

RESOLUTION NO. 23-39

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES,
COLORADO, APPROVING A DEVELOPMENT AGREEMENT WITH CP
COMMERCIAL, LLC**

WHEREAS, the City of Castle Pines (“City”) is authorized to enter into contracts for lawful purposes for the protection of the health, safety, and welfare of its citizens; and

WHEREAS, CP Commercial, LLC, a Colorado limited liability company (“Developer”) owns certain real property in fee simple located in the subdivision known as Lagae Family Trust Minor Development Plat, recorded in the Douglas County Clerk and Recorder’s office at reception number 2020078058, as amended by the Lagae Family Trust Minor Development Final Plat, Amendment No. 1, recorded in the Douglas County Clerk and Recorder’s office at reception number 2022055309 (“Lagae Family Parcel”); and

WHEREAS, Developer has submitted an application to the City pursuant to the City Zoning Code adopted via Ordinance No. 08-04, as amended (“Zoning Code”), for rezoning of the Lagae Family Parcel from Business zone district to a planned development titled, Parkway Plaza Planned Development, Case No. RDP-2022-002 (“Rezoning Application”), to authorize, among other things, Self-Storage Use as a permitted use only on Lots 1A and 2A, Lagae Family Trust Minor Development Final Plat, Amendment No. 1, recorded at reception number 2022055309 of the Property (the “Project”); and

WHEREAS, a criterion of approval of rezoning to planned development set forth in Section 1503.04 of the Zoning Code is whether the general impact of the rezoning would adversely impact the provision of public facilities and services; and

WHEREAS, Developer acknowledges the City’s general municipal operations and services is funded in large part by a sales and use tax imposed on taxable transaction, and that the Rezoning Application, if approved, would allow an additional non-sales tax generating use on the Property; and

WHEREAS, the Developer agrees that if such Rezoning Application is approved by the City Council via adoption of an ordinance (“Rezoning Ordinance”), the Developer, on behalf of itself and its successors and assigns, voluntarily agrees to make payments to the City based on a per storage unit fee to support the Project’s costs of providing municipal services by the City; and

WHEREAS, the City and Developer mutually agree on the terms and conditions set forth in a development agreement in substantially the same form as attached to this Resolution, and that such matters are necessary to protect, promote, and enhance the public welfare; and

WHEREAS, the City Council finds that it is in the best interest of the residents and the Castle Pines community to enter into a development agreement with the Developer for Developer’s payment of a storage unit fee to support the City’s costs of providing municipal services for the Project.

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

Section 1. The City Council hereby approves a Development Agreement between the City of Castle Pines, Colorado and CP Commercial, LLC, a Colorado limited liability company, in substantially the form as attached hereto as **Exhibit 1**; (b) authorizes the City Attorney, in consultation with the City Manager, to make such changes that do not increase the obligations of the City; and (c) 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 7 IN FAVOR AND 0 AGAINST THIS 8th DAY OF AUGUST, 2023.


Tracy Engerman (Aug 24, 2023 10:41 MDT)

Tracy Engerman, Mayor

ATTEST:



APPROVED AS TO FORM:



Tobi Duffey, MMC, City Clerk



Linda C. Michow, City Attorney

EXHIBIT 1

[see attached development agreement]

DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”) is made as of this ___ day of _____, 2023, between **CP COMMERCIAL, LLC**, a Colorado limited liability company (“Developer”), whose address is 8678 Concord Center Drive, Unit 200, Englewood, Colorado 80112, and the **CITY OF CASTLE PINES**, a Colorado home rule municipal corporation (“City”), whose address is 7501 Village Square Drive, Suite 100, Castle Pines, CO 80108.

I. GENERAL

1.1 **Purpose.** The purpose of this Agreement is to provide for certain matters in connection with the approval of the Parkway Plaza Planned Development, Case No. RDP-2022-002 (the “Parkway PD”).

1.2 **Recitals.**

(a) Developer owns certain real property in fee simple located in the subdivision known as Lagae Family Trust Minor Development Plat, recorded in the Douglas County Clerk and Recorder’s office at reception number 2020078058, as amended by the Lagae Family Trust Minor Development Final Plat, Amendment No. 1, recorded in the Douglas County Clerk and Recorder’s office at reception number 2022055309 (“Lagae Family Parcel”).

(b) Developer has submitted an application to the City pursuant to the City Zoning Code adopted via Ordinance No. 08-04, as amended (“Zoning Code”), for rezoning of the Lagae Family Parcel from Business zone district to a planned development titled, Parkway Plaza Planned Development, Case No. RDP-2022-002 (“Rezoning Application”) to authorize, among other things, Self-Storage Use as a permitted use only on Lots 1A and 2A, Lagae Family Trust Minor Development Final Plat, Amendment No. 1, recorded at reception number 2022055309 of the Property (the “Project”).

