

RESOLUTION NO. 2018-102

A RESOLUTION APPROVING THE TOWN OF CASTLE ROCK/CASTLE ROCK
URBAN RENEWAL AUTHORITY 2019 LOAN AGREEMENT

WHEREAS, formation of the Castle Rock Urban Renewal Authority ("CRURA") was approved by the Town Council on June 4, 2013; and

WHEREAS, by State statute, the CRURA Board of Commissioners is required to develop, adopt, and complete an annual budget to administer the program; and

WHEREAS, the CRURA wishes to enter into a loan agreement with the Town of Castle Rock to provide start-up funding to support the CRURA program until such time as Tax Increment Funding is generated and distributed to CRURA and the loan paid back in full to the Town of Castle Rock.

NOW, THEREFORE BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK, COLORADO AS FOLLOWS:

Section 1. Approval. The Town Council hereby approves the Town of Castle Rock/Castle Rock Urban Renewal Authority 2019 Loan Agreement, in the form attached as *Exhibit 1*. The Mayor and other proper Town officials are authorized to execute the Loan Agreement by and on behalf of the Town of Castle Rock, Colorado.

PASSED, APPROVED AND ADOPTED this 6th day of November, 2018 by the Town Council of the Town of Castle Rock, Colorado, on first and final reading by a vote of 6 for and 0 against.

ATTEST:

TOWN OF CASTLE ROCK



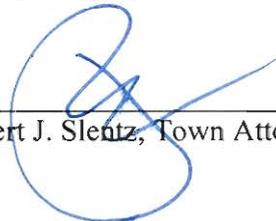
Lisa Anderson, Town Clerk



Jennifer Green, Mayor

Approved as to form:

Approved as to content:



Robert J. Slenitz, Town Attorney



Bill Detweiler, Director of Development Services



**TOWN OF CASTLE ROCK/CASTLE ROCK URBAN
RENEWAL AUTHORITY
2019 LOAN AGREEMENT**

DATE: November 6, 2018.

PARTIES: **CASTLE ROCK URBAN RENEWAL AUTHORITY**, 100 Wilcox Street, Castle Rock, Colorado 80104 ("CRURA").

TOWN OF CASTLE ROCK, a Colorado home rule corporation, 100 Wilcox Street, Castle Rock, Colorado 80104 ("Town").

RECITALS:

WHEREAS, the CRURA desires to borrow \$24,000 from the Town in order to operate in 2019 ("2019 Loan") since the tax increment financing has not commenced within the Castle Rock Urban Renewal Area.

WHEREAS, the Town and CRURA are parties to existing Loan Agreements dated December 2, 2014 and November 21, 2017 and the terms of such Loan Agreements do not affect the terms of the 2019 Loan between the Parties,

WHEREAS, the Town has designated funds for the CRURA, and accordingly the Town is willing to loan \$24,000 for new development upon the terms and conditions set forth in this Loan Agreement.

NOW, THEREFORE, in consideration of the foregoing and these mutual promises, the parties agree and covenant as follows:

Section 1. Loan. Town shall loan to the CRURA \$24,000 in 2019. Funding may be advanced by the Town to the CRURA through December 31, 2019, to be used by the CRURA for costs incurred by the CRURA for its staffing and consultants in connection with review, processing, and conducting public hearings for any urban renewal project. Such amounts shall be paid directly to the CRURA by the Town. Any amounts so advanced by the Town shall be a second priority obligation only to the debt issued by CRURA. Disbursement of the Loan proceeds is addressed in Section 6, below.

Section 2. Promissory Note. The Loan to the CRURA at Closing shall be evidenced by a Promissory Note ("Note") of the CRURA payable to the Town. The Note may not be assigned by the CRURA.

Section 3. Interest. Interest on the outstanding principal balance of Note shall accrue at a variable per annum rate equivalent to the Town's inter-fund borrowing rate ("IBR"), the average earnings rate for investments as calculated by the Town's investment broker, in effect on each anniversary date of the Note plus one-half point (50 basis points), but in any event not to exceed 3.0 percent per annum. However, for the first year of the Loan the interest rate shall be

fixed at 1.5 percent, irrespective of the IBR. Thereafter, the interest rate shall be reset on each anniversary date of the Note and such reset rate shall be the rate applied to the outstanding principal to determine the interest due with the following annual installment payment. The Town's IBR is defined as the prior calendar year interest rate yield as calculated by the Town's year-end investment portfolio statement for existing Town funds (to illustrate the IBR methodology, the Town interest rate yield for 2013 was .7%).

Section 4. Note Payments The Note is payable in equal annual principal installments commencing after the fourth year the date of the Note. The annual principal installment shall be \$2,000. Each annual installment payment shall consist of the principal payment together with accrued interest then due and owing. The first annual installment of principal and interest shall be payable on December 31, 2020, with successive annual installments due each subsequent December 31, until December 31, 2030, at which time the remaining balance due under the Note shall be due and payable. The Note may be prepaid in whole at any time without penalty.

