

ORDINANCE NO. 2020-023

AN ORDINANCE APPROVING A \$1,000,000 LINE OF CREDIT WITH FIRSTBANK ON BEHALF OF THE CASTLE ROCK DOWNTOWN DEVELOPMENT AUTHORITY AND IN CONJUNCTION THEREWITH APPROVING A REVOLVING LINE OF CREDIT PROMISSORY NOTE, SALES AND PROPERTY TAX PLEDGE AGREEMENT, AND ACCOUNT PLEDGE AGREEMENT

WHEREAS, pursuant to voter authorization and Ordinance No. 2008-39, the Town of Castle Rock (the "Town") is authorized to issue debt for the Castle Rock Downtown Development Authority (the "DDA") up to \$30,000,000, with a maximum repayment cost of \$45,000,000 for DDA projects and other purposes;

WHEREAS, the Town and the DDA have determined that obtaining a line of credit is necessary and advisable to enable the DDA to accelerate the development of certain downtown projects;

WHEREAS, the Town has secured a line of credit in the amount of \$1,000,000 (the "Line of Credit") with FirstBank, Castle Rock, Colorado (the "Lender") on terms mutually acceptable to the Town and the DDA; and

WHEREAS, the Line of Credit meets the requirements of Section 31-25-807(3)(a)(II), C.R.S.

NOW, THEREFORE, IT IS ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK, COLORADO:

Section 1. Approval. The Line of Credit is hereby approved. The Revolving Line of Credit Promissory Note (the "Note") attached as *Exhibit 1*, Sales and Property Tax Pledge Agreement attached as *Exhibit 2*, and Account Pledge Agreement attached as *Exhibit 3* (collectively, the "Loan Documents") are hereby authorized and approved in substantially the form attached hereto, provided that the Loan Documents may be completed, corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance and as the Town Manager shall approve, the execution thereof being deemed conclusive approval of any such changes by the Town. The Mayor and other proper Town officials are hereby authorized to execute the Loan Documents by and on behalf of the Town. The Mayor and other proper Town officials are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance.

Section 2. Supplemental Public Securities Act. The Town Council hereby elects to apply all of Title 11, Article 57, Part 2, C.R.S. (the "Supplemental Act"), to the Loan Documents. The Note is issued under the authority of the Supplemental Act and shall so recite. Pursuant to Section 11-57-210, C.R.S., such recital shall be conclusive evidence of the validity and regularity of the issuance of the Note after its delivery for value.

Pursuant to the Supplemental Act, the Town Council hereby delegates to the Mayor or the Town Manager the independent authority to make any determination delegable pursuant to Section 11-57-205(1)(a-i), C.R.S., in relation to the Loan Documents; subject to the following parameters and restrictions: (a) the maximum principal amount of the Note shall not exceed \$1,000,000, plus all fees, charges and additional expenditures incurred by the Lender and payable by the Town under the Loan Documents; and (b) the maximum net effective interest rate on the Note shall not exceed 7.0% per annum. The delegation set forth in this Section 3 shall be effective for one year following the date of adoption of this Ordinance.

Section 3. Charter Controls. The Loan Documents are being executed and delivered pursuant to the authority of Title 31, Article 25, Part 8, C.R.S., the Supplemental Act, and the Town's home rule charter (the "Charter"). Pursuant to Article XX of the State Constitution and the Charter, all State statutes that might otherwise apply in connection with the provisions of this Ordinance and the Loan Documents are hereby superseded to the extent of any inconsistencies or conflicts between the provisions of this Ordinance and the Loan Documents authorized hereby and such statutes. Any such inconsistency or conflict is intended by the Town Council and shall be deemed made pursuant to the authority of Article XX of the State Constitution and the Charter.


Section 4. 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 5. Safety Clause. The Town 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.

APPROVED ON FIRST READING the 20th day of October, 2020 by a vote of 6 for and 0 against, after publication in compliance with section 2.02.100C of the Castle Rock Municipal Code; and


PASSED, APPROVED AND ADOPTED ON SECOND AND FINAL READING this 5th day of January, 2021 by the Town Council of the Town of Castle Rock by a vote of 7 for and 0 against.

ATTEST:



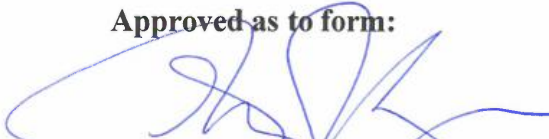
Lisa Anderson, Town Clerk

TOWN OF CASTLE ROCK




Jason Gray, Mayor

Approved as to form:



Michael J. Hyman, Town Attorney

Approved as to content:



Irish Muller, CPA, Finance Director



REVOLVING LINE OF CREDIT PROMISSORY NOTE

\$1,000,000.00

January __, 2021

FOR VALUE RECEIVED, TOWN OF CASTLE ROCK, a home rule municipality and political subdivision of the State of Colorado (“Maker”), promises to pay, solely from the sources described herein, to the order of FIRSTBANK, a Colorado state banking corporation (“Payee”), at 12345 West Colfax Avenue, Lakewood, Colorado 80215, or such other address as Payee may from time to time designate, One Million and No/100 Dollars (\$1,000,000.00), or so much thereof as may be advanced pursuant to this Note, in lawful money of the United States of America, with interest thereon from the date of this Revolving Line of Credit Promissory Note (“Note”) to and including the date this Note is paid in full, at a variable interest rate adjusted monthly, to be equal to the highest prime rate of interest published in The Money Rate Table of the Western Edition of The Wall Street Journal, as that rate may change monthly on the first day of each month, plus one percent (1.00%) per annum (the “Interest Rate”); provided, however, that the Interest Rate shall not at any time be less than five and one-quarter percent (5.25%) per annum or more than seven percent (7%). Interest shall be collected based upon a 360-day year multiplied by the actual number of days for which interest has accrued.

