of proceeds generated by the sale of Tract I.
2. Municipal Code. The terms of this Agreement are subject to the terms and conditions of the Castle Pines Municipal Code and the CTPC PD. Any reference to "Municipal Code" in this Agreement shall mean the City's compilation of ordinances, as adopted and amended from time to time, inclusive of the City's Zoning Ordinance and Subdivision Regulations.
3. Rezoning of Tract I. Tract I is or was prior to the date of this Agreement zoned for park uses. The City approved an amendment to the CPTC PD to amend Note 1 under Statement of Commitments to re-designate the purpose of cash in lieu fees for the general park and recreation purposes, and to allow single family/multi-family uses on Tract I. The rezoning was processed in accordance with the process set forth in Section 15 of the City's Zoning Ordinance. The Parties mutually cooperated in good faith to complete the rezoning of Tract I prior to the date hereof.
4. 2016 Comprehensive Plan – Amendment. In conjunction with the proposed rezoning of Tract I, City staff further initiated an amendment to the 2016 Comprehensive Plan ("2019 Amendment") to reflect the proposed residential uses on Tract I. The 2019 Amendment was, prior to the date hereof, approved.
5. Joint Sale of Tract I. Because the City Council approved the rezoning of Tract I to permit single family/multi-family uses, it is the intention of the Parties that the Parties' joint interest in and to Tract I will be sold and conveyed to a qualified third party purchaser ("Purchaser"). LS Partners, prior to the Effective Date (as defined herein), on behalf of the Parties' joint interest in and to the Property and subject to the terms of Paragraphs 3 and 4 above, marketed Tract I for sale and entered into a purchase and sale agreement for

Tract I with a Purchaser. LS Partners has, subject to Paragraph 9 below, provided copies of such purchase and sale agreement and any amendments to the City Manager through its City Attorney. If and to the extent such Purchaser terminates the purchase and sale agreement, LS Partners is authorized to further market Tract I for sale and to enter into a purchase and sale agreement for Tract I with another Purchaser on commercially reasonable terms subject to the good faith, commercially reasonable consent of the City Manager. Subject to the terms of Paragraph 9, upon request of the City Manager, LS Partners shall provide copies of such purchase and sale agreement(s) and any amendments, appraisals, closing documents and any other information and documents associated with the sale of Tract I to the City Manager through its City Attorney. Subject to Paragraph 9, the City is authorized to request and obtain from LS Partners such additional information and documents related to the marketing or sale of Tract I it deems reasonably necessary to be informed of the transaction. The Parties acknowledge that the City may be required to quitclaim its interest in Tract I to LS Partners as a condition of closing. The City shall reasonably cooperate with LS Partners in executing any quit claim deeds as may be required to account for the joint interest of the City in Tract I.

Upon closing of the sale of Tract I, LS Partners and the City shall allocate the proceeds of sale from the purchase price of Tract I as herein provided. The proceeds of sale shall mean the total amount of funds paid from the Purchaser, including amounts paid for infrastructure or site improvement costs, net of Closing Costs (as defined below) (“Sale Proceeds”). “Closing Costs” means all costs of closing, including reasonable escrow and attorneys’ fees, brokerage fees, title charges, prorations and all reasonable out of pocket costs of rezoning Tract I and preparing, submitting and processing the LFP Final Plat (as defined below), incurred by both LS Partners and the City, which costs of rezoning Tract I and the LFP Final Plat shall be shared 50% by the City and 50% by LS Partners. Immediately upon receipt of the Sale Proceeds on the date of closing or such other timeframe as set forth with particularity in the Escrow Agreement (as defined below), LS Partners and the City shall allocate the Sale Proceeds for the Parties’ joint interest in and to Tract I as follows: (a) to the City, 50% of the Sale Proceeds, plus 40.9% of the purchase price of the Lagae Family Parcel (“City Tract I Proceeds”), and (b) to LS Partners, 50% of the Sale Proceeds, less 40.9% of the purchase price of the Lagae Family Parcel.

