

**ECONOMIC INCENTIVE LOAN AGREEMENT BY AND BETWEEN THE
TOWN OF CASTLE ROCK AND BRINKERHOFF RESTAURANTS, LLC**

THIS ECONOMIC INCENTIVE LOAN AGREEMENT (the “Loan Agreement”) is made and entered into this 20 day of June, 2023, by and between the Town of Castle Rock, a home rule municipal corporation of the State of Colorado (the “Lender”), and Brinkerhoff Restaurants, LLC, a limited liability company of the State of Colorado (the “Borrower”), (each, individually, a “Party” and, collectively, the “Parties”).

WITNESSETH:

WHEREAS, the Borrower proposes to construct an approximately 9,052 square foot restaurant and 2,633 square foot event center, to be located in the Town of Castle Rock near the intersection of Castle Rock Parkway and Promenade Parkway in the Promenade at Castle Rock Community Center; and

WHEREAS, after securing a commitment for primary financing and taking into account Borrower’s equity investment, there is approximately a \$500,000 shortfall in financing which must be bridged in order for the Borrower to proceed with construction; and

WHEREAS, the Lender and the Borrower have negotiated the terms and conditions of a loan in the amount of \$500,000 which will be secured by a second deed of trust in the Borrower’s real property, buildings, and improvements and a second security interest in the Borrower’s business assets and related contract rights; and

WHEREAS, the proposed restaurant and event space qualifies for economic development incentives under the Lender’s Business and Development Program and will serve a public purpose by providing jobs and tax revenues, as well as a much-needed event center to serve as a gathering space for the community.

NOW, THEREFORE, the Parties, in and for the consideration of the performance of the mutual promises set forth herein, the receipt and adequacy of which is hereby acknowledged, do hereby agree as follows:

1. Loan. In consideration of the Borrower’s execution and delivery of a Promissory Note dated the date hereof, and observance and performance of the covenants, terms and conditions hereof, and in reliance on the Borrower’s representations made herein, Lender agrees to loan to Borrower the principal sum of Five Hundred Thousand Dollars (\$500,000.00), according to the terms and conditions set forth in this Loan Agreement and the Promissory Note of even date herewith (the “Loan” or “Town Loan”), a specimen copy of which Promissory Note is attached hereto as **Exhibit A** and incorporated herein by reference. The term of the Loan shall be five (5) years.

2. Promissory Note. In consideration of Lender’s agreement to loan said funds to the Borrower, the Borrower has made, executed and delivered to Lender a Promissory Note dated the date hereof, in the principal sum of Five Hundred Thousand Dollars (\$500,000.00), due and

payable, together with interest thereon at the rate of one percent (1.00%) per annum for the first 36 months, three and one-half percent per annum (3.50%) for months 37 through 48, inclusive, and five percent (5.00%) per annum for months 49 through 60, inclusive, according to the terms and conditions set forth therein and in this Loan Agreement. Interest on the Promissory Note shall commence to accrue as of the Initial Disbursement Date, as defined below.

3. Project Description. The principal sum of the Loan shall be used by the Borrower to help finance the construction of an approximately 9,052 square foot restaurant and 2,633 square foot event center, to be located near the intersection of Castle Rock Parkway and Promenade Parkway in the Promenade at Castle Rock Community Center (the "Project").

4. Allocation of Principal. The principal sum of the Loan shall be allocated as follows:

- a. An amount equal to \$221,365.76 shall come in the form of a deferment of Town permit fees, land use application fees, system development fees, and development impact fees (the "Town Fees") at the time of issuance of the structural building permit for the Project, but not including any use tax due and owing to the Town or to Douglas County. Said Town Fees shall be as shown on the schedule attached hereto as ***Exhibit B*** and incorporated herein by reference.
- b. An amount equal to \$278,634.24 shall come in the form of a cash payment to the Borrower from the lender's Economic Development Fund (the "Loan Proceeds") at the time a temporary certificate of occupancy is issued for the Project (the "Initial Disbursement Date").

5. Repayment of Loan. Payments of principal and interest on the Loan shall commence on the first day of the first month immediately following the Initial Disbursement Date and shall continue on the first day of each and every month thereafter until the Loan is paid in full. Such payments shall fully amortize the Loan over the five (5)-year term; provided, however, the entire remaining unpaid balance of principal and interest shall be due and payable in full on the first day of the sixtieth (60th) month following the Initial Disbursement Date. Lender hereby waives any right it may otherwise have to collect a Loan origination fee. All disbursements, payments, and compliance with the terms and conditions set forth in the Promissory Note and this Loan Agreement shall be administered by Lender through its Finance Department.