Payments of accrued but unpaid interest shall be due and payable on February 1, 2021, and on the 1st day of every calendar month thereafter. The entire unpaid principal balance plus all accrued and unpaid interest shall be due and payable in full without notice or demand on January 1, 2022 (“Maturity Date”).

This Note is a special and limited obligation of the Maker and payments of accrued and unpaid interest, principal, and fees hereunder are payable solely from and secured by a pledge (but not necessarily an exclusive pledge) of the Pledged Revenue (as defined in the Sales and Property Tax Pledge Agreement securing this Note) and the 2021 Revolving Line of Credit Sub-Account of the Special Fund Account (as defined below). This Note does not constitute a general debt, indebtedness, or obligation of the Maker or the State of Colorado within the meaning of any constitutional, home rule charter or statutory limitation and the full faith and credit of the Maker is not pledged for the payment of the principal of or interest on this Note.

Maker, from time to time, may request draws from Payee under this Note so long as (a) the principal amount outstanding at any time does not exceed the amounts deposited in that certain 2021 Revolving Line of Credit Sub-Account of the Special Fund Account held by the Payee (“Special Fund Account”), pledged to Payee pursuant to the Account Pledge Agreement as security for this Note (“Maximum Principal Amount”) and (b) there is no default or event of default under any indebtedness of the Maker payable to the Payee and secured by the Pledged Revenues. This Promissory Note has a revolving feature. Principal hereunder may be repaid and readvanced up to the Maximum Principal Amount.

This Note has been authorized and issued pursuant to the Maker’s power and authority as a home rule municipality under Colorado law, the Maker’s home rule charter and an ordinance of the Town Council of the Maker adopted on second reading on November __, 2020. This Note has also been authorized and issued pursuant to Title 31, Article 25, Part 8, Colorado Revised

Statutes and pursuant to Title 11, Article 57, Part 2, Colorado Revised Statutes (the “Supplemental Act”). Pursuant to Section 11-57-210 of the Supplemental Act, such recital shall be conclusive evidence of the validity and regularity of the issuance of this Note after its delivery for value. This Note is also being issued pursuant to the authority conferred at the special election held on November 4, 2008 (the “2008 Election”).

The Maker further agrees to pay on demand any expenditures made by the Payee in accordance with the Security Documents (as hereafter defined), of even date herewith, including reasonable attorneys’ fees incurred in connection with any matter pertaining hereto and/or the security pledged for this indebtedness. At the option of Payee, all such expenditures which are not paid by the Maker as and when due, may be paid by the Payee and may be added to the unpaid balance of this Note and become a part of and on a parity with the principal indebtedness secured by the Security Documents and other instruments executed in connection herewith and shall accrue interest at the lesser of the amount allowed pursuant to the 2008 Election and ten percent per annum (10%) (the “Default Rate”).

If Payee refers this Note to an attorney for collection or seeks legal advice following an Event of Default beyond all cure periods alleged under this Note, or the Payee is the prevailing party in any action instituted on this Note, or if any other judicial or nonjudicial action, suit or proceeding is instituted by Payee or any future holder of this Note, and an attorney is employed by Payee to appear in any such action or proceeding, or to reclaim, seek relief from a judicial or statutory stay, sequester, protect, preserve or enforce Payee’s interest in this Note, the Security Documents or any other security for this Note (including, but not limited to, proceedings under federal bankruptcy law, in eminent domain, under probate proceedings or in connection with any state or federal tax lien), then Maker promises to pay reasonable attorneys’ fees and reasonable costs and expenses incurred by Payee and/or its attorney in connection with the above-mentioned events. If not paid within ten (10) days after such fees become due and written demand for payment is made, such amount may be added to the then outstanding principal due under this Note.

Should any payment or installment hereunder be not paid when the same becomes due and payable, Maker recognizes that the Payee will incur extra expenses for both the administrative cost of handling delinquent payments and the cost of funds incurred by Payee after such due date as a result of not having received such payment when due. Therefore, Maker shall, in such event, without further notice, and without prejudice to the right of Payee to collect any other amounts provided to be paid herein, including default interest or to declare a default hereunder, pay to Payee to cover such expenses incurred as a result of any installment payment (but not the payment due on the Maturity Date) due being not received within ten (10) days of its due date, a “late charge” of five (5%) percent of the amount of such delinquent payment, but not less than One Hundred and no/100ths Dollars (\$100.00).

