



RESOLUTION

A RESOLUTION APPROVING AN AGREEMENT FOR A DEVELOPMENT INCENTIVE BETWEEN THE CITY AND BRC BIG CO JV I LLC.

WHEREAS, the City Council has found and determined that the stimulation of economic development and employment opportunities and the establishment of a sound tax base serves the general welfare of its citizens; and

WHEREAS, the City Council intends to further its economic development and employment objectives through the development of space for primary employers; and

WHEREAS, BRC BIG CO JV I LLC (BRC) is developing primary employment space in the City; and

WHEREAS, BRC will construct approximately 300,000 square-feet of employment space in three buildings at the northwest corner of 126th Avenue and Washington Street; and

WHEREAS, BRC is investing a total of approximately \$35,000,000 in construction costs; and

WHEREAS, BRC has approached the City for a Development Incentive to construct at this location; and

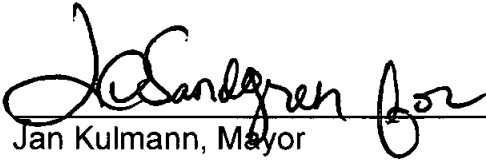
WHEREAS, the City wishes to support BRC and provide financial incentives for Development Incentives.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF THORNTON, COLORADO, AS FOLLOWS:

The Agreement between the City and BRC, which is attached hereto as Exhibit A, is hereby approved and the City Manager is hereby authorized to execute, and the City Clerk to attest, to the Agreement.

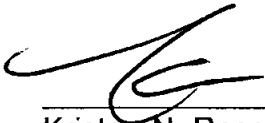
PASSED AND ADOPTED at a regular meeting of the City Council of the City of Thornton, Colorado, on October 26, 2021.

CITY OF THORNTON, COLORADO



Jan Kulmann, Mayor

ATTEST:



Kristen N. Rosenbaum, City Clerk

EXHIBIT A

**AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT
BY AND BETWEEN THE CITY OF THORNTON
AND BRC BIG CO JV I LLC**

THIS AGREEMENT is entered into between the City of Thornton, Colorado, a Colorado municipal corporation (the "City"), and BRC BIG CO JV I LLC ("BRC"), a Colorado limited liability company, this ____ day of October, 2021.

RECITALS

WHEREAS, the City Council has found and determined that the stimulation of economic development and employment opportunities and the establishment of a sound tax base serves the general welfare of the citizens of the City; and

WHEREAS, the City Council intends to further its economic development and employment objectives through the development of space for primary employers; and

WHEREAS, BRC is developing primary employment space in the City; and

WHEREAS, BRC will construct employment space of approximately 300,000 square-feet in three buildings (Development) at the Northwest corner of 126th Avenue and Washington Street; and

WHEREAS, BRC is investing approximately \$35,000,000 in construction costs; and

WHEREAS, BRC has approached the City for a Development Incentive to construct at this location; and

WHEREAS, the City wishes to support BRC and provide financial incentives for Development Incentives.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and BRC agree as follows:

AGREEMENT

1.00. **DEFINITIONS**. Unless the context otherwise clearly indicates, the following words and phrases shall be defined as follows:

1.01. "Agreement" shall mean this Economic Development Incentive Agreement between the City of Thornton and BRC, and all exhibits hereto.

1.02. "Letter of Completion" shall mean a letter issued by the City after final inspection and upon a finding that the building, structure, and development complies with

all provisions of the applicable City codes, permits, requirements and approved plans. This is not authorization to occupy a structure.

1.03. "City" shall mean the City of Thornton, Colorado, a municipal corporation organized pursuant to Article XX, Constitution of Colorado.

1.04. "Economic Development Incentive" shall mean the payments by the City to BRC pursuant to Section 3.00 of this Agreement.

1.05. "Development" shall mean approximately 300,000 square-feet of employment space in three buildings at the Northwest corner of 126th Avenue and Washington Street.

1.06. "BRC" shall mean BRC BIG CO JV I LLC, a Colorado limited liability company, the entity developing employment space.

1.07. "Open Space Taxes" shall mean that portion of the Use Tax remitted to the City by BRC that is designated for parks and open space acquisition, improvements and maintenance pursuant to City of Thornton Ordinance Numbers 2469 and 3277.

1.08. "Permit and Plan Review Fees" shall mean all fees charged by the City that BRC pays associated with its building permit. These fees include building permit, building plan review, electric permit, plumbing permit, mechanical permit, fire alarm permit and fire sprinkler permit fees.

