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**SECOND AMENDED AND RESTATED DEVELOPMENT AND REIMBURSEMENT
AGREEMENT**

LEDGE ROCK CENTER COMMERCIAL

JOHNSTOWN, COLORADO

DATE: September 12, , 2022

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**SECOND AMENDED AND RESTATED DEVELOPMENT AND REIMBURSEMENT
AGREEMENT
FOR
LEDGE ROCK CENTER COMMERCIAL
JOHNSTOWN, COLORADO**

THIS SECOND AMENDED AND RESTATED DEVELOPMENT AND REIMBURSEMENT AGREEMENT FOR LEDGE ROCK CENTER COMMERCIAL, JOHNSTOWN, COLORADO (this “**Agreement**”) is made and entered into as of the Effective Date by and between **THE TOWN OF JOHNSTOWN, COLORADO**, a home-rule municipality of the Counties of Larimer and Weld, State of Colorado (“**Town**”), **LEDGE ROCK CENTER, LLC**, a Kansas limited liability company (“**Developer**”), and **LEDGE ROCK CENTER COMMERCIAL METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the state of Colorado (“**District**”).

RECITALS

1. Unless a different meaning is clearly indicated, capitalized terms used in this Agreement have the meanings set forth in these Recitals or in Article 1 of this Agreement.
2. The District was organized pursuant to an Amended and Restated Service Plan approved by the Town on June 6, 2022 (the “**Service Plan**”) to finance, design, construct and operate and maintain the public improvements needed to serve the proposed Ledge Rock Center Commercial development.
3. The Parties previously entered into that certain Development and Reimbursement Agreement for Ledge Rock Center Commercial, Johnstown, Colorado, effective February 18, 2022 (the “**Development and Reimbursement Agreement**”), as amended by that certain First Amendment to Development and Reimbursement Agreement Ledge Rock Center Commercial Johnstown, Colorado, dated April 18, 2022 (the “**First Amendment**” collectively the Development and Reimbursement Agreement and the First Amendment will be referred to herein as the “**Original Agreement**”).
4. At the time of execution of the Development and Reimbursement Agreement it was anticipated the District would issue Bonds in 2022. Based on changes in construction costs and in the estimated net proceeds of the Bonds anticipated to be issued by the District in 2022 the Parties desire to amend and restate the Original Agreement in its entirety as indicated herein.
5. The Developer has executed, or shall execute, agreements to purchase approximately 94.227 acres of property located within the boundaries of the Town and the service area of the District at the southeast corner of U.S. Interstate 25 and U.S. Highway 60, generally described on the map attached hereto and incorporated herein by reference as **Exhibit A** and the legal descriptions set forth in **Exhibits B-1, B-2, B-3, and B-4** which the Developer intends to develop as a commercial and retail shopping center (the “**Property**”). The Developer may purchase additional property not referenced herein which may, subsequent to purchase and inclusion in the District, be subject to this Agreement pursuant to an amendment as provided in Section 7.1.

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6. The Developer has purchased from a private party approximately 35.857 acres of the Property more specifically described in the legal description attached hereto as Exhibit B-1 (the “**Anderson Parcel**”).

7. ~~Approximately 7.835 acres of the Property, more specifically described in the legal description attached here to as **Exhibit B-2** (“**Oxy Parcel No. 1, Lots 2-5 and Tract A**”), is to be acquired by the Developer from the Town pursuant to that certain Amended and Restated Agreement Concerning Purchase and Sale of Real Property for Ledge Rock Center Commercial of even date herewith (the (“**Amended PSA**”) and will be a part of Phase I of the Project, defined below, (“**First Phase Property**”).~~

8. The Developer will acquire the First Phase Property from the Town coincident with the issuance of the District’s Limited General Obligation Bonds, Series 2022 (the “**2022 Bonds**”).

9. Phase II of the Project is to be located on property that includes the property that is approximately 50.535 acres, more specifically described in the legal description attached hereto as Exhibit B-3 (“**Oxy Parcel No. 2**”) and Exhibit B-4 (the “**Oxy Parcel No. 1, Lot 1,**”), collectively referred to herein as the “**Second Phase Property.**” Developer will have an option to purchase the Second Phase Property as described herein and, in the Amended PSA. (For the avoidance of doubt, the Amended PSA contemplates the terms of the conveyance of Oxy Parcel No. 1, Lot 1 from the Town to the Developer and recognizes that the Town and Developer will execute a subsequent purchase and sale agreement to address conveyance of Oxy Parcel No. 2).

10. It is the intention of the District to issue Bonds to fund the public improvements related to the development of the Second Phase Property coincident with the beginning of the development of the Second Phase Property anticipated to occur in 2025 (the “**2025 Bonds**”).

11. Subject to the terms and conditions for acquisition of the Second Phase Property set forth herein, the Developer will acquire the Second Phase Property from the Town coincident with the issuance of the 2025 Bonds.

12. The Town received conveyance of the First Phase Property for nominal consideration and the Town has determined it to be in the best interests of the Town to convey the First Phase Property to the Developer to become a part of Ledge Rock Center so long as the District and Developer initiate and, in good faith, commit to complete the Project, defined below and convey to the Town any part of the First Phase Property that is required to be Dedicated or used for Public Spaces both as defined below.

13. The Developer intends to construct a retail shopping center containing approximately 836,500 square feet of new retail uses and two hotels (“**Project**”).

14. The Developer intends to construct the Project over a nine (9) year period from initiation of construction in 2022 to completion and occupancy of all of the anticipated retail spaces in the locations depicted on the conceptual development shown on **Exhibit C** (the “**Conceptual Development Plan.**”)

15. The Developer estimates that the total private and public construction costs of the Project will be approximately Three Hundred and Fifty Million Dollars (\$350,000,000).

16. Pursuant to the First Amendment, the Developer contributed approximately Five Million Eight Hundred Eighty Eight Thousand Six Hundred Fifty Nine Dollars (\$5,888,659) to the District toward the cost of the Ledge Rock Water and Sewer Pipeline Work, as defined in the First Amendment, from funds reimbursed to an affiliate of the Developer by the Johnstown Plaza Metropolitan District as part of the Johnstown Plaza Metropolitan District \$99,449,000 Limited Tax General Obligation Refunding & Improvement Bonds, Series 2022 (the “**JP Developer Contribution**”).

17. Under no circumstances will the District reimburse the Developer for the JP Developer Contribution.

18. The 2022 Bonds and the 2025 Bonds, together with Refunding Bonds, will fund the public improvements generally described on **Exhibit D** attached hereto and incorporated herein by this reference (the “Public Improvements”) to net \$150,000,000 (minus the JP Developer Contribution) in Bond proceeds to fund the Public Improvements. The Parties anticipate that the 2022 Bonds, as well as the 2025 Bonds, potentially, will be refinanced in 2027 to: (i) refund the 2022 Bonds, (ii) refund the 2025 Bonds, if at all, (iii) reimburse the Developer for Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance (defined below), and (iv) if funds are available, fund the District Cost Sharing Contribution (the “**2027 Bonds**”).

19. The Developer intends, as the Declarant, to record on the commercial portions of the Property that it owns at the time of issuance of the 2022 Bonds, and again prior to the issuance of the 2025 Bonds against any additional portions of the Property that it owns, a covenant that requires the payment in lieu of taxes for any uses which are exempt from property taxation under Colorado law prior to the issuance of the Bonds in a form approved by the Town and the District prior to recording and as amended from time to time only with the prior written approval of the Town and the District (“**PILOT Covenant**”).

20. The payment in lieu of taxes made pursuant to the PILOT Covenant shall be known as the “**PILOT Payment**.”

21. The District is authorized pursuant to its Service Plan to finance, design, plan, construct, install and/or complete public improvements, including, but not limited to, streets, parking lots, safety protection, water, sanitation, park and recreation, mosquito control, and transportation improvements, and other facilities and services, together with all necessary and appropriate appurtenances thereto more specifically described below and defined as the Public Improvements, to enter into contracts for the provision thereof, to maintain the Public Improvements and to pay for such improvements from the proceeds of Bonds.

22. The Parties anticipate that the Bonds will be paid by Credit PIF Revenues, Add-On PIF Revenues, PILOT Payment Debt Revenues and a debt mill levy of no less than 5 mills imposed by the District (the “**Debt Mill Levy**”). The Bonds may also be secured by other revenues as allowed by the Service Plan.

23. At the time the District was organized, it was anticipated that the 2022 Bonds, when issued, would net Seventy Four Million Dollars (\$74,000,000) in Project Funds (the “**Original**”).

Project Funds”). The revenue to be pledged was five (5) mills as the Debt Mill Levy, a 2.5% Add-On PIF, and a 2% credit PIF (the “**Original Pledged Revenues**”).

24. The 2022 Bonds, based on the Original Pledged Revenues, are currently anticipated to net Fifty One Million Dollars (\$51,000,000) in Project Funds (the “**New Project Funds**”).

25. With an increase in the credit PIF to 2.75% for the 2022 Bonds, together with the District pledge of five (5) mills and the 2.5% Add-On PIF (the “**Increased Pledged Revenues**”), the 2022 Bonds are anticipated to net approximately Fifty Seven Million Seven Hundred Ninety Eight Thousand Two Hundred Seventy Two Dollars (\$57,798,272) in Project Funds (the “**Increased Project Funds**”). The difference between the Original Project Funds and the Increased Project Funds leaves a deficit of approximately Sixteen Million Two Hundred One Thousand Seven Hundred Twenty Seven Dollars (\$16,201,727) that still requires funding, with such amount to be adjusted based on the actual amount of Project Funds at the time of closing on the issuance of the 2022 Bonds (the “**Bond Proceeds Shortfall**”).

26. The Developer has agreed to remit funds to the District in an amount equal to the Bond Proceeds Shortfall (the “**Developer Shortfall Funding Advance**”). The Developer Shortfall Funding Advance will not accrue interest and will not be reimbursed to the Developer by either the Town or the District.

27. The District shall provide funding to the Town for the Town’s use for any lawful purpose an amount equal to the increase of Credit PIF collected from 2% to 2.75% change in the Credit PIF for the 2022 Bonds as indicated in Section 4.7 below (the “**District Cost Sharing Contribution**”).

28. The Developer has agreed to deposit the Developer Shortfall Funding Advance into the Developer Funds Account established under the Amended and Restated Escrow Agreement to be used for construction of vertical improvements no later than the first to occur of the following: the date of sale or refinance of the southern portion of the multi-family parcel more specifically described in **Exhibit H** attached hereto and incorporated herein by this reference, within the Project (the “**Multi-Family Parcel**”), the issuance of a building permit on the Multi-Family Parcel or June 1, 2023.

29. The District intends to issue the Bonds as an “on-behalf of” issuer of the Town.

30. The District intends to design, construct, install and/or complete the Public Improvements required for the Project.

31. The Developer intends to design, construct, install and/or complete the retail development in the Project and to advance funds, as needed, to assure the District can complete the Public Improvements in reliance on the District’s commitment to reimburse the Developer for such advances.

32. The Parties desire to enter into this Agreement for the purpose of setting forth the terms and conditions relating to the development, design and maintenance of the Project, the Private Improvements and Public Improvements to the Property, the collection, payment, use and

duration of the Credit PIF and the Add-On PIF, the Developer Shortfall Funding Advance, the District Cost Sharing Contribution, and other matters related to the Project.

33. The Parties wish to adopt a comprehensive approach to the orderly and planned development of the Property and to cooperate in the funding of the Public Improvements. The Parties intend for development of the Project to occur under a unified development plan and Comprehensive Funding Plan as more specifically set forth in this Agreement.

34. The legislature of the State of Colorado has adopted C.R.S. § 29-1-203 in order to authorize and enable local governments of the State of Colorado to enter into cooperative agreements, or contracts for certain specified purposes. The Parties intend this Agreement to constitute such an intergovernmental agreement as between the Town and the District, and with respect to the financing and construction of the Public Improvements.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I DEFINITIONS

1.1 Definitions. For purposes of this Agreement, the following terms have the meanings indicated below.

- (a) 2022 Bonds. As defined in Recital 8.
- (b) 2025 Bonds. As defined in Recital 10.
- (c) 2027 Bonds. As defined in Recital 18.
- (d) 30 Day Submittal. As defined in Section 4.5(a)(ix).
- (e) Additional Refunding and New Money Bonds. As defined in Section 4.7(b)(ii).
- (f) Add-On PIF. The component of the PIF which is set at the rate of two and one-half percent (2.5%) in accordance with the terms and conditions of the PIF Covenant, and which is applied to Taxable Transactions before the calculation of applicable sales taxes.
- (g) Add-On PIF Revenue Fund. As defined in Section 4.4(d)(iii) of this Agreement.
- (h) Add-On PIF Revenues. The revenues generated from imposition of the Add-On PIF, net of the costs of collection, which are to be utilized by the District during the Credit PIF Period for the purpose of funding, financing or refinancing the Verified Eligible Costs, and after the Credit PIF Period, for any legal purpose, as further described in this Agreement and the Service Plan.

(i) Advance Reimbursement and Payment Agreement. An agreement to be entered into between the District and the Developer, pursuant to which the Developer will advance funds to the District for the Public Improvements as further described in Section 3.3(c)(ii).

(j) Amended and Restated Escrow Agreement. An amended and restated escrow agreement to be executed by the District, the Town and the Developer prior to the issuance of the 2022 Bonds, in a form substantially similar to the form attached hereto as Exhibit E.

(k) Amended PSA. As defined in Recital 7.

(l) Anderson Parcel. As defined in Recital 6.

(m) Agreement. This Second Amended and Restated Development and Reimbursement Agreement for Ledge Rock Center Commercial, Johnstown, Colorado, and any amendments hereto.

(n) Bond Proceeds Shortfall. As defined in Recital 25.

(o) Bonds. Bonds, notes, contracts or other multiple fiscal year financial obligations issued by the District that are (i) payable from the Credit PIF Revenues, the Add-On PIF Revenues and the PILOT Payment Debt Revenues; (ii) issued within the Credit PIF Period; and (iii) issued for the purposes of (a) funding Verified Eligible Costs, which net proceeds that pay for Verified Eligible Costs together with the portion of the principal amount of any Developer Bonds spent on Verified Eligible Costs, are not in excess of the Cap Amount or (b) refunding any outstanding Bonds or Developer Bonds. Bonds can be senior or subordinate obligations. Bonds must be fully amortized to a date on or before, the later of: (i) thirty (30) years from the date of issuance or (ii) December 1, 2052. Bonds include Developer Bonds but do not include Other Obligations. Developer Bonds shall not be amortized to be repaid with Credit PIF beyond December 1, 2051.

(p) Bond Participants. As defined in Section 4.8 of this Agreement.

(q) Bond Trustee. A state or national bank or trust company in good standing located in or incorporated under the laws of the State of Colorado that is authorized to exercise trust powers, which is selected by the District, with the written approval of the Town, to serve as bond trustee in connection with the issuance of one or more series of Bonds.

(r) Cap Amount. The Cap Amount is \$150,000,000 (minus the JP Developer Contribution) being the maximum amount of net proceeds of the Bonds together with the portion of the principal amount of any Developer Bonds available to the District for the payment, reimbursement or financing of Verified Eligible Costs. The following amounts are not counted in the Cap Amount: (i) interest costs referenced in Section 4.10(b)(i); reserve funds and the costs traditionally associated with the issuance of public debt; (ii) increases in principal amount of Bonds necessary to issue Refunding Bonds; (iii) interest earning on the investment of proceeds of Bonds; (iv) proceeds of Other Obligations; and (v) bonds or other obligations issued after the Credit PIF Period.

(s) Code. The Johnstown Municipal Code, as well as the ordinances of the Town of Johnstown, including but not limited to land use regulations, zoning regulations, subdivision regulations, the public works standards and specifications, parks and recreation park and open space standards and commercial site planning and site design standards, and any additional rules, regulations and master plans that may be promulgated under any of the foregoing, as amended from time to time, unless expressly stated otherwise. If there are any conflicts in the provisions of the above elements of the Code, the more restrictive provision shall apply.

(t) Comprehensive Funding Plan. Article IV of this Agreement.

(u) Comprehensive Plan. The Johnstown Area Comprehensive Plan, adopted November 1, 2021, as may be amended time to time.

(v) Conceptual Development Plan. The conceptual development plan for the Project attached as Exhibit C to this Agreement, which describes the Parties' intent with respect to the uses and other development matters affecting the Project and which is intended to establish a general conceptual framework within which the Site Development Plan and plats for the Project will be formulated, processed, adopted and implemented.

(w) Cost Certifier. As defined in Section 4.10(b).

(x) Credit PIF. The component of the PIF that will be:

(i) Imposed at the rate of two and seventy-five hundredths percent (2.75%) pursuant to the PIF Covenant for the repayment of the 2022 Bonds that will be applied to Taxable Transactions before the calculation of sales taxes occurring during the Credit PIF Period and as otherwise provided in Section 4.4. of this Agreement; and

(ii) Imposed at the rate of two hundredths percent (2.00%) pursuant to the PIF Covenant for the repayment of the First Refunding and New Money Bonds and Additional Refunding and New Money Bonds, if any, the 2025 Bonds, and other Bonds as approved by the Town, that will be applied to Taxable Transactions before the calculation of sales taxes occurring during the Credit PIF Period and as otherwise provided in Section 4.4. of this Agreement.

(y) Credit PIF Period. As defined and more specifically set forth in Section 4.4(e) of this Agreement.

(z) Credit PIF Revenues. The revenues generated from the Credit PIF, which are to be utilized by the District during the Credit PIF Period for the purpose of funding, financing, or refinancing the Verified Eligible Costs, as further described in this Agreement.

(aa) Credit PIF Revenue Fund. The Credit PIF Revenue Fund is the fund by that name defined in Section 4.4(d)(iii).

(bb) Debt Service Fund. As defined in Section 4.4(d)(iv) of this Agreement.

(cc) Dedicate or Dedication. The conveyance to the Town, after acquisition by the District or the Developer, of real property (excluding the dedication of water or water rights), free and clear of all monetary liens and those non-monetary encumbrances that are consistent with the public purpose for Dedication. Dedication can be accomplished either by ~~Recordation of a plat, acceptance by the Town, or by execution and delivery of a special warranty deed or easement, as determined by the Town.~~

(dd) Developer Bonds. Developer Bonds means Bonds, promissory notes, contracts or other multiple fiscal year financial obligations issued by the District to the Developer that will be subject to the following limitations: (i) be payable from Credit PIF Revenues, Add-On PIF Revenues and PILOT Payment Debt Revenues; (ii) the pledge of Credit PIF Revenues to terminate on the earlier of December 1, 2047 or the date all of the principal and interest on Developer Bonds has been paid in full; (iii) be payable, at the District's discretion, from other revenues legally available to the District; (iv) accrue interest at the Developer Bond Interest Rate; and (v) be issued for the purposes of funding Verified Eligible Costs, which, together with the proceeds of all other Bonds, shall not fund Verified Eligible Costs in excess of the Cap Amount. However, Developer Bonds specifically do not include the Developer Shortfall Funding Advance.

(ee) Developer Bond Interest Rate. Developer Bond Interest Rate shall be a market interest rate as certified by an External Financial Advisor at the time of the issuance of Developer Bonds, for bonds having comparable risks, terms and maturities as Developer Bonds being issued; provided, however, that the Developer Bond Interest Rate shall not exceed 7.0% simple interest.

(ff) Developer Contribution Agreement. As defined in Section 4.6(b).

(gg) Developer Shortfall Funding Advance. As defined in Recital 26.

(hh) District. Ledge Rock Center Commercial Metropolitan District.

(ii) District Accountant. The qualified person or firm engaged by the District to perform governmental accounting services for the District.

(jj) District Cost Sharing Contribution. As defined in Recital 27.

(kk) District Fees. Such fees, rates, tolls, penalties or charges for services, programs or facilities furnished by the District as the District may fix and, from time to time, increase or decrease pursuant to Colorado law.

(ll) District Public Improvement(s). The improvements generally described in **Exhibit D** that will be owned and maintained by the District.

(mm) District Streets. The streets that will be constructed as a part of the Public Improvements that will not be Dedicated.

(nn) Effective Date. The date that this Agreement is fully executed by all the Parties, which shall be the date the Agreement is executed by the District.

(oo) Eligible Costs. The reasonable and necessary costs of the Public Improvements as actually expended for such improvements, including the cost of acquisition of the land and easements necessary for the construction and location of the Public Improvements and the design, permitting, construction, general contractor fees, construction management fees, project development fees, legal fees, engineering costs and accounting costs related thereto. Eligible Costs also include all reasonable and necessary costs, fees and, expenses of organizing the District and establishing the PIF Covenant and the District's operation and maintenance expenses and other reasonable and necessary soft costs.

(pp) Escrow Agreement. An escrow agreement in a form substantially similar to the form attached hereto as Exhibit F and incorporated herein by this reference and with mutually acceptable terms to the Parties, to be executed by the Trustee, the District, the Town and the Developer prior to the issuance of the 2025 Bonds, the 2027 Bonds and any other Bonds except the 2022 Bonds. The Amended and Restated Escrow Agreement in the form attached hereto as Exhibit E will be executed by the Trustee, the District and the Town prior to the issuance of the 2022 Bonds.

(qq) Exhibits. The following Exhibits to this Agreement, all of which are incorporated by reference into and made a part of this Agreement.

- EXHIBIT A Map of the Property
- EXHIBIT B-1 Legal Description: Anderson Parcel Property
- EXHIBIT B-2 Legal Description: Oxy Parcel No. 1, Lots 2-5 and Tract A Property
- EXHIBIT B-3 Legal Description: Oxy Parcel No. 2 Property
- EXHIBIT B-4 Legal Description: Oxy Parcel No. 1, Lot 1 Property
- EXHIBIT C Conceptual Development Plan
- EXHIBIT D List of Public Improvements
- EXHIBIT E Form of Amended and Restated Escrow Agreement
- EXHIBIT F Form of Escrow Agreement
- EXHIBIT G Form of Subdivision Development and Improvement Agreement
- EXHIBIT H The Multi-Family Parcel

(rr) Feasibility Analysis. As defined in Section 4.5(a)(ix)(5) of this Agreement.

(ss) Final Allocation of Proceeds. As defined in Section 4.4(d)(ii) of this Agreement.

(tt) Final Plat. A cadastral map, drawn to scape, showing the division of the Property or portions thereof.

(uu) First Amendment. As defined in Recital 3.

(vv) First Phase Property. As defined in Recital 7.
4.7(b)(i). (ww) First Refunding and New Money Bonds. As defined in Section

(xx) Increased Pledged Revenues. As defined in Recital 25.

(yy) Increased Project Funds. As defined in Recital 25.

(zz) Indemnitees. As defined in Section 3.5.

(aaa) Indenture. As defined in Section 4.4(c) of this Agreement.

(bbb) Independent Engineer. An Engineer, such as Ranger Engineering, LLC, a Colorado limited liability company, or a consultant with similar expertise, who has not worked for the Developer on any project, is approved by the Town and will review and provide a certification of the Verified Eligible Costs.

(ccc) JP Developer Contribution. As defined in Recital 16.

(ddd) Land Acquisition Costs. The cost of the acquisition of the easements or right of way for the Public Spaces and the land to be subject to Dedication, including reasonable transaction costs. This definition does not include payment for any real estate interests or access to the Public Spaces or the land to be subject of Dedication located in the Oxy Parcel No. 1 as it is the intent of the Parties that no payment or reimbursement is to be made to the Developer for such interests under any circumstances.

(eee) Intentionally Omitted.

(fff) Intentionally Omitted.

(ggg) Ledge Rock Water and Sewer Pipeline Escrow Agreement. As defined in Section 4.13.

(hhh) Market Analyst. As defined in Section 4.5(a)(ix)(5) of this Agreement.

(iii) Multi-Family Parcel. As defined in Recital 28.

(jjj) New Project Funds. As defined in Recital 24.

(kkk) Operations and Maintenance Intergovernmental Agreement. The Intergovernmental Agreement between the Town and the District establishing the rights and responsibilities of the District and the Town regarding the maintenance of the Public Spaces and the pledge of the District of PILOT Payment General Fund Revenues to the funding of operations and maintenance expenses.

(lll) Original Agreement. As defined in Recital 3.

(mmm) Original Pledged Revenues. As defined in Recital 23.

(nnn) Original Project Funds. As defined in Recital 23.

(ooo) Other Obligations. Debt instruments, bonds and other obligations that may be issued or entered into by the District including agreements between the District and the Developer or other third parties for reimbursement of sums advanced or paid for Verified Eligible Costs, provided that no Credit PIF Revenues may be used to repay the Other Obligations and, during the Credit PIF Period, no Add-On PIF Revenues may be used to repay the Other Obligations and, all revenue pledged to repay the Other Obligations will also be pledged by the District to repay the Bonds and the Developer Bonds and the obligations of the District to pay on the Other Obligations will be subordinate in all ways to the Bonds and the Developer Bonds. Other Obligations specifically do not include the Developer Shortfall Funding Advance.

(ppp) Oxy Parcel No. 1. Oxy Parcel No. 1, Lot 1 and Oxy Parcel No. 1, Lots 2-5 and Tract A.

(qqq) Oxy Parcel No. 1, Lot 1. As defined in Recital 9.

