

ORDINANCE NO. 21-10

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO, AUTHORIZING THE SALE AND TRANSFER OF THE CITY'S INTEREST IN PROPERTY KNOWN AS TRACT E, CHARTER OAKS

WHEREAS, the City of Castle Pines ("City") is a home rule municipality with all powers granted by Article XX of the Colorado Constitution and the City's Home Rule Charter ("City Charter"); and

WHEREAS, Section 14.6 of the City Charter requires the adoption of an ordinance to authorize the sale or conveyance of the City's interest in real property; and

WHEREAS, HSDevelopment LLC, a Colorado limited liability company ("Buyer"), is under contract to purchase the real property legally described as Tract A, Charter Oaks, City of Castle Pines, County of Douglas, recorded on December 5, 1980 at Reception No. 261854 ("Tract A"); and

WHEREAS, the City is the owner of an approximately 6,400 square foot parcel of real property immediately adjacent to Tract A and legally described as Tract E, Charter Oaks, City of Castle Pines, County of Douglas, recorded on December 5, 1980 at Reception No. 261854 ("Tract E"); and

WHEREAS, Buyer desires to purchase Tract E from the City to allow for Buyer's development of a car wash on Tract A and Tract E; and

WHEREAS, Tract E was dedicated to the County of Douglas for roadway purposes pursuant to the plat known as Charter Oaks, City of Castle Pines, County of Douglas, recorded on December 5, 1980 at Reception No. 261854; and

WHEREAS, the County of Douglas conveyed Tract E to the City at the time of incorporation of the City pursuant to that certain Quit Claim Deed, recorded on August 27, 2008 at Reception No. 2008059877; and

WHEREAS, the City Council of the City of Castle Pines (the "City Council") has determined that Tract E is not and has never been used as a road, is not needed or planned for City roadway purposes, and does not serve as a public or private access from adjoining land to another established public road and, as such, the sale of Tract E to Buyer is in keeping with the spirit and intent of the City Subdivision Ordinance, the Castle Pines Comprehensive Plan, and the Castle Pines Master Transportation Plan; and

WHEREAS, the City obtained an appraisal to determine the reasonable market value of the fee simple interest in Tract E, which value together with the cost of the appraisal, was used to establish a purchase price for Tract E; and

WHEREAS, Buyer has committed in the approved site improvement plan for the car wash to install and maintain enhanced landscaping improvements within Tract A, Tract E, and the Castle Pines Parkway and Beverly Boulevard rights-of-way abutting Tract A and Tract E, and for such landscaping to be of such quality and quantity as to complement the schematic designs set forth in the Castle Pines Parkway, I-25 to Lagae Road Landscape Plan, dated February 5, 2021; and

WHEREAS, the City Council has determined that the conveyance of Tract E to Buyer in accordance with the conditions set forth in that certain Purchase and Sale Agreement attached hereto as **Exhibit A** (the "Purchase Agreement") is in the best interests of the City of Castle Pines and its citizens, and that the sale of Tract E is on equitable and fair terms which will promote the health, safety and general welfare of the Castle Pines community; and

WHEREAS, City Council conducted a public hearing, with proper notice provided, to consider adoption of this Ordinance as required by law.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO THAT:

Section 1. Recitals Incorporated. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the City Council.

Section 2. Sale of Property Authorized. The City Council hereby approves the Purchase Agreement attached as **Exhibit A** and authorizes the sale of Tract E to Buyer for the sum of Ten Thousand Five Hundred Fifty and No/100 Dollars (\$10,550.00) in accordance with the terms of the Purchase Agreement. The Mayor and City Clerk are hereby authorized to execute the Purchase Agreement and a bargain and sale deed to convey Tract E in substantially the form included in the Purchase Agreement. The Mayor and City Manager are each hereby authorized to execute closing documents and such other documents as are necessary to effectuate the sale of Tract E to Buyer, in such forms as are approved by the City Attorney. The closing of the sale of Tract E shall not occur prior to the effective date of this Ordinance and shall be conditioned upon Buyer's acquisition of Tract A, as set forth in the Purchase Agreement.

Section 3. Severability. If any part or provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provisions or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 4. Safety Clause. The City Council finds and declares that this Ordinance is promulgated and adopted for the public health, safety and welfare and this Ordinance bears a rational relation to the legislative object sought to be obtained.

Section 5. Publication and Effective Date. The City Clerk is hereby directed to cause publication of this Ordinance in accordance with Section 6.5 of the Charter. This Ordinance shall be effective thirty (30) days after final publication on the City's official website and posting at the City Clerk's office pursuant to Section 1-3-40 of the Municipal Code.

