

**TOWN OF CASTLE ROCK/CASTLE ROCK URBAN
RENEWAL AUTHORITY
2021 LOAN AGREEMENT**

DATE: October 6, 2020

PARTIES: **CASTLE ROCK URBAN RENEWAL AUTHORITY**, 100 Wilcox Street,
Castle Rock, Colorado 80104 ("CRURA").

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

RECITALS:

WHEREAS, the CRURA desires to borrow \$24,000 from the Town in order to operate in 2021 ("2021 Loan") since the tax increment financing has not commenced within the Castle Rock Urban Renewal Area.

WHEREAS, the Town has designated funds for the CRURA, and accordingly the Town is willing to loan \$24,000 for new development upon the terms and conditions set forth in this 2021 Loan Agreement.

NOW, THEREFORE, in consideration of the foregoing and these mutual promises, the parties agree and covenant as follows:

Section 1. 2021 Loan. The Town shall loan the CRURA \$24,000 in 2021. Funding may be advanced by the Town to the CRURA through December 31, 2021, to be used by the CRURA for costs incurred by the CRURA for its staffing and consultants in connection with review, processing, and conducting public hearings for any urban renewal project. Such amounts shall be paid directly to the CRURA by the Town. Any amounts so advanced by the Town shall be a second priority obligation only to the debt issued by the CRURA

Section 3. Interest. Interest on the outstanding principal balance of the 2021 Loan shall accrue at a variable per annum rate equivalent to the Town's inter-fund borrowing rate ("IBR"), the average earnings rate for investments as calculated by the Town's investment broker, in effect on each anniversary date of the 2021 Loan plus one-half point (50 basis points), but in any event not to exceed 3.0 percent per annum. However, for the first year of the 2021 Loan the interest rate shall be fixed at 1.5 percent, irrespective of the IBR. Thereafter, the interest rate shall be reset on each anniversary date of the 2021 Loan and such reset rate shall be the rate applied to the outstanding principal to determine the interest due with the following annual installment payment. The Town's IBR is defined as the prior calendar year interest rate yield as calculated by the Town's year-end investment portfolio statement for existing Town funds (to illustrate the IBR methodology, the Town interest rate yield for 2013 was .7%).

Section 3. Loan Payments. The 2021 Loan shall be due and payable each year on December 1. Each payment shall consist of the principal payment together with accrued interest then due and owing. The 2021 Loan may be prepaid in whole at any time without penalty.

All payments of the 2021 Loan by the CRURA (including prepayments) shall be made without setoff or counterclaim to the Town at the office of the Town, or such other location which may from time to time be designated in writing by the Town on the due date. If any payment under the 2021 Loan becomes due and payable on a day other than a day on which banking institutions in the Town of Castle Rock, Colorado are authorized by law to be open for business (a "Business Day"), then payment shall be due and payable on the next succeeding Business Day.

Section 4. Conditions Precedent. The obligation of the Town to make the 2021 Loan shall be subject to the fulfillment prior to or contemporaneously with the making of such Loan of the following conditions precedent: (a) the 2021 Loan Agreement and the 2020 Loan (collectively, the "2021 Loan Documents") shall have been approved and executed and delivered by the respective parties; and (b) all proceedings and all other documents and legal matters in connection with the transactions contemplated by this 2021 Loan Agreement and the other 2021 Loan Documents shall be satisfactory in form and substance to the Town and its counsel, the CRURA, and its Board of Commissioners.

Section 5. Closing and Disbursement. Upon satisfaction the conditions under Section 4, above, the parties shall schedule a Loan closing ("Closing") at a mutually acceptable date and time at the Town offices. At Closing, the CRURA shall tender a fully executed 2021 Loan and any other applicable 2021 Loan Documents. The loan disbursement of \$24,000 shall be disbursed upon need to the CRURA upon approval of this 2021 Loan Agreement by the Town Council.

Section 6. TABOR. The Parties acknowledge that, according to the decision of the Colorado Court of Appeals in *Olson v. City of Golden*, 53 P.3d 747 (2002), an urban renewal authority is not a local government and therefore is not subject to the provisions of Article X, Section 20 of the Colorado Constitution. Accordingly, CRURA's obligation to repay the 2021 Loan in accordance with the terms and provisions of this 2021 Loan Agreement does not require voter approval in advance and is not subject to annual appropriation.