All payments of the Note by the CRURA (including prepayments) shall be made without setoff or counterclaim to the Town at the office of the Town, or such other location which may from time to time be designated in writing by the Town on the due date. If any payment under the Note becomes due and payable on a day other than a day on which banking institutions in the Town of Castle Rock, Colorado are authorized by law to be open for business (a "Business Day"), then payment shall be due and payable on the next succeeding Business Day.

Section 5. Conditions Precedent The obligation of the Town to make the Loan shall be subject to the fulfillment prior to or contemporaneously with the making of such Loan of the following conditions precedent: (a) the Loan Agreement and the Note (collectively, the "Loan Documents") shall have been approved and executed and delivered by the respective parties; and (b) all proceedings and all other documents and legal matters in connection with the transactions contemplated by this Loan Agreement and the other Loan Documents shall be satisfactory in form and substance to the Town and its counsel, the CRURA, and its Board of Commissioners.

Section 6. Closing and Disbursement Upon satisfaction the conditions under Section 5, above, the parties shall schedule a Loan closing ("Closing") at a mutually acceptable date and time at the Town offices. At Closing, the CRURA shall tender a fully executed Note and any other applicable Loan Documents. The loan disbursement of \$24,000 shall be disbursed to the Authority upon approval of this loan agreement by the Town Council.

Section 7. TABOR Compliance The parties do not intend that the Loan Documents create multiple fiscal year obligations of the CRURA under Article X, Section 20 of the Colorado Constitution. Accordingly, the obligation of the CRURA to make the annual installment payments under the Loan Documents shall be subject to annual appropriation by the CRURA.

Section 8. Required Insurance During the term of this Loan Agreement, CRURA shall maintain in full force and effect liability and casualty insurance for any project until completion with the coverage limits and conditions as the Town maintains under its umbrella insurance policy.

Section 9. Events of Default Upon the occurrence of any of the following events:

(a) the CRURA shall fail to pay the principal of or interest on the Note, or any other amount payable hereunder, when due, whether by acceleration or otherwise; or

(b) the CRURA is in default of any other provision of the Loan Documents and such default is not cured within 30 days after written notice of such default from Town; provided, however, if such default is not reasonably capable of being cured, then the CRURA shall have such additional period of time as shall be reasonably required to cure such default, provided the CRURA promptly commences and diligently pursues such cure;

(c) then the Loan with accrued interest thereon, shall immediately become due and payable in full, and all amounts owing under this Loan Agreement shall be due and payable in full.

Section 10. Amendments and Waivers No amendments to this Loan Agreement or any other Loan Document shall be effective without a written agreement signed by authorized officers of both the Town and the CRURA Board. No waiver of any provision of this Loan Agreement or any other Loan Document shall be effective without a written waiver signed by an authorized officer of the party making such waiver.

Section 11. Notices Except as otherwise provided herein, all notices, requests, and demands to or upon the respective parties hereto to be effective, shall be transmitted in writing by hand delivery, by first class certified or registered mail, or by overnight courier service, addressed to the Town or the CRURA, as the case may be, at the address for such party as set forth above or at such other address as may be subsequently submitted by written notice of either party. Notices shall be deemed to have been given when received by the party to whom directed.

Section 12. No Waiver; Remedies Cumulative No failure to exercise and no delay in exercising on the part of the Town any right, remedy, power or privilege under this Loan Agreement or the other Loan Documents, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege under this Loan Agreement or any other Loan Document preclude any other or further exercise thereof; nor shall any single or partial exercise of any right, remedy, power or privilege under this Loan Agreement or any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. Each party shall be entitled to pursue any and all legal remedies and recover its reasonable attorney's fees and costs in such legal action.

Section 13. Survival All representations and warranties made under this Loan Agreement and the other Loan Documents and in any document, instrument, or certificate delivered pursuant thereto or in connection therewith shall survive the execution and delivery of the Note.

Section 14. No Partnership or Joint Venture This Agreement does not create any legal relationship between the parties other than that of debtor and creditor. Accordingly, the CRURA expressly agrees to indemnify and hold harmless Town or any of its officers or employees

from any and all claims, damages, liability, or court awards including attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including, but not limited to, any person, firm, partnership, or corporation, to the extent caused by the negligence or willful misconduct of CRURA or any of its employees or agents. In the event that any such suit or action is brought against Town, Town will give notice within ten (10) days thereof to CRURA.

Section 15. Miscellaneous Section or paragraph headings in this Loan Agreement are for convenience of reference only and do not affect the rights or obligations of any party hereto. In the event that any one or more of the provisions contained in this Loan Agreement or any other Loan Document shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions in this Loan Agreement or such other Loan Document. This Loan Agreement together with the exhibits hereto, and those portions of the Loan Documents incorporated by reference herein, embody the entire agreement and understanding between the parties hereto and supersede all other agreements and Understandings relating to the subject matter hereof.