(rrr) Oxy Parcel No. 1, Lots 2-5 and Tract A. As defined in Recital 7.

(sss) Oxy Parcel No. 2. As defined in Recital 9.

(ttt) Party(ies). Individually, or collectively, as the context dictates, the Town, the District, and the Developer and their respective successors in interest as designated pursuant to Section 7.14.

(uuu) Pedestrian Walkways and Trails. The sidewalks, walkways and trails to be constructed as a part of the Public Improvements that will not be Dedicated.

(vvv) Phase I. As defined in Section 3.2.

(www) Phase I Credit PIF. The Credit PIF derived from Taxable Transactions on Phase I of the Project in the amount of 2.75% as modified to 2.00% as provided in this Agreement.

(xxx) Phase II. As defined in Section 3.2.

(yyy) Phase II Credit PIF. The Credit PIF derived from Taxable Transactions on Phase II of the Project in the amount of 2.00%.

(zzz) PIF. Collectively, the Credit PIF and the Add-On PIF, which are public improvement fees imposed by the Developer through Recordation of the PIF Covenant, the purpose of which is to contribute to the financing of the Public Improvements.

(aaaa) PIF Collecting Agent. The collecting agent for the Credit PIF Revenues and the Add-On PIF Revenues pursuant to a PIF Collection Services Agreement as in effect from time to time as defined in the PIF Covenant.

(bbbb) PIF Collection Services Agreement. An agreement pursuant to which the District will contract with a PIF Collecting Agent for collection of the PIF Revenues in accordance with the terms and conditions of this Agreement.

(eeee) PIF Covenant. That certain privately imposed Declaration of Covenants Imposing and Implementing the PIF, recorded on the Phase I Property and on the Phase II Property, as amended or re-recorded from time to time in accordance with its terms.

(dddd) PIF Property. The property that is subject to the PIF Covenant.

(eeee) PIF Revenues. The combined Credit PIF Revenues and Add-On PIF Revenues.

(ffff) PIF Trustee. A state or national bank or trust company in good standing and incorporated under the laws of the State of Colorado authorized to exercise trust powers that is selected by the District, and approved by the Town, and authorized to undertake the duties of the PIF Trustee as described in Section 4.4(c) of this Agreement.

(gggg) PIF Trustee Agreement. As defined in Section 4.4(c) of this Agreement.

(hhhh) PILOT Covenant. As defined in Recital 19.

(iiii) PILOT Payment. As defined in Recital 20.

(jjjj) PILOT Payment - Debt. The PILOT Payment determined pursuant to the PILOT Covenant by application of the District mill levy for payment of Debt.

(kkkk) PILOT Payment Debt Revenues. Revenues received from the PILOT Payment - Debt.

(llll) PILOT Payment - General Fund. The portion of the PILOT Payment determined pursuant to the PILOT Covenant by application of the District mill levy for the payment of general fund expenses.

(mmmm) PILOT Payment General Fund Revenues. Revenues received from the PILOT Payment - General Fund.

(nnnn) PILOT Payment Revenues. Revenues received from the PILOT Payment Debt Revenues and the PILOT Payment General Fund Revenues.

(oooo) PILOT Revenue Fund. The fund defined in Section 4.4(d)(iii).

(pppp) Private Improvements. Private Improvements shall mean, without limitation, the construction and installation of all improvements that are not otherwise designated as Public Improvements.

(qqqq) Project. The retail project to be known as “**Ledge Rock Center**” and developed on the Property as generally described in Recital 13 and more particularly described or to be described in the Site Development Plan or plat for any Sites.

(rrrr) Project Fund. As defined in Section 4.4(d)(i) of this Agreement.

(ssss) Property. Collectively, the Property legally described in **Exhibits B-1, B-2, B-3, and B-4** and depicted on **Exhibit A**.

(tttt) Public Art. The art located in Public Spaces that will be acquired and installed as a part of the Public Improvements that will not be Dedicated and as approved by the Town in writing as set forth in Section 4.5(a)(ix)(4).

(uuuu) Public Improvements. The District Public Improvements and the Town Public Improvements.

(vvvv) Public Landscape Areas. The landscaping that will be constructed or, as appropriate, installed in the Public Spaces as a part of the Public Improvements that will not be Dedicated.

(wwww) Public Parking Facilities. The parking lots and structures that will be constructed or, as appropriate, installed in the Public Spaces as a part of the Public Improvements that will not be Dedicated.

(xxxx) Public Plazas. The plazas that will be constructed or, as appropriate, installed in the Public Spaces as a part of the Public Improvements that will not be Dedicated.

(yyyy) Public Spaces. The property upon which the Public Art, Public Parking Facilities, Public Plazas, Public Streets and Pedestrian Walkways and Trails are to be located.

(zzzz) Recital(s). Individually, one of the Recitals numbered 1 through 34 above, and, collectively, each of the Recitals set forth above.

(aaaa) Record/Recordation. The filing of an instrument in the office of the Weld County, Colorado, Clerk and Recorder.

(bbbb) Refunding and New Money Bonds. As defined in Section 4.7(b).

(cccc) Refunding Bonds. Bonds issued to refund Bonds and Developer Bonds.

(dddd) Review Period. As defined in Section 4.5(a)(ix)(6).

(eeee) Revenue Fund. As defined in Section 4.4(d)(iii) of this Agreement.

(ffff) Sales Tax. The tax obligation on the sale of tangible personal property at retail or the furnishing of services as more fully described in Article IV of Chapter 4 of the Johnstown Municipal Code.

(ggggg) Sales Tax Credit. The two and seventy-five hundredths percent (2.75%) credit against sales tax obligations on Taxable Transactions for payment on the 2022 Bonds and the two percent credit (2.0%) for payment on the First Refunding and New Money Bonds, Additional Refunding and New Money Bonds, the 2025 Bonds, the 2027 Bonds and other Bonds as approved by the Town, which the Town will implement in accordance with Section 4.4 of this Agreement, the rate of which will be equivalent at all times during the Credit PIF Period to the rate of the Credit PIF.

(hhhhh) Second Phase Property. As defined in Recital 9.

(iiiiii) Service Plan. The Amended and Restated Service Plan for the Ledge Rock Center Commercial Metropolitan District approved by Town Council by resolution on June 6, 2022, and, if further amended, then as amended.

(jjjjj) Site. One or more lot(s) or other tract(s) or parcel(s) of real property within the Project intended for development.

(kkkkk) Site Development Plan. The plans approved by the Town for the construction, installation and improvements of the Private Improvements.

(lllll) State. The State of Colorado.

(mmmmm) Street Standards. The technical standards and specifications for Dedication, design and construction of streets and rights-of-way as required by the Town.

(nnnnn) Subdivision Development and Improvement Agreement. The Subdivision Development and Improvement Agreement that relates to development of the Property or any portion thereof in the form attached hereto and incorporated herein by reference at **Exhibit G**.

(ooooo) Taxable Transaction. The sale or provision of goods or services which are subject to Town sales taxes.

(ppppp) Town. The Town of Johnstown, Colorado, a home-rule municipality of the Counties of Larimer and Weld, State of Colorado.

(qqqqq) Town Council. The governing body of the Town.

(rrrrr) Town Engineer. The professional engineer designated by the Town Manager to perform the obligations set forth in this Agreement.

(sssss) Town Fees. The fees lawfully assessed by the Town in relation to the development of real property within the Town in the amount and for the purposes determined by Town Council from time to time, including but not limited to impact fees, water and sewer tap fees and storm water utility fees, as set forth in the Code, together with applicable or additional fees, or modifications or amendments thereto, which are adopted by the Town and applied on a uniform and non-discriminatory basis within the Town. The amount of Town Fees will be as existing at the time payment is made.

(tttt) Town Manager. The Town Manager and his or her authorized designees.

(uuuuu) Town Official(s). The Town Manager, Town Attorney, Town Treasurer, Town Engineer, Town Planner and their authorized designees.

(vvvvv) Town Public Improvements. Improvements that will be Dedicated to the Town.

(wwwww) Verified Eligible Costs. Eligible Costs that have been reviewed and certified as being costs incurred for the Public Improvements, and as being reasonable and comparable for similar projects as constructed or incurred in the Denver Metropolitan Area by the Independent Engineer or the District Accountant, as further discussed in Section 4.10. For purposes of acquisition of rights-of-way, easements or other land pursuant to Section 4.10, the appraisal, presented and processed pursuant to Section 4.10, shall be deemed to have verified the cost to be paid for the interest in land being acquired.

(xxxxx) Vested Property Rights Statute. Sections 24-68-101, et seq., of the Colorado Revised Statutes.

ARTICLE II GENERAL PROVISIONS

2.1 Covenants. The provisions of this Agreement constitute covenants or servitudes that will, upon Recordation, touch, attach to and run with the land comprising the Property. The burdens and benefits of this Agreement will bind and inure to the benefit of all Parties hereto and all successors in interest to the Parties to this Agreement, except as otherwise provided in Section 7.14 of this Agreement.

2.2 Recitals. The Recitals are incorporated into this Agreement as if fully set forth herein.

2.3 Original Agreement Superseded. The Original Agreement is hereby superseded and replaced in its entirety by this Agreement.

ARTICLE III DEVELOPMENT AGREEMENT

3.1 Allocation of Development Obligations. Subject to the terms and conditions of this Agreement, the Service Plan and any additional agreements that may be executed, including but not limited to the Operations and Maintenance Intergovernmental Agreement, any Escrow Agreements and the Amended and Restated Escrow Agreement, and in consideration of the Developer's performance and the Town's performance of its obligations under this Agreement, the District agrees to finance the design, construction, maintenance and operation, as applicable, of the Public Improvements as and when reasonably needed to support development of the Project and further subject to the availability of funds therefor. References to the Developer or the District in the context of the Public Improvement obligations addressed in this Agreement shall be construed to include by reference the other party to the extent such other party has assumed the obligations of the District with respect to the Public Improvements pursuant to the terms of this Agreement or otherwise.

3.2 The Project. The Parties recognize and agree that the issuance of Bonds by the District and the payment of Eligible Costs are related to the construction of the Project. The Project, as generally set out on the Conceptual Development Plan, Exhibit C, contains an estimated total of 785,000 square feet of commercial and retail development. Phase I of the Project contains approximately 385,000 square feet of retail and a 90-unit hotel, and will be developed on the Anderson Parcel and the Oxy Parcel No. 1, Lots 2-5 and Tract A Property (**"Phase I of the Project"**). Phase II of the Project contains an estimated total of 451,500 square feet of retail and one 90-unit hotel and will be developed on Oxy Parcel No. 1, Lot 1, and Oxy Parcel No. 2 (**"Phase II of the Project"**). The Parties recognize and agree that the final development may differ based upon final approved development plans and changes approved by the Town. The Project includes the anticipated construction of Public Improvements and Private Improvements. Unless otherwise agreed in writing, Bonds, including Developer Bonds and Other Obligations may only be issued in accordance with this Agreement.

3.3 Construction of the Project.

(a) Subdivision Development and Improvement Agreement. The Parties recognize and agree that, at the time of execution of this Agreement, some of the Property is not subject to a Final Plat. On or before approval of a Final Plat by the Town Council, or at such time as required by the Town, the District and the Developer shall enter into a Subdivision Development and Improvement Agreement in substantially the same form as attached hereto as Exhibit G. This Agreement and the Subdivision Development and Improvement Agreement shall be read harmoniously. To the extent of a conflict between a provision of the agreements, the more restrictive provision shall control.

(b) Compliance with Law and Town Policies. The Project shall be designed, constructed and inspected in compliance with all applicable provisions of the law, including, but not limited to the Code, the Town's policies, procedures and regulations related to land development and, unless subsequently amended, revoked or terminated, all outstanding agreements, covenants, restrictions and similar items that are recorded against or binding upon the Property. The Town Public Improvements shall be dedicated as required in this Agreement and pursuant to Town Code and the Town's policies, procedures and regulations.

(c) Public Bidding. In addition to the provisions contained in the Subdivision Development and Improvement Agreement, the District shall follow all statutory procurement procedures applicable to the District, including the public bidding of the construction of the Public Improvements. In addition, the District will:

- (i) Secure Public bids for the Public Improvements before work begins on the Project;
- (ii) Prior to the award of a construction contract, enter into an Advance Reimbursement and Payment Agreement;
- (iii) Advance funds on a monthly basis for payment of the contractor;

(iv) Have the Cost Certifier provide a report on the amount of the monthly costs that are Verified Eligible Costs;

(v) Agree that the Bond Trustee will deposit, pursuant to the Amended and Restated Escrow Agreement, the reimbursement amounts due to the Developer to be released to the Developer in accordance with the provisions of the Amended and Restated Escrow Agreement;

(vi) Award the construction contracts for the Public Improvements to the lowest reasonable and responsive bidder;

(vii) Advertise formal bid purchases or formal contracts for construction of Public Improvements as follows:

(1) All notices and solicitations of bids shall state the time and place of the bid opening. The request for bids will be published online and in hard copies of the Daily Journal and the Johnstown Breeze and, if the District has a website, posted on the District's website at least ten (10) days prior to the bid deadline. The request shall include an adequate description of the scope of work to be completed, any specifics which may be required of the vendor, including the amount of any bid bond, all contractual terms, and conditions applicable to the public project;

(2) Notices and solicitations of bids shall include information that these are sealed bids and that they should be so identified on the envelope;

(3) Notices and solicitations of bids shall plainly state to whom the sealed bid(s) should be addressed;

(4) All available means for advertising the invitation to bid shall be used to the extent possible, to encourage full and open competition; and

(5) General contractor fees are anticipated to be included in the public bid and shall not exceed the industry standard amount;

(viii) Provide the form of invitation to bid and the bid documents to the Town prior to the District publishing the invitation to bid;

(ix) Provide the bid tab sheets to the Town for all bids submitted;

(x) Award all service agreements related to construction and all construction contracts at a regular or special District Board meeting; and

(xi) If the District does not choose the most responsive and lowest numerical bidder, provide the basis for the decision to the Town allowing the Town an opportunity to object.

3.4 Project Management Fees. Project management fees to be paid by the District on the Public Improvement costs will be negotiated between the Parties and will not exceed the amount certified by the Cost Certifier to be reasonable for the services provided.

~~3.5 Contractor Indemnity. To the fullest extent permitted by Colorado law, the District shall cause contractor(s) to indemnify, defend and hold the District and the Town and its affiliated entities or other persons or entities designated by the District and the Town and their respective directors, trustees, officers, members, managers, agents and employees (collectively, for purposes of this Section, the “Indemnitees”), harmless from any and all claims, demands, damages, losses, liabilities, actions, lawsuits and expenses, including, but not limited to, the reimbursement of attorneys’ fees and costs, arising out of death or bodily injury to persons or damage to property in such amount that is represented by the degree or percentage of negligence or fault attributable to the contractor and/or its agents, representatives, subcontractors, suppliers or any person for whom the contractor is responsible. In addition, the District shall cause the contractor(s) to indemnify, defend and hold the Indemnitees harmless from any and all claims, demands, damages, losses, liabilities, actions, lawsuits and expenses, including, but not limited to, the reimbursement of attorneys’ fees and costs when the same, in whole or in part, results from or arises out of (i) any claimed failure of the contractor, its subcontractors, suppliers or any person for whom the contractor is responsible to fully perform each and every provision of this contract; or (ii) any failure of the contractor, its subcontractors, suppliers or any person for whom the contractor is responsible to pay for all labor, materials services, suppliers and equipment, which failure of payment results in any lien, encumbrance, demand or claim being made or asserted against the Project, the work or against the Indemnitees or any surety on the Project. The foregoing indemnification shall include, without limitation, any losses suffered by the Indemnitees resulting from a failure of the contractor, its subcontractors, suppliers or any person for whom the contractor is responsible to comply with local, State or federal laws and regulations.~~

3.6 Performance and Payment Assurances. The District shall cause the contractor(s) to furnish, prior to commencement of the work and at its sole cost and expense, performance and payment bonds, letter of credit, security or other assurance in a form reasonably acceptable to the Town. The purpose of such assurance is to provide a warranty on all improvements to be owned by the Town or the District based upon the requirements of the Town, contained in the Code or otherwise, and to assure prompt payment of all amounts lawfully due to all persons supplying or furnishing such person or such person’s subcontractors with labor, laborers, materials, rental machinery, tools, or equipment used or performed in the prosecution of work on the Public Improvements. Any assurance related to the warranty shall remain in effect until two (2) years after the date of final payment or, if Dedicated, until final acceptance by the Town as provided in the Subdivision Development and Improvement Agreement. All bonds shall be executed by sureties authorized to do business in the State of Colorado as listed in the current list of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. Each bond, security or assurance shall be accompanied by a “Power of Attorney” authorizing the attorney-in-fact to bind the Surety and certified to include the date of the Bond. If the Surety on any bond furnished by contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in Colorado, contractor shall, within five (5) days thereafter, substitute another bond and Surety acceptable to

the District. Notwithstanding the foregoing, the Developer may provide such other security, reasonably acceptable to the Town as it is authorized by C.R.S. § 38-26-106.

3.7 Insurance Requirements. Unless otherwise expressly modified in the Subdivision Development and Improvement Agreement, the District shall comply with the insurance requirements contained herein.

(a) The District shall cause contractor(s) to purchase and maintain during the entire term of its contract(s), including any extensions of time resulting from change orders, such commercial general liability and other insurance as will provide protection from claims set forth below which may arise out of or result from contractor's performance of the work and contractor's other obligations under the contract, whether such performance is by contractor, by any subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

(i) Claims under workers' or workmen's compensation, disability benefits and other similar employee benefit acts;

(ii) Claims for damages because of bodily injury, occupational sickness or disease, or death of contractor's employees;

(iii) Claims for damages because of bodily injury, sickness or disease, or death of any person other than contractor's employees;

(iv) Claims for damages insured by personal injury liability coverage which are sustained by any person other than an employee of the contractor;

(v) Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

(vi) Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle;

(vii) Claims for bodily injury or property damage arising out of completed operations; and

(viii) Claims involving tort liability assumed in this contract, to the extent granted in an unendorsed industry standard ("ISO") Commercial General Liability policy, or broader.

(b) The insurance required of the contractor(s) shall include the specific coverages and corresponding limits of liability provided herein, or as required by law, whichever is greater, shall meet all requirements specified herein and shall be placed with insurance companies rated at least "A:XIII" by A.M. Best Company, or as otherwise accepted by the Town and the District. All coverages shall be underwritten by carriers authorized to do business in Colorado and acceptable to the District and the Town. All such insurance shall contain a provision that the coverage afforded will not be canceled or renewal refused until at

least thirty (30) days' prior written notice has been given to the contractor, or until at least ten (10) days' prior written notice has been given where there has been a non-payment of premiums. To the extent that the insurance company provides such notice of cancellation or non-renewal, contractor shall immediately provide the District with a copy of such notice. All such insurance shall remain in effect until final payment and at all times thereafter when contractor may be correcting, removing or replacing defective work. In addition, contractor shall maintain the Products and Completed Operations insurance as shown herein for at least two (2) years after final payment and furnish the District with evidence of continuation of such insurance at final payment and one (1) year thereafter.

(c) Contractor(s) shall obtain and maintain insurance coverage as provided herein, including the following:

(i) Worker's Compensation and Employers' Liability

(1) State: Statutory

(2) Employers' Liability

a) \$500,000 Each Accident

b) \$500,000 Disease, Policy Limit

c) \$500,000 Disease, Each Employee

(3) A Waiver of Subrogation in favor of the District, its directors, officers and employees shall be attached to the policy as a separate endorsement.

(ii) Commercial General Liability (Occurrence Form):

(1) Combined Bodily Injury and Property Damage:

a) \$1,000,000 each occurrence

b) \$1,000,000 Personal and Advertising Injury

c) \$2,000,000 General Aggregate

d) \$2,000,000 Products/Completed Operations

Aggregate

(2) The policy shall be written on an ISO Commercial General Liability form (CG0001), or an acceptable equivalent, which shall include, but not limited to, the following coverages:

a) Premises and Operations Liability

b) Liability for Acts of Independent Contractors

- c) Explosion and Collapse Hazard
- d) Underground Hazard
- e) Contractual, to the extent insurance is available
- f) Broad Form Property Damage
- g) Personal/Advertising Injury
- h) General Aggregate Limit per Project (applies to each project)

i) Products and Completed Operations Insurance shall be maintained by the contractor for a minimum of two (2) years after final payment, and the contractor shall continue to provide evidence of such coverage to the District on an annual basis during the aforementioned period. The District and engineer shall also be named as Additional Insureds.

j) Subcontractors shall comply with all provision of this Section.

k) A waiver of subrogation endorsement in favor of the District, its directors, officers and employees shall be attached to the policy as a separate endorsement.

l) Deletion of the subsidence exclusion.

(3) Automobile Liability:

- Damage:
- a) Combined Single Limit Bodily Injury and Property
 - i) \$1,000,000 each Accident
 - b) The following automobiles must be included:
 - i) Owned automobiles
 - ii) Non-owned and hired automobiles

herein:

(4) Umbrella Liability, to apply over all coverages required

a) \$6,000,000

(5) Builder's Risk Insurance:

a) The builder's risk insurance policy shall be on an "all risk" basis for the entire project and shall include (i) coverage for any loss from faulty workmanship, defective materials, and omission or deficiency in design or specifications; (ii) coverage against damage or loss caused by earthquake, flood, fire, hail, lightning, wind, explosion, smoke, water damage, theft, vandalism and malicious mischief, and machinery accidents and operational testing; (iii) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, facilities, fixtures and all other properties constituting a part of the project; (iv) transit coverage, with sub-limits sufficient to insure the full replacement value of any equipment item; and (v) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the site. The policy shall provide for coverage in the event an occupancy or use permit is issued for any portion or portions of the work prior to substantial completion of the work. Builder's risk insurance shall be written in completed value form and shall protect the contractor, subcontractors, the Town and the District. It shall also include soft costs in amounts satisfactory to the contractor, subcontractors, the Town and the District.

b) Builder's risk insurance shall provide for losses to be payable to contractor, subcontractors, the Town and the District as their interests may appear. The policy shall contain a provision that in the event of payment for any loss under the coverage provided the insurance company shall have no rights of recovery against the contractor, the Town or the District.

c) To the extent that contractor's work, or work under its direction, may require blasting, explosive conditions, or underground operations, the commercial general liability coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damage to underground property.

d) Insured losses under policies of insurance which include the District's interests shall be adjusted with the District and made payable to the District as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause. The District as trustee shall have the right to adjust and settle losses with the insurers. The District shall have no liability for damages caused by fire or other perils.

(6) Insurance Certificates/Policy. Prior to the commencement of any work, the contractor(s) shall furnish to the District and the Town proof of liability coverage on ACORD Form 25, and proof of coverage under any property policies on ACORD Form 27 or the equivalents, and copies of the applicable insurance policies and policy endorsements to prove that all required insurance is in force. Insurance obtained by the contractor(s) shall be subject to approval by the District and the Town for adequacy of protection. Neither approval by the District or the Town of any insurance supplied by contractor, nor failure to disapprove such insurance shall relieve the contractor of its obligation to maintain in full force during the life of the contract documents all required insurance as set forth herein.

(d) Additional Requirements.

(i) No insurance coverages required to be obtained by contractor(s) pursuant to the requirements of this Agreement shall have a deductible greater than

\$5,000 or as reasonably approved by the District and the Town. The contractor(s) is solely responsible for the payment of the deductible(s).

(ii) If any policy required is a claims made policy, the policy shall provide the contractor the right to purchase, upon cancellation or termination by refusal to renew the policy, an extended reporting period of not less than one (1) year. The District shall require the contractor(s) to purchase such an extended reporting period. The contractor's failure to purchase such an extended reporting period as required by this Section shall not relieve it of any liability under its contract. If the policy is a claims made policy, the retroactive date of any such renewal of such policy shall be not later than the date any contract is executed by the contractor and the District. If the contractor(s) purchases a subsequent claims made policy in place of any prior policy, the retroactive date of such subsequent policy shall be no later than the date the contract is executed by the contractor and the District.

(iii) The District shall require the contractor(s) to provide for the District and the Town and their respective directors, officers, agents and employees to be designated as Additional Insureds on the contractor's commercial general liability insurance and as Insureds under the automobile liability insurance, and the same shall be clearly indicated on the applicable certificates of insurance provided to comply with these requirements.

(iv) The District shall require the contractor(s) to provide for any claims related to the provision of services by the contractor, contractor's insurance to be the primary insurance with respect to the District and the Town and their respective directors, officers, employees and agents. Any insurance maintained by the District or the Town (or their respective directors, officers, employees and agents) shall be in excess of contractor's insurance and shall not contribute with it.

(v) The District shall require the contractor's insurance apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(vi) The District shall require any failure on the part of the contractor(s) to comply with reporting provisions or other conditions of the policies shall not affect the obligation of the contractor to provide the required coverage to the District and the Town and their respective directors, officers, employees and agents.

ARTICLE IV COMPREHENSIVE FUNDING PLAN

4.1 Credit PIF Revenues. In consideration of the Developer's agreement to impose the Credit PIF on Taxable Transactions pursuant to the PIF Covenant and of the Developer's agreement to impose the Add-On PIF on Taxable Transactions and to assign the PIF Revenues to the District, and in further consideration of the District's agreement to utilize Credit PIF Revenues, the Add-On PIF Revenues, the PILOT Payment Debt Revenues, the Debt Mill Levy and other of the District's revenues to finance the design and construction of the Public Improvements, the Town will grant the Sales Tax Credit to retailers who are subject to and actually pay the Credit PIF to the PIF Collecting Agent during the Credit PIF Period in accordance with the terms and conditions of this Agreement.