6. Lagae Family Parcel. LS Partners acknowledges it is under contract to purchase the Lagae Family Parcel. Upon the City Manager’s request, subject to Paragraph 9, LS Partners shall submit a fully executed copy of the purchase and sale agreement for the Lagae Family Parcel and any amendments thereto to the City Attorney. LS Partners has processed and obtained approval of, subject to the cost sharing as described above, a subdivision plat through the City to create lots within the Lagae Family Parcel (the “LFP Final Plat”). Provided that the Parties close on the sale of Tract I, then LS Partners and the City shall jointly acquire the Lagae Family Parcel. If the LFP Final Plat is recorded at such time, the City will acquire the City Lot (as defined herein) and Tract A of the Lagae Family Parcel and LS Partners will acquire the remainder. If the LFP Final Plat is not yet recorded at such time, the City will acquire an undivided 40.9% interest in and to the Lagae Family Parcel, LS Partners will acquire the remainder and, in such event, within thirty (30) days of the recording of the LFP Final Plat, LS Partners and the City

shall convey the City Lot and Tract A to the City, it being the intent that the City will ultimately own the City Lot and Tract A on the Lagae Family Parcel as shown on LFP Final Plat and LS Partners will own the remainder of the Lagae Family Parcel. For purposes hereof, the "City Lot" shall collectively consist of two lots within the boundaries of the LFP Final Plat as depicted as the "City Lot" on the sketch plan/preliminary lot layout attached to this Agreement as **Exhibit A**, one for the City Hall and one for the City Recreation Facility ("Rec Facility Lot"). To accommodate the process set forth above, LS Partners agrees that LS Partners will, prior to the closing on the Lagae Family Parcel, partially assign the Lagae Family Parcel purchase contract to the City to account for the terms set forth above. All deeds for any conveyance shall be special warranty deeds. As shown on **Exhibit A**, unless otherwise agreed to between the Parties, the City Lot shall contain a minimum lot area to accommodate the development and construction of New City Hall, the City Recreation Facility, and associated parking. The City shall be solely responsible for design, construction, operation and maintenance of New City Hall, the City Recreation Facility and associated parking and improvements. The City and LS Partners further agree as part of the closing set forth above to negotiate and execute any necessary development agreements, subdivision improvement agreements, reciprocal easement agreements, and similar agreements to permit the development of the Lagae Family Parcel as contemplated in this Agreement, including cross-access agreements and maintenance and reimbursement provisions for any shared drives and detention areas, including Tract A, subject to the approval of City Council as may be required. The City acknowledges that these agreements may include an exchange accommodation titleholder ("EAT") on behalf of LS Partners in connection with any 1031 exchange processed by LS Partners in connection with the sale of LS Partners' interest in and to Tract I and the acquisition of the LS Partners' share of the Lagae Family Parcel (the "1031 Transaction"). Notwithstanding anything contained herein to the contrary, inclusive of the agreements set forth herein, within sixty (60) days of closing on the sale of the Lagae Family Parcel, LS Partners and the City shall execute a repurchase agreement that shall provide that (a) the City shall have a right of first refusal on the Option Lot as shown on **Exhibit A** to the extent required for the proper development of the City Recreation Facility; (b) the City shall have a purchase option on the Option Lot as shown on **Exhibit A** to the extent required for the proper development of the City Recreation Facility at a purchase price per square foot equal to the price paid by LS Partners for the Option Lot; and (c) if and to the extent the City fails to commence construction (as evidenced by the pouring of footings and foundations) of the City Recreation Facility on the Rec Facility Lot by the date that is five (5) years after the date of the closing, then the City shall convey the Rec Facility Lot back to LS Partners via special warranty deed for a purchase price of one dollar (\$1.00) within one hundred twenty (120) days of expiration of such five year period.