1.09. "Property" shall mean the land at the Northwest corner of 126th Avenue and Washington Street, Thornton, Colorado where the Development will be located.

1.10. "Use Tax" shall mean the tax paid by a consumer for using tangible personal property or taxable services inside the City that is remitted to the City by BRC pursuant to Chapter 26 of the Thornton City Code. No amount of Use Tax includes taxes paid pursuant to an audit.

2.00. PUBLIC PURPOSE. The City Council hereby declares that there are particular public purposes for which the economic development incentives contained in this Agreement overcome any individual interests incidentally served by retention of the incentives by BRC. The Council finds that there will be the general benefit to the City's citizens by increased employment, long-term tax base growth, and related economic development benefits. In addition to these general public benefits, the City Council finds that there are at least two discrete and particularized public purposes:

(A) These incentives will permit BRC to locate and develop its business park in the City which will contribute to the development of new businesses and the expansion of existing businesses, and will result in long-term expansion of new employment and tax base within the City; and

(B) These incentives are performance based and will provide direct and indirect benefits to the City's commercial markets. These public purposes outweigh any incidental individual interests and are not a special aid, incentive or privilege.

3.00. ECONOMIC DEVELOPMENT INCENTIVE. The City shall rebate to BRC an Economic Development Incentive of \$1,150,000 of the Use Tax for Construction materials and Permit Fees during their construction buildout.

3.01. The total Economic Development Incentive payments shall not exceed One Million One Hundred Fifty Thousand Dollars and 00/100 (\$1,150,000) and shall cease at the earlier of 12 months from the City's issuance of the last Letter of Completion or the total of all Economic Development Incentive payments equals One Million One Hundred Fifty Thousand Dollars and 00/100 (\$1,150,000). For purposes of Economic Development Incentive payments, the following shall apply:

(A) The City, as an Economic Development Incentive, shall rebate to BRC \$1,150,000 of the Use Tax for Construction materials and Permit Fees during its construction buildout during the term of this Agreement. Use Tax to be rebated shall be calculated at the applicable rate, which amount excludes the .25% portion designated for Open Space Taxes.

(B) BRC shall be required to request payment of the Economic Development Incentive payment related to Use Tax as referenced in Sections 3.01(A), (B) and (C). Within 90 days of the receipt of sufficient information and a request for payment from BRC, the City shall make the requested Economic Development Incentive payment if a Letter of Completion has been issued.

(C) No interest shall accrue on any sum owed to BRC pursuant to this Agreement.

(D) In no event shall the aggregate total Economic Development Incentive paid by the City hereunder exceed \$1,150,000.

3.05. Nothing herein shall in any way bind the City to act on any application to the City, including but not limited to zoning, conceptual site plan, development permit, subdivision, building permit, letter of completion or certificate of occupancy related to the Facility.

3.06. Nothing herein shall be construed to grant to, or create in BRC any right, claim, lien or priority in or to the City's Sales and Use Tax revenue superior to in parity with the rights, claims, or liens of the holders of any Sales and Use Tax revenue bonds, notes, certificates or debentures payable from or secured by any Sales Taxes, Use Taxes or any combination thereof, existing or hereafter issued by the City. Moreover, nothing herein shall be construed to deny or limit the City's full authority to issue such Sales and Use Tax bonds. Accordingly, BRC specifically acknowledges and agrees that all rights of BRC to the Economic Development Incentive contemplated under this Agreement are, and at all times shall be, subordinate and inferior to the rights, claims and liens of the holders of any and all such Sales and Use Tax revenue bonds, notes, certificates or debentures payable from or secured by any Sales Taxes, Use Taxes, or any combination thereof existing or hereafter issued by the City. It is further acknowledged that the Economic Development Incentive to BRC shall be available only from City revenues and only to the extent herein provided, and no obligation of the City pursuant to this Agreement

shall provide access to any other City revenue source, nor shall such obligation be deemed to create any pledge of credit or invoke the full faith and credit of the City.