4.2 Add-On PIF Revenues. The Add-On-PIF may extend beyond the Credit PIF Period. The Developer and the District agree to collect the Add-On PIF during the entire Credit PIF Period and further agree not to reduce the rate of the Add-On PIF during the Credit PIF Period; provided the Sales Tax Credit is also in effect. While any Bonds payable from PIF Revenues remain outstanding, the District agrees to deposit all PIF Revenues net of collection costs with the Bond Trustee in accordance with Section 4.4(d)(iii) hereof unless otherwise provided in the Bond Documents.

4.3 PILOT Payment Revenues. The Developer agrees to record the PILOT Covenant on the commercial portions of the Property owned by the Developer, in a form acceptable to the Town, prior to the issuance of the 2022 Bonds, the 2025 Bonds, the First New Money and Refunding Bonds, Additional New Money and Refunding Bonds and any other Bonds and not to amend or release the PILOT Covenant during the entire Credit PIF Period. The District agrees to collect the PILOT Payment Revenues during the entire Credit PIF Period. While any Bonds payable from the PILOT Payment Debt Revenues remain outstanding, the District agrees to deposit all PILOT Payment Debt Revenues, net of collection costs, with the Bond Trustee in accordance with Section 4.4(d)(iii).

4.4 Implementation of Sales Tax Credit.

(a) Approval of Sales Tax Credit Ordinance. In order to implement the Town's obligation under this Agreement with respect to the Sales Tax Credit, the Town Council shall consider and, if appropriate, adopt an ordinance amending the Code provisions regarding municipal sales tax to provide for and implement the Sales Tax Credit. Such Sales Tax Credit shall be automatic and will take effect immediately upon the applicable retailer's first Taxable Transaction and payment of the Credit PIF Revenues to the PIF Collecting Agent. During the Credit PIF Period, the Town will coordinate with the District, the Developer and the State of Colorado Department of Revenue (i) to endeavor to assure that each retailer liable to collect and pay Sales Tax to the Town on Taxable Transactions within the Property, that collects and pays the Credit PIF to the PIF Collecting Agent, will receive the Sales Tax Credit against such Sales Tax in the amount and at the rate of the Sales Tax Credit; (ii) to make any necessary modifications to the Sales Tax reporting forms for reporting with respect to the Taxable Transactions by all retailers within the PIF Property during the Credit PIF Period; and (iii) to appropriate and remit to the District any Sales Tax collections of the Town that should have been part of the Sales Tax Credit, but were not collected by the PIF Collecting Agent due to the Department of Revenue's timing of implementation of the Sales Tax rate change for any retailer or any other reason. The transaction and payments supporting the Sales Tax Credit for any given period will nevertheless be subject to audit to the same extent, for the same limitations periods and in the same manner as the items which are required to be reported on the taxpayer's return relating to the period in which the transaction occurs.

(b) Cap Amount. The Town has established the Cap Amount based upon a review of the estimated Verified Eligible Costs that are representative of the costs of those improvements. The Cap Amount may only be amended by an amendment of this Agreement pursuant to Section 7.1.

(c) PIF Trustee and Bond Trustee. The District, with the consent of the Town, will appoint a PIF Trustee (the “**PIF Trustee**”) who will perform the duties set forth in this Agreement and in an agreement (the “**PIF Trustee Agreement**”) that will be executed by the PIF Trustee and the District, and approved by the Town. After the issuance of any Bonds or Developer Bonds payable from the PIF Revenues, the PIF Trustee shall serve as Bond Trustee for such Bonds and any Developer Bonds, or the District may appoint a different entity to serve as Bond Trustee, with the consent of the Town. The Bond Trustee’s duties shall be set forth in an indenture (the “**Indenture**”) executed by the Bond Trustee and the District, which Indenture shall contain the provisions required in this Agreement and shall be subject to approval by the Town in accordance with the provisions of this Agreement. The PIF Trustee Agreement shall provide, without limitation, the following minimum provisions, unless any such provisions are waived in writing by both the District and the Town:

(i) Prior to the issuance of any Bonds or any Developer Bonds, the PIF Trustee shall receive all PIF Revenues from the PIF Collecting Agent net of collection costs and PILOT Payment Debt Revenues, if any, and shall hold all PIF Revenues and PILOT Payment Debt Revenues in a segregated account;

(ii) The PIF Revenues and PILOT Payment Debt Revenues shall be invested by the PIF Trustee as directed by the District and in accordance with applicable law;

(iii) The PIF Trustee shall keep accurate books and records of all deposits of all Credit PIF and Add-on PIF Revenues and PILOT Payment Debt Revenues and investment earnings thereon, which books and records shall be available for inspection during regular business hours by the District and the Town;

(iv) The PIF Trustee Agreement shall not be amended with respect to the duties of the PIF Trustee’s administration of the Credit PIF Revenues without the prior written consent of the Town; and

(v) Upon the issuance of Bonds payable in whole or in part from PIF Revenues and PILOT Payment Debt Revenues and all moneys on deposit with the PIF Trustee shall be transferred to the Bond Trustee, if a different entity than the PIF Trustee, in accordance with the terms and provisions of the Indenture. Thereafter, all PIF Revenues and PILOT Payment Debt Revenues shall be deposited with the Bond Trustee during the PIF Period and shall be disbursed in accordance with the terms and provisions of the Indenture.

(d) Indenture Provisions. Each Indenture authorizing the issuance of Bonds and Developer Bonds shall provide, without limitation, the following minimum provisions, unless such provisions are waived in writing by the District and the Town:

(i) The net proceeds from all Bonds and Developer Bonds, except Refunding Bonds, (after paying costs of issuance, satisfying required deposits to debt service reserve funds, etc.) shall be deposited in a project fund, or similar fund established under the Indenture (hereinafter referred to as the “**Project Fund**”), and disbursed by the Bond Trustee upon proper requisitions received by the Bond Trustee from the District in accordance with the

Amended and Restated Escrow Agreement. Such requisitions shall set forth, at a minimum, the amount of District Bond proceeds being expended on Public Improvements;

(ii) After all of the moneys on deposit in the Project Fund have been disbursed in accordance with the Indenture, the Bond Trustee shall determine, based solely on the requisitions received from the District, the actual amount of Bond proceeds spent on Verified Eligible Costs, without including any investment earnings thereon, or any of the costs identified in Section 1.1(r)(i) through (v) (the "**Final Allocation of Proceeds**"). The Bond Trustee shall submit a written copy of the Final Allocation of Proceeds to the District and to the Town, which Final Allocation of Proceeds shall be used, in part, to confirm that the distribution of Bond proceeds used for Verified Eligible Costs did not exceed the Cap Amount;

(iii) All Credit PIF Revenues, Add-On PIF Revenues and PILOT Payment Debt Revenues shall be deposited by the Bond Trustee in revenue funds or similar funds created under the Indenture (hereinafter referred to as the "**Credit PIF Revenue Fund**" the "**Add-On PIF Revenue Fund**" and the "**PILOT Revenue Fund**" (collectively the "**Revenue Fund**");

(iv) The Indenture shall create or establish a debt service fund or similar fund (hereinafter referred to as the "**Debt Service Fund**") to be used to make debt service payments on outstanding Bonds as the same become due;

(v) On or prior to each debt service payment date, the Bond Trustee shall determine the amount required to be transferred from the Revenue Fund to the Debt Service Fund to make the debt service payments on Bonds. The Bond Trustee shall transfer from the Credit PIF Revenue Fund, the Add-On PIF Revenue Fund, the PILOT Revenue Fund and other revenues pledged by the District, if any, to the Debt Service Fund an amount necessary to pay the debt service requirements, together with the revenue from the Debt Mill Levy, on Bonds then coming due as provided in the Indenture;

(vi) After moneys on deposit in the Revenue Fund have been used for the payment of debt service requirements on outstanding Bonds that have a senior lien on the Revenue Fund, the Indenture shall provide how remaining moneys on deposit in such Revenue Funds may be spent and shall set forth a priority of expenditures. By way of example, the Indenture shall provide, at minimum, for (i) the replenishment of a reserve fund created for the security of Bonds; (ii) the funding of a surplus reserve fund, if any; (iii) the payment of debt service on any subordinate Bonds; (iv) the prepayment of senior Bonds or subordinate Bonds until such Bonds are repaid; (v) the payment of various fees and expenses; and (vi) the repayment of the Developer for Verified Eligible Expenses in an amount equal to the Shortfall Funding Advance; (v) payment of the District Cost Sharing Contribution and (vi) the payment of principal and interest on Developer Bonds;

(vii) The Indenture shall provide that the sections thereof implementing the terms of this Agreement may not be amended in a manner materially inconsistent with the terms of this Agreement without the prior written approval of the Town, which approval shall not be unreasonably withheld, conditioned or delayed;

(viii) The Indenture shall provide that no additional Bonds may be issued unless the District is in substantial compliance with all indentures authorizing the issuance of additional Bonds; and

(ix) The Indenture shall provide that the District and the Town have the right to inspect the books and records of the Bond Trustee during regular business hours.

(e) Duration of Credit PIF Period. The Credit PIF Period will commence for the Phase I Credit PIF and the Phase II Credit PIF on the date that the Sales Tax Credit becomes effective. The Credit PIF will continue until the earliest to occur of: (i) December 1, 2051; or (ii) the District's repayment in full of all of Bonds issued for the purpose of financing, refinancing or reimbursing the Verified Eligible Costs, including any re-financing or re-issue thereof, which net proceeds do not exceed the Cap Amount. The occurrence of subpart (ii) above shall be promptly certified by the District in a written supplement to the PIF Covenant recorded in the office of the Clerk and Recorder for Weld County, terminating the Credit PIF. At the time of issuance of any Bonds, the District may request an extension of the Credit PIF Period if an extension of the Credit PIF Period is anticipated to result in a lower interest or other favorable terms for issuance of Bonds. The Town will thereafter consider, but not be obligated to approve, an extension of the Credit PIF Period. No extension of the Credit PIF Period shall be effective unless approved by the Town Council, and any such permitted extension of the Credit PIF Period will be memorialized by the recording of a supplement to the PIF Covenant in the office of the Clerk and Recorder for Weld County, extending the duration of the Credit PIF.

(i) Adjustment of Credit PIF. The Credit PIF related to the 2022 Bonds will be reduced from 2.75% to 2% from the date of issuance of the Refunding and New Money Bonds and thereafter to the termination date of the Credit PIF.

(f) Disposition of Funds at the Termination of the Credit PIF Period. At the termination of the Credit PIF Period and after all Bonds are no longer outstanding under the terms of their respective indentures, if there are Credit PIF Revenues remaining on deposit with the Bond Trustee, the Bond Trustee shall remit all remaining Credit PIF Revenues to the Town. The Bond Trustee shall remit all remaining Add-On PIF Revenues, PILOT Payment Debt Revenues and any other pledged District funds to the District.

(g) Collection of PIF Revenues. The PIF Covenant requires the engagement of a PIF Collecting Agent. As more particularly set forth in a PIF Collection Services Agreement, the PIF Collecting Agent will be designated to receive the PIF Revenues and PILOT Payment Revenues on behalf of the District, to collect the PIF Revenues from retailers within the Project and remit all of the PIF Revenues, less an agreed upon administrative fee and any PILOT Payment Debt Revenues to the PIF Trustee (prior to the issuance of Bonds) or to the Bond Trustee (while any Bonds payable from PIF Revenues remain outstanding). Following the Town's adoption of a Sales Tax Credit ordinance as contemplated in Section 4.4 of this Agreement, the District and the PIF Collecting Agent will enter into a PIF Collection Services Agreement in a form mutually acceptable to the Parties. The PIF Collecting Agent will remit all of the PILOT Payment Revenues – General Fund, less an agreed upon administration fee, to the District.

(h) The District's Use of PIF Revenues. The District will construct the Public Improvements prior to expiration of the Credit PIF Period using net Bond proceeds and net proceeds from Developer Bonds and the Developer Shortfall Funding Advance up to the Cap Amount and funds available from Other Obligations, if any. Subject to and pursuant to the provisions of this Agreement, ~~the District may use Credit PIF Revenues and Add-On PIF Revenues~~ for costs related to the issuance of Bonds and repayment of Bonds, as set forth in the indentures or agreements, as applicable, authorizing the issuance of and the security for Bonds, and for cash disbursements associated with and directly related to the design and construction of Public Improvements and payment or repayment of Verified Eligible Costs up to the Cap Amount. In addition to the purposes set forth above, the Add-On-PIF Revenues may be used for any purpose permitted by law after the expiration of the Credit PIF Period.

(i) Audits. Within thirty (30) days of completion, but not later than August 15 of each year during the Credit PIF Period, the District will provide to the Town copies of its annual audit reports, year-end financial reports for the preceding fiscal year and budget for the current fiscal year, and will provide such other and additional information as reasonably requested by the Town regarding the use of the PIF Revenues. Upon reasonable notice, the Town will have the right at its own expense to audit the District's books and records and the PIF Trustee's and Bond Trustee's books and records, and the District will have the right at its own expense to audit the Town's books and records and the Bond Trustee's books and records, related to their respective obligations under this Comprehensive Funding Plan, including, but not limited to, the Public Improvements, the Sales Tax Credit and the PIF Revenues, other District debt obligations and the District's use of the PIF Revenues and the PILOT Payment Revenues. Nothing herein or elsewhere, however, shall obligate the Town to furnish to the District confidential information that the Town has obtained from the State or elsewhere.

(j) Audit of Retailers; Enforcement. Pursuant to the PIF Covenant, any person or entity who engages in a Taxable Transaction is subject to audit by the Town or the District regarding Taxable Transactions that are subject to the PIF. The Town and the District acknowledge that it is their intent to minimize their respective administrative costs and the administrative burdens imposed upon retailers within the Project and agree that, in the event one of the Parties exercises its right to audit the Taxable Transactions of a retailer within the Project, it will provide the other party with the opportunity to cooperatively participate in such audit upon payment of fifty-percent (50%) of the audit costs, provided that such retailer provides its written consent to such cooperative audit to the extent such consent is required under the terms and conditions of the PIF Covenant or applicable law.

If the PIF Collecting Agent is unable to collect all or any portion of the Credit PIF due to delinquency, deficiency or failure to file, such that the Sales Tax Credit is not received for any Taxable Transaction, the PIF Collecting Agent will notify the District of such fact. Upon receipt of any such notice, the District may, in addition to exercising all of its remedies under the PIF Covenant or otherwise, notify the Town in writing and the Town may institute the procedures authorized under the Code to enforce and collect the corresponding Sales Tax, together with any applicable interest, penalties and/or costs. The Town will then remit any such collected tax revenues to the District, subject to annual appropriation by the Town and subject to the further following conditions: (i) the Town will be entitled to retain an amount equal to its costs incurred in enforcing its collection of taxes under the Code, as well as an

administrative fee equal to ten percent (10%) of any tax and one hundred percent (100%) of any penalty and/or interest actually collected; (ii) the Town will have no responsibility to collect any Add-On PIF amounts that may be due and unpaid; (iii) the Town does not guarantee or ensure that it will be able to collect any delinquent or deficient Credit PIF amounts; and (iv) under no circumstances will the Town be subject to any legal liability to the District, the Developer, or any Bond Participant on account of the Town's failure to collect some or all of the delinquent or deficient Credit PIF obligations on behalf of the District or any Bond Participant. If the person or entity who failed to timely pay such Credit PIF subsequently remits the Credit PIF, such payment will result in the application of the Sales Tax Credit against such person or entity's tax obligation, which Sales Tax Credit will fully satisfy any corresponding liability to the Town for unpaid sales or use tax. In such circumstances, the Town will nevertheless be entitled to recover its administrative fee and any costs incurred in the enforcement and recovery of such Credit PIF Revenues.

(k) On an ongoing basis, the Town, Bond Trustee, the District and the Developer will reasonably cooperate to implement the terms of this Comprehensive Funding Plan as they relate to application of the PIF, the Sales Tax Credit or otherwise implementing the Credit PIF Revenues and Add-On PIF Revenues commitment with respect to internet sales, mail order sales, and other similar transactions occurring within the Property (i.e., transactions deemed to have occurred within the Property because delivery is made within the Property) and which otherwise would be subject to the Town's Sales Tax, including implementation of a means of the Town accounting for the occurrence of such transactions and Sales Tax receipts derived therefrom, to the extent possible, it being understood that such transactions are a growing trend and that the means for adequately identifying, tracking and collecting Sales Tax and PIF Revenues from such transactions may not presently be adequate but are expected to improve over time.

4.5 Bonds. It is anticipated that Bonds will be issued in more than one series to finance Verified Eligible Costs. It is currently anticipated that there will be three issuances of Bonds, the 2022 Bonds, the 2025 Bonds and the 2027 Bonds. It is anticipated that the 2027 Bonds will be issued as the First Refunding and New Money Bonds. Prior to the issuance of any Bonds, the following conditions must occur unless such condition is specifically waived by the Town in writing or is specifically modified in writing by the Town, the District and the Developer.

(a) Conditions Precedent to Bond Issuance. Prior to the issuance of Bonds by the District, the following conditions precedent shall be satisfied, unless specifically waived by the Town or modified by the Town with the written consent of the District and the Developer:

(i) Service Plan Amendment. Confirmation by the Town that no Service Plan Amendment is necessary prior to the issuance of any Bonds;

(ii) Preliminary Plat. The Town Council, by resolution, shall have approved a preliminary plat for the Property or the portion thereof that is subject to the construction of Public Improvements from the Bonds;

(iii) Advance Reimbursement and Payment Agreement. The District shall provide for the Town's review and comment, the Advance Reimbursement and Payment Agreement. The District and the Developer shall have executed the Advance Reimbursement and Payment Agreement;

(iv) Sales Tax Ordinance. The Town Council shall have, by ordinance, adopted the Sales Tax Credit;

(v) PIF Covenant. The Developer shall have recorded the PIF Covenant against the portion of the Property it owns.

(vi) PILOT Covenant. The Developer shall have recorded the PILOT Covenant against the portion of the Property it owns;

(vii) Escrow Agreement. Prior to the issuance:

(1) Of the 2022 Bonds, the Parties shall have executed the Amended and Restated Escrow Agreement, with completed terms that are mutually acceptable to the Parties and the Trustee, in substantially the form attached hereto as Exhibit E; and

(2) Of the 2025 Bonds, the 2027 Bonds, and any other Bonds, the Parties shall have executed the Escrow Agreement if determined by the Town to be required, with completed terms that are mutually acceptable to the Parties and the Trustee, in substantially the form attached hereto as Exhibit F.

(viii) Operations and Maintenance Agreement. The Parties acknowledge that the Operations and Maintenance Intergovernmental Agreement has been executed, as required; and

(ix) Thirty (30) Day Submittals. No less than thirty (30) days prior to the issuance of any Bonds or any Developer Bonds, the District shall have submitted to the Town the following ("30 Day Submittal"):

(1) The financing plan for the proposed issuance which shall include the build out assumptions and revenue assumptions for the repayment of Bonds, including Developer Bonds, together with any other outstanding Bonds and outstanding Developer Bonds to be repaid from the same pledged revenues, the estimated amortization schedule and summary of all of the terms related to the issuance of Bonds and Developer Bonds, including the estimated or assumed interest rate, call protection provisions, description of pledged revenues and flow of funds to be included in the Indenture. Bonds shall not be amortized to be repaid beyond the end of the Credit PIF Period without the written consent of the Town. Developer Bonds shall not be amortized to be repaid for a Credit PIF beyond December 1, 2047;

(2) Unless satisfied or otherwise established through the Feasibility Analysis (defined below), written documentation evidencing or otherwise confirming the tenant commitments supporting the build out assumptions and revenue assumptions. To the extent permitted by law, the Town agrees that all such documentation shall be delivered directly

to legal counsel for the Town, kept confidential and not subject to release to the general public and agrees to cooperate with the Developer and the District with respect to achieving such confidentiality;

(3) The schedule for the proposed issuance;

(4) The anticipated use of proceeds for the issuance, including the specific Public Improvements to be funded with the net Bond proceeds and the net Developer Bond proceeds and including the description of the Public Art to be included in the Public Improvements to be funded from the Bonds, the cost of which shall be at least 1.0% of the total Project Fund. The location, scope and specifications for the Public Art shall be submitted in writing and approved in writing by the Town prior to installation;

(5) A feasibility analysis, or if a feasibility analysis was previously issued, an update to the feasibility analysis, from a third party market research firm or a market research analyst that has been engaged in analyzing commercial market conditions for at least five (5) years (the “**Market Analyst**”), stating that it has developed the financial projections utilized in sizing the proposed Bond issuance including, but not limited to, absorption rates, valuation, growth and inflation rates and has evaluated the same in comparison to current and projected market conditions for such areas as deemed by such Market Analyst to be comparable, and that such financial projections are reasonable (the “**Feasibility Analysis**”). Provided, however, the District shall not be obligated to provide a Feasibility Analysis for the repayment of Developer Bonds, unless the District has otherwise had a Feasibility Analysis prepared for Developer Bonds; and

(6) No less than fifteen (15) days prior to the issuance of any Bonds or Developer Bonds, the District shall submit all material updates to the information provided in the 30-Day Submittal and shall also submit the following documentation in draft form: (i) the Indenture; (ii) the offering document, if any, for the issuance of Bonds and Developer Bonds, if any; and (iii) form of enforceability and tax-exempt opinion anticipated to be provided at the time of issuance of Bonds and Developer Bonds, if any.

Understanding that time is of the essence, the Town agrees to endeavor to expeditiously review the 30-Day Submittal within 30 days of receipt by the Town (the “**Review Period**”). If the 30-Day Submittal materials are submitted in full, there are no material modifications to the terms of this Agreement and the analysis contained therein supports the issuance of Bonds, the Town Manager may, in his or her discretion, approve the 30-Day Submittal in writing and the District may proceed to issue the applicable Bonds substantially on the terms provided in the 30-Day Submittal.

(b) Limitation on Time. Upon the satisfaction of all the conditions set forth in Section 4.5(a) above and the delivery of all the information required by Section 4.5(a)(ix) above, the District shall notify the Town in writing of the commencement of the 30-Day Submittal period. If the Town does not object to the 30-Day Submittal within thirty (30) days of receipt, the 30-Day Submittal shall be deemed approved and the District may proceed to issue the applicable Bonds and Developer Bonds substantially on the terms provided in the 30-Day Submittal.

(c) Limit on Amount of Issuance Costs. The issuance costs for any issuance of the Bonds shall not exceed four (4%) percent of the aggregate par value of the Bonds.

(d) Developer Bonds. Developer Bonds may only be issued in accordance with the provisions and limitations of this Agreement and the Service Plan. The Developer shall use commercially reasonable, best efforts to work with the Town and District to refinance any Developer Bonds with Refunding Bonds as soon as practicable after issuance.

(i) The obligation of the District to make payment of Land Acquisition Costs to the Developer will be documented in a Developer Bond unless otherwise approved in writing by the Town.

(e) Other Obligations. The District intends to issue Bonds and Developer Bonds with proceeds in amounts sufficient to equal the Cap Amount, but the Cap Amount is not expected to cover all of the Verified Eligible Costs of the Project. The parties to this Agreement acknowledge that the District may issue Other Obligations with proceeds sufficient to net an amount not to exceed the difference between the Cap Amount and the total Verified Eligible Costs. The District and the Developer acknowledge any revenue pledged to repay the Other Obligations shall also be pledged to pay the Bonds, the repayment of the Developer for Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance, the payment of the District Cost Sharing Contribution and Developer Bonds. Therefore, any pledge to repay the Other Obligations shall be fully subordinated to the Bonds, the repayment of the Developer for Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance, the payment of the District Cost Sharing Contribution, and the Developer Bonds, in that priority.

(f) Condition Precedent to Release of Bond Proceeds. Prior to the release of any funds from the Bond Proceeds Account, as defined in the Amended and Restated Escrow Agreement (“**Bond Proceeds Account**”), the Subdivision Development and Improvement Agreement, in substantially the form attached hereto as Exhibit G, shall be executed. The Parties acknowledge that they have entered into the Subdivision Development and Improvement Agreement for Town of Johnstown (Ledge Rock Center Commercial) for Phase I of the Project.

(g) First Requisition from the Bond Proceeds Account for Payment of Verified Eligible Costs. The first requisition from the Bond Proceeds Account for each Bond issuance shall be used to fund a specific amount of Land Acquisition Costs, Verified Eligible Costs related to soft costs incurred prior to that Bond issuance or other Verified Eligible Costs as agreed upon by the Parties, which shall be deposited in the Developer Fund Account, as defined in the Amended and Restated Escrow Agreement (“**Developer Funds Account**”), prior to the requisition of any other amounts from the Bond Proceeds for payment of any other Verified Eligible Costs. As the provisions related to the first requisition from the Bond Proceeds Account and the deposit and release of funds from the Developer Fund Account will be determined prior to every Bond issuance and will be set forth in the Amended and Restated Escrow Agreement, in the event there is a conflict between the provisions of the Amended and Restated Escrow Agreement and this Section 4.5(g), the provisions of the Amended and Restated Escrow Agreement shall control.