Section 7. Required Insurance. During the term of this 2021 Loan Agreement, CRURA shall maintain in full force and effect liability and casualty insurance for any project until completion with the coverage limits and conditions as the Town maintains under its umbrella insurance policy.

Section 8. Events of Default. Upon the occurrence of either of the following events:

(a) CRURA shall fail to pay the principal of or interest on the 2021 Loan, or any other amount payable hereunder, when due, whether by acceleration or otherwise; or

(b) CRURA is in default of any other provision of the 2021 Loan Documents and such default is not cured within 30 days after written notice of such default from Town;

provided, however, if such default is not reasonably capable of being cured, then the CRURA shall have such additional period of time as shall be reasonably required to cure such default, provided the CRURA promptly commences and diligently pursues such cure,

then the 2021 Loan with accrued interest thereon, shall immediately become due and payable in full, and all amounts owing under this 2021 Loan Agreement shall be due and payable in full.

Section 9. Amendments and Waivers. No amendments to this 2021 Loan Agreement or any other 2021 Loan Document shall be effective without a written agreement signed by authorized officers of both the Town and the CRURA Board. No waiver of any provision of this 2021 Loan Agreement or any other 2021 Loan Documents shall be effective without a written waiver signed by an authorized officer of the party making such waiver.

Section 10. Notices. Except as otherwise provided herein, all notices, requests, and demands to or upon the respective parties hereto to be effective, shall be transmitted in writing by hand delivery, by first class certified or registered mail, or by overnight courier service, addressed to the Town or the CRURA, as the case may be, at the address for such party as set forth above or at such other address as may be subsequently submitted by written notice of either party. Notices shall be deemed to have been given when received by the party to whom directed.

Section 11. No Waiver; Remedies Cumulative. No failure to exercise and no delay in exercising on the part of the Town any right, remedy, power or privilege under this 2021 Loan Agreement or the other 2021 Loan Documents, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege under this 2021 Loan Agreement or any other 2021 Loan Documents preclude any other or further exercise thereof; nor shall any single or partial exercise of any right, remedy, power or privilege under this 2021 Loan Agreement or any other 2021 Loan Documents preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. Each party shall be entitled to pursue any and all legal remedies and recover its reasonable attorney's fees and costs in such legal action.

Section 12. Survival. All representations and warranties made under this 2021 Loan Agreement and the other 2021 Loan Documents and in any document, instrument, or certificate delivered pursuant thereto or in connection therewith shall survive the execution and delivery of the Loan.

Section 13. No Partnership or Joint Venture. This Agreement does not create any legal relationship between the parties other than that of debtor and creditor. Accordingly, to the extent permitted by law, CRURA expressly agrees to indemnify and hold harmless Town or any of its officers or employees from any and all claims, damages, liability, or court awards including attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including, but not limited to, any person, firm, partnership, or corporation, to the extent caused by the negligence or willful misconduct of CRURA or any of its employees or agents. In the event that any such suit or action is brought against Town, Town will give notice within ten (10) days thereof to CRURA.

Section 14. Miscellaneous. Section or paragraph headings in this 2021 Loan Agreement are for convenience of reference only and do not affect the rights or obligations of any party hereto. In the event that any one or more

Section 15. Severability. Should any of the of the provisions contained in this 2021 Loan Agreement or any other 2021 Loan Documents shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions in this 2021 Loan Agreement or such other 2021 Loan Documents.

Section 16. Entire Agreement. This 2021 Loan Agreement together with the exhibits hereto, and those portions of the 2021 Loan Documents incorporated by reference herein, embody the entire agreement and understanding between the parties hereto and supersede all other agreements and Understandings relating to the subject matter hereof.

CRURA:

ATTEST:

**CASTLE ROCK URBAN RENEWAL
AUTHORITY**

Lisa Anderson, Secretary

Jason Gray, Chair

Approved as to form:

Michael J. Hyman, General Counsel

TOWN:

ATTEST:

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Approved as to form:

Michael J. Hyman, Town Attorney