

ORDINANCE NO. 2016-028

AN ORDINANCE APPROVING A TWO MILLION FIVE HUNDRED THOUSAND DOLLAR TERM LOAN WITH FIRSTBANK ON BEHALF OF THE CASTLE ROCK DOWNTOWN DEVELOPMENT AUTHORITY AND IN CONJUNCTION THEREWITH APPROVING A PROMISSORY NOTE, SALES AND PROPERTY TAX PLEDGE AGREEMENT, AND ACCOUNT PLEDGE AGREEMENT; AND PROVIDING FOR ITS EMERGENCY ADOPTION ON SECOND AND FINAL READING

WHEREAS, pursuant to voter authorization and Ordinance No. 2008-39, the Town is authorized to issue debt for the Castle Rock Downtown Development Authority (“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 DDA have determined that obtaining a term loan is necessary and advisable to enable the DDA to fund certain projects in the downtown;

WHEREAS, the Town has secured a ten-year term loan (the “Term Loan”) with FirstBank, Castle Rock, Colorado (the “Lender”) on terms mutually acceptable to Town and DDA;

WHEREAS, the Term Loan meets the requirements of C.R.S. §31-25-807(3)(a)(II); and

WHEREAS, it is necessary to adopt this Ordinance on an emergency basis on second and final reading to allow for the encumbrance of sufficient funds to enter into the construction contract for Festival Park.

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

Section 1. Approval. The Term Loan is hereby approved. The Promissory Note (the “Note”) attached as *Exhibit 1*, Sales and Property Tax Pledge Agreement in the form 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 of Castle Rock, Colorado at such time as the Loan Documents are finalized for execution. 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; Parameters. The Town Council hereby elects to apply all of Title 11, Article 57, Part 2, Colorado Revised Statutes (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 Colorado Revised Statutes, 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) of the Supplemental Act, in relation to the Loan Documents, and to execute a Sale Certificate setting forth such determinations, without any requirement that the Town Council approve such determinations, subject to the following parameters and restrictions: (a) the maximum principal amount of the Note shall not exceed \$2,500,000, plus all fees, charges and additional expenditures incurred by the Lender and payable by the Town under the Loan Documents; (b) the initial interest rate on the Note shall not exceed 4.58% per annum; and (c) the maximum net effective interest rate on the Note shall not exceed 7.0% per annum.. The delegation set forth in this Section 2 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, Colorado Revised Statutes, the Supplemental Act and pursuant to 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. Emergency Clause. For the reasons stated in the recitals to this Ordinance, it is declared that an emergency exists and it is necessary for the immediate preservation of the public peace, health or safety for this Ordinance to take effect upon its adoption. Accordingly, this Ordinance shall take effect upon its adoption.

Section 6. 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 this 6th day of September, 2016 by a vote of 6 for and 0 against, after publication in compliance with Section 2.02.100.C of the Castle Rock Municipal Code; and

PASSED, APPROVED AND ADOPTED AS AN EMERGENCY ORDINANCE ON SECOND AND FINAL READING this 20th day of September 2016, by a vote of the Town Council of the Town of Castle Rock, Colorado of ____ for and ____ against constituting the extraordinary majority required by Section 2.02.100 of the Castle Rock Municipal Code.

ATTEST:

TOWN OF CASTLE ROCK

Sally Misare, Town Clerk

Paul Donahue, Mayor

Approved as to form:

Robert J. Slentz, Town Attorney