4.6 Shortfall Funding.

(a) The Developer will advance funds to the District for the Developer Shortfall Funding Advance, which will not be repaid by the District. The District anticipates reimbursing the Developer for Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance on a subordinate basis to the 2022 Bonds, the 2025 Bonds and any other Bonds issued to complete the Public Improvements required for Phase I of the Project and Phase II of the Project. In no event will the District be obligated to pay, and the District shall not pay, to the Developer any interest on the Developer Shortfall Funding Advance. It is anticipated the Developer will be reimbursed for Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance from the issuance of the First Refunding and New Money Bonds and Additional Refunding and New Money Bonds. The Developer Shortfall Funding Advance shall be deposited upon receipt into the Developer Funds Account established under the Amended and Restated Escrow Agreement.

(b) The Developer has committed to make the Developer Shortfall Funding Advance in exchange for the commitment of the Town to sell the Developer up to nineteen and six-tenths (19.6) shares of water at Five Hundred Fifty Thousand Dollars (\$550,000) per share (the “**Water Shares**”) for the Multi-Family Parcels to be memorialized in an agreement between the Town and the Developer (the “**Developer Contribution Agreement**”). Developer’s payment of the Developer Shortfall Funding Advance shall be deposited in the Developer Funds Account established under the Amended and Restated Escrow Agreement and the purchasing of the Water Shares shall close on or before the earlier to occur of the following:

(i) the conveyance of any interest of the Developer in any portion of the Multi-Family Parcel;

(ii) the refinancing of the loan secured by the deed of trust currently recorded against the Multi-Family Parcel; or

(iii) June 1, 2023.

(c) The Covenants Securing Funding Commitment attached to the Developer Contribution Agreement shall be recorded against the Multi-Family Parcel.

(d) The sale of a portion of the Multi-Family Parcel together with the payment of the Developer Shortfall Funding Advance is currently anticipated to close February 2023. The Parties agree that the Developer Shortfall Funding Advance shall be deposited by the Developer in the Developer Fund under the Escrow Agreement no later than June 1, 2023.

(e) The sum of the Developer Shortfall Funding Advance deposited into the Developer Funds Account may be released upon request pursuant to leases and/or construction progression as detailed in the Amended and Restated Escrow Agreement.

(f) The payment to the Town of the District Cost Sharing Contribution shall be made on a subordinated basis to the reimbursement by the District to the Developer for Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance.

4.7 District Cost Sharing Contribution. The District shall provide funding to the Town for the Town's use for any lawful purpose an amount equal to the increase collected in the Credit PIF from 2% to 2.75% for the 2022 Bonds with no interest accrual included in the calculation (the "District Cost Sharing Contribution") upon the earlier to occur of the following:

(a) Simultaneously with the acquisition of the first to occur of the acquisition by the Developer of either the Oxy Parcel No. 1, Lot 1, the Oxy 2 Parcel, or both; or

(b) Simultaneously with the issuance of Bonds in an amount sufficient to refund the 2022 Bonds, pay Verified Eligible Costs in an amount equal to the Developer Shortfall Advance and fund the District Cost Sharing Contribution (the "**Refunding and New Money Bonds**").

(i) The District shall have the obligation to issue the first of the Refunding and New Money Bonds when it can achieve a net present value savings for the portion of the Refunding and New Money Bonds issued to redeem the 2022 Bonds, including transaction costs, while having sufficient capacity to repay a part or all of Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance and a part or all of the District Cost Sharing Contribution with the Original Pledged Revenues (the "**First Refunding and New Money Bonds**"). The Credit PIF will be reduced from 2.75% to 2% from the date of issuance of the First Refunding and New Money Bonds and thereafter to the termination date of the Credit PIF.

(ii) In the event the First Refunding and New Money Bonds is not in an amount sufficient to pay all of the Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance and the District Cost Sharing Contribution, the District may issue the Refunding and New Money Bonds in an amount that will repay all or a portion of Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance and not any or all of the District Cost Sharing Contribution. In these circumstances, the District shall be obligated to issue Additional Refunding and New Money Bonds to pay first any remaining amount due to repay Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance and to pay all of the District Cost Sharing Contribution as soon as it has capacity to do so ("**Additional Refunding and New Money Bonds**"). Any Verified Eligible Costs advanced by the Developer in excess of an amount equal to the Developer Shortfall Funding Advance cannot be refunded or reimbursed by the District until Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance has been fully repaid and the District Cost Sharing Contribution has been made to the Town.

(iii) The District will seek the input of an underwriter or municipal financial advisor at least once a year after the date of issuance of the 2022 Bonds to assess its ability to issue the Refunding and New Money Bonds, and any Additional Refunding and New Money Bonds, as needed to fulfill its commitment to pay the District Cost Sharing Contribution.

(iv) The Developer acknowledges that its rights to acquire the Second Phase Property is conditioned on the District's payment of the full amount of the District Cost Sharing Contribution by and through the purchase of the Second Phase Property, or a

portion thereof, or the District's reissuance of the Refunding and New Money Bonds in an amount sufficient for payment by the District to the Town of the full amount of the District Cost Sharing Contribution, whichever occurs first. If the District does not provide the District Cost Sharing Contribution to the Town as provided herein, unless otherwise agreed by the Town in the form of an amendment to this Agreement, the Developer shall not be entitled to purchase the Second Phase Property.

4.8 Legal Opinions. The District shall issue Bonds and Developer Bonds and the District, the District counsel, and the Bond Trustee ("**Bond Participants**") will rely on the Town's commitments regarding the Credit PIF Revenues as set forth herein in connection with issuance and marketing of Bonds and the issuance of the Developer Bonds. Accordingly, each Party affirms and warrants for the benefit of the other Parties and the Bond Participants that it is fully authorized to enter into and execute this Agreement, that all necessary actions, notices, meetings and/or hearings pursuant to any law required to authorize its execution of this Agreement have been made, and that this Agreement is enforceable against such Party in accordance with its terms and conditions. Each of the Parties hereby covenants that it will not assert in any context that the performance of its obligations hereunder is not fully enforceable. On or prior to the seventh day after the Effective Date, the District and the Developer will deliver an opinion of their respective outside counsel addressed to the other Parties to this Agreement, solely with respect to this Agreement, which opinion will state in substance that, assuming this Agreement has been duly authorized, executed and delivered by the other Parties hereto, the Comprehensive Funding Plan constitutes a valid and binding agreement of such Party enforceable according to its terms, subject to any applicable bankruptcy, reorganization, insolvency, moratorium or other law affecting the enforcement of creditors' rights generally and subject to the application of general principles of equity. The Developer's counsel will provide a similar opinion concerning the PIF Covenant at the time the PIF Covenant is recorded. Such opinions may also contain additional exceptions or qualifications as are agreed to in writing by the Town and the District. With at least thirty (30) days' written notice by the District, outside counsel to the Town will provide the District with a similar opinion letter concerning the Comprehensive Funding Plan and the ordinance authorizing the Sales Tax Credit at the time of the issuance of any Bonds at the District's cost and expense. From time to time, a Party to this Agreement may otherwise request a new opinion from the other Parties' outside counsel at such requesting Party's cost and expense.

4.9 Third Party Beneficiary; Assignment. The Parties hereby express their intent and agreement that the Bond Participants will be made third-party beneficiaries of the Town's obligations under this Comprehensive Funding Agreement with respect to implementation of the Sales Tax Credit and the District's right to receive the Credit PIF Revenues. Additionally, the District will be entitled to assign its rights to receive the Credit PIF Revenues, the Add-On PIF Revenues and the PILOT Payment Debt Revenues to the Bond Trustee in connection with the issuance of Bonds and Developer Bonds to finance Public Improvements. The District will provide prompt written notice to the Town of any such assignment upon execution and delivery thereof.

4.10 Payment of Verified Eligible Costs.

(a) Land Acquisition. It is anticipated the District will acquire the rights of way and easements necessary for the Public Improvements. The District shall secure an appraisal that will establish that the District is not paying more than fair market value for the interests to be acquired and shall provide a copy of the appraisal or appraisals to the Town prior to District closing on the acquisition of any interest in real estate for more than nominal monetary consideration. The Town shall have fifteen (15) days from the date of receipt of the appraisal to object to the appraisal. If the Town does not respond, the Town will be deemed to have no objection. As the Town has conveyed the Oxy Parcel No. 1, Lots 2-5 and Tract A to the District for nominal consideration, under no circumstances will the District pay for the acquisition or dedication of Public Spaces or interests in real estate to be Dedicated on the Oxy Parcel No. 1, Lots 2-5 and Tract A.

(b) Verification of Incurred Costs.

(i) Developer Incurred Costs. The Developer has incurred Eligible Costs prior to the organization of the District in anticipation of this Agreement and may continue to incur Eligible Costs in anticipation of the future issuance of Bonds and Developer Bonds by the District. The Developer may be reimbursed from the proceeds of Bonds and Developer Bonds so long as the Eligible Costs have been verified by the District Accountant, Independent Engineer or other independent third party reviewer approved by the Town and the District (collectively, the “**Cost Certifier**”) as Verified Eligible Costs. The Developer shall provide to the District as built drawings for any completed Public Improvements; lien waivers and indemnifications from each contractor verifying that all amounts due to contractors, subcontractors, material providers or suppliers have been paid in full, in a form acceptable to the District; copies of all contracts, pay requests, change orders, invoices, the final AIA payment form (or similar form) approved by the Independent Engineer, canceled checks and any other requested documentation to verify the amount requested; and an executed Bill of Sale conveying the Public Improvements to the District or to the Town, in form acceptable to the District and, if applicable, the Town. The District shall work with the District Accountant, the Independent Engineer or other Cost Certifier to have prepared a certification of the Verified Eligible Costs. The District’s obligation to repay the Verified Eligible Costs shall include interest thereon to be accrued at the Developer Bond Interest Rate from the date of expenditure through the date of repayment. The payment of interest shall not count against the Cap Amount as it is a cost of financing to be paid in addition to the Cap Amount.

(ii) District Incurred Eligible Costs.

(1) The District shall incur Eligible Costs and shall receive funding for Verified Eligible Costs from the net proceeds of Bonds or Developer Bonds in an amount, together with the Verified Eligible Costs reimbursed to the Developer pursuant to an Advance Reimbursement and Payment Agreement, which shall not exceed the Cap Amount.

(2) The District acknowledges that the total amount of Verified Eligible Costs to be paid from Credit PIF Revenues and Add-On PIF Revenues collected during the Credit PIF Period shall not exceed the Cap Amount. Therefore, the District shall provide an accounting of all Verified Eligible Costs paid directly from Credit PIF Revenues, from Add-On PIF Revenues collected during the Credit PIF Period, from the PILOT Payment Revenues and

from the net proceeds of Bonds or the portion of the principal amount of any Developer Bonds spent on Verified Eligible Costs. The District shall provide the Town, upon the Town's written request, the complete reports, reports related to the Verified Eligible Costs and all backup documentation related to the Verified Eligible Costs paid from Credit PIF Revenues, Add-On PIF Revenues and PILOT Payment Revenues collected during the Credit PIF Period. The District shall retain all reports and documentation related to the Verified Eligible Costs until the end of the Credit PIF Period. The District shall also be obligated to provide an accounting of Verified Eligible Costs paid for or evidenced by Other Obligations.

4.11 Oxy Parcel No. 1 Restriction. Under no circumstances will the Developer secure any financing for the Public Improvements with a mortgage or other encumbrance on any part of the Oxy Parcel No. 1.

4.12 Mortgage Restriction. Under no circumstances will the District secure any financing for the Public Improvements on any of the Property with a mortgage or any encumbrance beyond the pledge of revenues from the Credit PIF Revenues, the Add On PIF Revenues, the PILOT Payment Revenues and the ad valorem mill levy of the District.

4.13 Developer Contribution Initial Deposit. The Developer will remit the JP Developer Contribution to the District prior to the closing on the 2022 Bonds and the District will provide written notice of the receipt of such remittance to the Town prior to the closing on the 2022 Bonds. The JP Developer Contribution shall be deposited into the Ledge Rock Water and Sewer Pipeline Escrow Agreement established pursuant to the Ledge Rock Water and Sewer Pipeline Escrow Agreement, and thereafter disbursed to the Developer as set forth in the Ledge Rock Water and Sewer Pipeline Escrow Agreement. The Developer and the District acknowledge that the JP Developer Contribution is, under no circumstances, either directly or indirectly, to be reimbursed to the Developer, or any other party, from any revenues of the Town or the District or from the proceeds of any of the Bonds or Other Obligations.

4.14 Developer Contribution Restriction. The District will use the JP Developer Contribution for the payment of Public Improvement costs and will not use the JP Developer Contribution for any other purposes, including, but not limited to, the payment of the costs of issuance of the Bonds.

ARTICLE V DEFAULT; REMEDIES; TERMINATION

5.1 Default by Town. A "breach" or "default" by the Town under this Agreement will be defined as the Town's failure to fulfill or perform any express material obligation of the Town stated in this Agreement.

5.2 Default by the Developer and the District; No Cross-Defaults. A "breach" or "default" by the Developer or the District will be defined as such Party's failure to fulfill or perform any express material obligation of that Party stated in this Agreement. No default or breach by the Developer or the District of any obligation of that Party under this Agreement will be construed as or constitute a default or breach of any other Party or constitute a basis for the Town to assert or enforce any remedy against any Party other than the particular Party whose action or failure to act constitutes or gives rise to the default or breach. No default or breach by

the Developer or the District of any obligation of that Party arising under any agreement other than this Agreement will be construed as or constitute a default or breach of this Agreement or constitute a basis for the Town or the District to assert or enforce any remedy against any Party under the terms of this Agreement. No default by any Party to this Agreement in the performance of any obligation of that Party under this Agreement will constitute or be deemed to constitute a default of any obligation of that Party under any other agreement or to excuse the performance by any other Party under any other agreement to which that Party is a party.

5.3 Notices of Default. In the event of a default by any Party under this Agreement, the non-defaulting Party will deliver written notice to the defaulting Party of the default, at the address specified in this Agreement (as may be amended from time to time), and the defaulting Party will have thirty (30) days from and after receipt of the notice to cure the default without liability for the default. If the default is not of a type which can be cured within such thirty (30) day period and the defaulting Party gives written notice to the non-defaulting Party within such thirty (30) day period that it is actively and diligently pursuing a cure, the defaulting Party will have a reasonable period of time given the nature of the default following the end of the 30-day period to cure the default, provided that the defaulting Party is at all times within the additional time period actively and diligently pursuing the cure. Any claim for breach of this Agreement brought before the expiration of the applicable cure period will not be prosecuted by the non-defaulting party until the expiration of the applicable cure period and will be dismissed by the non-defaulting party if the default is cured in accordance with this Section 5.3.

5.4 Remedies. If any default under this Agreement is not cured as described in Section 5.3 of this Agreement, the non-defaulting Party will have the right to enforce the defaulting Party's obligations hereunder by an action for injunction or specific performance. In no event may the Town interfere with, terminate or suspend the PIF Trustee's or the Bond Trustee's receipt of the Credit PIF Revenues or the Sales Tax Revenues or the Town's obligations under the Comprehensive Funding Plan, including, but not limited to, its obligations with respect to the Credit PIF Revenues, the Sales Tax Revenues, the Sales Tax Credit or the Credit PIF during the Credit PIF Period.

ARTICLE VI DEVELOPER AND DISTRICT INDEMNITY

6.1 Developer Indemnity. The Developer shall defend, indemnify, assume all responsibility for and hold the Town and District, its members of its governing body, officers, agents, and employees, collectively the "Indemnified Parties" or singularly, each an "Indemnified Party") harmless, including without limitation, for attorney's fees and costs, from all claims or suits for and damages to property and injuries to persons, including accidental death, that may be caused by any of the Developer's activities undertaken pursuant to this Agreement or the Developer's activities regarding the financing, development, improvement, redevelopment, construction, repair, maintenance, management, acquisition, leasing, sale, disposition or other conduct or activities, related to the Project, whether such activities are undertaken by the Developer or anyone directly or indirectly employed by or under contract to the Developer or contractor of the Developer and whether such damage shall accrue or be discovered before or after termination of this Agreement. The Developer's obligations under this Section 6.1 shall not apply to losses, damages or claims arising from acts or omission of the Indemnified Parties.

(a) If any claim relating to the matters indemnified against pursuant to this Agreement is asserted against an Indemnified Party that may result in any damage for which any Indemnified Party is entitled to indemnification under this Agreement, then the Indemnified Party shall promptly give notice of such claim to the Developer.

(b) Upon receipt of such notice, the Developer shall have the right to undertake, by counsel or representatives of its own choosing, the good faith defense, compromise or settlement of the claim, such defense, compromise or settlement to be undertaken on behalf of the Indemnified Party.

(c) The Indemnified Party shall cooperate with the Developer in such defense at the Developer's expense and provide the Developer with all information and assistance reasonably necessary to permit the Developer to settle and/or defend any such claim.

(d) The Indemnified Party may, but shall not be obligated to, participate at its own expense in a defense of the claim by counsel of its own choosing, but the Developer shall be entitled to control the defense unless the Indemnified Party has relieved the Developer from liability with respect to the particular matter.

(e) If the Developer elects to undertake such defense by its own counsel or representatives, the Developer shall give notice of such election to the Indemnified Party within ten (10) days after receiving notice of the claim from the Indemnified Party.

(f) If the Developer does not so elect or fails to act within such period of ten (10) days, the Indemnified Party may, but shall not be obligated to, undertake the sole defense thereof by counsel or other representatives designated by it, such defense to be at the expense of the Developer.

(g) The assumption of such sole defense by the Indemnified Party shall in no way affect the indemnification obligations of the Developer.

(h) Notwithstanding the foregoing, the Town may, at its sole discretion, assume the defense of any claims asserted against it. Such defense shall in no way affect the indemnification obligations of the Developer.

6.2 District Indemnity. To the extent permitted by law, if any, and without waiving or limiting the application of governmental immunity, the District shall defend, indemnify, assume all responsibility for and hold the Town, its Council members, officers, agents, and employees, (collectively the "Indemnified Parties" or singularly, each an "Indemnified Party") harmless, including without limitation, for attorney's fees and costs, from all claims or suits for and damages to property and injuries to persons, including accidental death, that may be caused by any of the District's activities undertaken pursuant to this Agreement or the District's activities regarding the financing, development, improvement, redevelopment, construction, repair, maintenance, management, acquisition, disposition or other conduct or activities, including use of Bond proceeds or the Developer Bond proceeds, of the District related to the Project, whether such activities are undertaken by the District or anyone directly or indirectly employed by or under contract to the District or contractor of the District and whether such damage shall accrue or be discovered before or after termination of this Agreement. The

District's obligations under this Section 6.2 shall not apply to losses, damages or claims arising from acts or omission of the Indemnified Parties.

(a) If any claim relating to the matters indemnified against pursuant to this Agreement is asserted against an Indemnified Party that may result in any damage for which any Indemnified Party is entitled to indemnification under this Agreement, then the Indemnified Party shall promptly give notice of such claim to the District.

(b) Upon receipt of such notice, the District shall have the right to undertake, by counsel or representatives of its own choosing, the good faith defense, compromise or settlement of the claim, such defense, compromise or settlement to be undertaken on behalf of the Indemnified Party.

(c) The Indemnified Party shall cooperate with the District in such defense at the District's expense and provide the District with all information and assistance reasonably necessary to permit the District to settle and/or defend any such claim.

(d) The Indemnified Party may, but shall not be obligated to, participate at its own expense in a defense of the claim by counsel of its own choosing, but the District shall be entitled to control the defense unless the Indemnified Party has relieved the District from liability with respect to the particular matter.

(e) If the District elects to undertake such defense by its own counsel or representatives, the District shall give notice of such election to the Indemnified Party within ten (10) days after receiving notice of the claim from the Indemnified Party.

(f) If the District does not so elect or fails to act within such period of ten (10) days, the Indemnified Party may, but shall not be obligated to, undertake the sole defense thereof by counsel or other representatives designated by it, such defense to be at the expense of the District.

(g) The assumption of such sole defense by the Indemnified Party shall in no way affect the indemnification obligations of the District.

(h) Notwithstanding the foregoing, the Town may, at its sole discretion, assume the defense of any claims asserted against it. Such defense shall in no way affect the indemnification obligations of the District.

6.3 Litigation. To the extent not otherwise provided herein, the District and the Developer will cooperate with the Town in taking reasonable actions to defend against any litigation brought by a third party against the Town concerning the Project, the Public Improvements or this Agreement.

ARTICLE VII MISCELLANEOUS

7.1 Amendment of this Agreement.

(a) Written Amendment Required. Except as otherwise set forth in this Agreement, this Agreement may only be amended, terminated or superseded by mutual consent in writing of each of the Parties hereto.

(b) Effectiveness and Recordation. Any such written amendment will be effective upon the later to occur of (i) execution by all required Parties or (ii) the effective date of the District's resolution approving such amendment. Promptly after any amendment to this Agreement becomes effective, the Town will cause it to be Recorded as deemed necessary by the Town. As between the Parties, the validity or enforceability of such an amendment will not be affected by any delay in or failure to Record the amendment as provided herein.

7.2 Recordation of Agreement. This Agreement will be Recorded promptly after execution by all the Parties hereto, and passage of resolution by the District authorizing such execution.

7.3 Attorneys' Fees. In the event any litigation or legal proceeding arises between the Parties out of this Agreement and is prosecuted to final judgment, then if the Town or the District is a prevailing party against the Developer, the District and the Town will be entitled to recover from the Developer all of its costs and expenses incurred in connection with such litigation, including reasonable attorneys' fees. If the Developer is the prevailing party, it shall bear its own costs. If the Town is the prevailing party in a legal proceeding involving the District, to the extent permitted by law, the District shall pay the Town's costs and expenses incurred in connection with such litigation, including reasonable attorneys' fees.

7.4 No Joint Venture or Partnership. No form of joint venture or partnership exists between the Parties hereto, and nothing contained in this Agreement will be construed as making the Parties joint venturers or partners.

7.5 Colorado Governmental Immunity Act. Nothing in this Agreement shall be construed to waive, limit or otherwise modify any governmental immunity that may be available by the law to the Town, Town Officials, employees, contractors, or agents, or any other person acting on behalf of the Town and, in particular, governmental immunity afforded pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101 et seq., C.R.S., as amended. Nothing in this Agreement shall be construed to waive, limit or otherwise modify any governmental immunity that may be available by the law to the District, District Officials, employees, contractors, or agents, or any other person acting on behalf of the District and, in particular, governmental immunity afforded pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101 et seq., C.R.S., as amended.

7.6 Reimbursement of Town Costs. The Developer and the District shall be jointly and severally responsible for reimbursement of any and all reasonable and necessary costs incurred by the Town in the preparation of this Agreement and in the processing of any applications, review of documentation related to the issuance of Bonds, the Developer Bonds, the preparation of the Subdivision Development and Improvement Agreement, the preparation of the Operations and Maintenance Intergovernmental Agreement, the preparation of the Amended and Restated Escrow Agreement and any other actions to be taken by the Town or its outside consultants to exercise its responsibilities or protect its rights under this Agreement.

7.7 Waiver. No waiver of one or more of the terms of this Agreement will constitute a waiver of other terms. No waiver of any provision of this Agreement in any instance will constitute a waiver of such provision in other instances.

7.8 Findings. The Town hereby finds and determines that execution of this Agreement is in the best interests of the public health, safety, and general welfare of the citizens of the Town and the provisions of this Agreement are consistent with the Comprehensive Plan and development laws, regulations and policies of the Town. The District Board finds that this Agreement is in the best interests of the District.

7.9 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement will continue in full force and effect so long as enforcement of the remaining provisions would not be inequitable to the Party against whom they are being enforced under the facts and circumstances then pertaining or substantially deprive such Party of the benefit of its bargain under this Agreement. The Parties will cooperate in reforming this Agreement to the extent required to most fully effect the intent of any such invalid, void or unenforceable term, provision, covenant or condition.

7.10 Further Assurances. Each Party will execute and deliver to the others all such other further instruments and documents as may be reasonably necessary or requested by another Party to confirm or clarify the intent of the provisions of this Agreement, and to carry out and effectuate this Agreement in order to provide and secure to the other Parties the full and complete enjoyment of their rights and privileges under this Agreement.

7.11 Authority. The signatories to this Agreement affirm and warrant that they are fully authorized to enter into and execute this Agreement, and all necessary actions, notices, meetings and/or hearings pursuant to any law required to authorize their execution of this Agreement have been made.