The term “Loan Documents,” as used herein, shall mean this Note and any and all documents, instruments and agreements executed by Maker evidencing, securing or relating to the indebtedness evidenced by this Note, together with all amendments thereto, including, without limitation, the following: (i) this Note; (ii) Sales and Property Tax Pledge Agreement of even date herewith between Maker and Payee; and (iii) Account Pledge Agreement (items (ii)

and (iii) are referred to as the “Security Documents”); and (iv) such other security documents securing this Note as are reasonably required by Payee. All of the terms, conditions, agreements, covenants and obligations of the Loan Documents are expressly incorporated herein by this reference.

Upon the happening of any of the following events and after sending any required notice and passage of any time period granted Maker within which to cure, if any, and at the option of the Payee, all amounts then unpaid under this Note, including interest, shall bear interest for the period beginning with the date of the happening of such event at the Default Rate as defined above, and in addition the Payee may, at its option, without prior notice and demand, except as otherwise provided herein, declare immediately due and payable the entire unpaid principal sum hereunder, together with all interest thereon, plus any other sums payable at the time of such declaration pursuant to this Note, the Security Documents, the Loan Documents and any other instrument securing this Note. An “Event of Default” means:

1. The failure of the Maker to make any payment required hereunder when due;
2. The failure of Maker to perform or observe any non-monetary term, covenant, condition or obligation contained in this Note, the Security Documents or any other Loan Documents within thirty (30) days after written notice from Payee or the passage of any time period within which to cure, if any, provided, however, that if such non-monetary default cannot be cured within thirty (30) days, Maker shall have a reasonable period of time within which to cure such default, but in no event longer than sixty (60) days, provided Maker promptly commences curative action and prosecutes such curative action diligently to completion;
3. If any material representation or warranty contained herein or in the Loan Documents or any representation to the Payee concerning the financial condition or credit standing of the Maker proves to be materially and adversely false or misleading at the time made;
4. The suffering or permitting another person or entity or governmental agency to acquire possession of any interest in, or any lien upon, any of the collateral encumbered by the Security Documents, not removed within sixty (60) days, unless such lien is released or bonded around by the Maker, or the Maker otherwise provides Payee with reasonable assurances deemed by Payee as adequate to protect Payee’s interest;
5. The filing of any petition by the Maker, or any Guarantor, under any provision of the Federal Bankruptcy Code or any state law relating to insolvency, or the filing of any such petition against the Maker, or Guarantor (“Bankruptcy Filing”), unless such Bankruptcy Filing is dismissed within sixty (60) days from the date of such appointment, or an adjudication that the Maker, or any Guarantor, is insolvent or bankrupt; provided, however, an Event of Default shall not occur if a substitute Guarantor reasonably acceptable to Payee delivers a guaranty within thirty (30) days of such Bankruptcy Filing;
6. The execution by the Maker of any assignment for the benefit of creditors;

7. The liquidation, termination or dissolution of the Maker or any Guarantor; provided, however, an Event of Default shall not occur if a substitute Guarantor who is acceptable to Payee in its reasonable discretion delivers a guaranty within thirty (30) days of such liquidation, termination or dissolution of a Guarantor;

8. The occurrence of an Event of Default and the expiration of any cure or grace periods under any of the other Loan Documents; or

9. The occurrence of an event of default and the expiration of any cure or grace periods on any other loan outstanding between Maker and Payee.

Any Event of Default under this Note which is not cured within any applicable cure period shall constitute an Event of Default under each of the other Loan Documents, and any Event of Default under any of the Loan Documents shall constitute an Event of Default hereunder and under each of the other Loan Documents. Unless otherwise provided herein, Maker shall have a period of thirty (30) days after receipt of written notice to cure any non-monetary default.

Upon the occurrence of and during the continuance of any Event of Default under this Note and the expiration of any notice and cure periods, the holder of this Note shall have the right to foreclose any security interests securing the payment hereof or collect amounts due hereunder. Failure to exercise any right granted herein upon any Event of Default shall not constitute a waiver of the right to exercise such right in the event of any subsequent or other default. If this Note is placed in the hands of an attorney for collection or if collected through court or by any other legal or judicial proceedings, Maker agrees and shall be obligated to pay, in addition to the sums referred to above, all reasonable sums for collection costs and attorneys' fees. If an Event of Default occurs and is continuing, Maker hereby: (i) agrees to offsets of any sums or property owed to it by the Payee hereof at any time; (ii) waives all offsets and all applicable exemption, valuation and appraisal rights; and (iii) expressly agrees that the acceptance by the Payee of this Note of any performance which does not strictly comply with the terms of this Note or any of the other Loan Documents shall not be deemed to be a waiver of any rights of the Payee.

Except as otherwise provided herein, the Maker waives presentment and demand for payment, notice of acceleration or of maturity, protest and notice of protest and nonpayment, bringing of suit and diligence in taking any action to collect sums owing hereunder and agrees that its liability on this Note shall not be affected by any release or change in any security for the payment of this Note or release of anyone liable hereunder. No extension of time for the payment of this Note, or any installment hereof or other modification of the terms hereof made by the Payee with any person now or hereafter liable for the payment of this Note, shall affect the original liability under this Note of the Maker, unless the Maker is a party to such agreement.