7. Subdivision Improvement Agreements. The City and LS Partners are parties to those certain subdivision improvement agreements identified as: Lagae Ranch Filing No. 1 Subdivision Improvement Agreement between RI Management of Tulsa, Inc., and the City of Castle Pines North dated November 21, 2008, a First Amendment to RI Management of Tulsa, Inc., and the City of Castle Pines dated November 1, 2017, a Subdivision Improvements Agreement between LS Partners, LLC, Taylor Morrison of Colorado, Inc. and the City of Castle Pines dated May 26, 2017, and an Escrow

Agreement among LS Partners LLC, RI Management of Tulsa Inc., the City of Castle Pines and American Title Insurance Company dated January 2018 (collectively, the "SIA"). The SIA includes, among other provisions, an obligation by LS Partners and certain other parties to fund the full cost of intersection improvements at Castle Pines Parkway and Lagae Road as specifically described in the SIA ("Intersection Improvements"). The City agrees to prepare necessary documentation to acknowledge LS Partners' full satisfaction of the obligation to fund such Intersection Improvements and to release LS Partners from any additional costs associated with the Intersection Improvements. LS Partners and the City shall execute appropriate amendment(s) to the SIA or releases of the same (collectively, the "SIA Amendment") concurrently with the execution of the Escrow Agreement as set forth in Paragraph 9 below, and shall deposit the SIA Amendment in escrow subject to release as provided below and in accordance with the terms of the Escrow Agreement.

8. City Escrow Agreement: 1031 Transaction. At least ten (10) calendar days prior to closing on Tract I, the City and LS Partners shall execute an escrow agreement with a mutually agreeable Escrow agent ("Escrow Agent"), in substantially the same form attached hereto and incorporated herein as **Exhibit B** ("Escrow Agreement"). Immediately upon receipt of the City Tract I Proceeds as outlined in Paragraph 5 above, the City shall deposit sufficient funds with the Escrow Agent to pay for the City's pro rata share of site work associated with the LFP Final Plat as determined on a land-to-land basis of the City Lot as more fully described in the Escrow Agreement. In addition, the SIA Amendment shall be deposited into escrow and shall be released upon LS Partner's and the City's acquisition of the Lagae Family Parcel or otherwise released in accordance with applicable terms and conditions of the Escrow Agreement. Immediately upon receipt of the Sale Proceeds as outlined in Paragraph 5 above, LS Partners shall deposit, for the benefit of the EAT and in conjunction with the 1031 Transaction: (a) an amount equal to LS Partners' portion of the purchase price of the Lagae Family Parcel; and (b) an amount sufficient to fund LS Partner's pro rata share of site work associated with the LFP Final Plat, as determined on a land-to-land basis of LS Partner's ownership of the Lagae Family Parcel. The Escrow Agent will be authorized to disburse escrowed funds in accordance with the terms of the Escrow Agreement. The funds for the benefit of the EAT and the 1031 Transaction shall be utilized as herein provided.
9. Confidentiality. The City and LS Partners shall use best efforts to keep all written negotiations and communications between the Parties regarding the potential sale of Tract I and purchase of the Lagae Family Parcel confidential, acknowledging that the City is subject to the Colorado Open Records Act. Notwithstanding anything contained herein to the contrary, the City and LS Partners hereby agree that all information provided by LS Partners to the City hereunder regarding the sale of Tract I and purchase of the Lagae Family Parcel shall be considered proprietary, privileged, confidential and commercial information and financial data not subject to disclosure under the Colorado Open Records Act ("Confidential Documents"). If the City receives a request under the Colorado Open Records Act to inspect any such Confidential Documents from any source other than the City Council, employees, attorneys, and consultants who have signed a non-disclosure agreement, the City shall notify LS Partners of such request and tender to LS Partners the opportunity to file appropriate court proceedings to prevent such disclosure at its sole

cost and expense. Without limiting the foregoing, the City shall take all reasonable actions available under applicable laws to prevent disclosure of any Confidential Documents that it deems is not subject to public inspection.