6. Security. As security for the repayment of the Loan, the Borrower agrees as follows:

- a. To mortgage to the Lender the real property, buildings, and improvements owned by the Borrower as described with particularity in the Second Priority Deed of Trust of even date herewith, a specimen copy of which is attached hereto as ***Exhibit C*** and incorporated herein by reference.
- b. To grant a security interest to the Lender in and to all of the Project business assets and related contract rights, and any other contracts or agreements associated with the construction and/or operation of the Project facilities as described with particularity in the Second Priority UCC-1 Financing Statement of even date

herewith, a specimen copy of which is attached hereto as *Exhibit D* and incorporated herein by reference.

- c. Said mortgage and security interest shall be subordinate to a senior loan used by the Borrower to finance the majority of costs associated with the construction of the Project and the acquisition of Project business assets (the "Senior Loan").

7. Prepayment. Prepayment of the Loan may occur at any time during the Loan term without penalty.

8. Assignment. If, prior to the end of the Term, the Borrower sells, conveys, transfers, further mortgages or encumbers, or disposes of the Project, or any part thereof or interest therein, or enters into an agreement to do any of the foregoing, the Borrower shall immediately repay all amounts then outstanding on the Loan. This shall be in addition to any other remedies at law or equity available to the Lender.

9. Termination. This Agreement shall automatically terminate without any notice to Borrower if:

- a. A structural building permit for the Project is not issued by December 31, 2023;
- b. A temporary certificate of occupancy for the Project is not issued by June 30, 2025; or
- c. The Borrower has not received any deferment of Town Fees or disbursement of Loan Proceeds from the Lender; and the Borrower fails to pay its debts as they become due, makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts as they become due, files a petition under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter existing, becomes "insolvent" as that term is generally defined under the Federal Bankruptcy Code, files an answer admitting insolvency or inability to pay its debts as they become due in any involuntary bankruptcy case commenced against it, or fails to obtain a dismissal of such case within sixty (60) days after its commencement or convert the case from one chapter of the Federal Bankruptcy Code to another chapter, or is the subject of an order for relief in such bankruptcy case, or is adjudged a bankrupt or insolvent, or has a custodian, trustee, or receiver appointed for it, or has any court take jurisdiction of its property, or any part thereof, in any proceeding for the purpose of reorganization, arrangement, dissolution, or liquidation, and such custodian, trustee, or receiver is not discharged, or such jurisdiction is not relinquished, vacated, or stayed within sixty (60) days of the appointment.

10. Borrower's Warranties and Representations. Borrower warrants and represents as follows:

- a. The Borrower is duly organized and existing under the laws of the State of Colorado; has taken all proper action, including the adoption of a resolution, to authorize the execution, delivery and performance of its obligations under this Loan Agreement, the Promissory Note, and any other Loan Documents (hereinafter referred to jointly as the "Loan Documents"), and the incurring of the debt represented by the Promissory Note; and has the power and authority to enter into and consummate all transactions contemplated by the Loan Documents, and to carry out its obligations hereunder and thereunder.
- b. There is no action, suit, proceeding, inquiry or investigation at law or equity, by or before any judicial or administrative court, agency or body, pending or threatened against the Borrower wherein an unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of any of the Loan Documents.
- c. Neither the execution and delivery of the Loan Documents, the consummation of the transactions contemplated thereby, nor the fulfillment of, or compliance with the provisions of the Loan Documents will conflict with or result in the breach of any restriction, agreement or instrument to which the Borrower is a party, or by which it is bound, or result in the creation or imposition of any lien of any nature upon any of the property of the Borrower under the terms of any such instrument or agreement, nor will such action result in the violation of any provision of any law, ordinance, governmental order to which the Borrower, its property or operations are subject.
- d. No event of default has occurred in any agreement or instrument as to any outstanding indebtedness of the Borrower for money borrowed and no condition, event or act exists which, with the lapse of time or the giving of notice, would constitute an event of default under any such agreement or instrument. The Borrower is not in violation of any term of any restriction, agreement, indenture, ordinance, resolution, charter, or other instrument to which it is a party or which it or its property may be bound, which violation would materially and adversely affect the transactions contemplated hereby or the compliance by the Borrower with the terms of the Loan Documents.
- e. The Borrower has obtained or made all permits, filings and approvals required to the date of this Loan Agreement by any governmental body or officer for the making and performance by the Borrower of its obligations under the Loan Documents or for the Project, the financing thereof or the reimbursement of the Borrower for the costs thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental authority (other than those, if any, already obtained) is required on the part of the Borrower as a condition to entering into the Loan Documents and the performance of the Borrower's obligations hereunder and thereunder.

- f. The Loan Documents to which the Borrower is a party are legal, valid and binding obligations and agreements of the Borrower, enforceable against the Borrower according to their terms, except as the enforceability thereof may be limited by laws relating to bankruptcy, insolvency or other similar laws affecting creditors' rights generally and general principles of equity.
- g. There is no fact that the Borrower has not specifically disclosed in writing to the Lender that materially and adversely affects or will materially and adversely affect the properties, operations and finances of the Borrower, its status as a legal entity in good standing, or its ability to perform its obligations under the Loan Documents, or to pledge any revenues or property to the repayment of the Loan.

