

ORDINANCE NO. 2023-030

**AN ORDINANCE REPEALING AND REENACTING ARTICLE II OF
CHAPTER 3.04 OF THE CASTLE ROCK MUNICIPAL CODE
REGARDING SALES TAX AND AMENDING VARIOUS PROVISIONS
OF ARTICLE III OF CHAPTER 3.04 OF THE CASTLE ROCK
MUNICIPAL CODE REGARDING USE TAX**

WHEREAS, persons engaged in retail trade in the Town of Castle Rock are obliged to remit State sales taxes based on Colorado’s 2023 tax laws, but remit Town sales tax based on the 2003 State tax laws; and

WHEREAS, the requirement that Town businesspersons follow a twenty-year-old superseded State statute, one that is not easily located by persons without legal training, adds unnecessary complexity to the Town’s sales tax system; and

WHEREAS, the Colorado Municipal League (CML), at the urging of the General Assembly and in cooperation with major Colorado business groups, including the State Chamber of Commerce have developed a package of standardized definitions and campaigned for their adoption by home rule municipalities as a way to significantly simplify the remitting of sales taxes to multiple municipalities that collect their own sales taxes; and

WHEREAS, the CML standard sales tax definitions, together with standard provisions designed by CML to simplify remittance by out-of-town retailers, following the decision of the United States Supreme Court in *South Dakota v. Wayfair, Inc.*, 138 S.Ct. 2080 (2018), have been widely adopted by municipalities across Colorado; and

WHEREAS, as the CML simplification measures are exclusively intended to simplify remittance of municipal tax for the benefit of local businesses, and are consciously intended to be “revenue-neutral,” neither increasing nor decreasing tax revenue, the CML simplification packages may be adopted without an election under Article X, Section 20 of the Colorado Constitution (TABOR); and

WHEREAS, tax complexity for Castle Rock merchants due to the Town’s reliance on an outdated version of State law, combined with the Town’s unwillingness to join other Colorado home rule municipalities in adopting the CML tax simplification measures, has given the Town an unwanted notoriety for gratuitous complexity in its sales tax system; and

WHEREAS, the Colorado Supreme Court has recently clarified the reach of TABOR’s election requirements, in *TABOR Foundation v. RTD*, 416 P.3d 101 (Colo. 2018), holding that adoption of measures: (i) not intended to increase revenue, and (ii) which, in fact, result in no increase or only a *de minimis* increase in revenue, may be adopted by a local government without an election under TABOR; and

WHEREAS, the Town Council has no intention that the adoption of this ordinance generate any additional revenue to the Town, and in the preparation of this ordinance there has

been a conscious effort to avoid any change that would likely lead to any revenue increase to the Town; and

WHEREAS, the Town Council finds and determines that moving forward with simplification of the Town's sales and use tax code, thereby ending its reliance on the 2003 State tax code, and adopting revised definition and exemption sections using the CML standard definitions, is in the best interests of the Town's residents and retail businesses.

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

Section 1. Amendment. Chapter 3.04, Article II of the Castle Rock Municipal Code is repealed and reenacted to read as follows:

Article II. - Sales Tax

3.04.030 - Purpose.

The purpose of this Article is to impose a sales tax on the sale of tangible personal property at retail or the furnishing of services within the corporate limits of the Town.

3.04.040. - Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Auction shall mean any sale where tangible personal property is sold by an auctioneer who is either the agent for the owner of such property or is, in fact, the owner thereof.

Automotive vehicle shall mean any vehicle or device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, or any device used or designed for aviation or flight in the air. "Automotive vehicle" includes, but is not limited to, motor vehicles, trailers, semi-trailers, or mobile homes. "Automotive vehicle" shall not include devices moved by human power or used exclusively upon stationary rails or tracks.

Carrier access services shall mean the services furnished by a local exchange company to its customers who provide telecommunications services which allow them to provide such telecommunications services.

Chief Building Official means the Town's Chief Building Official or duly authorized representative.

Coin-operated device shall mean any device operated by coins or currency or any substitute therefor.

Commercial packaging materials shall mean containers, labels, and/or cases, that become

part of the finished product to the consumer, used by or sold to a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use, and is not returnable to said person for reuse. “Commercial packaging materials” does not include commercial shipping materials.

Commercial shipping materials shall mean materials that do not become part of the finished product to the consumer which are used exclusively in the shipping process. “Commercial shipping materials” include but are not limited to containers, labels, pallets, banding material and fasteners, shipping cases, shrink wrap, bubble wrap or other forms of binding, padding or protection.

Construction equipment shall mean any equipment, including mobile machinery and mobile equipment, which is used to erect, install, alter, demolish, repair, remodel, or otherwise make improvements to any real property, building, structure or infrastructure.

Construction materials shall mean tangible personal property that, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a completed structure or project including public and private improvements. “Construction materials” include, but are not limited to, such things as: asphalt, bricks, builders’ hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wall paper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms, or other items that do not remain as an integral or inseparable part of a completed structure or project, are not “construction materials.”

Consumer shall mean any person in the Town who purchases, uses, stores, distributes or otherwise consumes tangible personal property or taxable services, purchased from sources inside or outside the Town.

Contractor shall mean any person who shall build, construct, reconstruct, alter, expand, modify, or improve any building, dwelling, structure, infrastructure, or other improvement to real property for another party pursuant to an agreement. For purposes of this definition, “contractor” also includes subcontractor.

Digital product shall mean an electronic product including, but not limited to:

- A. “Digital images” which means works that include, but are not limited to, the following that are generally recognized in the ordinary and usual sense as photographs, logos, cartoons, or drawings;
- B. “Digital audio-visual works” which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying

sounds, if any;

- C. “Digital audio works” which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones. For purposes of the definition of “digital audio works,” “ringtones” means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication; and
- D. “Digital books” which means works that are generally recognized in the ordinary and usual sense as books.

Director means the Town’s Director of Finance or duly authorized representative.

Economic nexus means the connection between the Town and a person not having a physical nexus in the State of Colorado, which connection is established when the person or marketplace facilitator makes retail sales into the Town, and:

- A. In the previous calendar year, the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in Section 39-26-102(3)(c), C.R.S., as amended; or
- B. In the current calendar year, 90 days has passed following the month in which the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in Section 39-26-102(3)(c), C.R.S., as amended.

This definition does not apply to any person who is doing business in this state but otherwise applies to any other person.

Engaged in business in the Town shall mean performing or providing services or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption within the Town. “Engaged in business in the Town” includes, but is not limited to, any one of the following activities by a person:

- A. Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the taxing jurisdiction;
- B. Sends one or more employees, agents or commissioned salespersons into the taxing jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons;
- C. Maintains one or more employees, agents or commissioned salespersons on duty at a location within the taxing jurisdiction;
- D. Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction;

- E. Makes more than one delivery into the taxing jurisdiction within a 12-month period;
or
- F. Makes retail sales sufficient to meet the definitional requirements of “economic nexus” as set forth in this section 3.04.040.

Farm closeout sale shall mean full and final disposition of all tangible personal property previously used by a farmer or rancher in farming or ranching operations which are being abandoned.