7.12 Notices. Any notice or communication required under this Agreement between the Parties must be in writing, and may be given either personally by registered or certified mail, return receipt requested, or by electronic mail on the condition that the intended recipient of the electronic mail acknowledges receipt thereof. If personally delivered, a notice will be deemed to have been given when delivered to the party to whom it is addressed. If given by registered or certified mail, the same will be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by electronic mail, the same will be deemed to have been given and received upon acknowledgement by the intended recipient. Any Party may at any time, by giving written notice to the other Parties hereto as provided in this Section, designate additional persons to whom notices or communications will be given, and designate any other address in substitution of the address to which such notice or communication will be given. Such notices or communications will be given to the parties at their addresses set forth below:

If to the Town:

Matt LeCerf, Town Manager
Town of Johnstown
450 South Parish Avenue
Johnstown, CO 80534
mlecerf@townofjohnstown.com

With a copy to:

Avi Rocklin, Town Attorney
1437 N. Denver Avenue #330
Loveland, CO 80538
avi@rocklinlaw.com

and

MaryAnn M. McGeady
Erica Montague
McGeady Becher P.C.
450 East 17th Avenue, Suite 400
Denver, CO 80203-1254
legalnotices@specialdistrictlaw.com

If to the District:

Ledge Rock Center Commercial
Metropolitan District
c/o Spencer Fane LLP
1700 Lincoln Street, Suite 2000
Denver, CO 80203

With a copy to:

David O'Leary
Spencer Fane LLP
1700 Lincoln Street, Suite 2000
Denver, CO 80203
doleary@spencerfane.com

If to the Developer:

Ledge Rock Center LLC
c/o Michael Schlup
13725 Metcalf Ave.
Overland Park, KS 66223
mikeschlup@corbinparkop.com

With a copy to:

Allen D. Schlup, Esq.
A.D. Schlup Law, LLC
10950 W. 192nd PL.
Spring Hill, KS 66083
allen.schlup@adschluplaw.com

7.13 Consent. Where any of the Parties to this Agreement have the right of approval or consent, such consent shall not be unreasonably withheld, conditioned or delayed.

7.14 Assignment; Binding Effect. This Agreement will be binding upon and, except as otherwise provided in this Agreement, will inure to the benefit of the successors in interest or the legal representatives of the Parties hereto. The Developer, upon the delivery of written notice to the Town of the Developer's intent, will have the right to assign or transfer all or any portion of its respective interests, rights or obligations under this Agreement to the District or to third parties acquiring an interest or estate in all or any part of the Property, including, but not limited to, joint venture partners, purchasers or long term ground lessees of individual lots, parcels, or of any improvements now or hereafter located within the Property; provided that to the extent the Developer assigns any of its respective obligations under this Agreement, the assignee of such obligations shall expressly assume the obligations contained in this Agreement. Unless further consented to by the Town as set forth below, any such assignee shall be jointly and severally

liable with the Developer under this Agreement. Any assignment by the Developer of the Developer's interests, rights or obligations under this Agreement, without provision of written notice to the Town, shall not be effective or enforceable. Subject to the Town's prior written consent, the express assumption of any of the Developer's obligations under this Agreement by an assignee or transferee will, in the Town's discretion, relieve the Developer of any further obligations under this Agreement and release the other Parties from further obligation to the Developer with respect to the matter so assigned and assumed. If the Town does not provide such written consent, the Developer shall remain liable for the obligations under this Agreement. Subject to the Town's prior written consent, the District may, in the Town's discretion, assign its obligation under this Agreement with respect to design, construction and financing of the Public Improvements; provided, however, that the District's assignment of its right to receive the Credit PIF Revenues will be governed by Section 4.4 of this Agreement.

7.15 Venue and Choice of Law; Waiver of Trial by Jury; Construction. This Agreement will be construed and enforced according to the laws of the State of Colorado. Venue will be in Weld County, Colorado. To reduce the cost of and to expedite the resolution of disputes under this Agreement, the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement. In the event of ambiguity in this Agreement, any rule of construction which favors one Parties' interpretation as a non-drafting party will not be applied, and the ambiguous provision will be interpreted as though neither Party was the drafter.

7.16 Compliance with the Law. The Developer and the District shall comply with all federal, State and local laws and regulations in the performance of the obligations under this Agreement.

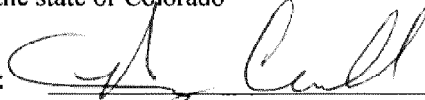
7.17 Headings. The paragraph headings herein are for the convenience and reference of the parties and are not intended to define or limit the scope or intent of this Agreement.

7.18 Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed to be an original and all of which taken together will constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

[The Remainder of this Page Intentionally Left Blank]

**LEDGE ROCK CENTER COMMERCIAL
METROPOLITAN DISTRICT**, a quasi-
municipal corporation and political subdivision
of the state of Colorado

By: 
Its: President
Date: 9-12-22

Attest:


Secretary

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

The foregoing Development and Reimbursement Agreement for Ledge Rock Center Commercial, Johnstown, Colorado was acknowledged before me this 12 day of September 2022, by Amy Carroll and John Schlup, as President and Secretary Ledge Rock Center Metropolitan District, a quasi-municipal corporation of the state of Colorado.

Witness my hand and official seal.

My commission expires: 6-20-23

Nancy E. Zellmer
Notary Public
State of Kansas
My Appt. Exp. _____


Notary Public

LEDGE ROCK CENTER, LLC, a Kansas
limited liability company

By: Michel Schlup
Its: President
Date: 9-12-22

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

The foregoing Development and Reimbursement Agreement for Ledge Rock Center Commercial, Johnstown, Colorado was acknowledged before me this 12 day of September 20 22, by Michel Schlup, as managing member of Ledge Rock Center, LLC, a Kansas limited liability company.

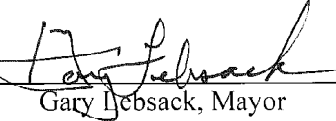
Witness my hand and official seal.

My commission expires: 6-20-23

Nancy E. Zellmer
Notary Public
State of Kansas
My Appt. Exp. 6-20-23

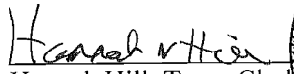
Nancy Zellmer
Notary Public

THE TOWN OF JOHNSTOWN,
a home-rule municipality of the County of
Weld, State of Colorado

By: 
Gary Hebsack, Mayor

Date: _____

Attest:


Hannah Hill, Town Clerk

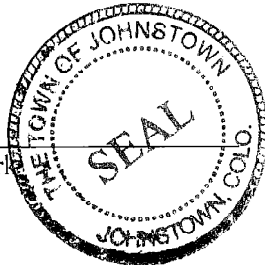
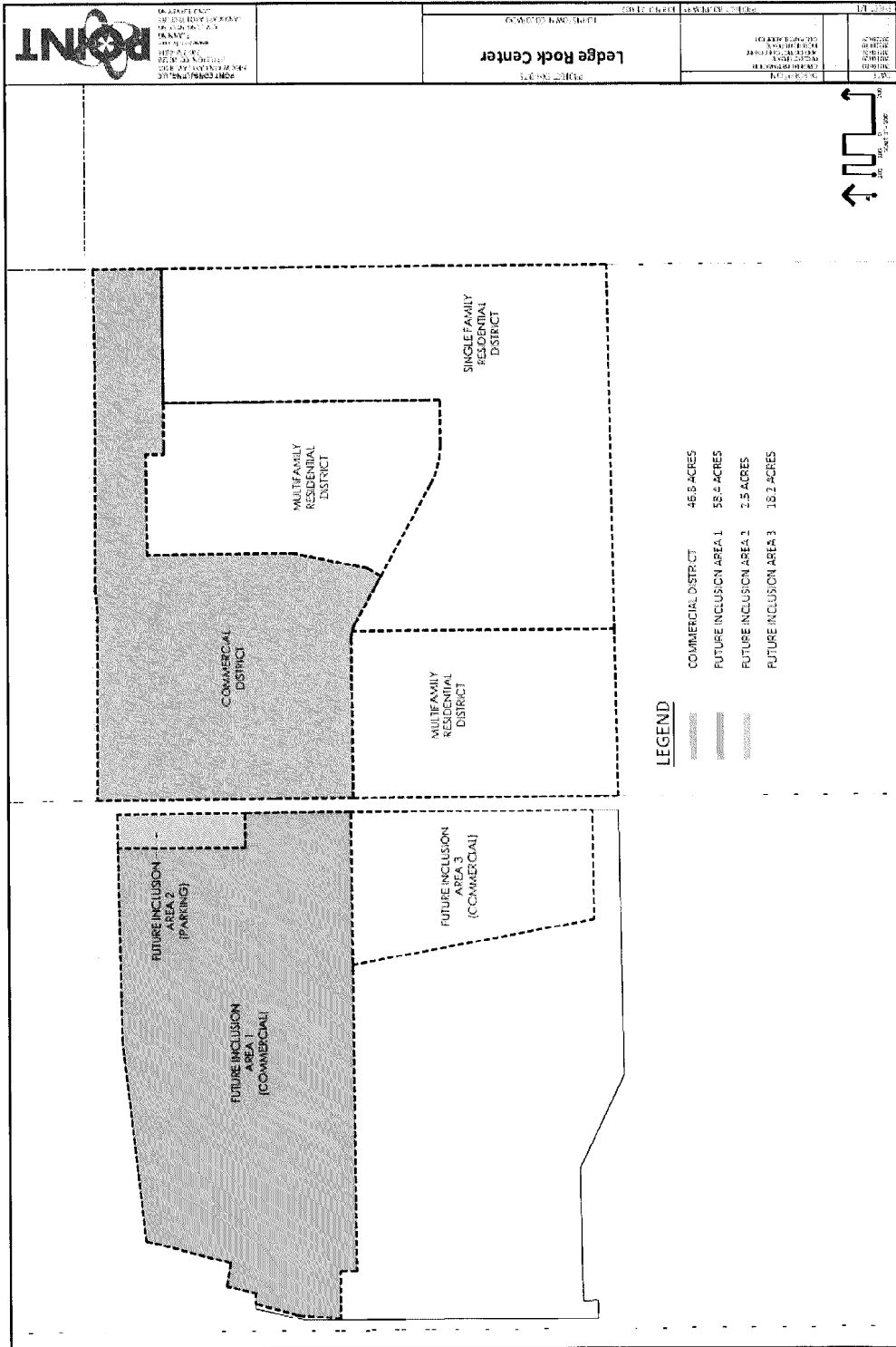


EXHIBIT A
MAP OF THE PROPERTY



{00997975.DOCX v:1 }

A-1



A-2

{00997975.DOCX.v.1 }

EXHIBIT B-1

ANDERSON PARCEL

**PT NE4 11 4 68 PT LOT B REC EXEMPT RE-2092 COMM SW COR LOT B N00D26W
1333.97 TPOB N00D26W 1285.42 S89D50E 905.22 S00D09W 12.82 THENCE ALNG
CURVE R (R=350.79 CH=S74D01E 50.17) THENCE ALNG CURVE R (R=888.38
CH=S67D31E 86.36) S65D14E 65.45 THENCE ALNG CURVE L (R=300.68 CH=S69D44E
55.78) S76D41E 65.78 THENCE ALNG CURVE L (R=406.56 CH=S78D05E 17.40)
S00D26E 859.21 S11D14W 380.83 S28D50W 80 N61D09W 248.67 THENCE ALNG
CURVE L (R=250 CH=N75D47W 126.36) S89D33W 769.64 TO POB, CONSISTING OF
APPROXIMATELY 35.857 ACRES**

EXHIBIT B-2

OXY PARCEL NO. 1, LOTS 2-5 AND TRACT A

LOTS 2, 3, 4, 5 AND TRACT A, WEST LEDGE ROCK CENTER SUBDIVISION FILING NO. 1, A SUBDIVISION OF LOT 2, OF PLAT OF OXY LAND SUBDIVISION, SITUATED IN THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 4 NORTH, RANGE 68 WEST OF THE 6TH P.M., TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO, CONSISTING OF APPROXIMATELY 7.83 ACRES

{00997975.DOCX v:1 }

B-2

EXHIBIT B-3
OXY PARCEL NO. 2

LOT 4, PLAT OF OXY LAND SUBDIVISION, LOCATED IN THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 4 NORTH, RANGE 68 WEST OF THE 6TH P.M., TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO, CONSISTING OF APPROXIMATELY 25.15 ACRES AND RECORDED AT RECEPTION NUMBER 4785196 ON DECEMBER 15, 2021 IN WELD COUNTY CLERK AND RECORDER'S OFFICE

EXHIBIT B-4

OXY PARCEL NO. 1, LOT 1

LOT 1, WEST LEDGE ROCK CENTER SUBDIVISION FILING NO. 1, A SUBDIVISION OF LOT 2, OF PLAT OF OXY LAND SUBDIVISION, SITUATED IN THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 4 NORTH, RANGE 68 WEST OF THE 6TH P.M., TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO, CONSISTING OF APPROXIMATELY 25.385 ACRES

{00997975.DOCX v:1 }

B-4

EXHIBIT D

LIST OF DISTRICT PUBLIC IMPROVEMENTS

Public Improvements
1 Grading/Miscellaneous
Mobilization/General Conditions
Clearing/Grubbing and Topsoil Stripping
Earthwork (cut/fill/place)
Erosion Control
Traffic Control
MSE Block Wall
Offsite Work
Subtotal
2 Roadway Improvements/Miscellaneous Concrete Work
CDOT State Highway 60 (82' section)
Park n Ride Facility
Signal
Major Arterial (74' section)
Major Collector (36' section)
Minor Collector (36' section)
Asphalt Prep.
Asphalt Place.
Asphalt Prep. Offsite
Asphalt Place. Offsite
Concrete Prep.
Concrete Place.
Subtotal
3 Potable Waterline Improvements
12" Water Onsite
12" Water Offsite
Subtotal
4 Sanitary Sewer
Offsite 18" Sewer
Onsite 8" Sewer
Subtotal
5 Storm Drainage Improvements
Offsite 48" StormSewer
Onsite 36" StormSewer
Onsite 24" StormSewer
Onsite 18" StormSewer
Subtotal
6 Open Space, Parks and Trails
Landscape/Irrigation/Amenities
Site Lighting Cable
Light Poles
Monumentation
Project Monument Tower
Subtotal
Infrastructure Subtotal
Contingency (15%)
Infrastructure Total Cost
7 Admin. / Design / Permitting / Etc.
Engineering/Surveying
Con. Man. / Inspection
Admin. / Planning
Subtotal
8 Land Aquisition
Land (parking, common and public areas)
Real Estate Appraisal
Subtotal

EXHIBIT E

{00997975.DOCX v:1 }

E-1

**AMENDED AND RESTATED ESCROW AGREEMENT
(2022 LIMITED TAX GENERAL OBLIGATION BONDS LEDGE ROCK CENTER
COMMERCIAL METROPOLITAN DISTRICT)**

This **AMENDED AND RESTATED ESCROW AGREEMENT** (the “**Agreement**”) is made and entered into as of the ___ day of _____, 2022 by and among the **TOWN OF JOHNSTOWN, COLORADO**, a home-rule municipality of the Counties of Larimer and Weld, State of Colorado (“**Town**”), **LEDGE ROCK CENTER, LLC** a Kansas limited liability company (“**Developer**”), **LEDGE ROCK CENTER COMMERCIAL METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the state of Colorado (“**District**”) and **UMB BANK, N.A.**, a national banking association as escrow agent (“**Escrow Agent**”). Town, Developer, District and Escrow Agent are sometimes individually referred to as a “**Party**” and collectively as the “**Parties**.”

RECITALS

WHEREAS, the Town, the Developer, and the District entered into the Development and Reimbursement Agreement for Ledge Rock Center on January 3, 2022, the First Amendment to Development and Reimbursement Agreement for Ledge Rock Center on or about April 18, 2022, and the Second Amended and Restated Development and Reimbursement Agreement for Ledge Rock Center on or about September 12, 2022 (together, the “**Development Agreement**”) for the purpose of establishing the terms and conditions of the overall development of the Project; and

WHEREAS, the Parties previously entered into that certain Escrow Agreement (2022 Special Revenue Series A and Series B Bonds Ledge Rock Center Commercial Metropolitan District) dated May 31, 2022 (the “**Original Escrow Agreement**”); and

WHEREAS, based on changes in the estimated net proceeds of the 2022 Bonds (as defined below) anticipated to be issued by the District and pursuant to the Development Agreement this Amended and Restated Escrow Agreement is to be executed prior to the issuance of the 2022 Bonds; and

WHEREAS, the District is organized pursuant to and in accordance with the provisions of §§ 32-1-101, *et seq.*, C.R.S. for the purpose of constructing, financing, operating and maintaining certain public improvements for itself, its taxpayers, residents and users; and

WHEREAS, the Town approved the Service Plan for the District on September 8, 2021 and subsequently approved an Amended and Restated Service Plan for the District on June 6, 2022 (the “**Service Plan**”); and

WHEREAS, the District is authorized to finance and provide public improvements needed for the Ledge Rock Center commercial development project (the “**Project**”); and

WHEREAS, pursuant to the Development Agreement, the District is required to submit documents required for the Town’s review prior to the issuance of the 2022 Bonds; and

WHEREAS, the District anticipates the issuance of its 2022 Limited Tax General Obligation Bonds (the “**2022 Bonds**”) and the Town, the District and the Developer have agreed

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to the deposit and release of the proceeds of the 2022 Bonds in accordance with the provisions set forth in this Agreement; and

WHEREAS, at the time the District was organized, it was anticipated that the 2022 Bonds, when issued, would net Seventy Four Million Dollars (\$74,000,000) in Project Funds (the "**Original Project Funds**"). The revenue to be pledged was five (5) mills in District property taxes, a 2.5% Add-On PIF, and a 2% credit PIF (the "**Original Pledged Revenues**"); and

WHEREAS, the 2022 Bonds, based on the Original Pledged Revenues, are currently anticipated to net Fifty One Million Dollars (\$51,000,000) in Project Funds (the "**New Project Funds**"); and

WHEREAS, with an increase in the credit PIF to 2.75%, together with the District pledge of five (5) mills and the 2.5% Add-On PIF (the "**Increased Pledged Revenues**"), the Bonds are anticipated to net approximately Fifty Seven Million Seven Hundred Ninety Eight Thousand Two Hundred Seventy Two Dollars (\$57,798,272) in Project Funds (the "**Increased Project Funds**"). The difference between the Original Project Funds and the Increased Project Funds still leaves a deficit of approximately Sixteen Million Two Hundred One Thousand Seventy Hundred Twenty Seven Dollars (\$16,201,727) that still requires funding, with such amount to be adjusted based on the actual amount of Project Funds at the time of closing on the issuance of the 2022 Bonds (the "**Bond Proceeds Shortfall**"); and

WHEREAS, the Developer has agreed to advance funds to the District in an amount equal to the Bond Proceeds Shortfall (the "**Developer Shortfall Funding Advance**"); and

WHEREAS, the Developer Shortfall Funding Advance is to be deposited in the Developer Funds Account under this Agreement and used for construction of vertical improvements; and

WHEREAS, the Developer Shortfall Funding Advance will not accrue interest and will not be reimbursed to the Developer by either the Town or the District; and

WHEREAS, future issuances of Bonds are anticipated to occur as development occurs to include at least one additional bond issuance; and

WHEREAS, the Project will be constructed with the use of various revenue sources of the Developer and the District, including, but not necessarily limited to, the proceeds deposited hereunder pursuant to the Indenture of Trust for the 2022 Bonds (the "**2022 Bonds Indenture**") between the District and UMB Bank, n.a., as trustee (the "**Bond Trustee**") for the 2022 Bonds to be spent on Verified Eligible Costs, and funds for Private Improvements constructed by the Developer from the reimbursements made to the Developer under the Advance Reimbursement and Payment Agreement (the "**Reimbursement Agreement**"); and

WHEREAS, as set out in the Budget attached hereto on Exhibits A-1 through Exhibit A-3 (the "**Budget**"), Verified Eligible Costs are to be funded with the proceeds of the 2022 Bonds and the Private Improvements are to be paid from various sources other than Bond proceeds in order to acquire, construct and install the Project; and

WHEREAS, the Parties hereto desire to set forth the terms and conditions by which the Escrow Agent shall manage and disburse the escrow established hereunder.

NOW THEREFORE, in consideration of the mutual covenants and promises expressed herein, the parties hereby agree as follows:

COVENANTS AND AGREEMENTS

(Capitalized terms used but not defined herein shall have the meaning set forth in the 2022 Bonds Indenture and the Development Agreement, as amended.)

1. Appointment of Escrow Agent and Establishment of Escrow Accounts. The Developer, the District and the Town hereby appoint the Escrow Agent and the Escrow Agent hereby accepts such appointment pursuant to the terms and conditions of this Agreement. The Escrow Agent shall establish the following accounts for the purpose of holding the Bond proceeds referenced in this Agreement and all interest earned (the “**Escrow Funds**”): (1) the Ledge Rock Center Commercial Metropolitan District 2022 Tax Exempt Bond Proceeds Account (the “**Ledge Rock Center Commercial Metropolitan District 2022 Tax Exempt Bond Proceeds Account**” or the “**Bond Proceeds Account**”) and (2) the Developer Funds Account (the “**Developer Funds Account**”). The two separate accounts shall collectively be referred to as the “**Accounts**.” Monies in the Accounts shall be distributed by the Escrow Agent pursuant to the provisions of this Agreement, and all deposits made into the Accounts shall be treated in all respects as escrowed funds with no portion thereof subject to any claims of the Escrow Agent’s general creditors. A description of the Accounts is as follows:

(a) The Bond Proceeds Account: Amounts released pursuant to the terms of the 2022 Bonds Indenture by the Bond Trustee from the net proceeds of the 2022 Bonds that were issued on a tax exempt basis (the “**Tax Exempt Bond Proceeds**” or “**Bond Proceeds**”) shall be deposited by the Bond Trustee directly into the Bond Proceeds Account. All references in this Agreement to “Tax Exempt Bond Proceeds” are deemed to include any interest earned on the Tax Exempt Bond Proceeds while being held pursuant to this Agreement. Tax Exempt Bond Proceeds shall be invested in legal investments as may be directed by the District.

(b) The Developer Funds Account: Bond Proceeds utilized: (i) to fund reimbursement of Verified Eligible Costs incurred by the Developer for soft costs prior to the issuance of the 2022 Bonds under the Reimbursement Agreement, and (ii) to fund the purchase of interests in land by the District from the Developer pursuant to those certain real estate contracts or other instruments entered into between the District and the Developer shall be “**Developer Funds**.” The Developer Shortfall Funding Advance shall also constitute Developer Funds. Developer Funds shall be deposited into the Developer Funds Account for purposes of securing and completing the Private Improvements. Developer Funds may also, at the sole discretion of the Town, be used to fund or reimburse the Developer for Verified Eligible Costs incurred after the issuance of the 2022 Bonds. Prior to the release of any Bond Proceeds from the Bond Proceeds Account for the payment of any other Verified Eligible Costs, Bond Proceeds in the amount of up to Twenty Seven Million Six Hundred Thousand Dollars (\$27,600,000), exclusive of the Developer Shortfall Funding Advance, shall be released for payment of a portion of the purchase price for the land together with the Verified Eligible Costs related to soft costs incurred prior to

the closing on the issuance of the 2022 Bonds conditioned upon the verification of the amount needed for the Bond Proceeds Account for Public Improvements (the “**First Disbursement**”). The First Disbursement shall be directly deposited in the Developer Funds Account (the “**Developer Fund Deposit**”). All references in this Agreement to Developer Funds are deemed to include any interest earned on the Developer Funds while being held pursuant to this Agreement that are not required to be paid to the federal government pursuant to the Internal Revenue Code of 1986, as amended. The Developer Funds shall be invested as may be directed by the Developer.

(i) The Developer Shortfall Funding Advance shall also be deposited into the Developer Funds Account, however, no repayment of any amounts equal to the Developer Shortfall Funding Advance shall be made to the Developer pursuant to this Agreement.

(c) Investment of Funds in Accounts: The Escrow Agent may conclusively rely upon the District’s or Developer’s written instruction as to both the suitability and legality of the directed investments regarding their respective accounts. If the District or Developer fails to provide written directions concerning investment of moneys held by the Escrow Agent in their respective accounts, the Escrow Agent may invest in a money market fund that qualifies as a legal investment and matures or is subject to redemption prior to the date such funds will be needed. Unless otherwise confirmed or directed in writing, an account statement delivered periodically by the Escrow Agent to the District or Developer for their respective accounts shall confirm that the investment transactions identified therein accurately reflect the investment directions of the District or Developer, unless the District or Developer notifies the Escrow Agent in writing to the contrary within thirty (30) days of the date of such statement. The Escrow Agent may make any and all such investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades, including cash sweep account fees, and it is specifically provided herein that the Escrow Agent may purchase or invest in shares of any investment company that (i) is registered under the Investment Company Act of 1940, as amended (including both corporations and Massachusetts business trusts, and including companies for which the Escrow Agent may provide advisory, administrative, custodial, or other services for compensation), (ii) invests substantially all of its assets in short-term high-quality money-market instruments, limited to obligations issued or guaranteed by the United States, and (iii) maintains a constant asset value per share, and, the Escrow Agent may implement its automated cash investments system to assure that cash on hand is invested and to charge reasonable cash management fees, which may be deducted from income earned on investments.

2. Accounts.

(a) Use of Funds.

(i) Bond Proceeds Account. The Escrow Funds deposited into the Bond Proceeds Account shall be used to: (i) fund Verified Eligible Costs related to the acquisition, construction and installation of the public facilities which qualify as District Public Improvements or Town Public Improvements as defined within the Development Agreement, as may be amended from time to time, within or benefiting the Project (collectively the “**Public Improvements**”) by the District; and (ii) fund the District’s purchase of public land as permitted in the Development Agreement, in an amount not to exceed the fair market value as established by an appraisal as set forth herein.

