

**MURDOCH'S RANCH AND HOME SUPPLY
ECONOMIC ASSISTANCE AGREEMENT**

DATE: _____, 2018.

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

MURDOCH'S RANCH AND HOME SUPPLY, LLC, a Montana limited liability company, 2311 N. 7th Avenue, Bozeman, Montana 59715 ("Murdoch's").

RECITALS:

A. Murdoch's will enter into a ten year lease at 100 Founders Parkway, Castle Rock, Colorado, within a portion of the former King Soopers store located in the Milestone Shopping Center. The leased premises is further described and depicted on the attached ***Exhibit 1*** (the "Leased Property").

B. Pursuant to the Lease, Murdoch's will be responsible for certain tenant finish improvements, with an estimated cost of \$2.5 million, as further described in the attached ***Exhibit 2*** ("Building Improvements").

C. Murdoch's seeks economic development assistance from the Town for the Building Improvements. The project conforms with the Town's Comprehensive Master Plan, Economic Development Strategic Action Plan, Economic Development Assistance policies and the zoning and other applicable regulations on the Leased Property.

D. Occupancy of the vacant space within the Milestone Shopping Center will generate an increase in sales tax and will likely increase patronage to the other businesses located within the Milestone Shopping Center. Accordingly, the Town finds that Murdoch's has demonstrated that economic development assistance is warranted due to the cost of Building Improvements, and accordingly, Murdoch's request for sales tax pledge qualifies for economic assistance under 3.04.025 of the Code.

THEREFORE, in reliance on the matters set forth above and in consideration of the mutual promises contained in this Agreement, the Parties agree and covenant as follows:

COVENANTS:

**ARTICLE I
DEFINITIONS**

1.01 Defined Terms. Unless the context expressly indicates to the contrary, the following words when capitalized in the text shall have the meanings indicated:

Agreement: this Murdoch's Economic Development Assistance Agreement.

Building Improvements: those items, types of expenditures or substantially (in use or nature) similar items listed/identified on *Exhibit 2*.

Code: the Castle Rock Municipal Codes, as amended from time to time.

Development Fees: the fees and charges imposed by the Town under the Town Regulations on development and construction, including all permit fees.

Lease: the Lease between Murdoch's and Milestonecenter18, LLC for the Leased Property dated _____.

Leased Property: the property described and/or depicted in the attached *Exhibit 1*.

Project: the operation of a Murdoch's Ranch and Home Supply store of approximately 50,000 square feet located within the Milestone Shopping Center at 100 Founders Parkway, Castle Rock, Colorado 80104, of a quality and scope of a ranch and home goods and services consistent with the same in comparable Murdoch's stores, and include the scope of Building Improvements as set forth in *Exhibit 2*.

Project Approvals: the construction permits required under the Town Regulations for the Project, inclusive of applicable public works and building permits.

Town Regulations: the Town Charter, ordinances, resolutions, rules, regulations and technical criteria of the Town, including the Code, and other provisions of all zoning, subdivision and building codes, as the same may be amended from time to time.

Certain other terms are defined in the text of the Agreement and shall have meaning indicated.

1.02 Cross-reference. Any reference to a section or article number, without further description, shall mean such section or article in this Agreement.

ARTICLE II APPLICATION AND EFFECT

2.01 Applicability. This Agreement and the financial incentives extended the Project are exclusive to Murdoch's and to the Project, and are not assignable or transferable to any other property, other development interests or other activity/operations at the Leased Property or the Milestone Shopping Center.

2.02 Town Regulations. Town Regulations shall apply to the development of the Project in the same manner and effect as within other areas of the Town. The development and use of the Leased Property shall be subject to the payment of all Development Fees, fees and taxes imposed by the Town through the Town Regulations.

2.03 Not Exclusive. This Agreement does not restrict the Town from extending financial assistance incentives to any other project or enterprise, including projects that may offer similar goods and services to those of the Project.