3.07. In the event that the City does not appropriate sufficient funds or does not have funds available for any payment herein at any time, the City shall provide written notice to BRC that payment or payments will not be made. The parties may terminate this Agreement at that time or may proceed without making the payments, at the parties' discretion. The failure to appropriate or have funds available shall not be a breach of this Agreement. During the term of this Agreement, if any court of competent jurisdiction determines that the Agreement by the City to make Economic Development Incentive payments as described in Section 3.00 is in violation of Section 20, Article X of the Colorado Constitution, and such court orders BRC to reimburse the City for all or part of the incentives provided under this Agreement and any penalties or interest assessed by the court, then BRC shall reimburse the City in the manner ordered by the court. Further, if any court of competent jurisdiction determines that the Agreement violates the multi-year contract restriction in Section 20, Article X of the Colorado Constitution, then the parties agree that the Agreement shall immediately convert to a one-year contract, with automatic annual renewal provisions, subject only to failure by the City to appropriate funds annually.

3.08. Performance obligations required of BRC are specified as follows:

- (A) BRC agrees to close on the land for the Development by June, 30, 2022.
- (B) BRC agrees to construct the Development.
- (C) BRC agrees to request the incentive within 6 months of issuance of the Letter of Completion.

4.00. REMEDIES.

If BRC fails to fulfill its obligations under this Agreement and after the City has given at least 30 days written notice to BRC, and BRC has failed to cure a default within the prescribed period stated in the written notice of default, BRC shall repay any and all Economic Development Incentive that it had received up to that date to the City. The City shall have all remedies available to it, in law or in equity, including, but not limited to, Specific Performance against BRC for enforcement of this provision. If BRC fails to repay the Economic Development Incentive and the City is awarded the payment by a court order, BRC shall pay the City's attorney's fees, costs and expenses of litigation, and interest on the amount of the Economic Development Incentive from the date of the notice of default. These remedies shall survive the termination of this Agreement.

5.00. COMPLETION OF CONSTRUCTION. BRC shall obtain all Letters of Completion for the Facility by June 30, 2023. At BRC's request, the City Manager, in his sole discretion, may extend this date not to exceed one year.

6.00. GENERAL OBLIGATIONS AND REPRESENTATIONS OF BRC.

(A) BRC represents and warrants that it is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Colorado; is qualified to do business in the State of Colorado; has the right, power, and legal capacity to enter into and perform its obligations under this Agreement and the documents to be executed and delivered pursuant hereto; and the execution and delivery of this Agreement and such documents and the performance and observance of their terms, conditions, and obligations have been duly and validly authorized by all necessary action on its part to make this Agreement and such documents and such performance and observance valid and binding upon BRC.

(B) BRC agrees that the execution and delivery of this Agreement, the documents required hereunder and the consummation of the transaction contemplated by this Agreement will not (i) conflict with or contravene any law, order, rule or regulation applicable to BRC or BRC's governing documents; (ii) result in the breach of any of the terms or provisions of, or constitute a default under, any agreement or other instrument to which BRC is a party or by which it may be bound or affected; or (iii) permit any party to terminate any such agreement or instrument or to accelerate the maturity of any indebtedness or other obligation of BRC.

(C) BRC represents and warrants that BRC knows of no action, suit, proceeding or governmental investigation that is threatened or pending contesting the powers of BRC or any of its principals with respect to the location or this Agreement that has not been disclosed to the City.

(D) BRC represents and warrants that to the best of BRC's knowledge, BRC has the necessary financial and legal ability to enter into the Agreement and to construct the location.

(E) Unless otherwise approved by the City, BRC agrees to complete or cause to be completed the Development in conformance with the City's Development Review process. BRC agrees to comply with all City codes, ordinances, resolutions and regulations, and pay all taxes, fees, and expenses due to the City. If BRC is in violation of the provisions of this section, the City may withhold any Economic Development Incentive described in Section 3.00 of this Agreement until such time as the violations are cured or abated. This list is not intended to be all-inclusive and other improvements may be determined necessary by the City. The parties expressly acknowledge that the City has sole jurisdiction over the permitting process, and the City may impose other additional requirements or restrictions. The City shall reasonably determine conformance and relative quality of the construction. Issuance of building permits by the City shall constitute acknowledgement by the City that the plans for permitted improvements to the Facility are in conformance with this Agreement.

(F) BRC agrees to permit the City to use BRC's name in promotional literature and advertising about the City, and the City encourages BRC to use the City's name in similar promotional literature and advertising.