(ii) Developer Funds Account. Once released from the Bond Proceeds Account and deposited into the Developer Funds Account, such Bond Proceeds, Developer Shortfall Funding Advance, unless otherwise agreed by the Town, shall be used to fund the Private Improvements in the manner set forth in this Agreement.

(iii) Not a Bond Payment Pledge. Moneys on deposit in the Accounts are not pledged to the payment of the Bonds and shall not secure the payment thereof.

(b) Tax Covenants.

(i) The District shall at all times do and perform all acts and things necessary or desirable in order to assure that interest paid on the 2022 Bonds shall, for the purposes of federal income taxation, be excludable from the gross income of the recipients thereof and exempt from such taxation.

(ii) The District shall not permit the use of any proceeds of the 2022 Bonds or any funds of the District held under this Agreement, directly or indirectly, to acquire any securities or obligations, and shall not take or permit to be taken any action or actions with regard to the investment of any proceeds of the 2022 Bonds, which would cause any 2022 Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code or "federally guaranteed" within the meaning of Section 149(b) of the Code and any such applicable requirements promulgated from time to time thereunder and under Section 103(b) of the Code, and the District shall observe and not violate the requirements of Section 148 of the Code and any such applicable regulations. The District shall comply with all requirements of Sections 148 and 149(d) of the Code to the extent applicable to the 2022 Bonds. In the event that at any time the District is of the opinion that for purposes of this paragraph it is necessary to restrict or to limit the yield on the investment of any moneys held by the Escrow Agent under the Escrow Agreement, the District shall so restrict or limit the yield on such investment or shall so instruct the Escrow Agent in a detailed certificate, and the Escrow Agent shall take such action as may be necessary in accordance with such instructions.

(iii) The District specifically covenants to comply with the provisions and procedures of the Tax Certificate and with all tax matters and covenants of the District contained in the Escrow Agreement.

3. Requests to Release Funds from the Accounts. The District or the Developer, as appropriate, may submit requests for the release of Escrow Funds as follows:

(a) Disbursement Requests from the Bond Proceeds Account. The District may submit written requests to the Town for the payment of Verified Eligible Costs from the Bond Proceeds Account based broadly and generally on the costs set out in the Budget attached hereto on Exhibits A-1 and A-2 ("**Disbursement Request**"). The Parties acknowledge the first Disbursement Request shall be for the First Disbursement and shall be directly deposited in the Developer Funds Account as the Developer Fund Deposit. No other Disbursement Request will be processed until the full amount of the First Disbursement constituting the Developer Fund Deposit has been made. The Parties acknowledge that the Budget contains preliminary estimates and shall not limit the specific amounts or timing of a requisition as long as the amount to be

requisitioned reasonably reflects the work performed and is properly certified. The written request shall be in the form of a Requisition from Bond Proceeds Account as set forth on **Exhibit B-1** attached hereto and incorporated herein by reference (a “**Bond Proceeds Requisition**”). Upon receipt of an executed Bond Proceeds Requisition from the District, the Town shall approve or object to all, or a portion of, the Disbursement Request. Each Bond Proceeds Requisition shall be provided by the twentieth (20th) day of each month, or on the first business day thereafter. Under an administrative approval process, the Town shall have seventeen (17) days, or on the first business day thereafter, to approve or object to all, or a portion of, the Disbursement Request, as more specifically set forth in this Agreement. Each Bond Proceeds Requisition shall contain the information set out in **Exhibit C** attached hereto, and incorporated herein by reference (alternatively, the information may be contained in the District’s Engineer’s Certification of Verified Eligible Costs), and, include, at a minimum, the following information:

(i) Reference to the underlying construction contract of the District or basis for payment and a description of the work performed for which payment is being requested;

(ii) The total amount of the requested funds;

(iii) Detail of the total amount of progress payments on the construction and other applicable contracts executed by District, all payments made toward the same prior to the date of the Disbursement Request, including copies of lien waivers and the amount that will be outstanding after payment of the requisition;

(iv) Certification by the Cost Certifier that all costs to be paid pursuant to the Disbursement Request constitute Verified Eligible Costs and estimates of the percentage of total completion of the Public Improvements, including the public site work, and the cost to complete the work that is the subject of the Disbursement Request. The Cost Certifier shall be an independent licensed engineer experienced in the design and construction of public improvements in the Johnstown or Denver metropolitan area. As of the date hereof, Ranger Engineering, LLC, a Colorado limited liability company, is the Cost Certifier. The District may select a different engineering firm meeting the requirements set forth herein and in the Development Agreement to serve as the Cost Certifier upon written notice to and approval of the Town, which approval may be provided by the Town Manager and shall not be unreasonably withheld, conditioned, or delayed. In lieu of certification by the Cost Certifier, certain costs contained within a Disbursement Request may be certified by the District’s independent accountant as Verified Eligible Costs, if so permitted by and in a manner consistent with the Development Agreement, which shall also contain an estimates of the percentage of completion of the work and the cost to complete the work;

(v) If the request is for expenses related to the District’s purchase of public land from the Developer, which shall not include interest paid by the Developer, the District shall provide an appraisal from an independent appraiser of its choosing evidencing the fair market value of the real property or any part thereof. The appraisal must be publicly available and kept by the District for as long as the 2022 Bonds are outstanding. The District shall provide written notice of the name and other professional information of the independent appraiser for review and approval by the Town, which approval may be provided by the Town Manager and shall not be

unreasonably withheld, conditioned, or delayed. If the Town Manager takes no action within fifteen (15) business days, the appraiser shall be deemed approved by the Town;

(vi) The Ledge Rock Center Commercial Metropolitan District 2022 Tax Exempt Bond Proceeds Accounts from which payment should be made, and how much from each account; and

(vii) Any other information reasonably requested by the Town.

For the avoidance of doubt, notwithstanding any provision to the contrary in this Agreement, \$27,600,000 of the 2022 Bond Proceeds are required to be deposited into the Developer Funds Account for disbursement pursuant to Section 3(b) below. The \$27,600,000 is exclusive of the Developer Shortfall Funding Advance.

(b) Disbursement Requests from the Developer Funds Account. The Developer shall be entitled to make a written request for payment from the Developer Funds Account (each, also a “**Disbursement Request**”) to the Town. At the sole discretion of the Town Manager, the Disbursement Request may be based on the Lease Verification methodology (defined below) or the Construction Progression methodology (defined below).

(i) Lease Verification. To use the Lease Verification methodology, when a lease with a tenant for Ledge Rock Center has been fully executed, the Developer shall provide the executed lease to the Town for review. Developer may redact certain confidential information from the lease, but must, at a minimum, provide the building for which the lease is executed, the name of the tenant, the square footage, the date by which the tenant is anticipated to occupy the premises, the obligations of the Developer to the tenant to be fulfilled with the amount to be released from the Developer Funds Account and any other information reasonably requested by the Town. The Town Manager, at the Town Manager’s sole discretion, shall determine whether to allow a Developer Funds Disbursement Request based on the Lease Verification methodology. If the Town Manager approves the methodology, the Developer may submit a Developer Funds Requisition (defined below) based upon:

- (1) An initial release of \$160.00 per square foot; and
- (2) Upon the earlier of the tenant opening for business or the issuance of a final Certificate of Occupancy, the release of \$40.00 per square foot.

(ii) Construction Progression. To use the Construction Progression methodology, Developer shall provide Disbursement Requests based on the following milestones:

(1) Private Site Work. When a building permit for a building shell has been issued by the Town to the Developer, the Developer may submit a Disbursement Request for reimbursement of the private site work associated with the private site work costs and private site improvements and related soft costs associated with such building (“**Private Site Work Costs**”) based upon \$40.00 per square foot. The Private Site Work Costs are to be paid solely from the Developer Funds Account.

(2) Private Building Shell. When a building shell has received a conditional certificate of occupancy for tenant improvements from the Town (a “CCO”), the Developer may submit a Disbursement Request for reimbursement of the building shell costs and the Private Building soft costs associated with that building (“**Private Building Shell Costs**”) based upon \$75.00 per square foot. The Private Building Shell Costs are to be paid solely from the Developer Funds Account. A CCO is issued when the building is fit for occupancy except for the completion of interior improvements, including tenant improvements, and the building permit is thus closed.

(3) Tenant Improvement Allowance. When a permit for tenant improvements has been issued by the Town, the Developer may submit a Disbursement Request for tenant improvements based upon \$65.00 per square foot to be used for the hard costs associated with the tenant improvements. Upon issuance of a final Certificate of Occupancy, Developer may submit a Disbursement Request for the payment of soft costs based upon \$20.00 per square foot. Tenant improvement costs are to be paid solely from the Developer Funds Account. A final Certificate of Occupancy is issued when the tenant improvements are complete and the tenant improvement permit is thus closed.

(iii) Requisition Forms for Developer Funds Account.

(1) Lease Verification Form. For the Lease Verification methodology, the written request shall be in the form of a Requisition from Developer Funds Account as set forth on **Exhibit B-2**, attached hereto and incorporated herein by reference (a “**Developer Funds Requisition**”), and shall be accompanied by the executed lease, with, at Developer’s discretion, confidential information redacted, but containing, at a minimum, the building for which the lease is executed, the name of the tenant, the square footage, the date by which the tenant is anticipated to occupy the premises, the obligations of the Developer to the tenant to be fulfilled with the amount to be released from the Developer Funds Account and any other information reasonably requested by the Town.

(2) Construction Progression Form. For the Construction Progression methodology, the written request shall also be in the form of a Requisition from Developer Funds Account as set forth on **Exhibit B-2** (also, a “**Developer Funds Requisition**”), and shall be accompanied by documentation containing, at a minimum, the following information:

- a) The category of cost set out in the Budget;
- b) The total amount of the requested funds and the calculation supporting the request;
- c) If the request is for Private Site Work Costs, at a minimum, the building permit number, the building for which the permit is issues, and the square footage;
- d) If the request is for Private Building Shell Costs, at a minimum, the building permit number, the building for which the permit is issues, the conditional certificate of occupancy number and the square footage;

e) If the request is for the hard costs associated with tenants improvements, at a minimum, the permit number(s) for the tenant improvements and the square footage;

f) If the request is for the soft costs associated with tenant improvements, at a minimum, the final certificate of occupancy number and the square footage;

g) Any additional relevant information; and

h) Any additional information required by the Town.

(iv) Timing of Town Review of Developer Funds Disbursement. After receipt of a Developer Funds Requisition from Developer to the Town, the Town shall have seventeen (17) days, or on the first business day thereafter, to approve or object to all, or a portion of, the Disbursement Request as set forth herein.

(c) Town Review of Disbursement Requests and Approval or Denial. Upon receipt, the Town shall review the Disbursement Request(s) and, if satisfied that the request appears to be consistent with the terms of this Agreement, shall approve and sign the Bond Proceeds Requisition or Developer Funds Requisition, as applicable. The Town's review of the Disbursement Request and approval of the Bond Proceeds Requisition or Developer Funds Requisition shall not be unreasonably conditioned, delayed, or withheld.

The Town may object to all or any portion of a Disbursement Request by providing written notice to the District or the Developer (the "**Town Objection**"). A Town Objection shall specify all, or the specific portions of the Disbursement Request, to which there is an objection and the specific reasons for the objection. The Town and the District or the Developer, as appropriate, shall work together in good faith to resolve any Town Objection consistent with the intent of the Development Agreement and this Agreement. If the parties are not able to reach a resolution, the parties shall participate in mediation as set forth in Section 18. If the Town provides a Town Objection to a portion, but not all, of the Disbursement Request, the Town shall indicate on the Requisition the amount of Escrow Funds that are authorized to be released.

The Town Manager may approve and execute a Bond Proceeds Requisition or Developer Funds Requisition on behalf of the Town. The Town Manager, in the Town Manager's sole discretion, in order to expedite construction and assist the Developer in expediting the completion of construction, may waive in writing any and all of the non-substantive requirements of this Agreement as it relates to Town's approval of a Bond Proceeds Requisition or Developer Funds Requisition.

The Town's review of a Disbursement Request and approval of a Bond Proceeds Requisition or Developer Funds Requisition is solely administrative and shall not limit or waive any rights the Town may have nor shall it affect the District or the Developer's responsibility and liability for the design, construction and installation of, and payments for, the Public Improvements and Private Improvements. The Town shall be entitled to rely upon the contents of the Disbursement Request without a corresponding obligation to independently verify the same.

(d) Disbursement by the Escrow Agent. Upon receipt of a Bond Proceeds Requisition or Developer Funds Requisition signed by the Town, the Escrow Agent shall make disbursement of the authorized amount of Escrow Funds to the District or the Developer, as appropriate, within two (2) business days. Upon receipt of a Bond Proceeds Requisition or Developer Funds Requisition that is not signed by the Town and a certification by the District and the Developer attesting to the delivery of the Bond Proceeds Requisition or Developer Funds Requisition to the Town and the Town's failure to respond within thirty (30) days of delivery ("**Certification**"), which Certification shall also be provided to the Town, and the proof of such delivery provided to the Escrow Agent, the Escrow Agent shall make disbursement to District or the Developer, as appropriate, of the full amount of the Bond Proceeds Requisition or Developer Funds Requisition after two (2) business days but less than four (4) business days, to provide an adequate opportunity for the Town to comment and, if it so desires, object to the Disbursement Request. If there is a Town Objection, the Escrow Agent shall release funds for any undisputed portion of the Requisition to District or the Developer, as appropriate, within two (2) business days. The Escrow Agent may conclusively rely as to the completeness and accuracy of all statements in a Bond Proceeds Requisition or Developer Funds Requisition or Certification if executed by the proper parties and the Escrow Agent, in good faith, believes the Bond Proceeds Requisition or Developer Funds Requisition or Certification is genuine. The Escrow Agent shall not be required to make any independent investigation in connection therewith.

4. Duties of Escrow Agent. The duties of the Escrow Agent shall be as follows:

(a) During the term of this Agreement, the Escrow Agent shall hold and disburse the Escrow Funds in accordance with the terms and provisions of this Agreement.

(b) If a dispute shall develop concerning the release of Escrow Funds, then in any such event, the Escrow Agent shall deliver the Escrow Funds in accordance with joint written instructions of Parties hereto if received by the Escrow Agent within ten (10) days after the Escrow Agent has issued a written request for instructions. The Escrow Agent shall have the right to pay the Escrow Funds into a court of competent jurisdiction and interplead the Parties, after which the Escrow Agent shall be discharged from any obligation in connection with this Agreement.

(c) The Escrow Agent may act in reliance upon any written instrument or signature which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such written instrument.

(d) The Escrow Agent shall execute and deliver all forms required by federal, state and other governmental agencies relative to the Escrow Funds.

(e) Notwithstanding the foregoing or any provisions to the contrary contained herein, the Escrow Agent shall not remit any moneys on deposit in the Bond Proceeds Accounts to the District except (1) to pay or reimburse Verified Eligible Costs and upon compliance with the requisition process set forth in this Agreement or (2) in any manner that the District reasonably deems necessary to maintain the tax-exempt status of interest on the 2022 Bonds referred to in the 2022 Bonds Indenture, as stated in a written opinion of Bond Counsel.

(f) Final Allocation of Proceeds. The Escrow Agent shall determine the actual amount of proceeds of the 2022 Bonds spent on Verified Eligible Costs, without including any investment earnings thereon or any of the costs identified in Section 1.1(r)(i-v) of the Development Agreement (the “**Final Allocation of Proceeds**”). Such determination of the Final Allocation of Proceeds shall be performed in accordance with the terms of the Development Agreement, which Final Allocation of Proceeds shall be used, in part, to confirm that the distribution of proceeds of the 2022 Bonds used for Verified Eligible Costs did not exceed the Cap Amount. Such determination shall be based solely on representations made to the Escrow Agent by the other Parties to this Agreement in Exhibits B-1, B-2 or C and approvals of such Exhibits. The Parties hereby confirm that the Escrow Agent is not a party to the Development Agreement and has no obligation or responsibility to determine whether a payment requested from any of the Accounts does or does not qualify as a Verified Eligible Cost.

5. Audit and Records. Any Party shall have the right, at its expense and at reasonable times, to conduct or to cause to be conducted an audit of the Accounts and all disbursements therefrom. Any Party may request a statement of the Accounts, to include, among other details, the balance of the Accounts and disbursements therefrom, from the Escrow Agent.

6. Expenses and Compensation Relating to Escrow. The Escrow Agent shall receive from District an annual fee of \$2,000 for its services in connection with this Agreement and shall invoice the District for the same on a quarterly basis in the amount of \$500.00 in arrears (the “**Compensation**”). The Escrow Agent shall also receive from the District a one-time acceptance fee at the time of closing of the issuance of the 2022 Bonds. The Escrow Agent expressly waives any lien upon or claim against any other moneys and investments in the Escrow Fund. The Escrow Agent shall further be entitled to reimbursement in full, for all costs, expenses, charges, fees, or other payments (“**Fees and Expenses**”) made or to be made by Escrow Agent in the performance of the Escrow Agent’s duties and obligations under this Agreement. Such Fees and Expenses shall be paid by the District and shall not be paid or reimbursed with moneys on deposit in the Accounts.

7. Non-liability of Escrow Agent. The Escrow Agent shall not be liable for any mistakes of fact, or errors of judgment, or for acts or omissions of any kind unless caused by the willful misconduct or gross negligence of the Escrow Agent. The District and the Developer shall, on a separate (and not joint and several basis) indemnify and hold harmless the Escrow Agent (and any successor Escrow Agent) from and against any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorney’s fees and disbursements, arising out of and in connection with this Agreement. The Escrow Agent may conclusively rely and act upon any instrument or other writing it, in good faith, believes to be genuine and to be signed and presented by the proper person. The Escrow Agent may, at any time, ask for written confirmation from the Town and/or the District/Developer concerning the propriety of a proposed disbursement of the Escrow Funds or other action or refusal to act by the Escrow Agent. The Escrow Agent shall not be liable for any taxes, assessments or other governmental charges that may be levied or assessed upon the escrow or any part thereof, or upon the income therefrom. The Escrow Agent shall in no event be liable in connection with its investment or reinvestment of any cash held by it hereunder in good faith, in accordance with the terms hereof, including, without limitation, any liability for any delays (not resulting from its negligence or willful misconduct or breach of this Agreement) in the investment or reinvestment of the Escrow Funds, or any loss of interest incident to any such

delays. Each of the District and Developer agree that it shall be responsible for all required tax reporting, if any, with respect to the Bond Proceeds Account and the Developer Funds Account.

8. Advice of Counsel. The Escrow Agent may act in good faith pursuant to the advice of counsel retained or consulted by the Escrow Agent with respect to any matter relating to this Agreement and shall not be liable for any action taken or omitted in accordance with such advice.

9. Patriot Act. The Escrow Agent is serving as escrow holder only and has no interest in the Escrow Funds deposited hereunder. Any payments of income from this Agreement shall be subject to withholding of any applicable taxes. The District and/or Developer will provide completed Forms W-9 (or Forms W-8, in the case of non-U.S. persons) and other forms and documents that the Escrow Agent may reasonably request (collectively, "**Tax Reporting Documentation**") at the time of execution of this Agreement and any information reasonably requested by the Escrow Agent to comply with the USA Patriot Act of 2001, as amended from time to time. The Parties hereto understand that if such Tax Reporting Documentation is not so certified to the Escrow Agent, the Escrow Agent may be required by the Internal Revenue Code, as it may be amended from time to time, to withhold a portion of any interest or other income earned on the investment of monies or other property held by the Escrow Agent (the "**Escrow Income**") pursuant to this Agreement.

10. Resignation or Termination of Escrow Agent. Upon a thirty (30) day written joint notice of the Town, the District and the Developer, the Escrow Agent may be terminated and a new escrow agent appointed under such notice. The Escrow Agent may resign under this Agreement by giving written notice to the Town, the District and the Developer, effective thirty (30) days after the date of said notice. The Escrow Agent may petition a court of competent jurisdiction to appoint a successor in the event no such successor shall have been appointed within the 30 days. In the event of termination or resignation of the Escrow Agent, and upon the appointment by the Town the District and the Developer of a new escrow agent or custodian, or upon their mutual written instructions to the Escrow Agent providing for other disposition of the escrow, the Escrow Agent must deliver the Escrow Funds within a reasonable period of time as so directed to the new escrow agent, and thereafter will be relieved of any and all liability under this Agreement.

11. Termination of Escrow.

(a) Termination Conditions. It is anticipated that approximately 785,000 square feet of retail development and 90 hotel rooms are forecasted to support the repayment of the Ledge Rock Center Commercial Metropolitan District 2022 Tax Exempt Bonds. This Agreement shall terminate when all of the 2022 Bond Proceeds have been released from the Ledge Rock Center Commercial Metropolitan District 2022 Tax Exempt Bond Accounts and all Developer Funds have been released from the Developer Funds Account.

(b) Termination upon Satisfaction of Conditions. Upon receipt of a written notice signed by the Town, the District and the Developer stating that the termination conditions set forth above have been satisfied (the "**Termination Notice**"), the Escrow Agent shall, not later than two (2) business days after receipt of the Termination Notice, release the funds remaining in the Developer Funds Account to the Developer.

(c) Termination upon Failure to Satisfy Conditions.

(i) Bond Proceeds Account. If funds remain on deposit in the Ledge Rock Center Commercial Metropolitan District 2022 Tax Exempt Bond Proceeds Account five (5) years from the date of the execution of this Agreement, or at such earlier date that the Project is deemed by the Town to have been abandoned by the Developer, then the District and the Town shall agree on how the remaining 2022 Bond Proceeds shall be spent. If the District and the Town are not able to reach an agreement within sixty (60) days thereafter, the funds shall be returned to the 2022 Bond Trustee and used to repay the 2022 Bonds.

(ii) Developer Funds Account. The Developer Funds Account shall not terminate until the termination conditions are satisfied and all the Developer Funds have been released pursuant to this Agreement. Escrow funds deposited therein shall be used to pay for Private Improvements for the Project as set forth in this Agreement.

12. Notices.

(a) Simple Notice Procedure. Except for notices to the Escrow Agent, any notification or objection set forth in Section 3, shall be given by use of the procedure set forth in this Section 12(a) Notice shall be provided in writing and personally delivered or sent by an electronic mail (effective on acknowledgement of receipt by the intended recipient) as follows:

If to Town: Matt LeCref, Town Manager
mleceref@townofjohnstown.com

With a copy to: Avi Rocklin, Town Attorney
avi@rocklinlaw.com

and

MaryAnn McGeady
Erica Montague
legalnotices@specialdistrictlaw.com

If to the District: CliftonLarsonAllen LLP, District Manager
Lisa.Johnson@CLAconnect.com

With a copy to: David O'Leary
doleary@spencerfane.com

If to the Developer: Michael Schlup
mikeschlup@corbinparkop.com

With a copy to: Allen Schlup, Esq.
Allen.schlup@adschluplaw.com

(b) Complex Notice Procedure.

(i) Any Notice to the Escrow Agent, including the delivery of a Requisition as set forth in Section 3(d), must be given in accordance with this Section 12(b) hereof unless waived in writing by Escrow Agent.

(ii) Any notice or communication required under this Agreement not described in Section 12(a) must be in writing, and may be given personally, sent via nationally recognized overnight carrier service, or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same will be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent; or (ii) three days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or sent via nationally recognized overnight carrier service, a notice will be deemed to have been given and received on the first to occur of: (i) one business day after being deposited with a nationally recognized overnight air courier service; or (ii) delivery to the party to whom it is addressed. Any party hereto may at any time, by giving written notice to the other party hereto as provided herein designate additional persons to whom notices or communications will be given, and designate any other address in substitution of the address to which such notice or communication will be given. Such notices or communications will be given to the parties at their addresses set forth below:

If to the Town:

Matt LeCeref, Town Manager
Town of Johnstown
450 South Parish Avenue
Johnstown, CO 80534

With a copy to:

Avi Rocklin, Town Attorney
1437 N. Denver Avenue, #330
Loveland, CO 80538

and

McGeady Becher P.C.
450 East 17th Avenue, Suite 400
Denver, CO 80203-1254
Phone: 303-592-4380
Email: legalnotices@specialdistrictlaw.com

If to the District:

Ledge Rock Center Commercial
Metropolitan District
c/o CliftonLarsonAllen LLP
8390 East Crescent Pkwy., Suite 300
Greenwood Village, CO 80111

With a copy to:

David O'Leary
Spencer Fane LLP
1700 Lincoln Street, Suite 2000
Denver, CO 80203

If to the Developer:

With a copy to:

Ledge Rock Center, LLC
c/o Michael Schlup
13725 Metcalf Ave.
Overland Park, KS 66223

Allen D. Schlup, Esq.
A.D. Schlup Law, LLC
10950 W. 192nd PL.
Spring Hill, KS 66083

and

If to the Escrow Agent:

UMB Bank, n.a.
Corporate Trust & Escrow Services
1670 Broadway
Denver, CO 80210

13. Amendment. This Agreement may not be amended, supplemented or discharged, and no provision of this Agreement may be modified or waived, except by a written instrument signed by all of the Parties hereto. No waiver of any provision of this Agreement by any Party will be deemed a continuing waiver of any matter by such Party.