10. 1031 Transaction; Subchapter K of the Internal Revenue Code. The City and LS Partners hereby agree to cooperate in a tax-free exchange under Section 1031 of the Internal Revenue Code for LS Partners hereunder. The City and LS Partners hereby agree to make an election out of Subchapter K of the Internal Revenue Code. At no cost to the City, LS Partners agrees to indemnify and hold the City harmless from any cost, expense or liability, including attorney fees, resulting from the City's participation in such exchange.
11. Article X, Section 20/TABOR. The City and LS Partners understand and acknowledge that the City is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The City represents that it has or will have budgeted and appropriated sufficient funding to meet its obligations set forth in this Agreement. For any amounts not fully appropriated, the City does not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the City's current fiscal period. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the Charter, and other applicable rules, regulations, ordinances and resolutions of the City, and any other applicable law. Notwithstanding anything contained herein to the contrary, the City hereby represents that it presently intends to appropriate any amounts required under this Agreement to the fullest extent permitted by the law; provided, however, that nothing in this Paragraph shall be construed as obligating the City council to appropriate as may be required herein in any fiscal year.
12. Governmental Immunity. Nothing in this Agreement 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 the same may be amended from time to time.
13. Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Electronic signatures shall be as effective as an original signature.
14. Legislative Authority. The City's obligation to proceed with the property entitlements described in this Agreement is expressly conditional upon the City Council's exercise of its legislative discretion in considering any such land use applications, including amendments to the 2016 Comprehensive Plan, rezoning, and approval of this Agreement. Nothing in this Agreement shall be construed to constitute approval of any land use application for Tract I or the Lagae Family Parcel or to waive or impair the City's police powers or any applicable provision of the Municipal Code. Further, the completion of any real estate transaction contemplated herein is conditional upon the formal approval

of such acquisition by the Castle Pines City Council via ordinance, as required by Section 14.6 of the City of Castle Pines Home Rule Charter (“Charter”).

- 15. **Binding Effect.** This Agreement, when executed, shall inure to the benefit of and be binding on the successors or assigns in interest or the legal representatives of the Parties hereto, including all the purchasers and subsequent LS Partners(s) of the Property. This Agreement constitutes the entire agreement of the Parties and may be amended only in writing, approved in substantially the same manner as the Agreement itself.
- 16. **Notices.** Unless otherwise specifically required by a provision of this Agreement, any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if either: (a) hand delivered to the person(s) identified below; or (b) sent by certified mail or registered mail, postage and fees prepaid, or (c) sent by recognized overnight courier, for next business day delivery, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party.

<u>If to the City:</u>	<u>If to LS Partners:</u>
City Manager City of Castle Pines 360 Village Square Lane Suite B Castle Pines, Colorado 80108	LS Partners LLC 9801 E. Easter Avenue Centennial, CO 80112
With Copy to: City Attorney City of Castle Pines c/o Michow Cox & McAskin LLP 6530 S. Yosemite St., Suite 200 Greenwood Village, CO 80112	With Copy to: Brian Jumps Jumps Law 2579 West Main St., Suite 201 Littleton, CO 80120

- 17. **Waiver of Breach.** The waiver by any Party to this Agreement of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any Party.
- 18. **Entire Agreement.** This Agreement represents the entire agreement between the Parties and, supersedes any prior oral or collateral agreements or understandings.
- 19. **Amendment.** This Agreement may be amended only by an instrument in writing signed by the Parties.

20. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and LS Partners, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third person on such Agreement. It is the express intention of City and LS Partners that any person other than City or LS Partners and their successors and assigns receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
21. Governing Law, Venue. This Agreement shall be governed by the laws of the State of Colorado. Venue for any action arising from this Agreement shall lie with any appropriate court within Douglas County, Colorado.
22. Authorization of Parties' Representative. The undersigned hereby represent that they serve as representatives of the Party for which they have executed this Agreement and are fully authorized to execute this Agreement on behalf of such party.
23. Provisions Severable. Should any one or more paragraphs or provisions of this Agreement be judicially determined to be invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Agreement, the intention being that the various provisions hereof are severable.
24. Additional Documents. Each party hereto agrees to execute such further documents or agreements as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions.
25. Effective Date. The "Effective Date" of this Agreement shall be the date of the last party to sign.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Effective Date.

CITY:

CITY OF CASTLE PINES, COLORADO, a Colorado home rule municipal corporation

By: _____
Tera Stave Radloff, Mayor

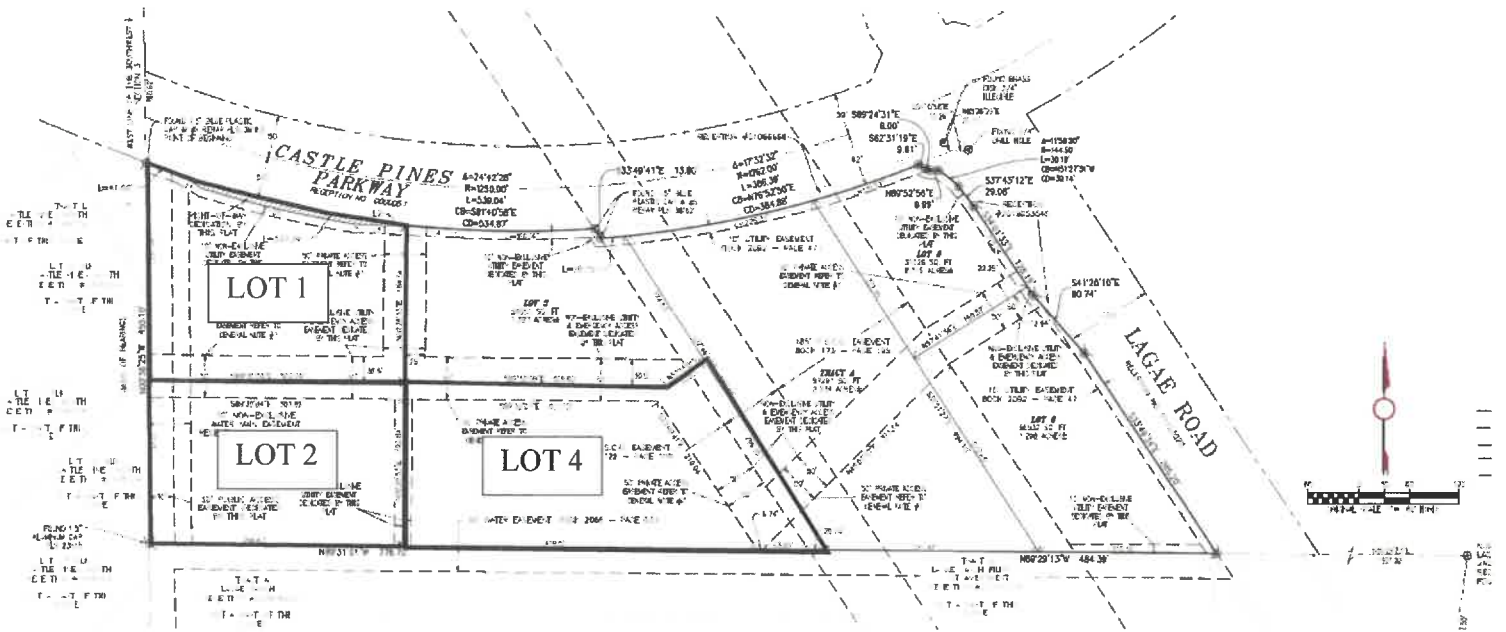
Date of execution: _____, 20__

ATTEST:

Approved as to Form:

City Clerk

Linda C. Michow, City Attorney



CITY LOT - Lots 2 and 4

OPTION LOT - Lot 1

REC FACILITY LOT - Lot 2

NEW CITY HALL - Lot 4

EXHIBIT B
Escrow Agreement

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "Escrow Agreement") is made and entered into by and between LS PARTNERS, LLC, a Colorado limited liability company ("LS"), the CITY OF CASTLE PINES, a Colorado home rule municipal corporation (the "City"), and _____ (the "Escrow Agent"). The effective date of this Escrow Agreement ("Effective Date") shall be the date of the last party to sign.

RECITALS:

A. LS and the City (together, the "Parties") are parties to that certain Public-Private Partnership Agreement dated _____, 2020 (the "PPP Agreement"). Any term not specifically defined in this Escrow Agreement shall be defined as set forth in the PPP Agreement.

B. The PPP Agreement establishes that the Parties shall allocate the sale proceeds of Tract I, Castle Pines Town Center Filing No. 2, City of Castle Pines, recorded at Reception No. 2017035484 in the Douglas County real property records ("Tract I"), net of closing costs associated with sale and brokerage fees, if any, and out of pocket costs included by the City and LS related to processing the rezoning of Tract I.

C. The PPP Agreement also confirms that LS is under contract to acquire, with the City, certain real property located in the southwest corner of Castle Pines Parkway and Lagae Road comprised of approximately 10.56 acres (the "Lagae Family Parcel").

D. Tract I has been sold to a qualified third party purchaser. LS sold and conveyed Tract I to _____, a _____ on _____, 202___. Net of closing costs (as discussed in the PPP Agreement), the City received _____ dollars (\$ _____).

E. In accordance with the terms of the PPP Agreement, the City has deposited _____ dollars (\$ _____) with the Escrow Agent in order to fund the City's pro rata share of site work associated with the Lagae Family Parcel, specifically the City Lot's share of overall site development costs as calculated per the terms of the PPP Agreement ("City Contribution").

F. In addition to the City Contribution, the following documentation has been submitted to the Escrow Agent to be held in escrow in accordance with the terms and conditions of this Escrow Agreement: that certain SIA Amendment, as that term is defined in the PPP Agreement, releasing LS from any additional costs associated with the intersection improvements at Castle Pines Parkway and Lagae Road (the "Escrow Documents").

G. The Parties desire to enter into this Escrow Agreement for the purposes of escrowing the City Contribution and the Escrow Documents, and to set forth the Parties' agreement as to the proper disbursement of the City Contribution and the release of the Escrow Documents for recording in the real property records of Douglas County ("County Records")

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Deposit of City Contribution and Escrow Documents. On or prior to the Effective Date, the City shall deposit the City Contribution and the Escrow Documents with Escrow Agent. During the term of this Escrow Agreement, Escrow Agent shall invest the City Contribution in an interest-bearing account jointly designated by the City; provided, however, that the account balance must be subject to immediate withdrawal without penalty. Release of City Contribution shall include any pro rata accrued interest to the party to which such City Contribution are released. The deposit of the City Contribution by the City under the terms of this Paragraph 1 will establish an escrow with Escrow Agent in accordance with and subject to the terms and conditions of this Escrow Agreement.