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INTRODUCED, READ, AND PASSED ON FIRST READING, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO THE 9TH DAY OF NOVEMBER, 2021.

READ, PASSED, AND ADOPTED ON SECOND READING, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO THE 14TH DAY OF DECEMBER, 2021.



DocuSigned by:
Tera Stave Radloff
5E0C8EB279DC479
Tera Stave Radloff, Mayor

ATTEST:

DocuSigned by:
Tobi Duffey
AD03A3B02032490...
Tobi Duffey, CMC, City Clerk

Approved as to form:

DocuSigned by:
Linda C. Michow
6241DE00B8FF444...
Linda C. Michow, City Attorney

CERTIFICATION OF PUBLICATION

I hereby attest and certify that the within and foregoing Ordinance was introduced and read on first reading on November 9, 2021; published by title only in the Douglas County News-Press, together with the statement that “[t]he complete text of the ordinance is available through the City Clerk’s office and on the City’s official website with second reading and public hearing to be held on December 14, 2021”; and finally passed and adopted by the City Council on December 14, 2021, following a duly noticed public hearing and published on the City’s official website and posted at the City Clerk’s office on November 10, 2021.

ATTEST:

DocuSigned by:
Tobi Duffey
AD03A3B02032490...
Tobi Duffey, CMC, City Clerk

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Exhibit A
Purchase and Sale Agreement

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered as of the date of the last signature below (the "Effective Date"), by and between the **CITY OF CASTLE PINES**, a Colorado home rule municipal corporation, with offices at 360 Village Square Lane, Suite B, Castle Pines, Colorado 80108 (the "City"), and **HSDEVELOPMENT LLC**, a Colorado limited liability company, having a legal address of 258 Lead Queen Drive, Castle Rock, Colorado 80108 ("Buyer"). The City and Buyer may be collectively referred to herein as the "Parties."

WHEREAS, Buyer is under contract to purchase the real property legally described as Tract A, Charter Oaks, City of Castle Pines, County of Douglas, recorded on December 5, 1980 at Reception No. 261854 ("Tract A"), which contract to purchase is anticipated to close on or before December 15, 2021; and

WHEREAS, the City is the owner of real property immediately adjacent to Tract A and legally described as Tract E, Charter Oaks, City of Castle Pines, County of Douglas, recorded on December 5, 1980 at Reception No. 261854 ("Tract E"); and

WHEREAS, Tract E was dedicated to the County of Douglas for roadway purposes pursuant to the plat known as Charter Oaks, City of Castle Pines, County of Douglas, recorded on December 5, 1980 at Reception No. 261854; and

WHEREAS, the County of Douglas conveyed Tract E to the City at the time of incorporation of the City pursuant to that certain Quit Claim Deed, recorded on August 27, 2008 at Reception No. 2008059877; and

WHEREAS, the City Council of the City of Castle Pines (the "City Council") has determined that Tract E is not and has never been used as a road, is not needed or planned for City roadway purposes, and does not serve as a public or private access from adjoining land to another established public road and, as such, the sale of Tract E to Buyer is in keeping with the spirit and intent of the City Subdivision Ordinance, the Castle Pines Comprehensive Plan, and the Castle Pines Master Transportation Plan; and

WHEREAS, the City Council recently approved by Resolution No. 21-03 the Castle Pines Parkway, I-25 to Lagae Road Landscape Plan, dated February 5, 2021 (as the same may be amended from time to time (the "Landscape Plan"), which Landscape Plan sets forth a schematic landscape design and preliminary construction pricing for landscaping along Castle Pines Parkway from I-25 to the intersection of Castle Pines Parkway and Lagae Road; and

WHEREAS, the City desires for enhanced landscaping to be designed for and installed and maintained within Tract A, Tract E, and the Castle Pines Parkway and Beverly Boulevard rights-of-way abutting Tract A and Tract E, and for such landscaping to be of such quality and

quantity as to complement the schematic designs set forth in the Landscape Plan (“Enhanced Landscaping”); and

WHEREAS, the City obtained an appraisal to determine the reasonable market value of the fee simple interest in Tract E, which value together with the cost of the appraisal, was used to establish the Purchase Price (as defined in Section 3 below) for Tract E; and

WHEREAS, subject to the terms and conditions of this Agreement, including Buyer’s payment of the Purchase Price and Buyer’s installation of the Enhanced Landscaping, the City desires to sell and Buyer desires to purchase Tract E; and