14. Third Party Beneficiaries. Notwithstanding anything contained herein to the contrary, including, without limitation the Recitals, the Parties to this Agreement shall be the District, the Developer, the Town and the Escrow Agent. This Agreement is not intended to give any benefits, rights, privileges, actions or remedies to any person, partnership, firm or corporation, as a third party beneficiary or otherwise under any theory of law.

15. Binding Agreement. This Agreement shall inure to and be binding on the heirs, executor, administrators, successors, and assigns of the Parties hereto.

16. Severability. Any provision of this Agreement which is declared by a court of competent jurisdiction to be illegal, invalid, prohibited or unenforceable will be ineffective to the extent of such illegality, invalidity, prohibition or unenforceability without invalidating the remaining provisions of this Agreement.

17. Attorneys' Fees. In the event any litigation or legal proceeding arises between the Parties out of this Agreement and is prosecuted to final judgment, then if the Town or the District is a prevailing party against the Developer, the District and the Town will be entitled to recover from the Developer all of its costs and expenses incurred in connection with such litigation, including reasonable attorneys' fees. If the Developer is the prevailing party, it shall bear its own costs. If the Town is the prevailing party in a legal proceeding involving the District, to the extent permitted by law, the District shall pay the Town's costs and expenses incurred in connection with such litigation, including reasonable attorneys' fees.

18. Mediation. If a dispute arises under this Agreement that the Parties are not able to mutually resolve, prior to commencing litigation, the Parties shall first submit the matter to mediation conducted by a neutral mediator. The Parties shall attempt to agree upon a mediator and shall endeavor to find a mediator having experience in construction-related matters. If the Parties are unable to agree upon a mediator, any Party may apply to the Judicial Arbitrator Group in Denver, Colorado, for appointment of a mediator. The cost of the mediation shall be shared equally by the

Parties. Unless the dispute involves the Escrow Agent, the Escrow Agent shall not be obligated to comply with this Section 18.

19. Governing Law. This Agreement and all claims or controversies arising out of or relating to this Agreement shall be governed and construed in accordance with the law of the State of Colorado, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado. Venue for all actions arising from this Agreement shall be in the District Court in and for Weld County. To reduce the cost and to expedite the resolution of disputes under this Agreement, the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement.

20. Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the Town or to the District, their respective officials, employees, contractors, or agents, or any other person acting on behalf of the Town or the District and, in particular, governmental immunity afforded or available to the Town and the District pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S.

21. Negotiated Provisions. This Agreement shall not be construed more strictly against one party than against another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being acknowledged that each Party has contributed substantially and materially to the preparation of this Agreement.

22. Headings for Convenience Only. Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

23. Counterparts; Facsimile Signatures. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings.

24. Electronic Execution and Storage. The Parties hereto agree that the transactions described herein may be conducted and related documents may be stored by electronic means. Copies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[Remainder of page intentionally left blank. Signature pages follow].

TOWN:

THE TOWN OF JOHNSTOWN, a home-rule
municipality of the County of Weld, State of
Colorado

By:

Gary Lebsack, Mayor

Date:

Attest:

Diana Seele, Town Clerk

EXHIBIT A-1
FIRST REQUISITION BUDGET

1. Estimate of Soft Costs
Incurred Prior to 2022 Bond Issuance \$

2. Estimate of Land Acquisition Costs
To be paid from Bond Proceeds \$

TOTAL \$ _____

EXHIBIT A-2
PUBLIC IMPROVEMENTS BUDGET

(In Addition to First Requisition Budget)

Roads	\$ 12,000,000
Water	\$ 3,000,000
Sewer	\$ 5,000,000
Storm Drainage	\$ 4,000,000
Parking	\$ 3,000,000
Landscaping	\$ 3,000,000
Other	\$ 5,000,000
	TOTAL \$ 35,000,000

**EXHIBIT A-3
PRIVATE IMPROVEMENTS BUDGET**

Site Work Cost Estimate	\$ 8,200,000
Building Shell Cost Estimate	\$ 15,375,000
Tenant Improvement Allowance Cost Estimate	\$ 13,325,000
Other Tenant Incentives Cost Estimate	\$ 4,100,000
	TOTAL \$ 41,000,000

EXHIBIT B-1
FORM OF ESCROW ACCOUNT REQUISITION
LEDGE ROCK CENTER COMMERCIAL METROPOLITAN DISTRICT 2022 BOND
PROCEEDS ACCOUNT

Requisition No. _____

Ledge Rock Center Commercial Metropolitan District
(in the Town of Johnstown, Colorado)

\$ _____
2022 Limited Tax General Obligation
Bonds

The undersigned certifies that s/he is a District Representative under that certain Amended and Restated Escrow Agreement dated as of _____, 2022 (the “**Escrow Agreement**”) among Ledge Rock Center Commercial Metropolitan District, Town of Johnstown, Colorado (the “**District**”), Town of Johnstown, Colorado (“**Town**”), Ledge Rock Center, LLC (“**Developer**”) and UMB Bank, n.a. (the “**Escrow Agent**”). All capitalized terms used in this certificate shall have the respective meanings assigned in the Escrow Agreement.

The Town hereby approves a Requisition in the amount of \$ _____ from the Ledge Rock Center Commercial Metropolitan District 2022 Bond Proceeds Account.

[**Alternatively**] The Requisition shall be deposited into the Developer Funds Account OR The Requisition shall be made to the Ledge Rock Center Commercial Metropolitan District.:

The above payment obligations have been or will be properly incurred, is or will be a proper charge against the Ledge Rock Center Commercial Metropolitan District 2022 Bond Proceeds Account, and have not been the basis of any previous withdrawal. The disbursement requested herein will be used solely for the payment of Project Costs.

Disbursement instructions are attached hereto.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____,
20 ____.

By: _____
District Representative

TOWN APPROVAL

I, Matt LeCerf, the Town Manager for the Town of Johnstown, have reviewed Requisition No. _____. The Town hereby approves and authorize the Escrow Agent to release funds in the amount of \$_____ from the Ledge Rock Center Commercial Metropolitan District 2022 Bond Proceeds Account.

By: _____
Matt LeCerf, Town Manager

EXHIBIT B-2
FORM OF ESCROW ACCOUNT REQUISITION
DEVELOPER FUNDS ACCOUNT

Requisition No. _____

Ledge Rock Center, LLC
(in the Town of Johnstown, Colorado)

The undersigned certifies that s/he is a Developer Representative under that certain Amended and Restated Escrow Agreement dated as of _____, 2022 (the "**Escrow Agreement**") among Ledge Rock Center Commercial Metropolitan District, Town of Johnstown, Colorado (the "**District**"), Town of Johnstown, Colorado ("**Town**"), Ledge Rock Center, LLC ("**Developer**") and UMB Bank, n.a. (the "**Escrow Agent**"). All capitalized terms used in this certificate shall have the respective meanings assigned in the Escrow Agreement.

The Town hereby approves a Requisition in the amount of \$_____, and the Escrow Agent is authorized to make such Requisition from the Developer Funds Account.

The name and address of the person, firm, or corporation to whom payment is due or has been made is as follows:

The above payment obligations have been properly incurred, are a proper charge against the Developer Funds Account, and have not been the basis of any previous withdrawal. The disbursement requested herein will be used solely for the payment of Project Costs.

Disbursement instructions are attached hereto.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____,
20____

By: _____
Developer Representative

TOWN APPROVAL

I, Matt LeCerf, the Town Manager for the Town of Johnstown, have reviewed Requisition No. _____. The Town hereby approves and authorize the Escrow Agent to release funds in the total amount of \$ _____ from the Developer Funds Account.

By: _____
Matt LeCerf, Town Manager

**EXHIBIT C
FORM OF DISBURSEMENT REQUEST
FOR PUBLIC IMPROVEMENTS**

Requisition No. ____

The _____ (District or Developer) hereby requests a Requisition from the Ledge Rock Center Commercial Metropolitan District 2022 Bonds Proceeds Account.

The request for funds is based on the following information required by Section 3 of the Escrow Agreement:

1. The amount sought to be requisitioned is \$ _____, which amount is hereby allocated to the electoral authorization of the District as follows:

Infrastructure Category	Requested Disbursement Amount	Total Amount Previously Disbursed (not including this requisition)	Total Amount of Electoral Authorization Applied (including this requisition)	Total Amount of Electoral Authorization Remaining
Water				
Sanitation				
Streets				
Traffic and Safety				
Parks and Recreation				
Transportation				
TV Relay and Translation				
Mosquito Control				
Security				
Fire Protection and Emergency Medical				
Total				

2. The construction contract for which payment is sought and a description of the work performed:

3. The total amount of progress payments on the construction and other applicable contracts is as follows:

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C-1

DN 6816895.1

4. All payments made toward the construction and other applicable contracts to date is as follows:

5. An estimate of the percentage of total completion of the Public Improvements is as follows:

6. An estimate of cost to complete the work that is the subject of this Requisition is as follows:

7. If the Requisition is for the cost of the District's purchase of public land from the Developer, the fair market value of the public land is as follows:

8. Funds in the amount of \$ _____ are requested to be paid from the Bond Proceeds Account and \$ _____ are requested to be paid from the Developer Funds Account.

9. Certification that any lien waivers required have been obtained and shall be certified by the District Engineer in accordance with the requirements of the Development Agreement and the Verified Eligible Cost requirements.

10. An independent appraisal of the fair market value of the public land is (circle one) attached/not attached. If an appraisal is not attached, the reason is as follows:

11. Payment shall be made to the _____ (District or Developer) as follows:

12. Any additional relevant information is as follows:

I have hereunto set my hand this ____ day of _____, 20 ____.

By: _____
District Representative

I, _____, with _____, the District Engineer hereby certify that that all costs to be paid for Requisition No. _____ constitute Verified Eligible Costs and that Requisition No. _____ contains an estimate of the percentage of total completion of the Public Improvements and the cost to complete the public work that is the subject of said Requisition.

By: _____
District Engineer

TOWN APPROVAL

I, Matt LeCerf, the Town Manager for the Town of Johnstown, have reviewed Requisition No. _____. The Town hereby approves and authorize the Escrow Agent to release funds in the total amount of \$ _____ from the Bonds Proceeds Account. The Town hereby approves and authorize the Escrow Agent to release funds in the total amount of \$ _____ from the Developer Funds Account.

By: _____

EXHIBIT F

FORM OF ESCROW AGREEMENT

**ESCROW AGREEMENT
(202_ SPECIAL REVENUE SERIES ___ BONDS LEDGE ROCK CENTER
COMMERCIAL METROPOLITAN DISTRICT BONDS)**

This **ESCROW AGREEMENT** (the “**Agreement**”) is made and entered into as of the ____ day of _____, 20__ by and among the **TOWN OF JOHNSTOWN, COLORADO**, a home-rule municipality of the Counties of Larimer and Weld, State of Colorado (“**Town**”), **LEDGE ROCK CENTER**, a Kansas limited liability company (“**Developer**”), **LEDGE ROCK CENTER COMMERCIAL METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the state of Colorado (“**District**”) and **UMB BANK, N.A.**, a national banking association as escrow agent (“**Escrow Agent**”). Town, Developer, District and Escrow Agent are sometimes individually referred to as a “**Party**” and collectively as the “**Parties**.”

RECITALS

WHEREAS, the District is organized pursuant to and in accordance with the provisions of §§ 32-1-101, *et seq.*, C.R.S. for the purpose of constructing, financing, operating and maintaining certain public improvements for itself, its taxpayers, residents and users; and

WHEREAS, the Town approved the Service Plan for the District on September 8, 2022 and subsequently approved an Amended and Restated Service Plan for the District on June 6, 2022, 2022 (the “**Service Plan**”); and

WHEREAS, the District is authorized to finance and provide public improvements needed for the Ledge Rock Center commercial development project (the “**Project**”); and

WHEREAS, the Town, the Developer, and the District entered into the Development and Reimbursement Agreement for Ledge Rock Center on January 3, 2022, the First Amendment to Development and Reimbursement Agreement for Ledge Rock Center on or about April 18, 2022, and the Amended and Restated Development and Reimbursement Agreement for Ledge Rock Center on or about _____, 2022 (together, “**Development Agreement**”), as amended for the purpose of establishing the terms and conditions of the overall development of the Project; and

WHEREAS, the Development Agreement provides for the execution of an Escrow Agreement prior to any issuance of Bonds, other than Refunding Bonds; and

WHEREAS, pursuant to the Development Agreement, the District is required to submit documents required for the Town’s review prior to the issuance of the Bonds; and

WHEREAS, the District anticipates the issuance of its 202_ Special Revenue Series ___ Bonds (the “**202_ Bonds**”) and the Town, the District and the Developer have agreed to the release of the proceeds of the 202_ Bonds in accordance with the provisions set forth in this Agreement; and

WHEREAS, future issuances of Bonds are anticipated to occur as development occurs to include at least one additional bond issuance; and

WHEREAS, the Project will be constructed with the use of various revenue sources of the Developer and the District, including, but not necessarily limited to, the proceeds deposited hereunder pursuant to two Indentures of Trust (ASSUMES THERE WILL BE TWO SERIES OF BONDS, THE BONDS SOLD IN THE MARKET AND DEVELOPER BONDS) (collectively, the "**Indenture**") between the District and UMB Bank, n.a., as trustee (the "**Bond Trustee**") for the 202_ Bonds to be spent on Verified Eligible Costs, and funds for Private Improvements constructed by the Developer from the reimbursements made to the Developer under the Advance Reimbursement and Payment Agreement (the "**Reimbursement Agreement**"); and

WHEREAS, as set out in the Budget attached hereto on Exhibits A-1 through Exhibit A-3 (the "**Budget**"), Verified Eligible Costs are to be funded with the proceeds of the Bonds and the Private Improvements are to be paid from various sources other than Bond proceeds in order to acquire, construct and install the Project; and

WHEREAS, prior to the issuance of the Bonds, the District and the Developer are required to enter into the Reimbursement Agreement; and

WHEREAS, the Parties hereto desire to set forth the terms and conditions by which the Escrow Agent shall manage and disburse the escrow established hereunder.

NOW THEREFORE, in consideration of the mutual covenants and promises expressed herein, the parties hereby agree as follows:

COVENANTS AND AGREEMENTS

(Capitalized terms used but not defined herein shall have the meaning set forth in the Indenture and the Development Agreement, as amended)

1. Appointment of Escrow Agent and Establishment of Escrow Accounts. The Developer, the District and the Town hereby appoint the Escrow Agent and the Escrow Agent hereby accepts such appointment pursuant to the terms and conditions of this Agreement. The Escrow Agent shall establish the following accounts for the purpose of holding the Bond proceeds referenced in this Agreement and all interested earned (the "**Escrow Funds**"): (1) the **Ledge Rock Center Commercial Metropolitan District 202_ Tax Exempt Bond Proceeds Account** (the "**Ledge Rock Center Commercial Metropolitan District 202_ Tax Exempt Bond Proceeds Account**" or the "**Bond Proceeds Account**") and (2) the **Developer Funds Account** (the "**Developer Funds Account**"). The two separate accounts shall collectively be referred to as the "**Accounts**." Monies in the Accounts shall be distributed by the Escrow Agent pursuant to the provisions of this Agreement, and all deposits made into the Accounts shall be treated in all respects as escrowed funds with no portion thereof subject to any claims of the Escrow Agent's general creditors. A description of the Accounts is as follows:

a. The Bond Proceeds Account: Amounts released pursuant to the terms of the Indenture by the Bond Trustee from the net proceeds of the Bonds that were issued on a tax exempt basis (the "**Tax Exempt Bond Proceeds**") shall be deposited by the Bond Trustee directly into

the Bond Proceeds Account. All references in this Agreement to "Tax Exempt Bond Proceeds" are deemed to include any interest earned on the Tax Exempt Bond Proceeds while being held pursuant to this Agreement. Tax Exempt Bond Proceeds shall be invested in legal investments as may be directed by the District. The JP Developer Contribution shall also be deposited by the District into the Bond Proceeds Account.

b. The Developer Funds Account: Bond proceeds utilized: (i) to fund reimbursement of Verified Eligible Costs incurred by the Developer for soft costs prior to the issuance of the Bonds under the Reimbursement Agreement and (ii) to fund the purchase of interests in land by the District from the Developer pursuant to those certain real estate contracts or other instruments entered into between the District and the Developer shall be "**Developer Funds.**" The general expectation is that Developer Funds shall be deposited into the Developer Funds Account for purposes of securing and completing the Private Improvements. Developer Funds may also, at the sole discretion of the Town, be used to fund or reimburse the Developer for Verified Eligible Costs incurred after the issuance of the Bonds. Prior to the release of any Bond proceeds from the Bond Proceeds Account for the payment of any other Verified Eligible Costs, Bond Proceeds in the amount of _____ (\$ _____) Dollars shall be released for payment of a portion of the purchase price for the land together with the Verified Eligible Costs related to soft costs incurred prior to the closing on the issuance of the Bonds (the "**First Disbursement**"). If all of the purchase price for the land together with the Verified Eligible Costs related to soft costs incurred prior to the closing on the issuance of the Bonds have been reimbursed out of a prior Bond issuance(s), the first Verified Eligible Costs in an amount agreed upon by the Town, the District and the Developer, shall be deemed to be the First Disbursement. The First Disbursement shall be directly deposited in the Developer Fund (the "**Developer Fund Deposit**"). All references in this Agreement to Developer Funds are deemed to include any interest earned on the Developer Funds while being held pursuant to this Agreement that are not required to be paid to the federal government pursuant to the Internal Revenue Code of 1986, as amended. The Developer Funds shall be invested as may be directed by the Developer.

c. Investment of Funds in Accounts: The Escrow Agent may conclusively rely upon the District's or Developer's written instruction as to both the suitability and legality of the directed investments regarding their respective accounts. If the District or Developer fails to provide written directions concerning investment of moneys held by the Escrow Agent in their respective accounts, the Escrow Agent may invest in a money market fund that qualifies as a legal investment and matures or is subject to redemption prior to the date such funds will be needed. Unless otherwise confirmed or directed in writing, an account statement delivered periodically by the Escrow Agent to the District or Developer for their respective accounts shall confirm that the investment transactions identified therein accurately reflect the investment directions of the District or Developer, unless the District or Developer notifies the Escrow Agent in writing to the contrary within thirty (30) days of the date of such statement. The Escrow Agent may make any and all such investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades, including cash sweep account fees, and it is specifically provided herein that the Escrow Agent may purchase or invest in shares of any investment company that (i) is registered under the Investment Company Act of 1940, as amended (including both corporations and Massachusetts business trusts, and including companies for which the Escrow Agent may provide advisory, administrative, custodial, or other services for compensation), (ii) invests substantially all of its assets in short-term high-quality

money-market instruments, limited to obligations issued or guaranteed by the United States, and (iii) maintains a constant asset value per share, and, the Escrow Agent may implement its automated cash investments system to assure that cash on hand is invested and to charge reasonable cash management fees, which may be deducted from income earned on investments.

2. Accounts.

a. Use of Funds.

i. Bond Proceeds Account. The Escrow Funds deposited into the Bond Proceeds Account shall be used to: (i) fund Verified Eligible Costs related to the acquisition, construction and installation of the public facilities which qualify as District Public Improvements or Town Public Improvements as defined within the Development Agreement, as may be amended from time to time, within or benefiting the Project (collectively the “**Public Improvements**”) by either the District or the Developer; and (ii) fund the District’s purchase of public land as permitted in the Development Agreement, in an amount not to exceed the fair market value as established by an appraisal as set forth herein.

ii. Developer Funds Account. Once released from the Bond Proceeds Account, unless otherwise agreed by the Town, the Escrow Funds deposited into the Developer Funds Account shall be used to fund the Private Improvements in the manner set forth in this Agreement.

iii. Not a Bond Payment Pledge. Moneys on deposit in the Accounts are not pledged to the payment of the Bonds and shall not secure the payment thereof.

b. Tax Covenants.

i. The District shall at all times do and perform all acts and things necessary or desirable in order to assure that interest paid on the Series 202_ Bonds shall, for the purposes of federal income taxation, be excludable from the gross income of the recipients thereof and exempt from such taxation.

ii. The District shall not permit the use of any proceeds of the Series 202_ Bonds or any funds of the District held under this Agreement, directly or indirectly, to acquire any securities or obligations, and shall not take or permit to be taken any action or actions with regard to the investment of any proceeds of the Series 202_ Bonds, which would cause any Series 202_ Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code or “federally guaranteed” within the meaning of Section 149(b) of the Code and any such applicable requirements promulgated from time to time thereunder and under Section 103(b) of the Code, and the District shall observe and not violate the requirements of Section 148 of the Code and any such applicable regulations. The District shall comply with all requirements of Sections 148 and 149(d) of the Code to the extent applicable to the Series 202_ Bonds. In the event that at any time the District is of the opinion that for purposes of this paragraph it is necessary to restrict or to limit the yield on the investment of any moneys held by the Escrow Agent under the Escrow Agreement, the District shall so restrict or limit the yield on such investment or shall so instruct the Escrow Agent in a detailed certificate, and the Escrow Agent shall take such action as may be necessary in accordance with such instructions.

iii. The District specifically covenants to comply with the provisions and procedures of the Tax Certificate and with all tax matters and covenants of the District contained in the Escrow Agreement.

3. Requests to Release Funds from the Accounts. The District or the Developer, as appropriate, may submit requests for the release of Escrow Funds as follows:

a. Disbursement Requests from the Bond Proceeds Account. The District may submit written requests to the Town for the payment of Verified Eligible Costs from the Bond Proceeds Account based broadly and generally on the costs set out in the Budget attached hereto on Exhibits A-1 and A-2 (“**Disbursement Request**”). The Parties acknowledge the first Disbursement Request shall be for the First Disbursement and shall be directly deposited in the Developer Fund as the Developer Fund Deposit. No other Disbursement Request will be processed until the full amount of the First Disbursement constituting the Developer Fund Deposit has been made. The Parties acknowledge that the Budget contains preliminary estimates and shall not limit the specific amounts or timing of a requisition as long as the amount to be requisitioned reasonably reflects the work performed and is properly certified. The written request shall be in the form of a Requisition from Bond Proceeds Account as set forth on Exhibit B-1 attached hereto and incorporated herein by reference (a “**Bond Proceeds Requisition**”). Upon receipt of an executed Bond Proceeds Requisition from the District, the Town shall approve or object to all, or a portion of, the Disbursement Request. Each Bond Proceeds Requisition shall be provided by the twentieth (20th) day of each month, or on the first business day thereafter. Under an administrative approval process, the Town shall have seventeen (17) days, or on the first business day thereafter, to approve or object to all, or a portion of, the Disbursement Request, as more specifically set forth in this Agreement. Each Bond Proceeds Requisition shall contain the information set out in Exhibit C attached hereto, and incorporated herein by reference (alternatively, the information may be contained in the District’s Engineer’s Certification of Verified Eligible Costs), and, include, at a minimum, the following information:

i. Reference to the underlying construction contract of the District or basis for payment and a description of the work performed for which payment is being requested;

ii. The total amount of the requested funds;

iii. Detail of the total amount of progress payments on the construction and other applicable contracts executed by District, all payments made toward the same prior to the date of the Disbursement Request, including copies of lien waivers and the amount that will be outstanding after payment of the requisition;

iv. Certification by the Cost Certifier that all costs to be paid pursuant to the Disbursement Request constitute Verified Eligible Costs and estimates of the percentage of total completion of the Public Improvements, including the public site work, and the cost to complete the work that is the subject of the Disbursement Request. The Cost Certifier shall be an independent licensed engineer experienced in the design and construction of public improvements in the Johnstown or Denver metropolitan area. As of the date hereof, Ranger Engineering, LLC, a Colorado limited liability company, is the Cost Certifier. The District may select a different engineering firm meeting the requirements set forth herein and in the Development Agreement to

serve as the Cost Certifier upon written notice to and approval of the Town, which approval may be provided by the Town Manager and shall not be unreasonably withheld, conditioned, or delayed. In lieu of certification by the Cost Certifier, certain costs contained within a Disbursement Request may be certified by the District's independent accountant as Verified Eligible Costs, if so permitted by and in a manner consistent with the Development Agreement, which shall also contain an estimates of the percentage of completion of the work and the cost to complete the work;

v. If the request is for expenses related to the District's purchase of public land from the Developer, which shall not include interest paid by the Developer, the District shall provide an appraisal from an independent appraiser of its choosing evidencing the fair market value of the real property or any part thereof. The appraisal must be publicly available and kept by the District for as long as the Bonds are outstanding. The District shall provide written notice of the name and other professional information of the independent appraiser for review and approval by the Town, which approval may be provided by the Town Manager and shall not be unreasonably withheld, conditioned, or delayed. If the Town Manager takes no action within fifteen (15) business days, the appraiser shall be deemed approved by the Town;

vi. The Ledge Rock Center Commercial Metropolitan District 202 Tax Exempt Bond Proceeds Accounts from which payment should be made, and how much from each account; and

vii. Any other information reasonably requested by the Town.

