

**SECOND AMENDMENT TO ENCORE CR DOWNTOWN
REDEVELOPMENT AND FINANCING AGREEMENT**

DATE: December 3, 2019

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

CASTLE ROCK DOWNTOWN DEVELOPMENT AUTHORITY, a downtown development authority duly organized and existing under Part 8 of Article 25, Title 31, C.R.S., 18 South Wilcox Street, Suite 202, Castle Rock, Colorado 80104 (“DDA”).

TOWN OF CASTLE ROCK FESTIVAL PARK COMMONS GENERAL IMPROVEMENT DISTRICT, a general improvement district organized under Part 6 of Article 25, Title 31, C.R.S., 100 N. Wilcox Street, Castle Rock, Colorado 80104 (“GID”).

CD-FESTIVAL COMMONS, LLC, a Colorado limited liability company, 430 Indiana Street, Suite 200, Golden, Colorado 80401 (“CDFC”).

RECITALS:

The above-named entities are the Parties to the Encore CR Downtown Redevelopment and Financing Agreement CDFC dated September 3, 2019, as amended by the First Amendment to Encore CR Downtown Redevelopment Agreement and Financing Agreement dated November 5, 2019 (as so amended, the “RDA”). The Parties have identified the need to make certain additional revisions to the RDA to facilitate the Construction Closing, as that term is defined in the RDA.

THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree and covenant as follows:

Section 1. Amendment. The following sections (or subsections) of the RDA are amended, and as so amended, restated as follows:

1.01 Defined Terms:

GID Mill Levy: the annual mill levy on the entirety of the Project Property certified by the Board in the Certification Year.

2.10 CDFC Exclusive Beneficiary. All entitlements and benefits accruing to CDFC under this Agreement are exclusive to CDFC as defined in 1.01. Except as otherwise provided in this Agreement, no other owner, tenant, business or occupant within the Project shall have any claim to the financial assistance afforded CDFC under this Agreement. Accordingly, CDFC shall indemnify and defend the Town and DDA against any claims to amounts paid to CDFC asserted by any third parties. Such indemnification shall extend to the reasonable attorney's fees incurred by the Town and DDA. For clarity, any party which is recognized, pursuant to Section 14(B)(2) of the Ground Lease, as the Lessee (as defined in the Ground Lease) under the Ground Lease following the completion of foreclosure or sale proceedings, shall be entitled to exercise all of the rights, entitlements and benefits of CDFC under this Agreement as such rights, entitlements and benefits are extant at the time of assumption by such party. Each escrow agreement described in this Agreement (each, an "Escrow Agreement") shall include a comparable acknowledgment from the escrow agent (each, an "Escrow Agent") thereunder.

4.08 Construction Closing.

A. The Construction Closing shall occur on December 5, 2019, which date may be extended by mutual consent of the Parties.

B. 2. CDFC:

i. (intentionally deleted);

4.09 Construction Suspension. In the event that construction on the Parking Garage should cease for a duration of 60 days or more, or should CDFC be subject to a voluntary or involuntary bankruptcy proceeding, such event shall constitute a default of this Agreement. Subject to obtaining any required judicial approval, Town shall have the right to assume the Parking Garage Contract and complete construction of the Parking Garage in conjunction with the surety under the Completion Bond, provided that the Lessee under the Ground Lease has declined to cure such default within a 60-day cure period after receipt of notice of default in accordance with the Ground Lease. These remedies afforded Town shall be in addition to the remedies provided in 11.06.

9.02 GID Mill Levy.

A. On November 6, 2018 the GID electorate authorized imposition of a GID Mill Levy Cap of 30 mills. Subsequent to that election, the Parties determined that additional tax revenue from the GID is necessary to support the Town Investment. Consequently, the Parties concur that an increase in the GID Mill Levy Cap to 45 mills (subject to adjustment to account for changes in

the method by which assessed valuation is calculated) will be referred to the ballot at a special election of the GID on November 5, 2019. If the increase in the GID Mill Levy Cap to 45 mills is approved at the November 5, 2019 GID election, and such increase is not set aside by final judicial decree, this 9.02 shall apply and in that event 9.04 shall be of no force or effect. Alternatively, if the increase in the Mill Levy Cap does not take effect, then in that event 9.04 shall apply and 9.03 shall be of no force or effect.