11. Borrower's Covenants and Agreements. Borrower agrees to the following conditions:

- a. Borrower will execute the Loan Documents and any supplements or additions thereto, and such other documents in connection with this Loan as Lender may request which are reasonably necessary to effectuate to the fullest extent possible the terms of this Loan Agreement and the Loan Documents.
- b. Prior to or upon execution of the Loan Documents, Borrower will provide Lender with a title commitment for the Project and a title insurance policy insuring Lender's interest in the Project under the Second Priority Deed of Trust.
- c. Prior to or upon execution of the Loan Documents, Borrower will provide Lender with a phase one environmental audit of the property upon which the Project will be constructed. Borrower will comply, in all material respects, with all applicable environmental laws, rules and regulations and assume any and all environmental risks associated with the construction and operation of the Project.
- d. On or prior to the Initial Disbursement Date, Borrower will provide Lender an appraisal and cost review of the Project, which appraisal and cost review shall demonstrate that the Project appraises at an amount greater than the sum of the Senior Loan and the Town Loan.
- e. Borrower will, on demand, reimburse Lender for any and all costs and expenses, including reasonable attorney fees, incurred, or which may be hereafter incurred, by Lender or its agents from time to time in connection with or by reason of the making, closing, and administration of the Loan.
- f. Borrower will at all times keep proper books of account in a manner satisfactory to Lender. Borrower authorizes Lender, on reasonable notice, to make or cause to be made, during regular business hours, at Borrower's expense and in such manner and at such times as Lender may require, inspections and audits of any books, records and papers in the custody or control of Borrower or others, relating to

Borrower's financial or business conditions, including the making of copies thereof and extracts therefrom and inspections of any of Borrower's assets.

- g. Borrower agrees to fully comply, in all material respects, with all applicable federal, state and local laws, regulations, ordinances and permits pertaining to its business and the Project. If at any time notice of noncompliance is received by the Borrower, the Borrower agrees to take any necessary action to comply with the local, state, or federal law, regulation, ordinance, or permit in question.
- h. Borrower agrees to pay in a timely manner the principal and interest on the Promissory Note, and on any other indebtedness now or hereafter at any time due to Lender.
- i. The Borrower will promptly pay all taxes, charges, liens, assessments and encumbrances which now affect, or which may in the future affect, the Project or the security for the payment of the Promissory Note as herein provided, or Lender's interest therein for which it is legally liable.
- j. Borrower agrees to indemnify and hold Lender, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings (including costs and attorney's fees) arising from or connected with the Borrower's Project funded herein.
- k. Borrower agrees that it will notify Lender in writing within 30 days of the occurrence of any change in Borrower's place of business or "location" as that term is defined and used in Article 9 of the Colorado Uniform Commercial Code. Failure to do so shall constitute a material default upon the terms of this Loan Agreement.

12. Insurance. The Borrower shall at all times during the term of this Loan Agreement, and while the Promissory Note is outstanding, keep and maintain, or provide evidence acceptable to the Lender that it has obtained, builder's all-risk and all-risk hazard insurance, property and casualty insurance, workers compensation, and commercial liability insurance with insurers licensed to do business in the State, against such risks and in such amounts as are customary in the State for entities of the same or similar size and type as the Borrower, and similarly situated with facilities of the Project's type, and provide proof of such coverage to the Lender. Each policy (except workers' compensation insurance) shall be Lender loss payable, and name the Lender as an additional insured or loss payee, as its interests may appear. Any policy provided pursuant to this section must provide that it cannot be canceled without prior written notice of cancellation to the Lender. In the event of cancellation, the Borrower will promptly obtain replacement insurance with the same or substantially similar coverage and provide proof of such coverage to the Lender. In the event of renewal, replacement, or changes in coverage, the Borrower will promptly provide written notice of such changes to the Lender.

13. Default. The Borrower shall be in default under this Agreement upon the happening of any one or more of the following events:

- a. The Borrower fails to pay when due any amount payable on the Loan and such nonpayment is not remedied within ten (10) business days after written notice thereof to the Borrower by the Lender;
- b. The Borrower is in breach in any material respect, of any obligation or agreement under this Agreement (other than nonpayment of any amount payable on the Loan) and remains in breach in any material respect for thirty (30) business days after written notice thereof to the Borrower by the Lender; provided, however, that if such breach shall reasonably be incapable of being cured within such thirty (30) business days after notice, and if the Borrower commences and diligently prosecutes the appropriate steps to cure such breach, no default shall exist so long as the Borrower is proceeding to cure such breach;
- c. If any material covenant, warranty, or representation of the Borrower shall prove to be untrue in any material respect, provided such covenant, warranty or representation of the Borrower remains untrue in any material respect for thirty (30) business days after written notice thereof to the Borrower by the Lender; provided, however, that if such untruth shall reasonably be incapable of being corrected within such thirty (30) business days after notice, and if the Borrower commences and diligently prosecutes the appropriate steps to correct such untruth, no default shall exist so long as the Borrower is so proceeding to correct such untruth;
- d. The Borrower, on or after the Initial Disbursement Date, fails to pay its debts as they become due, makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts as they become due, files a petition under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter existing, becomes "insolvent" as that term is generally defined under the Federal Bankruptcy Code, files an answer admitting insolvency or inability to pay its debts as they become due in any involuntary bankruptcy case commenced against it, or fails to obtain a dismissal of such case within sixty (60) days after its commencement or convert the case from one chapter of the Federal Bankruptcy Code to another chapter, or be the subject of an order for relief in such bankruptcy case, or be adjudged a bankrupt or insolvent, or has a custodian, trustee, or receiver appointed for it, or has any court take jurisdiction of its property, or any part thereof, in any proceeding for the purpose of reorganization, arrangement, dissolution, or liquidation, and such custodian, trustee, or receiver is not discharged, or such jurisdiction is not relinquished, vacated, or stayed within sixty (60) days of the appointment;
- e. A final judgment is entered against the Borrower that the Lender reasonably deems will have a material, adverse impact on the Borrower's ability to comply with the Borrower's obligations under this Agreement;
- f. The Borrower sells, conveys, transfers, encumbers, or otherwise disposes of all or any part of the Project property and/or equipment without the prior written approval of the Lender;

- g. The Borrower merges or consolidates with any other entity without the prior written approval of the Lender; or
- h. There is a loss, theft, substantial damage, or destruction of all or any part of the Project property and/or equipment that is not remedied to the Lender's satisfaction within sixty (60) business days after written notice thereof by the Lender to the Borrower.

14. Remedies Upon Default.

- a. In the event of a default, the Lender shall have the right as its option and without demand or notice, to declare all or any part of the Loan immediately due and payable, and in addition to the rights and remedies granted hereby, the Lender shall have all of the rights and remedies available under the Colorado Uniform Commercial Code and any other applicable law.
- b. The Borrower agrees in the event of a default to make the collateral available to the Lender. The Borrower agrees to pay the costs and expenses incurred by the Lender in enforcing its rights under this Agreement, including but not limited to the Lender's attorney's fees. If any notice of sale, disposition or other intended action by the Lender is required by law to be given to the Borrower, such notice shall be deemed reasonably and properly given if mailed to the Borrower at the Development Property or at such other address of the Borrower as may be shown herein, at least fifteen (15) days before such sale, disposition or other intended action.

15. Rights and Remedies Cumulative. The rights and remedies herein conferred upon the Lender shall be cumulative and not alternative and shall be in addition and not in substitution of or in derogation of rights and remedies conferred by the Loan Documents or any other agreements between the parties hereto or by any applicable law. The failure of the Lender to enforce strict performance of any covenant, promise, or condition herein contained, including timely payments due hereunder, shall not operate as a waiver of the right of the Lender thereafter to require that the terms hereof be strictly performed according to the tenor thereof.

16. Notice. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given, at the address set forth below, or at such other address as has been previously furnished in writing, to the other party. Such notice shall be deemed to have been given when deposited in the United States mail. Any required or permitted notice or other communication under this Agreement shall be in writing and addressed as follows:

If to Lender:	Town of Castle Rock
	Attn: Town Manager
	100 N. Wilcox Street

Castle Rock, CO 80104

with copy to: Town Attorney

If to Borrower: Brinkerhoff Restaurants, LLC
Attn: Mark Brinkerhoff, Managing Member
558 Castle Pines Parkway, B4-101
Castle Pines, CO 80108

17. Time of the Essence. Time is of the essence in the performance of the covenants, terms and conditions contained in this Loan Agreement. This Loan Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective transferees, successors and assigns except that the Borrower may not assign or transfer it rights under the Loan Documents without prior written consent of Lender.

18. Entire Agreement. All other prior discussions, communications and representations concerning the subject matter of the Loan Documents are superseded by the terms of the Loan Documents, and except as specifically provided herein, the Loan Documents constitute the entire agreement with respect to the subject matter hereof.

19. Governing Law and Venue. This Loan Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Any lawsuit pertaining to or affecting this Loan Agreement shall be brought in District Court in and for Douglas County, Colorado. Each of the parties hereby irrevocably consents and submits to the jurisdiction of the courts of the State of Colorado.