WHEREAS, in anticipation of Buyer’s acquisition of Tract E pursuant to this Agreement, Buyer is seeking City approval of a replat of Tract A and Tract E referred to as the Charter Oaks Filing No. 1, 9th Amendment (the “Replat”), which Replat combines Tract A and Tract E to create one lot (“Lot 1A”); and

WHEREAS, in anticipation of Buyer’s acquisition of Tract E pursuant to this Agreement, Buyer obtained approval (which approval was conditioned upon Buyer acquiring Tract E) on May 27, 2021 from the City of Castle Pines Planning Commission of that certain Charter Oaks Filing No. 1 9th Amendment Lot 1A, Car Wash Site Improvement Plan SIP 2020-006 (the “SIP”) to allow for the development of Lot 1A as a car wash and requiring the Enhanced Landscaping.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants, promises and agreements of each of the Parties hereto, the sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Purchase and Sale. The City agrees to sell and the Buyer agrees to purchase Tract E subject to the terms and conditions set forth in this Agreement.

2. Title Company. The title and escrow company for this transaction is Heritage Title Company, Inc. (the “Title Company”).

3. Purchase Price. The purchase price for Tract E shall be Ten Thousand Five Hundred Fifty and No/100 Dollars (\$10,550.00) (the “Purchase Price”). The Purchase Price shall be paid by the Buyer at Closing (as defined in Section 7 below) in cash, certified funds, or by wire transfer of other immediately available funds.

a. Deposit. Within five (5) days following the Effective Date, the Buyer shall deposit the sum of Two Thousand Dollars (\$2,000.00) (“Deposit”) with the Title Company. Title Company will hold the Deposit in escrow by promptly placing the Deposit in a segregated non-interest-bearing account. The Deposit shall be applied to the Purchase Price at Closing. In the event this Agreement is terminated prior to Closing, the Title Company shall promptly deliver the Deposit to the applicable party as provided for herein. Following the expiration of the Inspection Period, the Deposit shall be non-refundable to the Buyer except as otherwise provided for herein.

- b. Balance of Purchase Price. Buyer shall pay the City the unpaid balance of the Purchase Price on the date of Closing.

4. Evidence of Title. No later than fifteen (15) days after the Effective Date, the City shall provide to Buyer, at Buyer's expense, a title commitment issued by the Title Company, along with copies of all exception documents, with a standard coverage owner's policy of title insurance, insuring title to Tract E as of the date of Closing in the amount of the Purchase Price (the "Title Commitment").

5. Evidence of Ownership of Tract A. Buyer shall provide the City with a copy of the recorded deed conveying Tract A to the Buyer and an owner's and encumbrance report demonstrating Buyer's fee simple ownership of Tract A upon Buyer's acquisition of Tract A, but not later than ten (10) days prior to the closing of the sale of Tract E.

6. Inspection.

- a. The City and Buyer expressly covenant and agree that Buyer's satisfaction upon the inspection provided for herein is a specific condition precedent to the obligation of Buyer to purchase Tract E. The period of inspection (the "Inspection Period") shall begin on the Effective Date and shall terminate on the earlier of: (i) receipt by the City of written notice from Buyer that Tract E is suitable for purchase; or (ii) twenty-one (21) days after the Effective Date.
- b. During the Inspection Period, Buyer may enter Tract E to make such reasonable inspections, reviews, studies, evaluations, or surveys, at Buyer's sole cost and expense, required by Buyer to satisfy itself as to the acceptability and suitability of Tract E for purchase.

All such entries upon Tract E shall be at reasonable times during normal business hours and after at least twenty-four (24) hours prior notice to the City and the City shall have the right to accompany Buyer during any activities performed by Buyer on Tract E. Buyer shall restore Tract E to substantially the same condition as existed before Buyer's inspections, reviews, studies, evaluations, or surveys. Buyer shall indemnify, defend, and hold harmless the City and its officers, officials, employees, and agents from and against any and all losses, costs, damages, claims, or liabilities, including, but not limited to, mechanic's liens and consultant and attorneys' fees and costs arising out of or in connection with Buyer's inspection of Tract E.

Buyer shall notify the City in writing of its dissatisfaction with Tract E and its desire to terminate this Agreement on or before the expiration of the Inspection Period. If Buyer fails to so notify the City prior to the expiration of the Inspection Period, Buyer shall be deemed to have accepted Tract E as suitable for purchase and to have waived any right to terminate this Agreement.