Notwithstanding any provision herein or in any of the Loan Documents to the contrary, the Maker's obligations under this Note and the other Loan Documents and shall not exceed the amounts authorized at the 2008 Election, including all other obligations that are issued pursuant

to the authority conferred at the 2008 Election.

In no event whatsoever shall the amount paid, or agreed to be paid, to the holder of this Note for the use, forbearance or retention of the money to be loaned hereunder (“Interest”) exceed the maximum amount (a) authorized at the 2008 Election and (b) permissible under applicable law, including a maximum net effective interest rate of seven percent (7%). If the performance or fulfillment of any provision hereof or of any of the Loan Documents or any agreement between Maker and the Payee of this Note shall result in Interest exceeding the limit for interest prescribed by law, then the amount of such Interest shall be reduced to such limit. If, from any circumstance whatsoever, the Payee of this Note should receive as Interest, an amount which would exceed the highest lawful rate, the amount which would be excessive Interest shall be applied to the reduction of the principal balance owing hereunder (or, at the option of the Payee, be paid over to Maker) and not to the payment of Interest.

If any provision hereof or under any of the other Loan Documents shall, for any reason and to any extent, be invalid or unenforceable, then the remainder of the document or instrument in which such provision is contained and any of the other Loan Documents shall not be affected thereby but instead shall be enforceable to the maximum extent permitted by law.

The term “Maker” as used herein shall include the original Maker of this Note and any party who may subsequently become liable for the payment hereof, as an assumer with the consent of the Payee, provided that the holder of this Note may, at its option, consider the original Maker of this Note alone as Maker unless Payee has consented in writing to the substitution of another party as maker. The term “Payee” as used herein shall mean the Payee or, if this Note is transferred, the then holder of this Note.

All notices or other written communications hereunder shall be delivered in accordance with the terms of the Sales and Property Tax Pledge Agreement.

This Note and the Loan Documents shall be construed and enforced in accordance with the laws of the State of Colorado.

WAIVER OF JURY TRIAL. MAKER AND PAYEE EACH WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER IN CONTRACT, TORT, OR OTHERWISE, BETWEEN MAKER AND PAYEE ARISING OUT OF, CONNECTED WITH, RELATED TO OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS NOTE, ANY OTHER LOAN DOCUMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION WITH ANY LOAN DOCUMENT OR THE TRANSACTIONS RELATED TO ANY LOAN DOCUMENT. MAKER AND PAYEE EACH HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

[Signatures on Following Page]

IN WITNESS WHEREOF, the undersigned has caused this Promissory Note to be executed as of the date and year above first written.

MAKER:

TOWN OF CASTLE ROCK,
a home rule municipality and political subdivision
of the State of Colorado

By: _____
Jason Gray, Mayor

ATTEST:

By: _____
Lisa Anderson, Town Clerk

(Seal)

**SALES AND PROPERTY TAX PLEDGE AGREEMENT
("Agreement")**

Date: January __, 2021

Lender's Name: FIRSTBANK (the "Lender")

Lender's Mailing Address: 12345 West Colfax Avenue
Lakewood, Colorado 80215
Attn: Jarrod Lassen

Borrower's Name: TOWN OF CASTLE ROCK
(the "Town")

Borrower's Mailing Address: 100 N. Wilcox Street
Castle Rock, CO 80104

Lender may give all notices to the Town at the above address until advised in writing by the Town to the contrary.

The Town agrees with the Lender as follows:

1. Promissory Note. This Agreement secures that certain Revolving Line of Credit Promissory Note, from the Town payable to the order of Lender in the original principal amount of not more than One Million and no/100 Dollars (\$1,000,000.00) (the "Note"). The Note evidences the obligation to repay a loan made by the Lender to the Town (the "Loan"). The Town's obligation under the Loan Documents (as defined in the Note) shall not exceed the amount authorized at the special election held on November 4, 2008, including all obligations that are issued pursuant to the authority conferred at the 2008 election.

2. Pledged Revenues. The Note shall be payable from (hereafter collectively referred to as the "Pledged Revenues"): (a) property and sales tax increment (the "TIF") as such term is used and referenced in the Plan of Development (the "Development Plan") of the Castle Rock Downtown Development Authority (the "DDA"), as approved and adopted pursuant to DDA Resolution No. 2008-01 adopted on November 20, 2008 (the "DDA Resolution") and Town Resolution No. 2008-116, adopted on December 16, 2008, as amended by Resolution No. 2015-59, adopted on July 7, 2015 (collectively, the "Town Resolutions Approving DDA Plan of Development"); and (b) the amounts of TIF annually allocated by the Town to the Special Fund Account (as defined in the Account Pledge Agreement dated of even date herewith). Pursuant to Ordinance No. 2008-33, the Town referred to the qualified electors at a special election on November 4, 2008, certain questions concerning the formation of the DDA and related matters (the "Town Election Ordinance") and the voters thereafter approved the formation. Pursuant to Ordinance No. 2008-38, the Town approved the Master Plan of the DDA (the "Town Ordinance Approving DDA Master Plan"). Pursuant to Ordinance No. 2008-39, the Town created the DDA

(the “Town Ordinance Establishing DDA”) (together with the DDA Resolution, the Town Resolutions Approving DDA Plan of Development, the Town Election Ordinance and the Town Ordinance Approving Master Plan, the “Authorizing Documents”). The Town hereby pledges and grants an irrevocable lien and security interest in and to the Pledged Revenues to secure the payment of the principal of and interest on the Note.