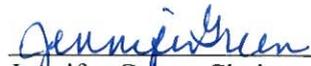
CRURA:

ATTEST:

**CASTLE ROCK URBAN RENEWAL
AUTHORITY**

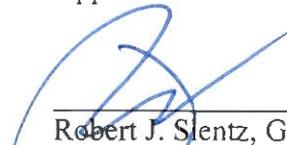


Lisa Anderson, Secretary



Jennifer Green, Chair

Approved as to form:



Robert J. Slentz, General Counsel

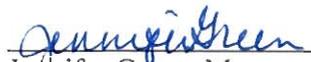
TOWN:

ATTEST:

TOWN OF CASTLE ROCK



Lisa Anderson, Town Clerk



Jennifer Green, Mayor

Approved as to form:



Robert J. Slentz, Town Attorney



PROMISSORY NOTE

\$24,000

Date: November 6, 2018

FOR VALUE RECEIVED, Castle Rock Urban Renewal Authority, ("Borrower") promises to pay to the order of Town of Castle Rock, a Colorado home rule municipal corporation, ("Lender"), the principal sum of Twenty-four thousand Dollars (\$24,000), or so much thereof, as may be disbursed to Borrower by Lender pursuant to that certain Loan Agreement dated November 6, 2018.

INTEREST: Interest on the outstanding principal balance of Note shall accrue at a variable per annum rate equivalent to the Town's inter-fund borrowing rate ("IBR"), the average earnings rate for investments as calculated by the Town's investment broker, in effect on each anniversary date of the Note plus one-half point (50 basis points), but in any event not to exceed 3.0% per annum. However, for the first year of the Loan the interest rate shall be fixed at 1.5%, irrespective of the IBR. Thereafter the interest rate shall be reset on each anniversary date of the Note and such reset rate shall be the rate applied to the outstanding principal to determine the interest due with the following annual installment payment. The Town's IBR is defined as the prior calendar year interest rate yield as calculated by the Town's year-end investment portfolio statement for existing Town funds. (To illustrate the IBR methodology, the Town interest rate yield for 2013 was .7%.)

NOTE PAYMENTS: The Note is payable in 10 equal annual principal installments. Assuming the CRURA draws the full Loan amount of \$24,000 the annual principal installment shall be \$2,000. If the principal amount drawn under the Loan is less than \$24,000 the annual principal installment shall be 10% of the amount drawn under the Loan. Each annual installment payment shall consist of the principal payment together with accrued interest then due and owing. The first annual installment of principal and interest shall be payable on December 31, 2019, with successive annual installments due each subsequent December 31. The Note may be prepaid in whole at any time without penalty.

All payments of the Note by the CRURA (including prepayments) shall be made without setoff or counterclaim to the Town at the office of the Town, or such other location which may from time to time be designated in writing by the Town on the due date. If any payment under the Note becomes due and payable on a day other than a day on which banking institutions in the Town of Castle Rock, Colorado are authorized by law to be open for business (a "Business Day"), then payment shall be due and payable on the next succeeding Business Day.

DEFAULT: Upon the occurrence of any of the following events:

- a) the CRURA shall fail to pay the principal of or interest on the Note, or any other amount payable hereunder, when due, whether by acceleration or otherwise; or
- b) the CRURA is in default of any other provision of the Loan Documents and such default is not cured within 30 days after written notice of such default from Town;
provided, however, if such default is not reasonably capable of being cured then the CRURA shall have such additional period of time as shall be reasonably required to cure such default provided the CRURA promptly commences and diligently pursues such cure; then the Loan with accrued interest thereon, shall immediately become due and payable in full, and all amounts owing under this

Loan Agreement shall be due and payable in full. However, in the event of such default, the Town's remedies are listed in the No Waiver; Remedies Cumulative section below.

No Waiver: Remedies Cumulative. No failure to exercise and no delay in exercising on the part of the Town any right, remedy, power or privilege under this Loan Agreement or the other Loan Documents, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege under this Loan Agreement or any other Loan Document preclude any other or further exercise thereof; nor shall any single or partial exercise of any right, remedy, power or privilege under this Loan Agreement or any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. Each party shall be entitled to pursue any and all legal remedies and recover its reasonable attorney's fees and costs in such legal action.

ANNUAL APPROPRIATION: Notwithstanding any provision of this Note, Borrowers obligation to make any payment under this Note is subject to annual appropriation.

Borrower hereby waives demand, presentment, notice of dishonor, diligence in collecting, grace and notice of protest.

BORROWER:

CASTLE ROCK URBAN RENEWAL AUTHORITY, an Urban
Renewal Authority duly organized and existing under Part 8 of Article 24, Title 31, C.R.S.

ATTEST:

CASTLE ROCK URBAN RENEWAL
AUTHORITY

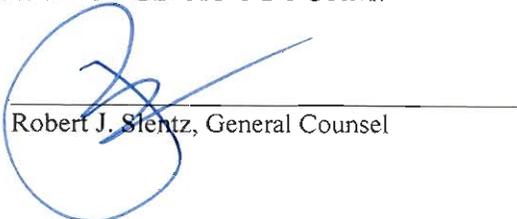


Lisa Anderson, Secretary



Jennifer Green, Chair

APPROVED AS TO FORM:



Robert J. Stentz, General Counsel

APPROVED AS TO CONTENT:



Dave Corliss, Town Manager