Farm equipment shall mean any farm tractor, as defined in Section 42-1-102(33), C.R.S., any implement of husbandry, as defined in Section 42-1-102(44), C.R.S., and irrigation equipment having a per unit purchase price of at least \$1,000.00. “Farm equipment” also includes, regardless of purchase price, attachments and baling wire, binders twine and surface wrap used primarily and directly in any farm operation. “Farm equipment” also includes, regardless of purchase price, parts that are used in the repair or maintenance of the farm equipment described in this Section 3.04.040, all shipping pallets, crates, or aids paid for by a farm operation, and aircraft designed or adapted to undertake agricultural applications. “Farm equipment” also includes, regardless of purchase price, dairy equipment. Except for shipping pallets, crates or aids used in the transfer or shipping of agricultural products, Farm equipment does not include:

- A. Vehicles subject to the registration requirements of Section 42-3-103, C.R.S., regardless of the purpose for which such vehicles are used;
- B. Machinery, equipment, materials, and supplies used in a manner that is incidental to a farm operation;
- C. Maintenance and janitorial equipment and supplies; and
- D. Tangible personal property used in any activity other than farming, such as office equipment and supplies and equipment and supplies used in the sale or distribution of farm products, research, or transportation.

Farm operation shall mean the production of any of the following products for profit, including, but not limited to, a business that hires out to produce or harvest such products;

- A. Agricultural, viticultural, fruit, and vegetable products;
- B. Livestock;
- C. Milk;
- D. Honey; and
- E. Poultry and eggs.

Food for home consumption shall mean food for domestic home consumption as defined in 7 U.S.C. Sec. 2012(k), as amended, for purposes of the supplemental nutrition assistance program, or any successor program, as defined in 7 U.S.C. Sec. 2012(t), as amended; except that “food” does not include carbonated water marketed in containers; chewing gum; seeds and plants to grow food; prepared salads and salad bars; packaged and unpackaged cold sandwiches; deli trays; and hot or cold beverages served in unsealed containers or cups that are vended by or through machines or non-coin-operated coin collecting food and snack devices on behalf of a retailer.

Garage sales shall mean sales of tangible personal property, except automotive vehicles, occurring at the residence of the seller, where the property to be sold was originally purchased for use by members of the household where such sale is being conducted. The term includes, but is not limited to, yard sales, estate sales, and block sales.

Gross sales shall mean the total amount received in money, credit, property or other consideration valued in money for all sales, leases, or rentals of tangible personal property or services.

Lodging means the transaction of furnishing rooms or accommodations by any person, partnership, limited liability company, association, corporation, estate, receiver, trustee, assignee, lessee, or person acting in a representative capacity or any other combination of individuals by whatever name known to a person who for a consideration uses, possesses, or has the right to use or possess any room in a hotel, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court and park, under any concession, permit, right of access, license to use, or other agreement, or otherwise. “Lodging” shall not include the transaction of furnishing rooms or accommodations to any natural person who is a permanent resident of any hotel, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court or park and who enters into or has entered into a written agreement for occupancy of a room or accommodations for a period of at least 30 consecutive days during the calendar year or preceding year.

Manufacturing shall mean the operation or performance of an integrated series of operations which places a product, article, substance, commodity, or other tangible personal property in a form, composition or character different from that in which it was acquired whether for sale or for use by a manufacturer. The change in form, composition or character must result in a different product having a distinctive name, character or use from the raw or prepared materials.

Marketplace means a physical or electronic forum, including, but not limited to, a store, a booth, an internet website, a catalog, or a dedicated sales software application, where tangible personal property, taxable products, or taxable services are offered for sale.

Marketplace Facilitator shall mean a person who:

- A. Contracts with a marketplace seller or multichannel seller to facilitate for consideration, regardless of whether or not the consideration is deducted as fees from the transaction, the sale of the marketplace seller’s tangible personal property, products, or services through the person’s marketplace;

- B. Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a consumer and the marketplace seller or multichannel seller; and
- C. Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the consumer on behalf of the seller.

“Marketplace facilitator” does not include a person that exclusively provides internet advertising services or lists products for sale, and that does not otherwise meet this definition.

Marketplace seller shall mean a person, regardless of whether or not the person is engaged in business in the Town, which has an agreement with a marketplace facilitator and offers for sale tangible personal property, products, or services through a marketplace owned, operated, or controlled by a marketplace facilitator.

Multichannel seller shall mean a retailer that offers for sale tangible personal property, commodities, or services through a marketplace owned, operated, or controlled by a marketplace facilitator, and through other means.

Mini-storage or mini-warehouse shall mean a building or group of buildings containing individual storage units rented or leased to individuals for the storage of merchandise, commodities or private property.

Mobile machinery and self-propelled construction equipment shall mean those vehicles, self-propelled or otherwise, which are not designed primarily for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo but which have been redesigned or modified by the mounting thereon of special equipment or machinery, and which may be only incidentally operated or moved over the public highways. This definition includes but is not limited to wheeled vehicles commonly used in the construction, maintenance, and repair of roadways, the drilling of wells, and the digging of ditches.

Motor fuel shall mean gasoline, casing head or natural gasoline, benzoyl, benzene and naphtha, gasohol and any other liquid prepared, advertised, offered for sale, sold for use or used or commercially usable in internal combustion engines for the generation of power for the propulsion of motor vehicles upon the public highways. The term does not include fuel used for the propulsion or drawing of aircraft or railroad cars or railroad locomotives.

Municipality shall mean any municipal corporation or similar form of local government, including any city, town, and city and county, whether organized pursuant to charter, constitution or statute, in Colorado or another state, except counties, school districts, or special districts, and the Town of Castle Rock.

Newspaper shall mean a publication, printed on newsprint, intended for general circulation,

and published regularly at short intervals, containing information and editorials on current events and news of general interest. The term “newspaper” does not include magazines, trade publications or journals, credit bulletins, advertising inserts, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.

Preprinted newspaper supplements shall mean inserts, attachments or supplements circulated in newspapers that:

- A. Are primarily devoted to advertising; and
- B. The distribution, insertion, or attachment of which is commonly paid for by the advertiser.

Prescription drugs for animals shall mean a drug which, prior to being dispensed or delivered, is required by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301, et. seq., as amended, to state at a minimum the symbol “Rx only” and is dispensed in accordance with any order in writing, dated and signed by a licensed veterinarian specifying the animal for which the medicine or drug is offered and directions, if any, to be placed on the label.

Prescription drugs for humans shall mean a drug which, prior to being dispensed or delivered, is required by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301, et seq., as amended, to state, at a minimum, the symbol “Rx only,” and is dispensed in accordance with any written or electronic order, dated and signed, by a licensed practitioner of the healing arts, or given orally by a practitioner and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and any required information of the patient for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.

Price or purchase price shall mean:

- A. The aggregate value measured in currency paid or delivered or promised to be paid or delivered in consummation of a sale, without any discount from the price on account of the cost of materials used, labor or service cost, and exclusive of any direct tax imposed by the federal government or by this Article, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if:
 - 1. Such exchanged property is to be sold thereafter in the usual course of the retailer’s business; or
 - 2. Such exchanged property is a vehicle, and is exchanged for another vehicle, and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft. Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

B. "Price" or "purchase price" shall include:

1. The amount of money received or due in cash and credits.
2. Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.
3. Any consideration valued in money, whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.
4. The total price charged on credit sales, including finance charges that are not separately stated at the time of sale. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated is not part of the purchase price.
5. Installation, applying, remodeling or repairing the property, delivery and wheeling-in charges included in the purchase price and not separately stated.
6. Transportation and other charges to effect delivery of tangible personal property to the consumer.
7. Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock.
8. The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.