(c) Developer acknowledges that a criterion of approval of rezoning to planned development set forth in Section 1503.04 of the Zoning Code is whether the general impact of the rezoning would adversely impact the provision of public facilities and services.

(d) Developer acknowledges that the City’s general municipal operations and services is funded in large part by a sales and use tax imposed on taxable transaction, and that the Rezoning Application, if approved, would allow an additional non-sales tax generating use on the Property.

(e) If such Rezoning Application is approved by the City Council via adoption of an ordinance (“Rezoning Ordinance”), the Developer, on behalf of itself and its successors and assigns, and the City mutually agree to the terms and conditions of this Agreement.

(f) The City and Developer mutually acknowledge and agree that the matters hereinafter set forth are reasonable conditions and requirements to be imposed by the City

and are authorized under Section 1505.09 of the Zoning Code, and that such matters are necessary to protect, promote, and enhance the public welfare.

(g) The City and Developer wish to enter into this Agreement such that Developer voluntarily agrees to make payments to the City based on a per storage unit fee to support the Project's costs of providing municipal services by the City.

1.3 Term. The term of this Agreement will commence on the effective date of the Rezoning Ordinance and shall terminate upon termination of the Self-Storage Use on the Storage Property as determined by the City.

II. SELF STORAGE USE.

2.1 Self-Storage. The Parkway PD provides, as an approved use for the Property, "Self-Storage – Indoor Only" (the "Self-Storage Use"). The City, in approving the Parkway PD, expressed concerns in approving the Self-Storage Use as a change in use for the Property because of the lack of sales tax. As a condition to the approval of the Self-Storage Use, the City requires that Developer and its successors and assigns agree to the Storage Fee (as defined below). In furtherance of the foregoing, following the approval of the Parkway PD permitting the Self-Storage Use, the City agrees to pass a resolution or ordinance or similar matter imposing the Storage Tax as required by this Section.

2.2 Assessment of the Self-Storage Use Storage Fee. Upon the issuance of a certificate of occupancy for a Self-Storage Use facility on the Property or any portion thereof operating the Self-Storage Use (the "Storage Property") and for so long thereafter as the Storage Property shall be operated for the Self-Storage Use, the City shall impose and collect, in accordance with the terms of this Agreement, the Storage Fee on the Storage Property. For purposes hereof, the "Storage Fee" means an amount equal to \$0.20 per occupied storage unit per calendar day. The Storage Fee shall automatically be increased once every five years in whole cents based on the Denver-Aurora-Lakewood consumer price index calculated for each year on a cumulative five-year basis, commencing on the fifth anniversary of this Agreement and on every fifth anniversary thereafter. For avoidance of doubt, if there are 300 Self-Storage units being rented on the Storage Property in a 30-day period, the Storage Fee payable to the City for such 30-day period would be \$1,800.00.

2.3 Storage Fee Certification. Commencing in the first calendar quarter that a Self-Storage Use unit is occupied on the Storage Property, within 30 days after the last day of such calendar quarter (or portion thereof) and within 30 days after the last day of each calendar quarter thereafter, the owner or operator, if the operator is not the fee owner, of the Storage Property will deliver to the City its written statement certifying the number of calendar days and number of units occupied for the Self-Storage Use on the Storage Property during such calendar quarter (the "Certification").

2.4 Payment of Storage Fee. The Storage Fee will be calculated each calendar quarter based upon the Certification and will be payable by the fee owner, or operator, if the operator is not the fee owner, of the Storage Property concurrently with the delivery of the Certification. The City acknowledges and agrees that the owner or operator of the Storage Property may seek

reimbursement of the Storage Fee, as a rental fee or otherwise, from the tenants or occupants of the Self-Storage Use units.

2.5 Audit. The City has the right to audit the owner or operator of the Storage Property for the payments hereunder in the same manner as any other business in the City in accordance with the audit procedures set forth in Chapter 4 of the Castle Pines Municipal Code ("City Code") concerning sales and use tax collection.

2.6 Municipal Services. The City shall provide municipal services to the Storage Property in the same manner and to the same extent it provides services to other similarly situation properties within the City.

III. DEFAULTS AND REMEDIES

3.1 Default by Developer. A default by Developer shall exist as hereinafter provided if Developer or its successors and assigns breaches or fails to comply with any obligation of Developer under this Agreement.

3.2 Notice. In the event a default by Developer is believed to exist, the City shall give written notice thereof to Developer, specifying the default. Within 30 days after receiving written notice of any default, the Developer shall be required to cure the default. Except in the case of a default resulting from failure to pay money, if it is not possible to cure a default within the time period set forth above, the time for curing the default may be extended by the City if the Developer is working diligently on curing the defect.

3.3 Remedies of City. If after receipt of written notice of a default the Developer fails to cure such default within 30 days, as may be extended pursuant to Section 3.2, the City shall be entitled, but not required, to sue the Developer for recovery of any amount necessary to cure the default. The City may also seek any other right or remedy at law or in equity. The rights and remedies of the City are cumulative and the exercise by any City of a remedy shall not preclude the exercise by it, at the same or different times, of any other remedy for any other default by the Developer.