2. Disbursement of City Contribution – to City. The City may make written requests to the Escrow Agent for disbursements of the City Contribution, copies of which shall be simultaneously sent to LS at the address set forth in the notification provision of this Escrow Agreement. In each disbursement request, the City shall provide reasonable evidence that the City has expended such requested funds or will need funds to pay invoices in connection with the City's pro rata share of site work necessary in connection with the Lagae Family Parcel as specifically identified in the PPP Agreement, including, without limitation, copies of invoices from the third party contractors and other service providers for the amounts to be disbursed. Unless LS provides notice of disapproval of a disbursement request within ten (10) calendar days after its receipt of such disbursement request, the Escrow Agent shall disburse such portion of the City Contribution as requested (and, with respect to the final disbursement, all interest earned thereon) in accordance with the instructions of the City. Unless LS provides notice of disapproval of a disbursement request as set forth above, LS irrevocably authorizes the Escrow Agent to make disbursements of the City Contribution, up to and including the total amount of the City Contribution plus all interest earned thereon. LS may only object to a disbursement request if LS has good cause to dispute the validity of any disbursement request. Good cause shall be limited to those instances where the disbursement request, or invoice accompanying same, is not reasonably related to the City's pro rata share of site work associated with the Lagae Family Parcel, as specifically identified in the PPP Agreement. If Escrow Agent and the City timely receive an objection notice, then the City and LS shall promptly meet and in good faith attempt to resolve all objections and provide mutually-acceptable direction(s) to Escrow Agent to disburse amounts to the City. In the event that City fails to acquire a portion of the Lagae Family Parcel as contemplated in Paragraph 3. below, the Escrow Agent shall disburse City Contribution in accordance with Paragraph 3.

3. Disbursement of City Contribution. In the event that LS and the City fail to acquire the Lagae Family Parcel, then the Escrow Agent shall disburse the City Contribution as follows: the Escrow Agent shall disburse the City Contribution, including all interest earned thereon, to the City.

4. Disbursement of Escrow Documents. As set forth in Recital G., above, the Escrow Documents deposited with the Escrow Agent have been finalized and executed as required by the PPP Agreement and release LS from any additional costs associated with the intersection improvements at Castle Pines Parkway and Lagae Road. The Escrow Agent shall release the Escrow Documents for recording in the County Records upon LS's and the City's acquisition of the Lagae Family Parcel (the "Escrow Documents Release Condition"). LS may make a written request to the Escrow Agent for release of the Escrow Documents, a copy of which shall be

simultaneously sent to the City at the address set forth in the notification provision of this Escrow Agreement. In such written request, LS shall provide evidence that all of the Escrow Documents Release Condition has been satisfied. Unless the City provides notice of disapproval of the Escrow Documents release request within ten (10) calendar days after its receipt of such written request, the Escrow Agent shall release the Escrow Documents for recording in the County Records. If Escrow Agent and LS timely receive an objection notice, then LS and the City shall promptly meet and in good faith attempt to resolve all objections and provide mutually-acceptable direction(s) to Escrow Agent to release the Escrow Documents.

5. Escrow Agent Liability. The Parties agree that the Escrow Agent shall have no obligation or liability hereunder except as a depository to retain the City Contribution and Escrow Documents and to disburse the same in accordance with the terms hereof. The Escrow Agent shall be entitled to rely and act upon any written instrument received by it, and if a limited liability company, purporting to be executed by a manager, and shall not be required to inquire into the authority of such manager or the correctness of the facts stated in said instrument. Upon disposition by the Escrow Agent, in accordance with the terms hereof, of the City Contribution and Escrow Documents, the Escrow Agent shall be fully and finally released and discharged from any and all duties, obligations and liabilities hereunder.

6. Escrow Agent Fee. The Escrow Agent shall receive an escrow fee in the amount of \$500.00, which fee shall be paid by LS, and which shall be paid on or prior to the Effective Date of this Escrow Agreement.

7. Disputes. In the event of a dispute between any of the parties hereto as to their respective rights and interests hereunder, the Escrow Agent shall be entitled to hold any and all of the City Contribution or Escrow Documents then in its possession hereunder until such dispute shall have been resolved by the parties in dispute and the Escrow Agent shall have been notified by instrument jointly signed by LS and the City, or until such dispute shall have been finally adjudicated by a court of competent jurisdiction. Further, Escrow Agent shall have the right to interplead the City Contribution or Escrow Documents into a court of competent jurisdiction, sitting in Douglas County, Colorado, in the event of any such dispute.