C. "Price" or "purchase price" shall not include:

1. Any sales or use tax imposed by the State of Colorado or by any political subdivision thereof.
2. The fair market value of property exchanged if such property is to be sold thereafter in the retailer's usual course of business. This is not limited to exchanges in Colorado. Out-of-state trade-ins are an allowable adjustment to the purchase price.
3. Discounts from the original price, if such discount and the corresponding

decrease in sales tax due is actually passed on to the consumer, and the seller is not reimbursed for the discount by the manufacturer or someone else. An anticipated discount to be allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales.

Private communications services shall mean telecommunications services furnished to a subscriber, which entitles the subscriber to exclusive or priority use of any communication channel or groups of channels, or to the exclusive or priority use of any interstate inter-communications system for the subscriber's stations.

Prosthetic devices for humans shall mean any artificial limb, part, device or appliance for human use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular patient; and is prescribed by a licensed practitioner of the healing arts. "Prosthetic devices" include, but are not limited to, prescribed auditory, ophthalmic or ocular, cardiac, dental, or orthopedic devices or appliances, and oxygen concentrators, and oxygen with related accessories.

Purchase or sale shall mean:

- A. The acquisition for any consideration by any person of tangible personal property, other taxable products or taxable services that are purchased, leased, rented, sold, used, stored, distributed, or consumed. These terms include capital leases, installment and credit sales, and property and services acquired by:
 - 1. Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property, other taxable products, or taxable services;
 - 2. A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property, other taxable products, or taxable services. The utilization of coin-operated devices, except coin-operated telephones, which do not vend articles of tangible personal property shall be considered short-term rentals of tangible personal property.
 - 3. Performance of taxable services; or
 - 4. Barter or exchange for other tangible personal property, other taxable products, or services.
- B. The terms "purchase" and "sale" do not include:
 - 1. A division of partnership assets among the partners according to their interests in the partnership;
 - 2. The transfer of assets of shareholders in the formation or dissolution of professional corporations, if no consideration including, but not limited to,

the assumption of a liability is paid for the transfer of assets;

3. The dissolution and the pro rata distribution of the corporation's assets to its stockholders, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
4. A transfer of a partnership or limited liability company interest;
5. The transfer of assets to a commencing or existing partnership or limited liability company, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
6. The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
7. The transfer of assets from a parent company to a subsidiary company or companies which are owned at least 80% by the parent company, which transfer is solely in exchange for stock or securities of the subsidiary company;
8. The transfer of assets from a subsidiary company or companies which are owned at least 80% by the parent company to a parent company or to another subsidiary which is owned at least 80% by the parent company, which transfer is solely in exchange for stock or securities of the parent company or the subsidiary which received the assets;
9. The transfer of assets between parent and closely held subsidiary companies, or between subsidiary companies closely held by the same parent company, or between companies which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this title was paid by the transferor company at the time it acquired such assets, except to the extent that there is an increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor company. To such an extent, any transfer referred to in this paragraph 9 shall constitute a sale. For the purposes of this paragraph 9, a "closely held subsidiary company" is one in which the parent company owns stock possessing at least 80% of the total combined voting power of all classes of stock entitled to vote and owns at least 80% of the total number of shares of all other classes of stock.

Qualified hospital organization shall mean any of the following:

- A. An organization that is exempt from federal income tax under Section 115 or Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, but only if the organization holds a license to operate a "general hospital" for people

issued pursuant to Sections 25-3-101 and 25-3-102, C.R.S., as amended, including any successor provisions to those sections, and operates a general hospital in the Town;

- B. A corporation or trust that is exempt from federal income tax under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and that owns or employs personal property or improvements that are used in the operations of one or more organizations described in paragraph A of this definition; and either:
 - 1. Directly controls, or is controlled by, one or more organizations described in paragraph A of this definition; or
 - 2. Is controlled by a management organization as defined in paragraph C of this definition in common with one or more organizations described in paragraph A of this definition; or
 - 3. Owns a hospital that is licensed to operate as a “general hospital” for people in the Town pursuant to Sections 25-3-101 and 25-3-102, C.R.S., as amended, including any successor provisions to those sections, and that is operated by an organization described in paragraph A of this definition.
- C. An organization that is exempt from federal income tax under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and a principal function of which is to manage the property or operations, or both, of one or more organizations described in paragraphs A or B of this definition; and
- D. A partnership, limited partnership, limited liability limited partnership, limited liability partnership, limited liability company, or joint venture if all of the partners, members, joint venturers or other participants in such partnership, limited partnership, limited liability limited partnership, limited liability partnership, limited liability company or joint venture are organizations described in paragraphs A, B, or C of this definition.

Resident shall mean a person who resides or maintains one or more places of business within the Town, regardless of whether that person also resides or maintains a place of business outside of the Town.

Retail sales shall mean all sales except wholesale sales.

Retailer shall mean any person selling, leasing, or renting, or granting a license to use tangible personal property or services at retail. “Retailer” shall include, but is not limited to, any:

- A. Auctioneer.
- B. Salesperson, representative, peddler or canvasser who makes sales as a direct or

indirect agent of, or obtains such property or services sold from, a dealer, distributor, supervisor or employer.

- C. Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation, or that the proceeds are to be used for charitable or governmental purposes.
- D. Retailer-contractor, when acting in the capacity of a seller of building supplies, construction materials, and other tangible personal property.
- E. Marketplace facilitator, marketplace seller, or multichannel seller.

Retailer-contractor shall mean a contractor who is also a retailer of building supplies, construction materials, or other tangible personal property, and purchases, manufactures, or fabricates such property for sale (which may include installation), repair work, time and materials jobs, and/or lump sum contracts.

Return, for purposes of this chapter, shall include any definition of “return” included in other chapters of this title.

Sales tax shall mean the tax that is collected or required to be collected and remitted by a retailer on sales taxed under this chapter.

Software program shall mean a sequence of instructions that can be measured, interpreted, and executed by an electronic device (e.g., a computer, tablets, smart phones) regardless of the means by which it is accessed or the medium of conveyance. “Software program” includes:

- A. “Custom software program,” which is a software program prepared to the special order or specifications of a single customer;
- B. “Pre-written software program,” which is a software program prepared for sale or license to multiple users, and not to the special order or specifications of a single customer. “Pre-written software” is commonly referred to as canned, off-the-shelf (COTS), mass-produced or standardized;
- C. “Modified software,” which means pre-written software that is altered or enhanced by someone other than the consumer to create a program for a particular user; and
- D. The generic term “software,” includes software applications, as well as updates, upgrades, patches, user exits, and any items which add or extend functionality to existing software programs.

Special fuel shall mean kerosene oil, kerosene distillate, diesel fuel, all liquefied petroleum gases, and all combustible gases and liquids for use in the generation of power for propulsion of motor vehicles upon the public highways. The term does not include fuel used for the propulsion

or drawing of aircraft, railroad cars or railroad locomotives.

Storage shall mean any keeping or retention of, or exercise dominion or control over, or possession of, for any length of time, tangible personal property not while in transit but on a stand still basis for future use when leased, rented or purchased at retail from sources either within or without the Town from any person or retailer.

Storage facility shall mean any indoor or outdoor area, structure, warehouse, or unit, whether mobile or immobile, that is ordinarily used to store tangible personal property. “Storage facility” shall not include kennels, lockers, mobile home pads, safe deposit boxes, and reservoirs.

Tangible personal property shall mean personal property that can be one or more of the following: seen, weighed, measured, felt, touched, stored, transported, exchanged, or that is in any other manner perceptible to the senses.