IV. MISCELLANEOUS.

4.1 No Third Party Beneficiaries. Except as herein provided, no person or entity, other than a party to this Agreement, shall have any right of action under this Agreement.

4.2 Assignability. Developer may assign its rights and obligations under this Agreement to a party who is the successor or assignee of Developer as to the Storage Property, provided that such assignment requires the assumption of all Developer's rights and obligations under this Agreement and City receives written notice of such assignment.

4.3 Notices. All notices, consents or other instruments or communications provided for under this Agreement shall be in writing, signed by the party giving the same, and shall be deemed properly given and received (a) when actually delivered and received personally, by messenger service, or by fax or telecopy delivery; (b) on the next business day after deposit for delivery in an overnight courier service such as Federal Express; or (c) three business days after

deposit in the United States mail, by registered or certified mail with return receipt requested. All such notices or other instruments shall be transmitted with delivery or postage charges prepaid, addressed to the party at the address below for that party or to such other address as such party may designate by written notice to the other party:

If to Developer: CP Commercial, LLC
c/o Ventana Capital, Inc.
8678 Concord Center Drive, Unit 200
Englewood, Colorado 80112
Attention: Tom Clark

If to the City: City of Castle Pines
7501 Village Square Drive, Suite 100
Castle Pines, CO 80108

City Attorney, City of Castle Pines
c/o 7501 Village Square Drive, Suite 100
Castle Pines, CO 80108

4.4 Further Assurances. At any time, and from time to time, upon request of either party, the other party agrees to make, execute and deliver or cause to be made, executed and delivered to the requesting party any and all further instruments, certificates and documents consistent with the provisions of this Agreement as may, in the reasonable opinion of the requesting party, be necessary or desirable in order to effectuate, complete or perfect the right of the parties under this Agreement.

4.5 Binding Effect. This Agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

4.6 Headings for Convenience. All headings and captions used herein are for convenience only and are of no meaning in the interpretation or effect of this Agreement.

4.7 No Implied Waivers. The failure by a party to enforce any provision of this Agreement or the waiver of any specific requirement of this Agreement shall not be construed as a general waiver of this Agreement or any provision herein nor shall such action act to estop the party from subsequently enforcing this Agreement according to its terms.

4.8 Severability. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, it shall not affect the validity of this Agreement as a whole or any part thereof other than the part declared to be invalid and there shall be substituted for the affected provision, a valid and enforceable provision as similar as possible to the affected provision.

4.9 No Waiver of Sovereign Immunity. Nothing contained in this Agreement shall constitute a waiver of the sovereign immunity of the City under applicable state law.

4.10 Consent to Jurisdiction and Venue. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement with respect to this Agreement shall be proper

only if such action is commenced in the District *Court* for Douglas County, Colorado. Developer expressly waives the right to bring such action in or to remove such action to any other court, whether state or federal.

4.11 Force Majeure. Neither party shall be liable for failure to perform hereunder if such failure is the result of Force Majeure and any time limit expressed in this Agreement shall be extended for the period of any delay resulting from any Force Majeure. "Force Majeure" shall mean causes beyond the reasonable control of a party such as, but not limited to, weather conditions, acts of God, strikes, work stoppages, unavailability of or delay in receiving labor or materials, faults by contractors, subcontractors, utility companies or third parties, fire or other casualty, or action of government authorities.

4.12 Entire Agreement. This Agreement, and any agreement *or* document referred to herein, constitutes the entire understanding between the parties with respect to the subject matter hereof and all other prior understandings or agreements shall be deemed merged in this Agreement.

4.13 Recording of Agreement. This Agreement will, at the expense of the Developer, be recorded against any Storage Property prior to the issuance of a certificate of occupancy for such Storage Property in the office of the Clerk and Recorder of Douglas County.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the City and the Developer have executed this **AGREEMENT** as of the dates set forth below.

CITY:

CITY OF CASTLE PINES, a Colorado municipal corporation

BY: _____
Tracy Engerman, Mayor

DATE: _____, 2023

ATTEST:

APPROVED AS TO FORM:

Tobi Duffey, MMC, City Clerk

Linda C. Michow, City Attorney

DEVELOPER:

CP COMMERCIAL, LLC, a Colorado limited liability company

By: _____

Name: _____

Title: _____

DATE: _____, 2023

STATE OF COLORADO)

COUNTY OF) ss.

The foregoing Development Agreement was acknowledged before me this ____ day of _____, 2023, by _____ as _____ of CP COMMERCIAL, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

EXHIBIT A

Lot 1A and Lot 2A, Lagae Family Trust Minor Development Final Plat, Amendment No. 1,
recorded at Reception No. 2022055309