Notwithstanding the foregoing, pursuant to the Development Plan, as amended by the Town Resolutions Approving DDA Plan of Development, the Town’s pledge hereunder of municipal sales tax increment comprising a portion of the TIF shall be limited to the amount of municipal sales tax increment annually allocated to and paid into the special fund referred to in the Development Plan (the “Town’s Special Fund”) and such amount allocated to the Town’s Special Fund shall not be less than provided in the Development Plan. In addition to any of the Town’s Special Fund amounts securing the Loan in the Special Fund Account held by the Lender (“Special Fund Account”) pursuant to the Account Pledge Agreement between the Town and the Lender of even date herewith, and subject to the following sentence, the Town hereby agrees that it shall annually allocate and pay into the Town’s Special Fund municipal sales tax increment in an amount such that when such municipal sales tax increment is added to the property tax increment under the Development Plan, the total of the TIF on deposit in the Town’s Special Fund for any year is at least 1.0 times the debt service on all outstanding notes, bonds or other evidences of debt of the Town secured by the TIF, plus for such year, the amount equal to the outstanding amount drawn on the Note as specified further in the Account Pledge Agreement. In the event of a default hereunder or under any evidences of debt payable by the Town to Lender, or held by Lender, the Town hereby agrees to allocate and pay into the Town’s Special Fund and deliver to the Special Fund Account at the Lender all municipal sales tax increment as Pledged Revenues and shall, upon receipt of notice of default hereunder, automatically deposit such Pledged Revenues into the Town’s Special Fund and the Special Fund Account at the Lender.

The creation, perfection, enforcement, and priority of the pledge of the Pledged Revenues to secure or pay the Note as provided herein shall be governed by Section 11-57-208 of the Supplemental Public Securities Act (Title 11, Article 57, Part 2, C.R.S.) The Pledged Revenues pledged for the payment of the Note, as received by or otherwise credited to the Town, shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of the Pledged Revenues and the obligation to perform the contractual provisions made herein shall have priority over any or all other obligations and liabilities of the Town. The lien on such Pledged Revenues shall be valid, binding, and enforceable as against all persons or entities having claims of any kind in tort, contract, or otherwise against the Town irrespective of whether such persons or entities have notice of such liens.

3. Representations, Warranties, Covenants and Agreements. The Town represents, warrants, covenants, and agrees that, at all times this Agreement is in effect:

3.1 The Town has not pledged or otherwise encumbered Pledged Revenues except for: (a) the subordinate pledge provided for in the Downtown Redevelopment Reimbursement Agreement (Merchantile Commons) dated August 4, 2015, by and among the Town, the DDA and Merchantile Commons, LLC; (b) the Downtown Redevelopment Agreement

(Riverwalk) dated May 2, 2017, by and among the Town, the DDA, and CD Wilcox, LLC; and (c) the Encore CR Downtown Redevelopment and Financing Agreement dated September 3, 2019, by and among the Town, the DDA, the Town of Castle Rock Festival Park Common General Improvement District, and CD-Festival Commons, LLC, as amended by the First Amendment to the Encore CR Downtown Redevelopment and Financing Agreement, dated November 5, 2019, and the Second Amendment to the Encore CR Downtown Redevelopment and Financing Agreement, dated December 3, 2019. There are no liens or encumbrances of any kind or description on the Pledged Revenues which are superior to or on a parity with the lien on the Pledged Revenues as provided in the Loan Documents. The Town has not and shall not issue any obligations that are secured by a lien on the Pledged Revenues that is superior to the lien created hereunder to secure the Note without the express written consent of the Lender. The Town shall not issue any obligations that are secured by a lien on the Pledged Revenues or any other obligation, reimbursement, or rebate agreements that is on parity with the lien thereon of the Note, this Agreement and the Account Pledge Agreement without the express written consent of the Lender. The Town is permitted to issue obligations that are secured by a lien on the Pledged Revenues or other reimbursement or rebate obligations, so long as all such obligations are subordinate to the lien thereon created by this Agreement and the Account Pledge Agreement upon notice to the Lender and provided the pledge or other agreement with the subordinate lienholder or other party includes an agreement and acknowledgement from each subordinate lienholder or other party and the Town that: (a) such pledge, security interest in, lien on, or other right in or to the Pledged Revenues is subordinate to the pledge, security interest or lien on the Pledged Revenues granted in this Agreement and the Account Pledge Agreement and (b) Lender is a third-party beneficiary of the agreement and acknowledgement in (a) above.

3.2 The Town shall, to the extent permitted by law, defend the validity and legality of the Authorizing Documents, and the Pledged Revenues against all claims, suits and proceedings which would materially diminish or impair the Pledged Revenues. The Town shall not amend the Authorizing Documents in such a manner that would materially diminish the Pledged Revenues without the prior written consent of the Lender.