Tax shall mean the use tax due from a consumer or the sales tax due from a retailer or the sum of both due from a retailer who also consumes.

Telecommunications service shall mean the service of which the object is the transmission of any two- way interactive electronic or electromagnetic communications, including, but not limited to, voice, image, data and any other information, by the use of any means, but not limited to wire, cable, fiber optical cable, microwave, radio wave, Voice over Internet Protocol (VoIP), or any combination of such media, including any form of mobile two-way communication.

Television and entertainment services shall mean audio or visual content that can be transmitted electronically by any means, for which a charge is imposed.

Use shall mean the exercise, for any length of time by any person within the Town of any right, power or dominion over tangible personal property or services when rented, leased or purchased at retail from sources either within or without the Town from any person or retailer or used in the performance of a contract in the Town whether such tangible personal property is owned or not owned by the taxpayer. “Use” also includes the withdrawal of items from inventory for consumption.

Use tax shall mean the tax paid or required to be paid by a consumer for using, storing, distributing or otherwise consuming tangible personal property or taxable services inside the Town.

Wholesale sales shall mean sales by wholesalers to retailers, jobbers, dealers, or other wholesalers for resale and does not include a sale by wholesalers to users or consumers not for resale; latter types of sales shall be deemed to be retail sales and shall be subject to the provisions of this chapter.

Wholesaler shall mean any person doing an organized wholesale or jobbing business and selling to retailers, jobbers, dealers, or other wholesalers, for the purpose of resale, and not for storage, use, consumption, or distribution.

3.04.050 – Rate; Tax imposed.

- A. Sales tax. There is hereby imposed on all sales of tangible personal property at retail or the furnishing of services specified in section 3.04.070 of this code, a tax of 4.0% of the sale price of such property or service.
- B. Additional tax on lodging. In addition to the tax imposed by subsection A of this section, there is hereby imposed on all sales of lodging a tax of 6.0% of the sale price of such lodging.
- C. Imposition and collection. The tax specified in this section is imposed upon the consumer. Any seller shall collect the tax and remit it to the Town as provided in this Article.

3.04.060 – Marketplace sales.

- A. A marketplace facilitator engaged in business in the Town is required to collect and remit sales tax on all taxable sales made by the marketplace facilitator or facilitated by it for marketplace sellers or multichannel sellers to customers in the Town, whether or not the marketplace seller for whom sales are facilitated would have been required to collect sales tax had the sale not been facilitated by the marketplace facilitator.
- B. A marketplace facilitator shall assume all the duties, responsibilities, and liabilities of a retailer under this Article. Marketplace facilitators shall be liable for the taxes collected from marketplace sellers or multichannel sellers. The Town may recover any unpaid taxes, penalties, and interest from the marketplace facilitator that is responsible for collecting on behalf of marketplace sellers or multichannel sellers.
- C. The liabilities, obligations, and rights set forth under this Article are in addition to any duties and responsibilities of the marketplace facilitator has under this Article if it also offers for sale tangible personal property, products, or services through other means.
- D. A marketplace seller, with respect to sales of tangible personal property, products, or services made in or through a marketplace facilitator's marketplace, does not have the liabilities, obligations, or rights of a retailer under this Article if the marketplace seller can show that such sale was facilitated by a marketplace facilitator:
 - 1. With whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit sales tax on all sales subject to tax under this Article; or
 - 2. From whom the marketplace seller requested and received in good faith a certification that the marketplace facilitator is registered to collect sales tax and will collect sales tax on all sales subject to tax under this Article made in or through the marketplace facilitator's marketplace.

- E. If a marketplace seller makes a sale that is not facilitated by a licensed marketplace facilitator in a marketplace, the marketplace seller is subject to all of the same licensing, collection, remittance, filing and recordkeeping requirements as any other retailer.
- F. With respect to any sale, the Town shall solely audit the marketplace facilitator for sales made by marketplace sellers or multichannel sellers but facilitated by the marketplace. The Town will not audit or otherwise assess tax against marketplace sellers or multichannel sellers for sales facilitated by a marketplace facilitator.

3.04.070 - Schedules.

- A. In order to avoid fractions of pennies, the tax payable by the consumer to the retailer shall be computed by the retailer in accordance with a schedule or system approved by the Director. The schedule or system shall be designed so that no tax levied by this Article is charged on any purchase of \$0.12 or less. However, the use of a schedule in collecting taxes from consumers shall not relieve the retailer from liability for payment of the full amount of the tax levied in section 3.04.050 of this code on all of the taxable sales or services.
- B. Use of a schedule or system approved by the Director shall not result in computation of a tax liability that is less than the amount that equals taxable sales multiplied by the specified rate.

3.04.070 - Transactions and items subject to tax.

The tax levied by section 3.04.050 of this code shall apply to the price of the following and shall include any delivery charges:

- A. All tangible personal property, including food for home consumption, software programs, and digital products, that is sold, leased or rented, whether or not such property has been included in a previous taxable transaction, unless specifically exempt.
- B. Telecommunications service, except carrier access services and except as otherwise provided by this section for mobile telecommunications service, for all intrastate telecommunications service originating from or received on telecommunication equipment in the Town, if the charge for the service is billed to an apparatus, telephone or account in this Town, to a customer location in this Town, or to a person residing in this Town without regard to where the bill for such service is actually received. "Telecommunications services" do not include separately stated non-transmission services which constitute computer processing applications used to act on the information to be transmitted.
 - 1. Mobile telecommunications service shall be subject to the tax imposed by this Article only if the service is provided by a home service provider to a customer whose place of primary use is within the Town and the service originates within the Town; further, the tax shall be collected in accordance with the provisions of the Act.

2. As used in this subsection, unless the context otherwise requires:
 - a. “Act” means the federal “Mobile Telecommunications Sourcing Act,” 4 U.S.C. Sections 116 to 126, as amended.
 - b. “Customer” means customer as defined in Section 124(2) of the Act.
 - c. “Home service provider” means home service provider as defined in Section 124(5) of the Act.
 - d. “Mobile telecommunications service” means mobile telecommunications service as defined in Section 124(7) of the Act.
 - e. “Place of primary use” means the place of primary use as defined in Section 124(8) of the Act.
3. The Director may require payment of the tax on any other basis permitted by this Article when a customer fails to provide its place of primary use or the Act is determined to be inapplicable to the tax imposed by this Article on mobile telecommunications service.
- C. Gas, electricity and steam furnished for domestic and commercial consumption.
- D. Television and entertainment services, including charges for service, installation, connection, or any similar charge.
- E. Services of an operator when furnished with the lease or rental of tangible personal property, if such services are not separately stated.
- F. Rentals of storage space that is not subject to taxation as real property within the Town, except for rentals of storage space in conjunction with the lease of an area at which a business is conducted.

3.04.080 - Exemptions from Sales Tax.