7. Closing; Conditions Precedent. Subject to subsections (a) through (c) of this Section 7, the closing of this Agreement (“Closing”) shall be held at the office of the Title Company or closed in escrow on the date scheduled by the Parties for recordation of the Replat. At the Closing, the City shall deliver to Buyer a bargain and sale deed, which shall be substantially in the form attached hereto as Exhibit A (the “Deed”). The Parties’ obligations to close shall be subject to and contingent upon the following conditions precedent:

- a. Pursuant to the City of Castle Pines Home Rule Charter Section 14.6, the sale of Tract E to Buyer must be approved by an ordinance duly considered and adopted by the City Council. Closing of the sale shall not occur prior to the effective date of the ordinance which, per Charter Section 6.5, shall take effect thirty (30) days after publication of the ordinance. The City Council’s failure to approve the sale contemplated by this Agreement shall not be a default by the City under this Agreement.
- b. Pursuant to the City of Castle Pines Subdivision Regulations Article 7, the City Council must approve the Replat.
- c. Buyer shall acquire fee simple title to Tract A and shall be the fee simple owner of Tract A at the time of Closing.

If these conditions precedent are not satisfied and Closing does not occur on or before March 31, 2022, this Agreement shall be terminated and of no further force and effect.

8. City Warranties. As of the Effective Date and continuing through and including the date of Closing, the City warrants as follows:

- a. To the City’s actual knowledge, there are no actions, suits, proceedings, or investigations pending or threatened against or affecting Tract E, except for the case of Twin Star Energy v. Board of Adjustment of the City of Castle Pines, et al., Civil Action No. 1:21-cv-01451-NRN filed in the U.S. District Court, Denver, Colorado (the “Pending Litigation”), to which the City and Buyer are both parties; and
- b. To the City’s actual knowledge, Tract E is in compliance with the laws, orders, and regulations of the City governing Tract E; and
- c. To the City’s actual knowledge, the City is not a party to or subject to or bound by any agreement, contract, or lease relating to Tract E, which has not been specifically disclosed to Buyer.

Except for the warranties set forth in a. through c. above, Buyer is purchasing Tract E “AS IS”, “WHERE IS”, “WITH ALL FAULTS”, and “WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED”, including, without limitation, the physical condition of Tract E (including, without limitation, whether Tract E lies within a flood zone, is at risk of sinkholes, or is subject to any drainage issues, whether surface or underground or other damages exist, whether hazardous materials, mold, fungus, bacteria or other biological growth factors are present or absent, or whether there exists parking or access to Tract E). Buyer further acknowledges and agrees that

the City shall not have any liability, obligation, or responsibility to Buyer of any kind related to the Pending Litigation and that the City has made no representations or warranties of any kind regarding the Pending Litigation, including without limitation, its potential impact on Buyer's desired use of Tract A or Tract E.

Whenever the phrase "the City's actual knowledge" is used herein, such phrase shall mean the current, actual knowledge of Michael Penny and Sam Bishop without any requirement of investigation or due diligence.

9. Costs and Fees. Closing fees and escrow fees shall be shared equally by the City and Buyer. Per page recording costs shall be paid by Buyer. The premium for the title insurance policy, in favor of Buyer in the amount of the Purchase Price (the "Owner's Policy"), shall be paid by Buyer. The cost of deletions from the Owner's Policy of any standard exceptions in Schedule B-2 of the Title Commitment, as well as the cost of any other affirmative coverages or endorsements and the amount of any coverage exceeding the Purchase Price, shall be borne by Buyer. The City and Buyer shall each pay the fees and expenses of their respective legal counsel, accountants, and other consultants or advisors incurred in connection with the transaction contemplated by this Agreement.

10. Taxes. Taxes for all years prior to Closing shall be paid in full by the City prior to Closing. Taxes for the year of Closing shall be prorated to the date of Closing.

11. Remedies upon Default.

- a. City's remedies. If the City has fully performed or tendered performance of its obligations under this Agreement and Buyer is unable or fails to perform its obligations, then the City's sole remedy shall be to retain the Deposit as liquidated damages and retain ownership of Tract E and the City shall be released from its obligations to sell Tract E to Buyer. The Parties agree and stipulate that it would be impracticable and extremely difficult to affix damages if Buyer defaults under this Agreement and that the Deposit represents a reasonable estimate of the City's damages. In the event Buyer is unable or fails to perform its obligations hereunder it shall pay for any escrow cancellation charges or fees.
- b. Buyer's remedies. If Buyer has fully performed or tendered performance of its obligations under this Agreement and the City fails to consummate the transaction contemplated by this Agreement for any reason except a material breach by Buyer or the failure of a condition precedent set forth in Section 7 above, Buyer may elect, at the Buyer's sole option: (i) not to purchase Tract E, to be returned the Deposit, and to be released from its obligations hereunder; or (ii) to proceed against the City for specific performance of this Agreement.

12. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Douglas County, Colorado.

13. Closing Instructions; Further Documents. The City and Buyer hereby instruct the Title Company to use this Agreement as closing instructions. On the date of Closing, the Title Company shall record the Deed and immediately thereafter record the Replat. The City and Buyer shall perform such other actions or deliver such other documents, including additional closing instructions, as may be reasonable and necessary to complete the sale under this Agreement. Terms of this Agreement shall prevail over any inconsistent additional closing instructions unless Buyer and the City specifically waive the inconsistency in writing.

14. Notices. Any notices required by this Agreement shall be effective if made in writing and either delivered directly; sent by certified or registered mail, return receipt requested; or sent by USPS Express Mail to the following:

The City:	City of Castle Pines Attention: City Manager 360 Village Square Lane, Suite B Castle Pines, CO 80108
With a copy to:	Michow Cox & McAskin LLP Attention: Linda Michow 6530 S. Yosemite Street, Suite 200 Greenwood Village, CO 80111
Buyer:	HSDevelopment LLC 258 Lead Queen Drive Castle Rock, CO 80108

All notices shall be deemed received on the date of the return receipt or acknowledgment of delivery.

15. Modification. This Agreement may only be modified upon written agreement of the Parties.

16. Integration. The foregoing constitutes the entire agreement between the Parties and no additional or different oral representation, promise or agreement shall be binding on any of the Parties hereto.

17. Severability. If, prior to the Closing, any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, this Agreement shall be deemed void and of no further force and effect.

18. Broker(s). The City represents that there is no listing broker for this transaction. Buyer represents that there is no selling or cooperating broker for this transaction. The Parties agree that no commissions will be paid to any brokers or any other persons related to the transaction contemplated by this Agreement.

19. No Third-Party Beneficiaries. There are no intended third-party beneficiaries to this Agreement.

20. Construction. Buyer and the City acknowledge that each party has reviewed this Agreement and that the normal rule of construction that provides for ambiguities to be resolved against the drafting party shall not apply to the interpretation of this Agreement. This Agreement shall be construed neither for nor against the City or Buyer, but shall be given a reasonable interpretation in accordance with the plain meaning of its terms.

21. Article X, Section 20/TABOR. The City and Buyer understand and acknowledge that the City is subject to Article X, § 20 of the Colorado Constitution (“TABOR”). 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, if any, 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 applicable rules, regulations, and resolutions of the City and any other applicable law.

22. 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, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the City and its officers, officials, or employees.

23. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first set forth above.

THE CITY:

Tera Stave Radloff, Mayor, authorized by
Ordinance 21-10

Date of execution: _____, 2021

ATTEST:

REVIEWED BY:

By: _____
Tobi Basile, City Clerk

By: _____
Linda Michow, City Attorney

BUYER:

Name (printed):

Its:

Date of execution: _____, 2021

STATE OF COLOADO)
) ss.
COUNTY OF _____)

This Purchase and Sale Agreement was acknowledged before me this ___ day of _____ 2021, by _____.

Witness my hand and official seal.

Notary Public

[SEAL]

EXHIBIT A

FORM OF BARGAIN AND SALE DEED

After recording return to:

BARGAIN AND SALE DEED
(Statutory Form—C.R.S. §38-30-113)

The CITY OF CASTLE PINES, a Colorado home rule municipal corporation, whose address is 360 Village Square Lane, Suite B, Castle Pines, Colorado 80108, for the consideration of Ten Thousand Five Hundred Fifty and No/100 Dollars, in hand paid, hereby sell(s) and convey(s) to HSDEVELOPMENT LLC, a Colorado limited liability company, whose address is 258 Lead Queen Drive, Castle Rock, Colorado 80108, the following real property in the County of Douglas, and State of Colorado, to wit:

Tract E, Charter Oaks, City of Castle Pines, County of Douglas, recorded on December 5, 1980 at Reception No. 261854

with all its appurtenances.

Signed this ___ day of _____, 202__.

CITY OF CASTLE PINES,
a Colorado home rule municipal corporation

By: _____
Name: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this ___ day of _____, 202__, by _____ as _____ of the CITY OF CASTLE PINES, a Colorado home rule municipal corporation.

Witness my hand and official seal.

My commission expires: _____.

Notary Public