

RESOLUTION NO. 23-13

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO, APPROVING THE DESIGNATION OF NEW MAINTENANCE DIRECTOR [PURSUANT TO THE DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE LAGAE FAMILY TRUST MINOR DEVELOPMENT]

WHEREAS, the City of Castle Pines, Colorado (“City”) is the acting Maintenance Director under the *Declaration of Easements, Covenants, Conditions and Restrictions*, dated August 25, 2020, a copy of which was recorded on August 27, 2020, at Reference No. 2020080760 (“Declaration”); and

WHEREAS, the Declaration created the role of the Approving Parties (defined in the Declaration), who have the authority, per Section 3.3 of the Declaration, to remove the Maintenance Director and to appoint a new person or entity as the Maintenance Director; and

WHEREAS, the City is one of the Approving Parties under the Declaration; and

WHEREAS, the City Council finds that it is the recommendation of City Staff that the City be removed as the Maintenance Director under the Declaration, and that the City appoint the entity CP Commercial LLC, a Colorado limited liability company (“CPC”), as the new Maintenance Director; and

WHEREAS, the City Council desires to implement the recommendation of City Staff to remove the City as the Maintenance Director under the Declaration and to appoint CPC as the new Maintenance Director.

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

Section 1. The City Council hereby: (a) approves the Designation of New Maintenance Director in substantially the same form as attached hereto and incorporated herein as **Exhibit 1**; (b) authorizes the City Attorney, in consultation with the City Manager, to make such changes as may be necessary to correct any non-material errors that do not increase any obligations of the City; and (c) authorizes the City Manager to execute the Designation.

Section 2. If any section, paragraph, clause, or provision of this Resolution is held to be invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining sections, paragraphs, clauses, or provisions of this Resolution.

Section 3. This Resolution shall take effect upon its approval by the City Council.

[Remainder of this page intentionally left blank.]

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 14th DAY OF MARCH 2023.



ATTEST:

Tobi Duffey

Tobi Duffey, MMC, City Clerk

Tracy Engerman

Tracy Engerman (Mar 22, 2023 10:56 MDT)

Tracy Engerman, Mayor

APPROVED AS TO FORM:

Linda C. Michow

Linda C. Michow, City Attorney

EXHIBIT 1
DESIGNATION OF NEW MAINTENANCE DIRECTOR
*[Pursuant to the Declaration of Easements, Covenants, Conditions and Restrictions for
the Lagae Family Trust Minor Development]*

[See attached]

DESIGNATION OF NEW MAINTENANCE DIRECTOR

[Pursuant to the Declaration of Easements, Covenants, Conditions and Restrictions for the Lagae Family Trust Minor Development]

This DESIGNATION OF NEW MAINTENANCE DIRECTOR (“Designation”) is made by and between the City of Castle Pines, Colorado, a home rule municipal corporation of the State of Colorado, 360 Village Square Lane, Suite B, Castle Pines, Colorado 80108 (“City”) and CP Commercial, LLC, a Colorado limited liability company, 5800 S. Nevada St., Littleton, Colorado 80120 (“CPC”)

RECITALS

WHEREAS, the City and CPC are the Declarant as identified in that *Declaration of Easements, Covenants, Conditions and Restrictions*, dated August 25, 2020, a copy of which was recorded on August 27, 2020, at Reference No. 2020080760 (“Declaration”); and

WHEREAS, the Declarant included within and subjected to the Declaration the real property described within the Declaration (“Property”) to establish and impose certain covenants, conditions and restrictions on the Property for the mutual and reciprocal benefit and complement of the Property, and the owners, occupants and permittees of parcels thereof; and

WHEREAS, the Declaration provides for the creation of Common Maintenance Areas (defined in the Declaration), within the Property that are for the common use of the owners, occupants or permittees of the parcels located within the Property; and

WHEREAS, the Declaration created the role of the Maintenance Director (defined in the Declaration) for the purpose of maintaining the Common Maintenance Areas of the Property in accordance with Section 3.3 of the Declaration; and