The tax levied by 3.04.050 of this code shall not apply to the following; provided, however, that this list of exemptions shall not be increased by implication or similarity:

- A. Automotive vehicles sold to nonresidents of the Town for registration outside the Town.
- B. Tangible personal property when both of the following conditions exist:
 1. The sales are to a person who resides or is located outside the Town; and,

2. The articles purchased are delivered to a consumer outside the Town by common carrier or by the conveyance of the seller or by mail, and such articles delivered are used outside the Town.
- C. Prosthetic devices for humans, prescription drugs for humans, and items that are dispensed pursuant to a written order of a licensed practitioner of the healing arts.
 - D. All direct sales, except for construction materials used in a project for which a Town building permit is required, to charitable organizations in the conduct of their regular exempt organizational functions and activities, when billed to and paid for by the charitable organization.
 - E. All direct sales, except for construction materials used in a project for which a Town building permit is required, to the United States Government, the State of Colorado, its departments or institutions, and the political subdivisions thereof in their governmental capacities only, when billed to and paid for by the governmental entity.
 - F. Construction materials used in construction projects undertaken and managed directly by the Town.
 - G. All sales that the Town is prohibited from taxing under the Constitution or laws of the United States, or the Constitution of State of Colorado.
 - H. Motor fuel upon which there has been accrued or paid either the gasoline tax or special fuel tax required by Title 39, Article 27, C.R.S., and that is not subject to refund.
 - I. Farm equipment.
 - J. Neat cattle, sheep, lambs, swine and goats; mares and stallions for breeding purposes.
 - K. Feed for livestock or poultry, seeds, and orchard trees.
 - L. Straw and other bedding for use in the care of livestock.
 - M. Farm closeout sales.
 - N. All wholesale sales to licensed wholesalers, except sales of property used or consumed by the wholesaler.
 - O. Tangible personal property sold to a person engaged in manufacturing or processing for sale when the product being manufactured or processed is transformed in fact by the addition of the property, and such property becomes a constituent part of the finished product.
 - P. Commercial packaging materials, but not commercial shipping materials.

- Q. Napkins, straws or eating utensils sold to a retailer when the following conditions are met:
1. The property is used in the consumption of food purchased;
 2. The cost of the property is included in the price of an item that is sold separately, rather than included in the price of a service; and
 3. The property is not returnable or intended for reuse.
- R. Newsprint and printer's ink for use by publishers, newspapers and commercial printers.
- S. Newspapers, but not including preprinted newspaper supplements.
- T. Labor sold with tangible personal property, if such labor is stated separately on the invoice from the tangible personal property sold; except that, manufacturing or fabricating or other processing labor is never exempt.
- U. Construction materials, if the consumer of such materials presents to the retailer a building permit, or other documentation acceptable to the Town, that evidences that a use tax on such materials has been paid or is required to be paid to the Town or a municipality.
- V. Tangible personal property sold through coin-operated devices for a price of \$0.15 or less.
- W. Food for home consumption purchased with federal food stamps or with funds provided by the Special Supplemental Nutrition Program for Women, Infants, and Children, 42 U.S.C. Section 1786, from retailers who qualify as follows:
1. Retail food stores that primarily sell food for home preparation and consumption and in which one or more staple food items make up more than 50% of eligible food sales. These stores shall include: full-line grocery stores; convenience stores; stores that sell meat, poultry, or fish; stands that sell agricultural commodities; farmers' markets; milk routes; bread routes; day-old bread stores; bakeries that sell bread; and nonprofit cooperative food-purchasing ventures that are properly licensed to sell food in the state and locality in which they are operating.
 2. Firms whose primary business is not the sale of food for home preparation and consumption, but who have recognized grocery departments in which staple foods make up more than 50% of eligible food sales.
- X. Meals purchased with federal food stamps or with funds provided by the Special Supplemental Nutrition Program for Women, Infants, and Children, 42 U.S.C. Section 1786, in the following instances:
1. The meals are prepared for and served to residents of federally subsidized housing for the elderly; or are prepared for and served to persons who are 60 years of age or over or who receive supplemental security income benefits, and their spouses, in

senior citizens' centers, apartment buildings occupied primarily by such persons, public or private nonprofit establishments (eating or otherwise) that contract with the appropriate agency of the state to offer meals for such persons at concessional prices;

2. The meals are prepared for and delivered to persons 60 years of age or over and persons who are physically or mentally handicapped or otherwise so disabled that they are unable adequately to prepare all of their meals, when such meals are prepared for and delivered to them (and their spouses) at their home by a public or private nonprofit organization or by a private establishment that contracts with the appropriate state agency to perform such services at concessional prices;
 3. The meals are prepared for and served to narcotics addicts or alcoholics as part of drug addiction or alcoholic treatment and rehabilitation programs;
 4. The meals are prepared for and served to disabled or blind recipients of federal financial benefits under the Social Security Act who are residents in a public or private nonprofit group living arrangement that is certified for no more than 16 residents by the appropriate state agency or agencies under regulations issued under the Social Security Act; or
 5. The meals are prepared for and served to women and children temporarily residing in public or private nonprofit shelters for battered women and children.
- Y. Carrier access services.
- Z. Garage sales in a residential area, not exceeding a consecutive three-day period or a total of 21 days per calendar year, but not including sales conducted by a professional or compensated agent of the owner of the items to be sold.
- AA. Sales by a recognized youth group affiliated with a charitable organization or a governmental entity.
- BB. Water sold by the Town.
- CC. Insulin in all forms, dispensed pursuant to the direction of a licensed practitioner of the healing arts. Glucose to be used for the treatment of insulin reactions, diabetic urine and blood testing kits and materials, and insulin measuring and injecting devices.
- DD. All purchases of machinery or machine tools, or parts thereof, in excess of \$500.00 to be used in Colorado directly and predominantly in manufacturing tangible personal property for sale or profit. As used in this subsection, "Machinery" means any apparatus consisting of interrelated parts used to produce an article of tangible personal property. The term includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function. "Manufacturing" means the operation of producing a new

product, article, substance, or commodity different from and having a distinctive name, character, or use from raw or prepared materials.

- EE. All occasional sales by a charitable organization. For purposes of this subsection, “occasional sales” means retail sales of tangible personal property, including concessions, for fund-raising purposes if:
1. The sale of tangible personal property or concessions by the charitable organization takes place no more than 12 days, whether consecutive or not, during any one calendar year;
 2. The funds raised by the charitable organization through these sales are retained by the organization to be used in the course of the organization’s charitable service; and
 3. The funds raised by the charitable organization through these sales do not exceed \$25,000.00 during any one calendar year.
- FF. All sales of personal property on which a specific ownership tax has been paid or is payable when such sales meet both of the following conditions:
1. The consumer is a nonresident of, or has its place of business outside the Town; and
 2. Such personal property is registered or required to be registered outside the limits of the Town under the laws of the State.
- GG. All sales of cigarettes.
- HH. When sold in accordance with a written recommendation from a licensed doctor, all sales of therapeutic devices, appliances, or related accessories, with a retail value of more than \$100.00, which are sold to correct or treat a human physical disability or surgically created abnormality.
- II. All sales of therapeutic devices, appliances, or related accessories, with a retail value of \$100.00 or less, which are sold to correct or treat a human physical disability or surgically created abnormality.
- JJ. All sales and purchases of commodities and services incident to the furnishing rooms or accommodations by any person, partnership, limited liability company, association, corporation, estate, receiver, trustee, assignee, lessee, or person acting in a representative capacity or any other combination of individuals to any occupant who is a permanent resident of any hotel, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court or park and who enters into or has entered into a written agreement for occupancy of a room or accommodations for a period of at least 30 consecutive days during the calendar year or preceding year.