7.00. ASSIGNMENT. This Agreement is not assignable by BRC without the prior written consent of the City.

8.00. TERMINATION. This Agreement, and the terms and provisions hereof, shall terminate upon the earliest of the following to occur:

(A) The date at which BRC has received the maximum amount of Economic Development Incentive payments described in Section 3.01;

(B) The date 12 months following the issuance of the final Letter of Completion for the Facility;

(C) If BRC breaches any of its obligations found in Section 3 of this Agreement;
or

(D) If BRC does not construct the Development during the term of this Agreement;

8.01. Any obligations for Economic Development Incentive by the City shall be discharged upon termination of this Agreement.

9.00. INDEMNIFICATION. BRC shall defend, indemnify, assume all responsibility for and hold the City, its officers and employees, harmless from all claims or suits for, and damages to, property and injuries to persons, including accidental death that may be caused by any of BRC's negligence in performing this Agreement whether such activities are undertaken by BRC or any directly or indirectly employed or under contract to BRC and all claims or suits that arise or may arise related to any contracts related in any manner with this Agreement entered into between BRC and any third party.

10.00. NOTICES. All notices required or permitted hereunder shall be in writing and shall be effective upon mailing, deposited in the U.S. mail, postage prepaid, and to the intended recipient as follows:

(A) THE CITY OF THORNTON
9500 Civic Center Drive
Thornton, Colorado 80229-1220
ATTN: City Manager

(B) BRC BIG CO JV I LLC
PO Box 158
Louviers, CO 80131
ATTN: Brian Roach, Managing Member

Any party can change its address by written notice to the other given in accordance with this paragraph.

11.00. BINDING EFFECT. This Agreement shall be binding upon the City and BRC. This Agreement shall be binding upon the parties, their respective legal representatives, assigns, successors, and heirs; provided that nothing in this Article shall be construed to permit assignment unless the provisions of Section 7.00 have been met.

12.00. VENUE. This Agreement is being executed and delivered and is intended to be performed in the State of Colorado, and the laws of Colorado shall govern the validity, construction, enforcement and interpretation of this Agreement. Further, venue for any and all legal action at law or in equity regarding this Agreement shall be in the Adams County District Court, State of Colorado.

13.00. GOOD FAITH. The parties shall exercise good faith in the performance and enforcement of this Agreement

14.00. LOCAL LABOR. The City encourages the use of local Thornton residents and subcontractors in the performance of the construction work by BRC. BRC voluntarily agrees to utilize to the extent commercially reasonably possible qualified and available local labor and subcontractor businesses.

15.00. ENTIRE AGREEMENT. This Agreement 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 provisions, communications, representations, or agreement, either verbal or written, between the parties hereto.

16.00. WAIVER OF BREACH. No failure by either party hereto to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement, or to exercise any right or remedy consequent to a breach of this Agreement, shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Either party by giving written notice to the other party may, but shall not be required to, waive any of its rights or any condition or action to be undertaken by the other party. A written waiver by either party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

17.00. CAPTIONS. The captions of the articles and sections of this Agreement are set forth only for the convenience and reference of the parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

18.00. DELAYS. Any delays in or failure of performance by any party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, orders of civil or military authorities, failure to obtain permits from state or federal agencies, or other causes, which are beyond the reasonable control of such parties.

19.00. CITY NOT A PARTNER. Notwithstanding any language in this Agreement, the City shall not be deemed to be a member, partner or joint venturer of BRC, and the City shall not be responsible for any debt or liability of BRC or its contractors or agents.

20.00. INTEGRATION AND AMENDMENT. This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.

21.00. NO THIRD PARTY BENEFICIARIES. Neither party shall be obligated or liable under the terms of this Agreement to any person or entity not a party hereto. Further, neither party shall be bound by any contracts or conditions that BRC may negotiate with third parties related to the development of the Facility. Nothing expressed or to be implied by this Agreement is intended or shall be construed to give to any person other than the parties hereto any legal right, remedy or claim under or in respect to this Agreement or any covenants, conditions and provisions hereof.

22.00. AUTHORITY TO EXECUTE. BRC hereby warrants that the party signing below has full and lawful authority to execute this Agreement on behalf of BRC.

23.00. TIME OF ESSENCE. Time is of the essence of this Agreement. The parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

24.00. SEVERABILITY. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement so long as the intent of the parties as expressed in this Agreement may still be accomplished. To that end, any such provisions, covenants, agreements or portions of this Agreement are declared to be severable.

25.00. NONLIABILITY OF EMPLOYEES. No official, employee, agent or consultant of the City shall be personally liable to Brennan in the event of a default, or breach by the City.

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