ARTICLE III FINANCIAL ASSISTANCE

3.01 Qualifying Project. All financial assistance contained in this Article III is conditioned on the receipt of an application for a building permit for the Project that includes the Building Improvements substantially similar to those outlined in *Exhibit 2* not later than August 15, 2018, and opening of the Project to the public not later than February 1, 2019 ("Compliance Date(s)"). If, (i) the Project is not constructed in substantial conformance with the *Exhibit 2* criteria, or (ii) either of the Project progression dates is not met by Murdoch's, then at the option of the Town, this Agreement may be terminated, in which event it shall then have no force or effect, and all financial assistance established in this Article III shall lapse. The date the Project is open to the public shall be referred to as the "Opening Date."

Alternatively, Town, at its sole option and discretion, may waive the deviation from *Exhibit 2* criteria and/or extend the Compliance Date(s). Any action taken by the Town under this Section shall be effected by written notice to Murdoch's by the Town Manager, and shall become effective and irrevocable as of the date of such notice. The cure rights afforded to Murdoch's under Section 4.03 shall not be applicable to notice given pursuant to this Section 3.01.

3.02 Sales Tax Pledge. Provided Murdoch's develops and opens the Project in substantial conformance with this Agreement, pursuant to 3.04.025 of the Code, and subject to the

conditions set forth below, Town shall rebate to Murdoch's 25% of the Town's 4% sales tax actually collected and received for taxable sales at the Project/Leased Property for a period not to exceed four (4) years (48 months) commencing with the month taxable sales are first generated from the Project, but not to exceed the aggregate sum of \$300,000 ("Pledged Revenue"). Pledged Revenue is limited to either (a) the actual documented and certified costs (in a form determined by the Town) incurred by Murdoch's for the Building Improvements set forth in **Exhibit 2**, or (b) \$300,000, whichever is less. Pledged Revenue will be forwarded to Murdoch's on a monthly basis within 60 days following the close of the month being remitted.

The Town's commitment to rebate Pledged Revenue is subject to the following appropriation conditions: the annual budget and appropriation by the Town Council of the rebate of Pledged Revenue for the succeeding calendar year, and in the event Town Council should fail to so authorize the rebate of Pledged Revenue for the following year, the Town's obligation to rebate Pledged Revenue shall expire and lapse with rebate of Pledged Revenue on taxable sales through December 31 of the lapse year.

The rebate of Pledged Revenue under this Agreement is based, in part, on the representation of Murdoch's to Town, that under the terms of the lease/financial transaction between Murdoch's and Milestonecenter18, LLC, Murdoch's is solely responsible for the cost of the Building Improvements. Not later than the issuance of a building permit for the Project, Murdoch's shall provide Town with a fully executed copy of the Lease that evidences (i) a primary lease term of a minimum of ten years, and (ii) Murdoch's is in fact contractually obligated to construct the Building Improvements, at Murdoch's cost. Murdoch's failure to comply with this information shall void any obligation of Town under this Agreement, notwithstanding any other provision of this Agreement to the contrary.

3.03 Business Termination. This Agreement is specific to the Project and the Leased Property, including the continued operation of a Murdoch's Ranch and Home Supply. In the event Murdoch's materially changes the nature of its business or terminates its business operations on the Leased Property as a ranch and home supply store, as that business operation is commonly understood (except for temporary closures necessitated by remodeling, etc., damage or destruction due to casualty or other force majeure events) this Agreement shall terminate. In the event of such early termination, the Town shall make a final rebate of Pledged Revenues accrued to the date of termination. In the event of Murdoch's terminates its operation of a Murdoch's Ranch and Home Supply at the Leased Property prior to the expiration of the 10-year Lease term ("Closing Date"), Murdoch's shall reimburse Town 10% of the Pledged Revenue rebated to Murdoch's up to the date of termination multiplied by the number of full calendar years between the Closing Date and the tenth anniversary of the Opening Date. In other words, the Pledged Revenue is vested at the rate of 10% for each anniversary of the Opening Date that Murdoch's remains open.