- KK. All sales made to schools, other than schools held or conducted for private or corporate profit.
- LL. Any sale of a new or used trailer, semitrailer, truck, truck tractor, or truck body manufactured within this state if such vehicle is purchased from the manufacturer for use exclusively outside this state or in interstate commerce and is delivered by the manufacturer to the consumer within this state, if the consumer drives or moves such vehicle to any point outside this state within 30 days after the date of delivery, and if the consumer furnishes an affidavit to the manufacturer that such vehicle will be permanently licensed and registered outside this state and will be removed from this state within 30 days after the date of delivery.
- MM. Any sale of a new or used trailer, semitrailer, truck, truck tractor, or truck body if such vehicle is purchased for use exclusively outside this state or in interstate commerce and is delivered by the manufacturer or licensed Colorado dealer to the consumer within this state, if the consumer drives or moves such vehicle to any point outside this state within 30 days after the date of delivery, and if the consumer furnishes an affidavit to the seller that such vehicle will be permanently licensed and registered outside this state and will be removed from this state within 30 days after the date of delivery.
- NN. All sales of construction and building materials to a common carrier by rail operating in interstate or foreign commerce for use by such common carrier in construction and maintenance of its railroad tracks; however, any actual use of such construction and building materials shall, at the time of such actual use, be subject to the tax imposed by Article III of this Code.
- OO. The sale of tangible personal property for testing, modification, inspection, or similar type of activities in this state if the ultimate use of such property in manufacturing or similar type of activities occurs outside of this state and if the test, modification, or inspection period does not exceed 90 days.
- PP. The sale of tangible personal property that is to be affixed or attached as a component part of a locomotive, a freight car, railroad work equipment, or other railroad rolling stock.
- QQ. All sales of locomotives, freight cars, railroad work equipment, and other railroad rolling stock used or purchased for use in interstate commerce by a railroad company.
- RR. An amount equal to 48% of the purchase price of a manufactured home, as defined in Section 42-1-102 (106)(b), C.R.S., which amount shall increase to 100% of the purchase price in any subsequent sale of a manufactured home, after such manufactured home has been once subject to the payment of a municipal sales tax.
- SS. All sales of coins and precious metal bullion, as defined in Section 39-26-102(2.6) and (6.6), C.R.S., respectively.

- TT. All sales and purchases of agricultural compounds to be consumed by, administered to, or otherwise used in caring for livestock and all sales and purchases of semen for agricultural or ranching purposes. For purposes of this subsection, “agricultural compounds” means:
1. Insecticides, fungicides, growth-regulating chemicals, enhancing compounds, vaccines, and hormones;
 2. Drugs, whether dispensed in accordance with a prescription or not, that are used for the prevention or treatment of disease or injury in livestock; and
 3. Animal pharmaceuticals that have been approved by the U.S. Food and Drug Administration.
- UU. All sales and purchases of pesticides that are registered by the commissioner of agriculture for use in the production of agricultural and livestock products pursuant to the provisions of the Pesticide Act, Title 35, Article 9, C.R.S., and offered for sale by dealers licensed to sell such pesticides pursuant to Section 35-9-115, C.R.S.
- VV. All sales of equipment, as defined in Section 24-21-602(16), C.R.S., to a bingo-raffle licensee, as defined in Section 24-21-602(3), C.R.S.

3.04.090 - Place of sale.

For purposes of this Article, all retail sales shall be considered consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer or his or her agent to a destination outside the Town or to a common carrier for delivery to a destination outside the limits of the Town.

3.04.100 - Collection, administration and enforcement.

The collection, administration and enforcement of this sales tax shall be performed by the Town.

3.04.110 - Retailer’s fee.

A retailer shall be entitled, as collection agent for the Town, to withhold a collection fee in the amount of $3\frac{1}{3}\%$ or \$200.00, whichever is less, from the total amount remitted by the retailer to the Town each month. If any retailer is delinquent in remitting the tax, other than in unusual circumstances shown to the satisfaction of the Director, the retailer shall not be allowed to retain any amounts to cover such retailer’s expense in collecting and remitting the tax, and an amount equivalent to the full $3\frac{1}{3}\%$ shall be remitted to the Director by any such delinquent retailer.

3.04.120 - Tax credit against payment of public improvement fees in the Promenade at Castle Rock.

- A. Notwithstanding any other provisions of this Article to the contrary, and in order to implement the provisions of the Second Amended and Restated Public Finance Agreement entered into by the Town of Castle Rock, Promenade Castle Rock, LLC, and Promenade at Castle Rock Metropolitan District Nos. 1, 2, and 3, dated March 2, 2021, there is hereby granted to each person or entity obligated to pay, collect or remit the sales tax on the sale or provision of goods or services which are subject to the Town's sales taxes described in this Article occurring within the property known as the Promenade at Castle Rock, and more particularly described in Exhibits A-1, A-2, and A-3 of the Public Finance Agreement, a tax credit against the collection of sales tax as hereinafter set forth. Such sales tax credit shall be granted in the form of a reduction in the applicable sales tax rate in an amount equal to 0.55 %, and shall attach to a particular sales transaction only to the extent that the Credit PIF revenues are collected and received by the PIF Collection Agent for such transaction. The tax credit shall be automatic and shall take effect immediately upon the occurrence of a Taxable Transaction, but shall be subject to the applicable retailer's remittance to and receipt by the PIF collection agent of the Credit PIF revenues in accordance with the PIF Covenant and the Public Finance Agreement (as reflected on the retailer's periodic sales tax report).
- B. Notwithstanding the foregoing, in the event that a Designated Retailer opens a store in the Property prior to January 1, 2025, no sales tax credit shall be granted against any Taxable Sales occurring at any such Designated Retailer.
- C. All capitalized terms used in this section and not otherwise defined herein shall have the meanings given to them in the public finance agreement, as amended from time to time.
- D. The sales tax credit granted pursuant to this section shall remain in effect up to and including December 1, 2039, and shall thereafter automatically terminate.

3.04.130 - Tax credit against payment of public improvement fees in Miller's Landing.

- A. Notwithstanding any other provisions of this Article to the contrary, and in order to implement the provisions of the Public Finance Agreement entered into by the Town of Castle Rock, Citadel Development, LLC, the Miller's Landing Business Improvement District and the Castle Rock Urban Renewal Authority (the "Public Finance Agreement"), there is hereby granted to each person or entity obligated to pay, collect or remit the sales tax on the sale or provision of goods or services which are subject to the Town's sales taxes described in this Article occurring within the property known as Miller's Landing, and more particularly described in Exhibit A of the Public Finance Agreement (the "Property"), a tax credit against the collection of the sales taxes as hereinafter set forth. All capitalized terms used in this section and otherwise defined herein shall have the meanings given to them in the Public Finance Agreement, as amended from time to time. Such tax credit shall be granted in the form of a reduction in the applicable sales tax rate in an amount equal to 2.4 %, and shall attach to a particular transaction only to the extent that the Credit PIF Revenue is collected and received by the PIF Collection Agent for such transaction. Notwithstanding the foregoing, in the event that the Credit PIF is imposed at a rate less than 2.4 %, the tax credit shall be accordingly reduced to the amount of the Credit PIF so

imposed. The tax credit shall be automatic and shall take effect immediately upon the occurrence of a Taxable Transaction, but shall be subject to the applicable retailer's remittance to and receipt by the PIF Collection Agent of the Credit PIF Revenue in accordance with the Credit PIF Covenant and the Public Finance Agreement (as reflected on the retailer's periodic sales tax report).