8. Accounting. Upon written request of any party, the Escrow Agent shall deliver to City and LS a written statement of the account.

9. Notices. Any notice which any party may be required or may desire to give hereunder shall be deemed to have been duly given when personally delivered, or with respect to any party other than the Escrow Agent, on the next business day if sent by overnight courier, or on the same day if sent by facsimile or e-mail before the close of business, or the next day if sent by facsimile or e-mail after the close of business, or on the third business day after mailing by certified or registered mail, postage prepaid, addressed as set forth below, or to such other address as a party hereto may designate by a notice to the other parties. Any notice mailed or given to the Escrow Agent shall be deemed given only when actually received.

If to LS:

c/o Ventana Capital, Inc.
9801 East Easter Avenue
Centennial, Colorado 80112
Attention: Tom Clark
Telephone: 303-346-7006
Facsimile: 303-468-6705
E-mail: tclark@vantanacap.com

With a copy to:

Jumps Law
2579 West Main St., Suite 201
Littleton, CO 80120
Attention: Brian Jumps

If to the City:

The City of Castle Pines
360 Village Square Lane, Suite B
Castle Pines, Colorado 80108
Attention: City Manager

With a copy to:

City Attorney
c/o Michow Cox & McAskin LLP
6530 S. Yosemite Street, Suite 200
Greenwood Village, CO 80111

If to Escrow Agent:

10. Agreement to Perform Escrow Services. By its signature below, the Escrow Agent agrees to accept, as Escrow Agent hereunder, the City Contribution and Escrow Documents (collectively, "Escrow") deposited hereunder, and agrees to hold and dispose of said Escrow in accordance with the terms and provisions of this Escrow Agreement, to all of which terms and provisions the Escrow Agent hereby consents and agrees.

11. Entire Agreement; Conflict. This Escrow Agreement and the other agreements specifically referred to herein represent the entire agreement among the parties hereto with respect to the subject matter hereof, and all prior agreements, understandings or negotiations shall be deemed merged herein. No amendments or modifications to this Escrow Agreement shall be made or deemed to have been made unless in writing and executed by the party or parties to be bound thereby.

12. Severability. If any provision of this Escrow Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the

remainder of this Escrow Agreement, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Escrow Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

13. Governing Law. This Escrow Agreement and all the terms and provisions hereof shall be governed by and construed in accordance with the laws of the State of Colorado.

14. Attorneys' Fees. In the event any litigation or legal proceeding arises among the City and LS out of this Escrow Agreement and is prosecuted to final judgment, then the prevailing party shall recover from the other all of the prevailing party's costs and expenses incurred in connection therewith, including reasonable attorneys' fees.

15. Counterparts: Electronic Delivery. This Escrow Agreement may be executed in counterparts, each of which shall constitute an original and which together shall constitute one and the same agreement. Executed copies hereof may be delivered by telecopy or electronic delivery and, upon receipt, shall be deemed originals and binding upon the parties hereto. Without limiting or otherwise affecting the validity of executed copies hereof that have been delivered by telecopy or electronic delivery, the parties will use best efforts to deliver originals as promptly as possible after execution.

16. Representations of Authority. Each party hereto represents that it has all inherent corporate or company authority necessary to make this Escrow Agreement, and in fact has taken or received all corporate or company action necessary to authorize this Escrow Agreement's execution and delivery on its behalf by the signatory for such party as set forth below.

17. Successors and Assigns. This Escrow Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed the day and year first above written.

LS:

LS PARTNERS, LLC, a Colorado limited liability company

By: _____

Name: _____

Its: _____

Date of execution: _____, 20__

CITY:

CITY OF CASTLE PINES, a Colorado home rule municipal corporation

By: _____

Name: _____

Its: _____

Date of execution: _____, 20__

ATTEST:

City Clerk

ESCROW AGENT:

By: _____

Name: _____

Its: _____

Date of execution: _____, 20__