20. Amendment. This Loan Agreement and the Loan Documents may not be amended except in writing, which writing shall be expressly identified as a part hereof or thereof, and which writing will be signed by an authorized representative of each of the parties. No provision stated herein shall be waived without the prior written consent of Lender.

21. Severability. In the event that any provision of this Loan Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

22. Counterparts. This Loan Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

(Signature page to follow)

IN WITNESS WHEREOF, this Loan Agreement is executed by the parties hereto as of the day and year first written above.

ATTEST:

DocuSigned by:

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Lisa Anderson, Town Clerk

Approved as to form:

DocuSigned by:

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Michael J. Hyman, Town Attorney

TOWN OF CASTLE ROCK

DocuSigned by:

A7938A42F3A848A...

Jason Gray, Mayor

Approved as to content:

DocuSigned by:

1BB5457CFF75414...

David L. Corliss, Town Manager

ATTEST:

BRINKERHOFF RESTAURANTS, LLC

Mark Brinkerhoff, Managing Member

STATE OF COLORADO)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument as acknowledged before me this ____ day of _____, 2023, by Mark Brinkerhoff as Managing Member and _____ as _____ of Brinkerhoff Restaurants, LLC.

Witness my official hand and seal.

My commission expires:

Notary Public

IN WITNESS WHEREOF, this Loan Agreement is executed by the parties hereto as of the day and year first written above.

ATTEST:

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Approved as to form:

Approved as to content:

Michael J. Hyman, Town Attorney

David L. Corliss, Town Manager

ATTEST:

BRINKERHOFF RESTAURANTS, LLC

Mark Brinkerhoff
Mark Brinkerhoff, Managing Member

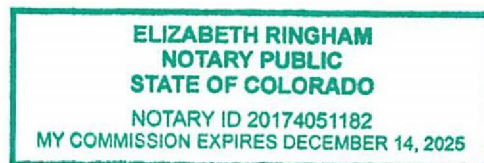
STATE OF COLORADO)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument as acknowledged before me this 6th day of July, 2023, by Mark Brinkerhoff as Managing Member and XXXXXX as XXXXXX of Brinkerhoff Restaurants, LLC.

Witness my official hand and seal.

My commission expires:
dec. 14, 2025

Elizabeth Ringham
Notary Public



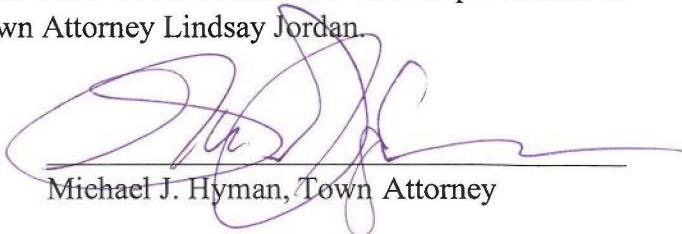


Office of the Town Attorney

Michael J. Hyman, Town Attorney

DELEGATION OF SIGNATURE AUTHORITY

For the period of time commencing on June 21, 2023, and ending on July 3, 2023, I, Michael J. Hyman, Town Attorney for the Town of Castle Rock, Colorado, do hereby delegate my signature authority under Section 5-1 of the Castle Rock Town Charter and various provisions of the Castle Rock Municipal Code to Assistant Town Attorney Lindsay Jordan.



Michael J. Hyman, Town Attorney

EXHIBIT A
BORROWER'S PROMISSORY NOTE

(specimen copy - see attached)

PROMISSORY NOTE

PRINCIPAL AMOUNT: US \$500,000 _____, 2023

FOR VALUE RECEIVED, **BRINKERHOFF RESTAURANTS, LLC**, a Colorado limited liability company (the “Borrower”), promises to pay to the order of the **TOWN OF CASTLE ROCK**, a home rule municipal corporation of the State of Colorado (the “Lender”), at the office of the Lender located at 100 N. Wilcox Street, Castle Rock, Colorado, the principal sum of FIVE HUNDRED THOUSAND DOLLARS (US \$500,000), together with interest thereon as set forth herein or such lesser amount due from the Borrower to the Lender pursuant to the terms of the Loan Agreement dated of even date herewith (the “Loan Agreement”) by and between the Borrower and the Lender, in lawful money of the United States of America. All capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed in the Loan Agreement.

This Note shall evidence the obligation of the Borrower to pay the Loan Amount and interest thereon due to Lender in accordance with the terms and provisions of the Loan Agreement.

All payments hereunder shall be made by the Borrower to the Lender in accordance with the Loan Agreement. This Note shall bear interest, be payable, mature and be enforceable pursuant to the terms and provisions of the Loan Agreement. Upon compliance with the conditions precedent set forth in the Loan Agreement, the principal amount of this Note shall be an amount equal to the Loan Amount and this Note shall begin to accrue simple per annum interest at the rate of one percent (1.00%) for the first 36 months, three and one-half percent (3.50%) for months 37 through 48, inclusive, and five percent (5.00%) for months 49 through 60, inclusive.