- B. Notwithstanding the foregoing, in the event that a Relocated Retailer or Restricted Grocery Store, as defined in the Public Finance Agreement, opens a store on the Property, no Sales Tax Credit shall be granted against any Taxable Transactions occurring at any such Relocated Retailer or Restricted Grocery Store, unless such Sales Tax Credit on a Relocated Retailer or Restricted Grocery Store is authorized by the Town Council and the Credit PIF is imposed all in accordance with the Public Finance Agreement and this section.
- C. The sales tax credit granted pursuant to this section shall remain in effect for the period set forth in the Public Finance Agreement and shall thereafter automatically terminate.

3.04.140 - Tax credit against payment of public improvement fees in the Riverwalk.

- A. Notwithstanding any other provisions of this Article to the contrary, and in order to implement the provisions of the Redevelopment Agreement dated May 16, 2017, and entered into by the Town of Castle Rock, CD Wilcox, LLC, and the Castle Rock Downtown Development Authority, as it may be amended (the "Redevelopment Agreement"), there is hereby granted to each person or entity obligated to pay, collect or remit the sales tax on the sale or provision of goods or services which are subject to the Town's sales taxes described in this Article occurring within the property known as the Riverwalk, and more particularly described in Exhibit 4 of the Redevelopment Agreement (the "Property"), a tax credit against the collection of the sales taxes as hereinafter set forth. All capitalized terms used in this section and not otherwise defined herein shall have the meanings given to them in the Redevelopment Agreement, as amended from time to time. Such tax credit shall be granted in the form of a reduction in the applicable sales tax rate in an amount equal to 2.7 %, and shall attach to a particular transaction only to the extent that the Credit PIF Revenue is collected and received by the PIF Collection Agent for such transaction. Notwithstanding the foregoing, in the event that the Credit PIF is imposed at a rate less than 2.7 %, the tax credit shall be accordingly reduced to the amount of the Credit PIF so imposed. The tax credit shall be automatic and shall take effect immediately upon the occurrence of a Taxable Transaction, but shall be subject to the applicable retailer's remittance to and receipt by the PIF Collection Agent of the Credit PIF Revenue in accordance with the Credit PIF Covenant and the Redevelopment Agreement (as reflected on the retailer's periodic sales tax report).
- B. The sales tax credit granted pursuant to this Section shall remain in effect for the period set forth in the Redevelopment Agreement and shall thereafter automatically terminate.

Section 2. Amendment. Section 3.04.170 of the Castle Rock Municipal Code is amended to read as follows:

3.04.170 - Purpose.

The purpose of this Article is to impose a use tax for the privilege of storing, using or consuming in the Town any construction and building materials and motor or other vehicles on which registration is required, purchased at retail, ~~and in accordance with Article 2, Title 39, C.R.S.~~

Section 3. Amendment. Section 3.04.180 of the Castle Rock Municipal Code is hereby repealed in its entirety.

Section 4. Amendment. Section 3.04.190 of the Castle Rock Municipal Code is hereby renumbered as Section 3.04.180 and amended to read as follows:

~~3.04.190-180~~ - Persons subject to tax.

- A. Any person who builds, constructs, reconstructs, alters, expands, modifies or improves any building, dwelling or other structure or improvement to any real property located within the Town, and who purchases ~~the lumber, fixtures or other building material and supplies~~ CONSTRUCTION MATERIALS used therefor from any source outside the corporate limits of the Town or who purchases any motor vehicle or any other vehicle for which registration is required under state law, either new or used, outside the corporate limits of the Town and stores or uses such vehicles within the Town shall be liable for the payment of a tax of ~~3.6% of the gross purchase price thereof between the dates of January 1, 1996, and December 31, 2010, and thereafter a tax of 4.0% of the gross purchase price commencing on January 1, 2011, or upon such earlier date as provided in Section 3.04.024.~~
- B. Contractors are considered to be the end users of building materials in the Town. Owners, lessors-LESSEES, AND contractors ~~and their subcontractors~~ must not pay municipal sales tax to a ~~vendor~~ RETAILER in another jurisdiction for ~~building~~ CONSTRUCTION materials to be used, consumed or stored at a location in the Town, as it is the intent of this Code for all Town taxes to be paid at the time a building permit is issued. No refund of another municipality's tax will be paid if a contractor ~~or subcontractor~~ pays another municipality's tax. ~~The Director may enter into a payment agreement for the tax referenced in this Section to be paid in installments that includes an interest rate of 9% per annum.~~

Section 5. Amendment. Section 3.04.200 of the Castle Rock Municipal Code is hereby renumbered as Section 3.04.190 and amended to read as follows:

~~3.04.200-190~~ - Imposition and collection of tax ON CONSTRUCTION MATERIALS.

- A. ~~Imposition of the tax on such personal property subject to this use tax shall be set forth in the rules and regulations of the Department of Revenue and in accordance with regulations enacted by separate ordinance of the Town At the stage of construction permitting prescribed in the Development Services' fee schedule (as defined in Section 2.25.020), but not later than issuance of the certificate of occupancy~~ TIME A BUILDING PERMIT IS ISSUED for construction of a structure or improvement which is subject to taxation

pursuant to Section 3.04.190-180, there shall be collected a prepayment of use tax on an amount equivalent to ~~fifty percent (50%)~~ of the construction valuation computed in accordance with the ~~permit fee~~ BUILDING valuation TABLE set forth in the fees ~~published by the~~ Development Services ~~Department~~ FEE SCHEDULE APPROVED PURSUANT TO SECTION 15.01.020, ~~which valuation forms the basis for computation of the permit fee imposed pursuant thereto~~ (THE "ESTIMATED PREPAYMENT"). It shall be presumed that ~~fifty percent (50%)~~ of the construction valuation is attributable to materials subject to taxation under Section 3.04.190-180. However, the Chief Building Official may adjust such construction valuation based upon the actual value of materials incorporated into such construction, in the event the permittee adequately documents the actual valuation of materials. The Town Manager may also approve deferrals of use tax pursuant to Section 2.25.030.F.

- B. UPON REMITTANCE OF THE ESTIMATED PREPAYMENT, THE TOWN SHALL ISSUE A RECEIPT TO THE CONTRACTOR IDENTIFYING THE ADDRESS OF THE PROPERTY FOR WHICH THE PURCHASE OF CONSTRUCTION MATERIALS IS MADE AND THE PERMIT NUMBER. THE RECEIPT SHALL BE PRESENTED TO EACH RETAILER OF CONSTRUCTION MATERIALS, WHO SHALL ALLOW THE CONTRACTOR AN EXEMPTION AS TO ANY AND ALL TOWN SALES AND USE TAX RELATING TO THAT SPECIFIC PERMIT.
- C. IT SHALL BE THE DUTY OF EVERY RETAILER OF CONSTRUCTION MATERIALS TO MAINTAIN A RECORD OF EACH EXEMPT SALE UNDER THIS SECTION, WHICH RECORD SHALL INCLUDE THE PERMIT NUMBER AND A COPY OF THE INVOICE FOR THE EXEMPT SALE.
- D. WITHIN 60 DAYS OF THE DATE OF FINAL INSPECTION BY THE CHIEF BUILDING OFFICIAL, IF NO CERTIFICATE OF OCCUPANCY WILL BE ISSUED OR THE DATE OF ISSUANCE OF A CERTIFICATE OF OCCUPANCY, WHEN A CERTIFICATE OF OCCUPANCY, TEMPORARY OR OTHERWISE IS ISSUED, THE CONTRACTOR SHALL COMPUTE THE USE TAX DUE ON THE ACTUAL COST OF CONSTRUCTION MATERIALS AND EITHER:
 - 1. MAKE A RETURN OF ANY TAX DUE IN EXCESS OF THE ESTIMATED PREPAYMENT PURSUANT TO SUBSECTION A ABOVE; OR
 - 2. REQUEST A REFUND AS PROVIDED IN SUBSECTION E BELOW, IF THE ACTUAL COST OF MATERIALS IS LESS THAN THE ESTIMATED VALUE OF THE MATERIALS.
- E. THE CONTRACTOR SHALL SUBMIT A REQUEST FOR A REFUND TO THE FINANCE DIRECTOR WITHIN 60 DAYS OF THE DATE OF FINAL INSPECTION BY THE BUILDING OFFICIAL, IF NO CERTIFICATE OF OCCUPANCY WILL BE ISSUED, OR THE DATE OF THE ISSUANCE OF THE CERTIFICATE OF OCCUPANCY, WHEN A CERTIFICATE OF OCCUPANCY, TEMPORARY OR OTHERWISE IS ISSUED, AND SHALL FURTHER PROVIDE THE FINANCE