3.3 There is not pending or threatened in writing any suit, action or proceeding against or affecting the Town before or by any court, arbitrator, administrative agency or other governmental entity which affects the validity or legality of the Authorizing Documents or the imposition and collection of the Pledged Revenues and the Town has the right to pledge the Pledged Revenues and enter into this Agreement without the consent of any other party.

3.4 The Town shall promptly furnish to the Lender any financial information regarding the Town or information regarding the Pledged Revenues as the Lender shall reasonably request, which information shall be in such form and detail as the Lender may specify.

3.5 The Town shall maintain the Special Funds Account at the Lender of all of the Pledged Revenues described in section 2(b) above and any additional amounts in section 2 required to be deposited in the Special Funds Account upon an event of default.

3.6 The amount of any payment made or the cost of any action taken by the Lender pursuant to the terms of this Agreement shall be promptly paid by the Town to the Lender, shall be added to the Note secured hereby, and shall bear interest at the highest rate specified in the Note secured hereby from the date incurred by the Lender until paid. No such act done or amount paid by the Lender shall be deemed to constitute a waiver of any default of the Town.

4. Default and Rights of the Lender.

4.1 Occurrence of any one of the following events shall constitute an “Event of Default” under this Agreement after ten (10) days opportunity to cure a monetary default and after written notice to the Town and thirty (30) days opportunity to cure a non-monetary default:

a. Breach, failure of payment or performance, or default by the Town of or under any of the terms, conditions, or covenants of this Agreement, the Note, or the Account Pledge Agreement, each of even date herewith.

b. The Town makes an assignment for the benefit of creditors, or a receiver, liquidator, or trustee is appointed for the Town or any of its property.

c. Any proceeding under any insolvency or bankruptcy law is instituted by or against the Town or any action is taken to realize upon or any proceeding is instituted to foreclose any security interest, lien or right of any kind against the Pledged Revenues.

4.2 Upon the happening and continuance of an Event of Default, the Lender may protect and enforce its rights hereunder by proper legal or equitable remedy deemed most effectual, including mandamus, specific performance of any covenants, the appointment of a receiver (the consent of such appointment being hereby granted), injunctive relief, or requiring the Town Council to act as if it were the trustee of an express trust, or any combination of such remedies. The Lender may exercise any of the rights and remedies of a creditor under the Uniform Commercial Code as in force in the State of Colorado on the date hereof (“UCC”), any other law, or any court rule and/or take any one or more of the actions specified below (which rights and remedies are cumulative):

a. Exercise any right or action set forth herein or in the Note and the Account Pledge Agreement.

b. Institute legal proceedings to foreclose the lien and security interest described herein; recover judgment on the Note.

4.3 Proceeds received by the Lender from exercising its remedies hereunder may be applied by the Lender first to the reasonable expense of exercising such remedies, including reasonable attorneys’ fees and legal expenses incurred, and then to the satisfaction of the Note. After such application and any further application required by law, the Town shall remain liable to the Lender for any deficiency.

5. Freedom to Deal with Pledged Revenues and Note. The Town agrees that the Lender may, without notice or liability to the Town: (a) release any security for the Note which has been provided by the Town before or after maturity of the Note; (b) enforce its rights as to any of the Pledged Revenues covered by this Agreement without being obliged to first do so as to any other security; (c) allow the Town to create additional obligations secured hereby; (d) and/or extend, renew, modify, or make any accommodations with regard to the Note.

6. Attorneys' Fees and Costs. All expenses incurred by the Lender in protecting, maintaining, and enforcing the Note and all expenses, including reasonable attorneys' fees and legal expenses, incurred by the Lender in seeking to collect or enforce any rights to or under the Pledged Revenues and, in case of default, incurred by the Lender in seeking to enforce its rights hereunder (including participating or taking action in any bankruptcy or other insolvency proceeding of the Town) shall be immediately reimbursed to the Lender by the Town and shall be part of the Note secured by this Agreement.

7. Miscellaneous. The paragraph headings used in this Agreement are for convenience only and shall not be used in the interpretation hereof. Nothing in this Agreement shall waive or restrict any right of the Lender granted in any other document or by law. No delay on the part of the Lender in the exercise of any right or remedy shall operate as a waiver. No single or partial exercise by the Lender of any right or remedy shall preclude any other future exercise of that right or remedy or the exercise of any other right or remedy. No waiver or indulgence by the Lender of any default shall be effective unless in writing and signed by the Lender, nor shall a waiver on one occasion be construed as a bar to or waiver of that right on any future occasion. Acceptance of partial or late payments owing on the Note at any time shall not be deemed a waiver of any default. All rights, remedies and security granted to the Lender herein are cumulative and in addition to other rights, remedies or security which may be granted elsewhere or by law. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. If any provision hereof shall be declared invalid or illegal it shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of the provision or the remaining provisions of this Agreement. Notice from the Lender to the Town shall be deemed given if faxed to the Town or sent by Federal Express or sent by hand and addressed to the Town's address set forth at the beginning of this Agreement or such other address as the Town may designate for itself by like notice to the Lender. Any reference to the Lender shall include any holder of the Note and any holder shall succeed to the Lender's rights under this Agreement. This Agreement shall bind the respective heirs, personal representatives, successors and assigns of the Town.