B. It is the intention of the Parties that all of the Project Property shall be included in the GID as of the date of the Real Estate Closing in order to maximize GID Tax Revenue. Accordingly, the Parties agree to effect any necessary inclusions of the Project Property into the GID prior to the Real Estate Closing.

11.10 No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Town, CDFC, and the Leasehold Mortgagee and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the Parties that any person other than the Party or the Leasehold Mortgagee receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

11.22 Leasehold Mortgagee Rights.

Notwithstanding anything to the contrary set forth in this Agreement or any other agreement:

A. After written notice is given by Leasehold Mortgagee (as defined in the Ground Lease, "Leasehold Mortgagee") to Town (i) that a default by CDFC continuing beyond all applicable notice and grace periods exists under the Leasehold Mortgage (as defined in the Ground Lease, "Leasehold Mortgage") and (ii) that any and all payments to be made to CDFC under this Agreement or any Escrow Agreement should be paid to Leasehold Mortgagee pursuant to the terms of one or more collateral assignments executed and delivered by CDFC to Leasehold Mortgagee, then Town, DDA and GID, as applicable, shall thereafter pay (or cause to be paid) to Leasehold Mortgagee all such payments then or thereafter payable to CDFC under this Agreement and each Escrow Agreement. CDFC hereby expressly authorizes Town, DDA, GID and each Escrow Agent to make such payments to Leasehold Mortgagee and releases and discharges Town, DDA, GID and each Escrow Agent from any and all liability of every kind and nature to CDFC on account of any such party making any such payments. Each Escrow Agreement shall include a comparable acknowledgment from the Escrow Agent thereunder;

B. The notice and cure periods afforded to Leasehold Mortgagee as set forth in Section 14(b)(2) of the Ground Lease in the event of a default by CDFC under the Ground Lease shall apply equally to any breach or default by CDFC under this Agreement and to any other agreement described in this Agreement; and

C. For so long as a Leasehold Mortgage remains of record, Town, DDA and GID, as applicable, hereby agree that none of this Agreement nor any agreement referenced herein to which CDFC is a party shall be amended or modified without Leasehold Mortgagee's prior written consent.

Section 2. Ratification. The Parties ratify and confirm the RDA as amended by this Second Amendment and acknowledge, that as amended the RDA is in full force and effect.

Section 3. Recordation. This First Amendment shall be recorded in the public records of Douglas County, Colorado.

TOWN:

ATTEST:

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Approved as to form:

Approved as to content:

Robert J. Slentz, Town Attorney

David L. Corliss, Town Manager

STATE OF COLORADO)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019 by Lisa Anderson as Town Clerk and Jason Gray as Mayor of the Town of the Town of Castle Rock, Colorado.

Witness my official hand and seal.
My commission expires: _____

[S E A L]

Notary Public

DDA:

**CASTLE ROCK DOWNTOWN
DEVELOPMENT AUTHORITY**

By: _____

Its: _____

STATE OF COLORADO)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019 by _____ as _____ for the Castle Rock Downtown Development Authority.

Witness my official hand and seal.
My commission expires: _____

[S E A L]

Notary Public

Approved as to form:

Corey Hoffman, General Counsel

GID:

ATTEST:

TOWN OF CASTLE ROCK FESTIVAL PARK COMMONS GENERAL IMPROVEMENT DISTRICT

Secretary

Chair

STATE OF COLORADO)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019 by _____ as Secretary and _____ as Chair for the Town of Castle Rock Festival Park Commons General Improvement District.

Witness my official hand and seal.
My commission expires: _____

[S E A L]

Notary Public

Approved as to form:

General Counsel

CDFC:

CD-FESTIVAL COMMONS, LLC, a Colorado limited liability company

By: _____

Its: _____

STATE OF)
) **ss.**
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019 _____ as _____ for CD-Festival Commons, LLC, a Colorado limited liability company.

Witness my official hand and seal.
My commission expires: _____

[S E A L]

Notary Public