DIRECTOR WITH THE COST OF MATERIALS AS VERIFIED BY THE RECORDS REQUIRED TO BE KEPT BY SECTION 3.05.060. FAILURE TO SO NOTIFY THE FINANCE DIRECTOR AND PROVIDE THE REQUIRED RECORDS TO THE FINANCE DIRECTOR SHALL BE GROUNDS FOR DENYING A REFUND REQUEST. UPON RECEIPT OF THE TIMELY REQUEST FOR A REFUND, COMPLETE WITH ALL REQUIRED RECORDS, THE FINANCE DIRECTOR SHALL DETERMINE WHETHER, IN THE DIRECTOR'S REASONABLE OPINION, RECEIPTS FOR ALL OF THE CONSTRUCTION MATERIALS USED HAVE BEEN PROVIDED. UPON MAKING THE DETERMINATION THAT ALL OF THE REQUIRED DOCUMENTS HAVE BEEN PROVIDED, THE FINANCE DIRECTOR WILL REVIEW THE REFUND REQUEST AND MAKE A DETERMINATION OF WHETHER A REFUND OF THE EXCESS USE TAXES PAID MAY BE GIVEN.

- F. EVERY CONTRACTOR WHO HAS REMITTED AN ESTIMATED PREPAYMENT UNDER THIS SECTION SHALL KEEP AND PRESERVE ALL INVOICES, RECEIPTS, AND STATEMENTS SHOWING ANY OR ALL PROJECT EXPENDITURES INCLUDING, BUT NOT LIMITED TO, PURCHASES OF CONSTRUCTION MATERIALS FOR A PERIOD OF THREE YEARS FOLLOWING THE ISSUANCE OF A FINAL CERTIFICATE OF OCCUPANCY OR FINAL INSPECTION OR, ALTERNATIVELY, THE DATE ON WHICH WORK IS ABANDONED OR OTHERWISE TERMINATED. THE DIRECTOR MAY, WITHIN THAT THREE-YEAR PERIOD, CONDUCT AN AUDIT OF THE RECORDS OF THE CONTRACTOR TO DETERMINE THE AMOUNT OF ALL THE USE TAX DUE AND OWING TO THE TOWN. THE DIRECTOR SHALL COLLECT ANY SUCH TAX DUE AND OWING TO THE TOWN OVER AND ABOVE THE AMOUNT OF THE ESTIMATED PREPAYMENT.

Section 6. Amendment. Section 3.04.210 of the Castle Rock Municipal Code is hereby repealed in its entirety.

Section 7. Amendment. Section 3.04.220 of the Castle Rock Municipal Code is hereby renumbered as Section 3.04.200 and amended to read as follows:

3.04.200 - Exemptions.

For the purposeS of this Article, the use tax imposed under this Article shall not apply TO:

- A. ~~For~~ The storage, use or consumption of any tangible personal property the sale of which is subject to the retail sales tax imposed by the Town;
- B. ~~For~~ The storage, use or consumption of any tangible personal property purchased for resale in the Town, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business;
- C. ~~For~~ The storage, use or consumption of any tangible personal property brought into the Town by a nonresident thereof for his own storage, use or consumption while temporarily

within the Town;

- D. ~~For~~The storage, use or consumption of tangible personal property by the United States government, or the State of Colorado, or its institutions, or its political subdivisions in their governmental capacities only, or by religious or charitable corporations in the conduct of their regular religious or charitable functions;
- E. ~~For~~The storage, use or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit or use, any article, substance or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded or furnished and the container, label or the furnished shipping case thereof;
- F. ~~For~~The storage, use or consumption of any article of tangible personal property, the sale or use of which has already been subject to a sales or use tax of another county, city or Town equal to or in excess of that imposed by this Article. A credit shall be granted against the use tax imposed by this Article with respect to a person's storage, use or consumption in the Town of tangible personal property purchased by him or her elsewhere. The amount of the credit shall be equal to the tax paid by him or her by reason of the imposition of any sales or use tax for another county, city or town on his or her purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this Article;
- G. ~~For~~The storage, use or consumption of tangible personal property and household effects acquired outside the Town and brought into it by a nonresident acquiring residency;
- H. ~~For~~The storage or use of a motor vehicle if the owner is or was, at the time of purchase, a nonresident of the Town, and he or she purchased the vehicle outside of the Town, for use outside the Town and actually so used it for a substantial and primary purpose for which it was acquired and he or she registered, titled and licensed the motor vehicle outside the Town;
- I. THE STORAGE, USE OR CONSUMPTION OF CONSTRUCTION MATERIALS THAT ARE USED TO BUILD, CONSTRUCT, RECONSTRUCT, ALTER, EXPAND, MODIFY, OR IMPROVE ANY BUILDING, DWELLING, STRUCTURE, OR OTHER IMPROVEMENT TO REAL PROPERTY, IF THE OWNER OR LESSEE OF SUCH PROPERTY WHO CONTRACTS FOR SUCH IMPROVEMENT TO BE MADE IS:
 - 1. THE UNITED STATES GOVERNMENT, THE STATE, AND THEIR RESPECTIVE DEPARTMENTS, INSTITUTIONS AND POLITICAL SUBDIVISIONS, IN THEIR GOVERNMENTAL CAPACITIES ONLY,
 - 2. THE TOWN OR ANY AGENCY OR DEPARTMENT THEREOF; OR
 - 3. ANY CHARITABLE ORGANIZATION IN THE CONDUCT OF ITS REGULAR CHARITABLE FUNCTIONS AND ACTIVITIES.

~~I. To the storage, use or consumption of any construction and building materials and motor and other vehicles on which registration is required, if a written contract for the purchase thereof was entered into prior to the effective date of this Article;~~

~~J. To the storage, use or consumption of any construction and building materials required or made necessary in the performance of any construction contract bid, let or entered into any time prior to January 1, 1977.~~

Section 8. Amendment. Section 3.04.230 of the Castle Rock Municipal Code is hereby renumbered as Section 3.04.210.

Section 9. Amendment. Section 3.04.240 of the Castle Rock Municipal Code is hereby repealed in its entirety.

Section 10. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall, for any reason, be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect the remaining provisions of this ordinance.

Section 11. 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 17th day of October, 2023, 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 ON SECOND AND FINAL READING this 7th day of November, 2023, by the Town Council of the Town of Castle Rock by a vote of ___ for and ___ against.

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

Trish Muller, CPA, Finance Director