This Agreement shall remain in full force and effect, and the Lender's security interest in the Pledged Revenues and all rights of the Lender and duties of the Town described herein shall continue in full force and effect until the Note secured hereby is paid in full. This Agreement has been executed in Colorado, and is governed by Colorado law.

If any payment applied by the Lender to the Note is subsequently set aside, recovered, rescinded or otherwise required to be returned or disgorged by the Lender for any reason (pursuant to bankruptcy proceedings, fraudulent conveyance statutes, or otherwise), the Note to

which the payment was applied shall for the purposes of this Agreement be deemed to have continued in existence, notwithstanding the application, and shall be secured by the Pledged Revenues as fully as if the Lender had not received and applied the payment.

8. WAIVER OF JURY TRIAL. THE TOWN AND THE LENDER EACH HEREBY KNOWINGLY AND VOLUNTARILY, WITHOUT COERCION AND AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, WAIVE ALL RIGHTS TO A TRIAL BY JURY OF ALL DISPUTES BETWEEN THEM ARISING OUT OF THIS AGREEMENT OR ANY OF THE NOTE. NEITHER THE TOWN NOR THE LENDER SHALL SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THIS WAIVER OF JURY TRIAL MAY NOT BE MODIFIED IN ANY RESPECT OR RELINQUISHED BY EITHER PARTY EXCEPT IN A WRITTEN INSTRUMENT EXECUTED BY BOTH PARTIES.

[Signatures on following page]

IN WITNESS WHEREOF, the Town and Lender have signed this Agreement as of the date and year first set forth above.

TOWN:

TOWN OF CASTLE ROCK,
a home rule municipality and political subdivision
of the State of Colorado

By: _____
Jason Gray, Mayor

(Seal)

ATTEST:

Lisa Anderson, Town Clerk

APPROVED AS TO FORM:

Michael J. Hyman, Town Attorney

LENDER:

FIRSTBANK,
a Colorado banking corporation

By: _____
Jarrod Lassen, President – Douglas County

ACCOUNT PLEDGE AGREEMENT

THIS ACCOUNT PLEDGE AGREEMENT (the “Agreement”) is entered into and effective as of December ___, 2020 (“Effective Date”), between TOWN OF CASTLE ROCK, a home rule municipality and political subdivision of the State of Colorado (“Pledgor”) and FIRSTBANK, a Colorado state banking corporation (“Pledgee”).

RECITALS

A. Pledgor has executed or will execute a Promissory Note of even date herewith, payable to the order of Lender in an amount not to exceed \$1,000,000.00 (“Note”). Terms not otherwise defined in this Agreement shall have the meanings ascribed to such terms as set forth in the Note.

B. In consideration of the loan evidenced by the Note, Pledgor has agreed to grant to Pledgee a security interest in all rights of Pledgee with respect to a deposit account (described below), held by Pledgee on the following terms and conditions:

AGREEMENT

NOW, THEREFORE, in partial consideration of Pledgee entering into the Loan Agreement, for the benefit of Pledgor and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Debt Service and Special Fund Deposit Account. Upon the execution of this Agreement, Pledgor will have on deposit with, and located at Pledgee, the certain deposit account described in the attached Exhibit A (“Special Fund Account”) in which Pledgor shall have on deposit in the 2021 Revolving Line of Credit Sub-Account of the Special Fund Account at least so much as the principal amounts drawn on the Note. The funds in the 2021 Revolving Line of Credit Sub-Account of the Special Fund Account may be withdrawn but shall never be less than the amount equal to the principal outstanding on the Note. The total in the Special Fund Account shall never be less than all amounts required pursuant to all loan documents relating to the Note, and any other indebtedness between the Town and Pledgee. The funds in the 2021 Revolving Line of Credit Sub-Account of the Special Fund Account shall bear interest at the standard applicable rate offered by the Pledgee to said accounts, which shall become part of the 2020 Revolving Line of Credit Sub-Account of the Special Fund Account.

2. Collateral. Pledgor hereby pledges, assigns and hypothecates to Pledgee all of Pledgor’s right, title and interest in the 2021 Revolving Line of Credit Sub-Account of the Special Fund Account, and including interest, fees and costs in the 2021 Revolving Line of Credit Sub-Account of the Special Fund Account (the foregoing, the “Collateral”); provided, however, that the amounts on deposit in the 2021 Revolving Line of Credit Sub-Account of the Special Fund Account shall secure only the payment of the Note and no other obligations between Pledgor and Pledgee except as agreed to in writing by the Pledgee.

3. Obligations Secured. This Agreement shall secure the following obligations (the “Obligations”):

- a. Any indebtedness existing under the terms of the Note;
- b. Payment, performance and observance by Pledgor of each covenant, condition, provision and agreement contained in the Note or the related Loan Documents (as defined in the Note) or to preserve any right of Pledgee thereunder;
- c. Payment, performance and observance by Pledgor of each covenant, condition, provision and agreement contained herein or to preserve any right of Pledgee hereunder, or to protect or preserve the Collateral or any party thereof.