Borrower shall make regular monthly payment of principal and interest commencing on the first day of the month immediately following the Initial Disbursement Date, and shall continue on the first day of each and every month thereafter until this Note is paid in full. This Note shall mature on the first day of the 60th month following the Initial Disbursement Date. In accordance with the annual interest rates set forth above, the monthly principal and interest payments will be in accordance with the Amortization Schedule attached hereto as **Exhibit 1** and incorporated herein by reference.

All monthly payments on the Note received by Lender shall first be applied to accrued and outstanding interest and then to reduce the outstanding principal balance. If such monthly payments are not received within five (5) calendar days of their due date, such payments shall be subject to a late fee equal to 5% of the defaulted payment.

Borrower shall be in default if Borrower fails to make any payment require, or to perform any obligation arising under this Note, or any other document executed by Borrower and securing this Note. In the event of default, this Note shall bear interest at a default interest rate of 12% per annum (“Default Interest”) as of the date of default. The Default Interest shall be compounded monthly from the date of default and added to the principal balance of this Note. In addition, at Lender’s option, all sums due hereunder shall immediately be accelerated and due and payable,

and Lender shall be entitled to all remedies at law or in equity against both Borrower and Lender's collateral.

Borrower may prepay the principal amount outstanding under said Note, in whole or in part, at any time. Any partial prepayments shall not postpone the due date of any subsequent payment. All payments received for application under this Note shall be applied first to the payment of Lender's costs and expenses of collection, if any, as a result of Borrower's default, then to interest at the default rate, if any, then to interest at the non-default rate, if any, and then to principal.

All payments due under this Note shall be made without deduction or setoff of any kind. No failure or delay on the part of Lender in exercising any right hereunder shall operate as a waiver of such right. The remedies herein provided are cumulative of any remedies provided by law and may be pursued concurrently or consecutively.

This Note is secured by a Second Priority Deed of Trust of even date herewith and a Second Priority UCC-1 Financing Statement of even date herewith.

Borrower waives presentment for payment, protest, notice of dishonor and non-payment, and agrees to any extension or extensions of time of payment and partial payments before, at, or after the due date of this Note. If this Note is not paid when due; or if Borrower breaches any provision of this Note; or if a receiver is appointed for any part of the Borrowers' property; or if an assignment is made for the benefit of creditors; or if any proceeding under any bankruptcy or insolvency laws is commenced by or against Borrower (provided that any action commenced by any person or entity against Borrower which results in any such proceeding shall be deemed not to have occurred if the same is dismissed within 60 days after Borrower receives notice of the filing thereof); then this Note shall, at the option of Lender, become immediately due and payable. If this Note is placed in the hands of an attorney for collection, or if suit is brought, or if this Note is collected or enforced through probate or bankruptcy proceedings (including any proceedings, either federal or state, for the relief of debtors), or in any receivership proceeding, then Borrower agrees to pay all costs incurred by Lender, including but not limited to, Lender's attorneys' fees.

Lender's interest in this Note may be sold, transferred, assigned, pledged or encumbered from time to time and all references herein to "Lender" shall include any subsequent holder of this Note, subject to written notice to Borrower of any such subsequent holder of this Note.

This Note is made in and shall be governed by the laws of the State of Colorado. The provisions of this Note may be amended or revised only by an instrument in writing signed by the Borrower and the Lender.

(Signature page to follow)

IN WITNESS WHEREOF, an authorized representative of the Borrower has executed this Promissory Note as of the day and year first above written.

ATTEST: **BRINKERHOFF RESTAURANTS, LLC**

Mark Brinkerhoff, Managing Member

STATE OF COLORADO)
) **ss.**
COUNTY OF DOUGLAS)

The foregoing instrument as acknowledged before me this ____ day of _____, 2023, by Mark Brinkerhoff as Managing Member and _____ as _____ of Brinkerhoff Restaurants, LLC.

Witness my official hand and seal.

My commission expires:

Notary Public

EXHIBIT 1
AMORTIZATION SCHEDULE

(to be attached at time of funding)