WHEREAS, the Declaration grants the Maintenance Director certain rights, obligations, and burdens associated with the maintenance of the Common Maintenance Areas including, but not limited to, the right to hire companies to perform the operation, maintenance and repair of the Common Maintenance Areas; the duty of maintaining the Common Maintenance Areas; the duty of maintaining property insurance covering the Common Maintenance Areas; the right and obligation to expend funds that are necessary for the operation, management, maintenance, repair, replacement, and insuring the Common Maintenance Areas; the obligation to create an annual budget for the maintenance and insurance costs connected to the Common Maintenance Areas, and to submit said annual budget to the Owners of Parcels within the Property for payment; and the right to collect payments from the owners of parcels in the Property for payment of the annual expenses; and

WHEREAS, the City is currently designated as and serving as the Maintenance Director under the Declaration; and

WHEREAS, the Declaration created the role of the Approving Parties (defined in the Declaration), who have the authority, per Section 3.3 of the Declaration, to remove the Maintenance Director and to appoint a new person or entity as the Maintenance Director; and

WHEREAS, the City and CPC are the Approving Parties under the Declaration; and

WHEREAS, the City and CPC both desire to remove the City as the Maintenance Director; and

WHEREAS, CPC is willing to accept the role of Maintenance Director under the Declaration, along with and not separate from all rights, liabilities, responsibilities, obligations, duties, and burdens of the Maintenance Director under the Declaration, inclusive of all past, current, and future liabilities of the Maintenance Director that exist or could exist at the time this Designation is executed by the City and CPC and that arise out of the time the City was the acting Maintenance Director; and

WHEREAS, the City is in agreement to convey to CPC the City's fee simple ownership interest in the real property known as Tract A Lagae Family Trust Minor Development, which is located within the Property, conditioned on CPC accepting the role of Maintenance Director and all rights, duties, and liabilities associated therewith; and

WHEREAS, the City and CPC, acting as the Approving Parties, believe it is in the best interest of the Property and the owners, occupants and permittees of parcels for CPC to be the Maintenance Director under the Declaration.

NOW THEREFORE, the City and CPC, for good and valuable consideration, hereby declare and agree to the following:

1. The foregoing recitals are hereby adopted and incorporated within the body of this Designation for all purposes as if setout fully herein.
2. The City is hereby removed as the Maintenance Director under the Declaration.
3. CPC is hereby named as the Maintenance Director under the Declaration.
4. CPC, by executing this Designation, agrees to act as the Maintenance Director under the Declaration and hereby accepts the rights, liabilities, responsibilities, obligations, duties, and burdens of the Maintenance Director under the Declaration, inclusive of all past, current, and future liabilities of the Maintenance Director that exist or could exist at the time this Designation is executed by the City and CPC and that arise out of the time the City was the acting Maintenance Director.
5. The City and CPC, as the Approving Parties under the Declaration, hereby approve the removal of the City and the appointment of CPC as the Maintenance Director under the Declaration.

6. This Designation shall be effective upon the date it is executed by both the City and CPC.
7. Each provision of this Designation is severable. If any provision of this Designation is declared illegal or invalid for any reason by a court of competent jurisdiction, such declaration shall not affect the remainder of this Designation.
8. Nothing in this Designation is intended to waive any protection afforded to the City by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, or any other applicable law providing immunity to the City, its officials, and employees.
9. This Designation may be executed in counterparts.
10. The undersigned individuals each represent to possess the authority required to execute this Designation on behalf of and to bind the undersigned's respective party.
11. The City and CPC acknowledge and agree that a fully executed copy of this Designation shall be recorded in the records of the Clerk and Recorder's Office for the County of Douglas, Colorado.

EXECUTED as of the date(s) indicated below.

CITY OF CASTLE PINES, COLORADO

By: _____
Michael Penny, City Manager

Date of Execution: _____

ATTEST:

APPROVED AS TO FORM:

By: _____
Tobi Duffey, MMC, City Clerk

By: _____
Linda Michow, City Attorney

CP COMMERCIAL, LLC

Signature: _____

Printed Name: _____

Title: _____

Date of Execution: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Designation of New Maintenance Director was subscribed, sworn to and acknowledged before me this ___ day of _____, 2023, by _____ as _____ of CP Commercial, LLC, a Colorado limited liability company.

My commission expires: _____

(SEAL)

Notary Public