4. Covenants and Warranties of Pledgor. Pledgor hereby warrants and covenants to Pledgee the following:

- a. Pledgor is the owner of 100% of the Collateral, free and clear of any prior liens, security interests, claims or encumbrances. Pledgor shall defend the Collateral against all claims and demands of any persons at any time claiming the same or any interest therein.
- b. No certificate, instrument or document has been issued to Pledgor or any other person or entity to evidence ownership rights of any kind in or to the Special Fund Account.
- c. Pledgor will not sell or offer to sell or otherwise transfer or encumber the Collateral or any interest therein without the prior written consent of Pledgee, in its sole discretion.

5. Balance of Account. Pledgor agrees that Pledgee shall be entitled to withdraw and collect any loan fees (as enumerated in the Note) from the 2021 Revolving Line of Credit Sub-Account of the Special Fund Account, in its sole discretion.

6. Further Assurances. As of and after the date of this Agreement, Pledgor shall provide to Pledgee a copy of any written or other communications or information that Pledgor receives from any person or entity regarding the Special Fund Account within five (5) days after receipt thereof by Pledgor. Pledgor shall execute and deliver to Pledgee irrevocable transfer powers and financing statements or other documents and instruments as reasonably required or requested by Pledgee to establish, maintain and perfect its security interest in the Collateral or to collect, repossess or foreclose upon the same or to preserve any of the Collateral.

7. Indemnity. To the extent permitted by law and subject to annual appropriation by the Pledgor’s Town Council, Pledgor shall indemnify, defend and hold Pledgee harmless from and against all claims, actions, demands, loss, cost, liability or expense (including, but not limited to, reasonable attorneys’ fees and court costs) incurred in connection with any action taken by Pledgee pursuant to this Agreement or asserted against Pledgee in connection with the Collateral.

8. Events of Default. Any failure of the Pledgor to timely perform or observe any term, covenant, condition or Obligation contained herein or in the Note or other Loan Documents shall constitute an “Event of Default.”

9. Rights Upon Default. Upon an Event of Default and any time thereafter, Pledgee may take the Collateral and apply it to amounts due and owing under the Note and provide Pledgor with notice as to the disposition of the Collateral in order to satisfy any of the Obligations to the extent owed to Pledgee. Upon the occurrence and continuation of an Event of Default, Pledgor acknowledges and agrees that it may not withdraw any amounts from the 2020 Revolving Line of Credit Sub-Account of the Special Fund Account, except upon the prior written consent of Pledgee. Pledgee shall have the rights and remedies of a secured party under Article 9 of the Colorado Uniform Commercial Code or other applicable law, and all rights provided herein and in the Loan Agreement shall be cumulative to the fullest extent permitted by law.

10. Remedies Cumulative. All of the remedies afforded to Pledgee by reason of this Agreement, the Note, or the other Loan Documents and under the laws of the State of Colorado are separate and cumulative remedies. It is agreed that no one such remedy shall be deemed to be exclusive of any other remedy and shall not in any manner limit or prejudice any other legal or equitable remedy which Pledgee may have. All remedies may be exercised concurrently, consecutively or simultaneously.

11. Notice. Any notice, request, demand, statement or consent made hereunder shall be in writing and shall be personally delivered, sent by overnight courier providing documentation of receipt or sent by registered or certified mail, return receipt requested, and shall be deemed given when personally delivered, when received by overnight courier or three days after deposit in the United States Mail, postage prepaid and properly addressed to the other party at its address as set forth in the Loan Agreement. Each party may designate a change of address by notice to the other party in accordance with this section.

12. Term. This Agreement shall terminate on the date that all obligations of Pledgor under the Note and the Loan Agreement are paid in full.

13. General Provisions.

a. No waiver by Pledgee of any Event of Default shall operate as a waiver of any other Event of Default or of the same Event of Default on a future occasion. Pledgee's acceptance of this Agreement shall not impair any other security Pledgee may have or acquire for the payment of the Obligations secured, nor shall the taking of any additional security waive or impair this Agreement. Pledgee shall retain any rights of setoff against Pledgor.

b. This Agreement may not be modified, amended, changed, discharged or terminated orally, but only by an agreement signed in writing by the party against whom enforcement of the modification, amendment, change, discharge or termination is sought.

c. If any term, covenant or provision of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such term, covenant or provision to the fullest extent permitted by law.

d. This Agreement shall be governed and construed in accordance with the laws of the state of Colorado applicable to contracts made in and to be performed in the state of Colorado.

e. All of the rights of Pledgee hereunder shall inure to the benefit of its successors and assigns. All the promises and duties of Pledgor shall bind and inure to the benefit of Pledgor's successors and assigns.

f. A carbon or photographic reproduction of this Agreement may be filed or recorded as a financing statement.

14. Counterparts. This Agreement may be executed in any number of original or facsimile counterparts, each of which shall constitute an original, but all of which, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

PLEDGOR:

TOWN OF CASTLE ROCK,
a home rule municipality and political subdivision
of the State of Colorado

By: _____
Jason Gray, Mayor

ATTEST:

Lisa Anderson, Town Clerk

APPROVED AS TO FORM:

Michael J. Hyman, Town Attorney

(SEAL)

PLEDGEE:

FIRSTBANK,
a Colorado state banking corporation,

By: _____
Jarrod Lassen, President - Douglas County

EXHIBIT A
SPECIAL FUNDS ACCOUNT

Account No. 285-129-1356