EXHIBIT B SCHEDULE OF TOWN FEES

Bar Hummingbird Restaurant and The Brinkerhoff Restaurant Building Permit Fees 22-5130 & 22-5131 Fees as of 6/7/23				
Permit Number	Permit Description	Fee Description	Fees Due	Sub Fees
22-5130	BAR HUMMINGBIRD RESTAURANT	ADMINISTRATIVE COST RECOVERY	\$ 1,541.90	
22-5130	BAR HUMMINGBIRD RESTAURANT	BUILDING PERMIT FEE	\$ 8,346.25	
22-5130	BAR HUMMINGBIRD RESTAURANT	FIRE DEPARTMENT COMPLIANCE REVIEW	703.13	
22-5130	BAR HUMMINGBIRD RESTAURANT	METER SET 2022	\$ -	
22-5130	BAR HUMMINGBIRD RESTAURANT	NEW COMMERCIAL IMPACT FEES 2022	\$ 9,069.99	
22-5130	BAR HUMMINGBIRD RESTAURANT	COMMERCIAL IMPACT FEE FIRE 2022		\$ 845.32
22-5130	BAR HUMMINGBIRD RESTAURANT	COMMERCIAL IMPACT FEE MUNI FACILITIES 2022		\$ 210.42
22-5130	BAR HUMMINGBIRD RESTAURANT	COMMERCIAL POLICE IMPACT FEE 2022		\$ 438.99
22-5130	BAR HUMMINGBIRD RESTAURANT	COMMERCIAL TRANSPORTATION IMPACT FEE 2022		\$ 7,575.26
22-5130	BAR HUMMINGBIRD RESTAURANT	USE TAX	\$ 43,750.00	
22-5130	BAR HUMMINGBIRD RESTAURANT	COMMERCIAL USE TAX 7/1/2012		\$ 37,625.00
22-5130	BAR HUMMINGBIRD RESTAURANT	USE TAX 5 DOUGLAS COUNTY		\$ 6,125.00
22-5130	BAR HUMMINGBIRD RESTAURANT	WATER FEES 2022	\$ -	
22-5130	BAR HUMMINGBIRD RESTAURANT	STORMWATER 2022	\$ 3,482.88	
22-5130	BAR HUMMINGBIRD RESTAURANT	PLAN CHECK FEE	\$ 5,425.06	
22-5130	BAR HUMMINGBIRD RESTAURANT	FIRE PERMIT FEE	\$ 351.57	
22-5131	THE BRINKERHOFF RESTAURANT	ADMINISTRATIVE COST RECOVERY	\$ 3,658.83	
22-5131	THE BRINKERHOFF RESTAURANT	BUILDING PERMIT FEE	\$ 17,380.00	
22-5131	THE BRINKERHOFF RESTAURANT	FIRE DEPARTMENT COMPLIANCE REVIEW	\$ 703.13	
22-5131	THE BRINKERHOFF RESTAURANT	NEW COMMERCIAL IMPACT FEES 2022	\$ 21,522.50	
22-5131	THE BRINKERHOFF RESTAURANT	COMMERCIAL IMPACT FEE FIRE 2022		\$ 2,005.90
22-5131	THE BRINKERHOFF RESTAURANT	COMMERCIAL IMPACT FEE MUNI FACILITIES 2022		\$ 499.32
22-5131	THE BRINKERHOFF RESTAURANT	COMMERCIAL POLICE IMPACT FEE 2022		\$ 1,041.69
22-5131	THE BRINKERHOFF RESTAURANT	COMMERCIAL TRANSPORTATION IMPACT FEE 2022		\$ 17,975.59
22-5131	THE BRINKERHOFF RESTAURANT	STORMWATER 2022	\$ 12,603.58	
22-5131	THE BRINKERHOFF RESTAURANT	STORMWATER COMMERCIAL 2022 CHERRY CREEK		\$ 4,338.94
22-5131	THE BRINKERHOFF RESTAURANT	STORMWATER COMMERCIAL 2022 PLUM CREEK		\$ 8,264.64
22-5131	THE BRINKERHOFF RESTAURANT	USE TAX	\$ 105,625.00	
22-5131	THE BRINKERHOFF RESTAURANT	COMMERCIAL USE TAX 7/1/2012		\$ 90,837.50
22-5131	THE BRINKERHOFF RESTAURANT	USE TAX 5 DOUGLAS COUNTY		\$ 14,787.50
22-5131	THE BRINKERHOFF RESTAURANT	PLAN CHECK FEE	\$ 11,297.00	
22-5131	THE BRINKERHOFF RESTAURANT	FIRE PERMIT FEE	\$ 351.57	
22-5131	BAR HUMMINGBIRD AND THE BRINKERHOFF	WATER FEES 2022	\$ 123,081.00	
22-5131	BAR HUMMINGBIRD AND THE BRINKERHOFF	RENEWABLE WATER 2022		\$ 87,888.00
22-5131	BAR HUMMINGBIRD AND THE BRINKERHOFF	WASTEWATER SYSTEM 2022		\$ 16,299.00
22-5131	BAR HUMMINGBIRD AND THE BRINKERHOFF	WATER SYSTEM 2022		\$ 18,894.00
22-5131	BAR HUMMINGBIRD AND THE BRINKERHOFF	METER SET 2022	\$ 1,847.37	
Total				\$ 370,740.76

EXHIBIT C
SECOND PRIORITY DEED OF TRUST

(to be attached at time of funding)