3.04 Subordination. The Town's obligation to pay Pledged Revenue is subordinate to the Town's obligation to pay any current or future bonds or other indebtedness which are backed by a sales and use tax pledge. In addition, the Town's obligation to pay Pledged Revenue under 3.02 is contingent upon the existence of surplus in sales and use tax revenues in excess of the sales and use tax revenues necessary to meet such existing or future bond or debt services.

3.05 Exclusive to Murdoch's. All interest and benefit of Murdoch's under this Agreement including specifically the right to receive Pledged Revenue is exclusive to Murdoch's. No third party shall have any claim to Pledged Revenue or otherwise the right to enforce or benefit from this Agreement. This Agreement creates no third party beneficiaries. The Town will have fully discharged its obligation to rebate Pledged Revenues in any particular fiscal year by disbursement to Murdoch's. Accordingly, Murdoch's shall indemnify and defend the Town against any claims to the Pledged Revenues made by any third party. Such indemnification shall extend to the reasonable attorney's fees incurred by the Town.

ARTICLE IV OTHER PROVISIONS

4.01 Event of Default. Failure of the Town or Murdoch's to perform any covenant, agreement, obligation or provision of this Agreement, shall constitute an event of default under this Agreement.

4.02 Remedies. Upon default of this Agreement and failure to timely cure, the non-defaulting party shall have the right to take whatever action at law or in equity necessary or desirable to enforce performance and compliance with this Agreement, or to collect the monies then due and thereafter to become due, however in the event of a default without cure by Murdoch's, the Town's sole remedy shall be to deny payments under Article III which become due to Owner after the event of default. In any such legal action, the prevailing party shall be entitled to recover its reasonable attorney's fees and litigation costs from the other party. To the extent necessary, and only to such extent, Town waives any immunity provided by law to permit enforcement of this Agreement pursuant to the terms hereof by Murdoch's.

4.03 Default Notice. In the event either party alleges that the other is in default, the non-defaulting party shall first notify the defaulting party in writing of such default, and specify the exact nature of the default in such notice. The defaulting party shall have twenty (20) working days from receipt of such notice within which to cure such default before the non-defaulting party may exercise any of its remedies.

4.04 TABOR and Appropriation Compliance. This Agreement does not create a multiple-fiscal year obligation under Article X, Section 20 of the Colorado Constitution, nor does it create indebtedness of the Town within the meaning of any constitutional, home rule charter or

statutory limitation or provision. The obligations of the Town under this Agreement shall be from year to year and the decision to annually continue with payment of the Pledged Revenue in the succeeding fiscal year is entirely at the discretion of the Town Council.

4.05 Governing Law. This Agreement shall be governed and construed in accordance with Colorado law, and Douglas County, Colorado shall be the proper venue for the commencement of any claims in state court.

4.06 Amendment. Any and all changes to this Agreement, in order to be mutually effective and binding upon the parties and their successors, must be in writing.

4.07 Notice. The addresses of the parties to this Agreement are listed below. Any and all notices allowed or required to be given in accordance with this Agreement are deemed to have been given when delivered to the other party, or three (3) days following the date the same is deposited in the United States mail, registered or certified, postage prepaid, return receipt requested, addressed to the other party at the address noted; or such address as is subsequently endorsed in writing.

If to Town:	Town of Castle Rock 100 N. Wilcox Street Castle Rock, Colorado 80104 Attn: Town Attorney
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If to Murdoch's	Murdoch's Ranch and Home Supply, LLC 2311 N. 7 th Avenue Bozeman, MT 59715
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4.08 Entire Agreement. This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written.

(SIGNATURE PAGES TO FOLLOW)

MURDOCH’S RANCH AND HOME SUPPLY, LLC,
a Montana limited liability company.

By: _____

Its: _____

STATE)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018 by _____ as _____ for Murdoch’s Ranch and Home Supply, LLC, a Montana limited liability company.

Witness my official hand and seal.

My commission expires: _____

(S E A L)

Notary Public