EXHIBIT D
SECOND PRIORITY UCC-1 FINANCING STATEMENT

(to be attached at time of funding)

RESOLUTION NO. 2023-086

**A RESOLUTION APPROVING AN ECONOMIC INCENTIVE LOAN
FROM THE TOWN OF CASTLE ROCK TO BRINKERHOFF
RESTAURANTS, LLC, TO FACILITATE THE DEVELOPMENT AND
CONSTRUCTION OF THE HUMMINGBIRD EVENT CENTER**

WHEREAS, the Town of Castle Rock, Colorado (the “Town”), has created the Castle Rock Business and Development Incentive Program (the “Program”) to support core Town economic development priorities, including the attraction and expansion of primary employers, the attraction and expansion of targeted retail, and investments in projects of economic significance or which serve as economic catalysts; and

WHEREAS, the Program is designed to serve a public purpose by creating jobs, expanding the tax base, encouraging existing businesses to make capital investments, and spur new office, industrial, and retail expansion and economic development; and

WHEREAS, the Town recognizes that there are certain projects of special significance which generate greater opportunities for additional economic development and/or provide highly desirable community amenities; and

WHEREAS, under the Program, projects of this nature are eligible for a variety of incentives, including a short-term, low-interest loan in an amount not to exceed 10% of the project costs or \$1,000,000; and

WHEREAS, Brinkerhoff Restaurants, LLC (the “Borrower”) proposes to construct an approximately 9,052 square foot restaurant and 2,633 square foot event center (5,572 square feet when including the indoor/outdoor four-season patio), to be located in the Town near the intersection of Castle Rock Parkway and Promenade Parkway in the Promenade at Castle Rock Community Center (the “Project”); and

WHEREAS, after securing a commitment for primary financing for the restaurant, and taking into account Borrower’s equity investment in the event center, there remains an approximately a \$500,000 shortfall in financing which must be bridged in order for the Borrower to proceed with construction of the Project; and

WHEREAS, the Town and the Borrower have negotiated the terms and conditions of a short-term, low-interest economic incentive loan in the amount of \$500,000 which will be secured by a second deed of trust in the Borrower’s real property, buildings, and improvements that comprise the Project and a second security interest in the Borrower’s business assets and contract rights related to the Project (the “Loan”); and

WHEREAS, the Loan will come in the form of: (i) a deferment of Town permit fees, land use application fees, system development fees, and development impact fees at the time of issuance of the structural building permit for the Project and (ii) of a cash payment from the Town Economic Development Fund at the time a temporary certificate of occupancy is issued for the Project; and

WHEREAS, the Loan will be due and payable over a five (5)-year term, at an interest rate of one percent (1.00%) per annum for the first 36 months, three and one-half percent per annum (3.50%) for months 37 through 48, inclusive, and five percent (5.00%) per annum for months 49 through 60, inclusive; and

WHEREAS, the Town Council finds and determines that the Project qualifies for a short-term, low-interest economic incentive loan under the Program;

WHEREAS, the Town Council further finds and determines that the financing of the event center (also referred to as the "Hummingbird Event Center") will serve a public purpose by facilitating the development and construction of a project of special significance that will provide the Town with new jobs and additional tax revenues, as well as a highly-desirable community amenity.

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

Section 1. Approval. The Economic Incentive Loan from the Town to Brinkerhoff Restaurants, LLC, to facilitate the development and construction of the Hummingbird Event Center is hereby approved in accordance with the terms and conditions set forth in the Resolution and in the Loan Agreement, which Agreement is also approved in substantially the same form as presented at tonight's meeting, with such technical changes, additions, modifications, deletions, or amendments as the Town Manager may approve upon consultation with the Town Attorney. The Mayor and other proper Town officials are hereby authorized to execute the Agreement and all related loan documents, and any technical amendments thereto by and on behalf of the Town.

Section 2. Encumbrance and Authorization for Payment. In order to meet the Town's financial obligations under the Loan Agreement, the Town Council authorizes the expenditure and payment from the Economic Development Fund, account no. 111-1300-413.80-41, in an amount not to exceed \$300,000.00, unless otherwise authorized in writing by the Town.

PASSED, APPROVED AND ADOPTED this 20th day of June, 2023, by the Town Council of the Town of Castle Rock, Colorado, on first and final reading by a vote of 7 for and 0 against.

ATTEST:

DocuSigned by:

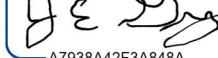


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Lisa Anderson, Town Clerk



TOWN OF CASTLE ROCK

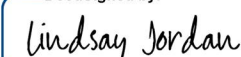
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Jason Gray, Mayor

Approved as to form:

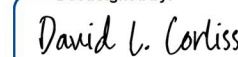
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Michael J. Hyman, Town Attorney

Approved as to content:

DocuSigned by:



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David L. Corliss, Town Manager