For the avoidance of doubt, notwithstanding any provision to the contrary in this Agreement, \$ _____ of the bond proceeds are required to be deposited into the Developer Funds Account for disbursement pursuant to Section 3(b) below.

b. Disbursement Requests from the Developer Funds Account. The Developer shall be entitled to make a written request for payment from the Developer Funds Account (each, also a "**Disbursement Request**") to the Town. At the sole discretion of the Town Manager, the Disbursement Request may be based on the Lease Verification methodology (defined below) or the Construction Progression methodology (defined below)

i. Lease Verification. To use the Lease Verification methodology, when a lease with a tenant for Ledge Rock Center has been fully executed, the Developer shall provide the executed lease to the Town for review. Developer may redact certain confidential information from the lease, but must, at a minimum, provide the building for which the lease is executed, the name of the tenant, the square footage, the date by which the tenant is anticipated to occupy the premises, the obligations of the Developer to the tenant to be fulfilled with the amount to be released from the Developer Funds Account and any other information reasonably requested by the Town. The Town Manager, at the Town Manager's sole discretion, shall determine whether to allow a Developer Funds Disbursement Request based on the Lease Verification methodology. If the Town Manager approves the methodology, the Developer may submit a Developer Funds Requisition (defined below) based upon:

(a) An initial release of \$160.00 per square foot; and

(b) Upon the earlier of the tenant opening for business or the issuance of a final Certificate of Occupancy, the release of \$40.00 per square foot.

ii. Construction Progression. To use the Construction Progression methodology, Developer shall provide Disbursement Requests based on the following milestones:

(1) Private Site Work. When a building permit for a building shell has been issued by the Town to the Developer, the Developer may submit a Disbursement Request for reimbursement of the private site work associated with the private site work costs and private site improvements and related soft costs associated with such building ("**Private Site Work Costs**") based upon \$40.00 per square foot. The Private Site Work Costs are to be paid solely from the Developer Funds Account.

(2) Private Building Shell. When a building shell has received a conditional certificate of occupancy for tenant improvements from the Town (a "**CCO**"), the Developer may submit a Disbursement Request for reimbursement of the building shell costs and the Private Building soft costs associated with that building ("**Private Building Shell Costs**") based upon \$75.00 per square foot. The Private Building Shell Costs are to be paid solely from the Developer Funds Account. A CCO is issued when the building is fit for occupancy except for the completion of interior improvements, including tenant improvements, and the building permit is thus closed.

(3) Tenant Improvement Allowance. When a permit for tenant improvements has been issued by the Town, the Developer may submit a Disbursement Request for tenant improvements based upon \$65.00 per square foot to be used for the hard costs associated with the tenant improvements. Upon issuance of a final Certificate of Occupancy, Developer may submit a Disbursement Request for the payment of soft costs based upon \$20.00 per square foot. Tenant improvement costs are to be paid solely from the Developer Funds Account. A final Certificate of Occupancy is issued when the tenant improvements are complete and the tenant improvement permit is thus closed.

iii. Requisition Forms for Developer Funds Account.

(1) Lease Verification Form. For the Lease Verification methodology, the written request shall be in the form of a Requisition from Developer Funds Account as set forth on **Exhibit B-2**, attached hereto and incorporated herein by reference (a "**Developer Funds Requisition**"), and shall be accompanied by the executed lease, with, at Developer's discretion, confidential information redacted, but containing, at a minimum, the building for which the lease is executed, the name of the tenant, the square footage, the date by which the tenant is anticipated to occupy the premises, the obligations of the Developer to the tenant to be fulfilled with the amount to be released from the Developer Funds Account and any other information reasonably requested by the Town.

(2) Construction Progression Form. For the Construction Progression methodology, the written request shall also be in the form of a Requisition from Developer Funds Account as set forth on **Exhibit B-2** (also, a "**Developer Funds Requisition**"), and shall be accompanied by documentation containing, at a minimum, the following information:

(a) The category of cost set out in the Budget;
(b) The total amount of the requested funds and the calculation supporting the request;

(c) If the request is for Private Site Work Costs, at a minimum, the building permit number, the building for which the permit is issued, and the square footage;

(d) If the request is for Private Building Shell Costs, at a minimum, the building permit number, the building for which the permit is issued, the conditional certificate of occupancy number and the square footage;

(e) If the request is for the hard costs associated with tenants improvements, at a minimum, the permit number(s) for the tenant improvements and the square footage;

(f) If the request is for the soft costs associated with tenant improvements, at a minimum, the final certificate of occupancy number and the square footage;

(g) Any additional relevant information; and

(h) Any additional information required by the Town.

iv. Timing of Town Review of Developer Funds Disbursement. After receipt of a Developer Funds Requisition from Developer to the Town, the Town shall have seventeen (17) days, or on the first business day thereafter, to approve or object to all, or a portion of, the Disbursement Request as set forth herein.

c. Town Review of Disbursement Requests and Approval or Denial. Upon receipt, the Town shall review the Disbursement Request(s) and, if satisfied that the request appears to be consistent with the terms of this Agreement, shall approve and sign the Bond Proceeds Requisition or Developer Funds Requisition, as applicable. The Town's review of the Disbursement Request and approval of the Bond Proceeds Requisition or Developer Funds Requisition shall not be unreasonably conditioned, delayed, or withheld.

The Town may object to all or any portion of a Disbursement Request by providing written notice to the District or the Developer (the "**Town Objection**"). A Town Objection shall specify all, or the specific portions of the Disbursement Request, to which there is an objection and the specific reasons for the objection. The Town and the District or the Developer, as appropriate, shall work together in good faith to resolve any Town Objection consistent with the intent of the Development Agreement and this Agreement. If the parties are not able to reach a resolution, the parties shall participate in mediation as set forth in Section 18. If the Town provides a Town Objection to a portion, but not all, of the Disbursement Request, the Town shall indicate on the Requisition the amount of Escrow Funds that are authorized to be released.

The Town Manager may approve and execute a Bond Proceeds Requisition or Developer Funds Requisition on behalf of the Town. The Town Manager, in the Town Manager's sole discretion, in order to expedite construction and assist the Developer in expediting the completion of construction, may waive in writing any and all of the non-substantive requirements of this Agreement as it relates to Town's approval of a Bond Proceeds Requisition or Developer Funds Requisition.

The Town's review of a Disbursement Request and approval of a Bond Proceeds Requisition or Developer Funds Requisition is solely administrative and shall not limit or waive any rights the Town may have nor shall it affect the District or the Developer's responsibility and liability for the design, construction and installation of, and payments for, the Public Improvements and Private Improvements. The Town shall be entitled to rely upon the contents of the Disbursement Request without a corresponding obligation to independently verify the same.

d. Disbursement by the Escrow Agent. Upon receipt of a Bond Proceeds Requisition or Developer Funds Requisition signed by the Town, the Escrow Agent shall make disbursement of the authorized amount of Escrow Funds to the District or the Developer, as appropriate, within two (2) business days. Upon receipt of a Bond Proceeds Requisition or Developer Funds Requisition that is not signed by the Town and a certification by the District and the Developer attesting to the delivery of the Bond Proceeds Requisition or Developer Funds Requisition to the Town and the Town's failure to respond within thirty (30) days of delivery ("**Certification**"), which Certification shall also be provided to the Town, and the proof of such delivery provided to the Escrow Agent, the Escrow Agent shall make disbursement to District or the Developer, as appropriate, of the full amount of the Bond Proceeds Requisition or Developer Funds Requisition after two (2) business days but less than four (4) business days, to provide an adequate opportunity for the Town to comment and, if it so desires, object to the Disbursement Request. If there is a Town Objection, the Escrow Agent shall release funds for any undisputed portion of the Requisition to District or the Developer, as appropriate, within two (2) business days. The Escrow Agent may conclusively rely as to the completeness and accuracy of all statements in a Bond Proceeds Requisition or Developer Funds Requisition or Certification if executed by the proper parties and the Escrow Agent, in good faith, believes the Bond Proceeds Requisition or Developer Funds Requisition or Certification is genuine. The Escrow Agent shall not be required to make any independent investigation in connection therewith.

4. Duties of Escrow Agent. The duties of the Escrow Agent shall be as follows:

a. During the term of this Agreement, the Escrow Agent shall hold and disburse the Escrow Funds in accordance with the terms and provisions of this Agreement.

b. If a dispute shall develop concerning the release of Escrow Funds, then in any such event, the Escrow Agent shall deliver the Escrow Funds in accordance with joint written instructions of Parties hereto if received by the Escrow Agent within ten (10) days after the Escrow Agent has issued a written request for instructions. The Escrow Agent shall have the right to pay the Escrow Funds into a court of competent jurisdiction and interplead the Parties, after which the Escrow Agent shall be discharged from any obligation in connection with this Agreement.

c. The Escrow Agent may act in reliance upon any written instrument or signature which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such written instrument.

d. ~~The Escrow Agent shall execute and deliver all forms required by federal, state and other governmental agencies relative to the Escrow Funds.~~

e. Notwithstanding the foregoing or any provisions to the contrary contained herein, the Escrow Agent shall not remit any moneys on deposit in the Bond Proceeds Accounts to the District except (1) to pay or reimburse Verified Eligible Costs and upon compliance with the requisition process set forth in this Agreement or (2) in any manner that the District reasonably deems necessary to maintain the tax-exempt status of interest on the 202_ Bonds referred to in the Indenture, as stated in a written opinion of Bond Counsel.

f. Final Allocation of Proceeds. The Escrow Agent shall determine the actual amount of proceeds of the Bonds spent on Verified Eligible Costs, without including any investment earnings thereon or any of the costs identified in Section 1.1.(k)(i-iii) of the Development Agreement (the "**Final Allocation of Proceeds**"). Such determination of the Final Allocation of Proceeds shall be performed in accordance with the terms of the Development Agreement, which Final Allocation of Proceeds shall be used, in part, to confirm that the distribution of proceeds of the Bonds used for Verified Eligible Costs did not exceed the Cap Amount. Such determination shall be based solely on representations made to the Escrow Agent by the other Parties to this Agreement in Exhibits B-1, B-2 or C and approvals of such Exhibits. The Parties hereby confirm that the Escrow Agent is not a party to the Development Agreement and has no obligation or responsibility to determine whether a payment requested from any of the Accounts does or does not qualify as a Verified Eligible Cost.

5. Audit and Records. Any Party shall have the right, at its expense and at reasonable times, to conduct or to cause to be conducted an audit of the Accounts and all disbursements therefrom. Any Party may request a statement of the Accounts, to include, among other details, the balance of the Accounts and disbursements therefrom, from the Escrow Agent.

6. Expenses and Compensation Relating to Escrow. The Escrow Agent shall receive from District an annual fee of \$ _____ for its services in connection with this Agreement and shall invoice the District for the same on a quarterly basis in the amount of \$ _____ in arrears (the "**Compensation**"). The Escrow Agent shall also receive from the District a one-time acceptance fee in the amount of \$ _____. The Escrow Agent expressly waives any lien upon or claim against any other moneys and investments in the Escrow Fund. The Escrow Agent shall further be entitled to reimbursement in full, for all costs, expenses, charges, fees, or other payments ("**Fees and Expenses**") made or to be made by Escrow Agent in the performance of the Escrow Agent's duties and obligations under this Agreement. Such Fees and Expenses shall be paid by the District and shall not be paid or reimbursed with moneys on deposit in the Accounts.

7. Non-liability of Escrow Agent. The Escrow Agent shall not be liable for any mistakes of fact, or errors of judgment, or for acts or omissions of any kind unless caused by the willful misconduct or gross negligence of the Escrow Agent. The District and the Developer shall, on a separate (and not joint and several basis) indemnify and hold harmless the Escrow Agent (and

any successor Escrow Agent) from and against any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorney's fees and disbursements, arising out of and in connection with this Agreement. The Escrow Agent may conclusively rely and act upon any instrument or other writing it, in good faith, believes to be genuine and to be signed and presented by the proper person. The Escrow Agent may, at any time, ask for written confirmation from the Town and/or the District/Developer concerning the propriety of a proposed disbursement of the Escrow Funds or other action or refusal to act by the Escrow Agent. The Escrow Agent shall not be liable for any taxes, assessments or other governmental charges that may be levied or assessed upon the escrow or any part thereof, or upon the income therefrom. The Escrow Agent shall in no event be liable in connection with its investment or reinvestment of any cash held by it hereunder in good faith, in accordance with the terms hereof, including, without limitation, any liability for any delays (not resulting from its negligence or willful misconduct or breach of this Agreement) in the investment or reinvestment of the Escrow Funds, or any loss of interest incident to any such delays. Each of the District and Developer agree that it shall be responsible for all required tax reporting, if any, with respect to the Bond Proceeds Account and the Developer Funds Account.

8. Advice of Counsel. The Escrow Agent may act in good faith pursuant to the advice of counsel retained or consulted by the Escrow Agent with respect to any matter relating to this Agreement and shall not be liable for any action taken or omitted in accordance with such advice.

9. Patriot Act. The Escrow Agent is serving as escrow holder only and has no interest in the Escrow Funds deposited hereunder. Any payments of income from this Agreement shall be subject to withholding of any applicable taxes. The District and/or Developer will provide completed Forms W-9 (or Forms W-8, in the case of non-U.S. persons) and other forms and documents that the Escrow Agent may reasonably request (collectively, "**Tax Reporting Documentation**") at the time of execution of this Agreement and any information reasonably requested by the Escrow Agent to comply with the USA Patriot Act of 2001, as amended from time to time. The Parties hereto understand that if such Tax Reporting Documentation is not so certified to the Escrow Agent, the Escrow Agent may be required by the Internal Revenue Code, as it may be amended from time to time, to withhold a portion of any interest or other income earned on the investment of monies or other property held by the Escrow Agent (the "**Escrow Income**") pursuant to this Agreement.

10. Resignation or Termination of Escrow Agent. Upon a thirty (30) day written joint notice of the Town, the District and the Developer, the Escrow Agent may be terminated and a new escrow agent appointed under such notice. The Escrow Agent may resign under this Agreement by giving written notice to the Town, the District and the Developer, effective thirty (30) days after the date of said notice. The Escrow Agent may petition a court of competent jurisdiction to appoint a successor in the event no such successor shall have been appointed within the 30 days. In the event of termination or resignation of the Escrow Agent, and upon the appointment by the Town the District and the Developer of a new escrow agent or custodian, or upon their mutual written instructions to the Escrow Agent providing for other disposition of the escrow, the Escrow Agent must deliver the Escrow Funds within a reasonable period of time as so directed to the new escrow agent, and thereafter will be relieved of any and all liability under this Agreement.

11. Termination of Escrow.

If to the District: _____, District Manager
_____.com

With a copy to: David O'Leary
doleary@spencerfane.com

If to the Developer: Michael Schlup
mikeschlup@corbinparkop.com

With a copy to: Allen Schlup, Esq.
Allen.schlup@adschluplaw.com

b. Complex Notice Procedure.

i. Any Notice to the Escrow Agent, including the delivery of a Requisition as set forth in Section 3.(d), must be given in accordance with this Section 10(b) hereof unless waived in writing by Escrow Agent.

ii. Any notice or communication required under this Agreement not described in Section 12.a must be in writing, and may be given personally, sent via nationally recognized overnight carrier service, or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same will be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent; or (ii) three days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or sent via nationally recognized overnight carrier service, a notice will be deemed to have been given and received on the first to occur of: (i) one business day after being deposited with a nationally recognized overnight air courier service; or (ii) delivery to the party to whom it is addressed. Any party hereto may at any time, by giving written notice to the other party hereto as provided herein designate additional persons to whom notices or communications will be given, and designate any other address in substitution of the address to which such notice or communication will be given. Such notices or communications will be given to the parties at their addresses set forth below:

If to the Town:

Matt LeCeref, Town Manager
Town of Johnstown
450 South Parish Avenue
Johnstown, CO 80534

With a copy to:

Avi Rocklin, Town Attorney
1437 N. Denver Avenue, #330
Loveland, CO 80538

and

McGeady Becher P.C.
450 East 17th Avenue, Suite 400
Denver, CO 80203-1254
Phone: 303-592-4380
Email: legalnotices@specialdistrictlaw.com

If to the District:

With a copy to:

Ledge Rock Center Commercial
District
c/o Spencer Fane LLP
1700 Lincoln Street, Suite 2000
Denver, CO 80203

David O'Leary
Spencer Fane LLP
1700 Lincoln Street, Suite 2000
Denver, CO 80203

If to the Developer:

With a copy to:

Ledge Rock Center, LLC
c/o Michael Schlup
13725 Metcalf Ave.
Overland Park, KS 66223

Allen D. Schlup, Esq.
A.D. Schlup Law, LLC
10950 W. 192nd PL.
Spring Hill, KS 66083

and

If to the Escrow Agent:

UMB Bank, n.a.
Corporate Trust & Escrow Services
1670 Broadway
Denver, CO 80210

13. Amendment. This Agreement may not be amended, supplemented or discharged, and no provision of this Agreement may be modified or waived, except by a written instrument signed by all of the Parties hereto. No waiver of any provision of this Agreement by any Party will be deemed a continuing waiver of any matter by such Party.

14. Third Party Beneficiaries. Notwithstanding anything contained herein to the contrary, including, without limitation the Recitals, the Parties to this Agreement shall be the District, the Developer, the Town and the Escrow Agent. This Agreement is not intended to give any benefits, rights, privileges, actions or remedies to any person, partnership, firm or corporation, as a third party beneficiary or otherwise under any theory of law.

15. Binding Agreement. This Agreement shall inure to and be binding on the heirs, executor, administrators, successors, and assigns of the Parties hereto.

16. Severability. Any provision of this Agreement which is declared by a court of competent jurisdiction to be illegal, invalid, prohibited or unenforceable will be ineffective to the extent of such illegality, invalidity, prohibition or unenforceability without invalidating the remaining provisions of this Agreement.

17. Attorneys' Fees. In the event any litigation or legal proceeding arises between the Parties out of this Agreement and is prosecuted to final judgment, then if the Town or the District is a prevailing party against the Developer, the District and the Town will be entitled to recover from the Developer all of its costs and expenses incurred in connection with such litigation, including reasonable attorneys' fees. If the Developer is the prevailing party, it shall bear its own costs. If the Town is the prevailing party in a legal proceeding involving the District, to the extent permitted by law, the District shall pay the Town's costs and expenses incurred in connection with such litigation, including reasonable attorneys' fees.

18. Mediation. If a dispute arises under this Agreement that the Parties are not able to mutually resolve, prior to commencing litigation, the Parties shall first submit the matter to mediation conducted by a neutral mediator. The Parties shall attempt to agree upon a mediator and shall endeavor to find a mediator having experience in construction-related matters. If the Parties are unable to agree upon a mediator, any Party may apply to the Judicial Arbitrator Group in Denver, Colorado, for appointment of a mediator. The cost of the mediation shall be shared equally by the Parties. Unless the dispute involves the Escrow Agent, the Escrow Agent shall not be obligated to comply with this Section 18.

19. Governing Law. This Agreement and all claims or controversies arising out of or relating to this Agreement shall be governed and construed in accordance with the law of the State of Colorado, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado. Venue for all actions arising from this Agreement shall be in the District Court in and for Weld County. To reduce the cost and to expedite the resolution of disputes under this Agreement, the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement.

20. Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the Town or to the District, their respective officials, employees, contractors, or agents, or any other person acting on behalf of the Town or the District and, in particular, governmental immunity afforded or available to the Town and the District pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S.

21. Negotiated Provisions. This Agreement shall not be construed more strictly against one party than against another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being acknowledged that each Party has contributed substantially and materially to the preparation of this Agreement.

22. Headings for Convenience Only. Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

23. Counterparts; Facsimile Signatures. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories

hereto, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings.

24. Electronic Execution and Storage. The Parties hereto agree that the transactions described herein may be conducted and related documents may be stored by electronic means. Copies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGES FOLLOW].

DEVELOPER:

LEDGE ROCK CENTER, LLC, a Kansas
limited liability company

By: _____
Its: Member
Date: _____

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by _____, as Member of Ledge Rock Center, LLC, a Kansas limited
liability company.

Witness my hand and official seal.

My commission expires: _____

Notary Public

TOWN:

THE TOWN OF JOHNSTOWN, a home-rule
municipality of the County of Weld, State of
Colorado

By: _____

Gary Lebsack, Mayor

Date: _____

Attest:

Hannah Hill, Town Clerk

ESCROW AGENT:

UMB BANK, N.A., a national banking
association, having an office and corporate trust
offices in Denver, Colorado

By: _____
Name: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____, as the _____ of UMB Bank, n.a.,
Escrow Agent.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A-1
FIRST REQUISITION BUDGET

1.	Estimate of Soft Costs Incurred Prior to Bond Issuance	\$ _____
2.	Estimate of Land Acquisition Costs To be paid from Bond Project Funds	\$ _____
		TOTAL \$ _____

EXHIBIT A-2
PUBLIC IMPROVEMENTS BUDGET

(In Addition to First Requisition Budget)

Roads	\$ _____
Water	\$ _____
Sewer	\$ _____
Storm Drainage	\$ _____
Parking	\$ _____
Landscaping	\$ _____
Other	\$ _____
	TOTAL \$ _____

**EXHIBIT A-3
PRIVATE IMPROVEMENTS BUDGET**

Site Work Cost Estimate	\$
Building Shell Cost Estimate	\$
Tenant Improvement Allowance Cost Estimate	\$
Other Tenant Incentives Cost Estimate	\$
	TOTAL \$

EXHIBIT B-1
FORM OF ESCROW ACCOUNT REQUISITION
LEDGE ROCK CENTER COMMERCIAL METROPOLITAN DISTRICT 202____
BOND PROCEEDS ACCOUNT

Requisition No. _____

Ledge Rock Center Commercial Metropolitan District
(In The Town Of Johnstown, Colorado)

\$ _____
Special Revenue Bonds
Series 202_

The undersigned certifies that s/he is a District Representative under that certain Escrow Agreement dated as of _____, 202____ (the “**Escrow Agreement**”) among Ledge Rock Center Commercial Metropolitan District, Town of Johnstown, Colorado (the “**District**”), Town of Johnstown, Colorado (“**Town**”), Ledge Rock Center, LLC (“**Developer**”) and UMB Bank, n.a. (the “**Escrow Agent**”). All capitalized terms used in this certificate shall have the respective meanings assigned in the Escrow Agreement.

The Town hereby approves a Requisition in the amount of \$ _____ from the Ledge Rock Center Commercial Metropolitan District 202____ Bond Proceeds Account.

[**Alternatively**] The Requisition shall be deposited into the Developer Funds Account OR The Requisition shall be made to the Ledge Rock Center Commercial Metropolitan District.:

The above payment obligations have been or will be properly incurred, is or will be a proper charge against the Ledge Rock Center Commercial Metropolitan District 202____ Bond Proceeds Account, and have not been the basis of any previous withdrawal. The disbursement requested herein will be used solely for the payment of Project Costs.

Disbursement instructions are attached hereto.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____,
20____.

By: _____
District Representative

TOWN APPROVAL

I, Matt LeCerf, the Town Manager for the Town of Johnstown, have reviewed Requisition No. _____. The Town hereby approves and authorize the Escrow Agent to release funds in the amount of \$ _____ from the Ledge Rock Center Commercial Metropolitan District 202_ Bond Proceeds Account.

By: _____
Matt LeCerf, Town Manager

EXHIBIT B-2
FORM OF ESCROW ACCOUNT REQUISITION
DEVELOPER FUNDS ACCOUNT

Requisition No. _____

Ledge Rock Center, LLC
(In The Town of Johnstown, Colorado)

The undersigned certifies that s/he is a Developer Representative under that certain Escrow Agreement dated as of _____, 202____ (the "**Escrow Agreement**") among Ledge Rock Center Commercial Metropolitan District, Town of Johnstown, Colorado (the "**District**"), Town of Johnstown, Colorado ("**Town**"), Ledge Rock Center, LLC ("**Developer**") and UMB Bank, n.a. (the "**Escrow Agent**"). All capitalized terms used in this certificate shall have the respective meanings assigned in the Escrow Agreement.

The Town hereby approves a Requisition in the amount of \$_____, and the Escrow Agent is authorized to make such Requisition from the Developer Funds Account.

The name and address of the person, firm, or corporation to whom payment is due or has been made is as follows:

The above payment obligations have been properly incurred, are a proper charge against the Developer Funds Account, and have not been the basis of any previous withdrawal. The disbursement requested herein will be used solely for the payment of Project Costs.

Disbursement instructions are attached hereto.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____,
20____

By: _____
Developer Representative

TOWN APPROVAL

I, Matt LeCerf, the Town Manager for the Town of Johnstown, have reviewed Requisition No. _____. The Town hereby approves and authorize the Escrow Agent to release funds in the total amount of \$ _____ from the Developer Funds Account.

By: _____
Matt LeCerf, Town Manager

**EXHIBIT C
FORM OF DISBURSEMENT REQUEST
FOR PUBLIC IMPROVEMENTS**

Requisition No. _____

The _____ (District or Developer) hereby requests a Requisition from the Ledge Rock Center Commercial Metropolitan District Bonds Proceeds Account.

The request for funds is based on the following information required by Section 3 of the Escrow Agreement:

1. The amount sought to be requisitioned is \$ _____, which amount is hereby allocated to the electoral authorization of the District as follows:

Infrastructure Category	Requested Disbursement Amount	Total Amount Previously Disbursed (not including this requisition)	Total Amount of Electoral Authorization Applied (including this requisition)	Total Amount of Electoral Authorization Remaining
Water				
Sanitation				
Streets				
Traffic and Safety				
Parks and Recreation				
Transportation				
TV Relay and Translation				
Mosquito Control				
Security				
Fire Protection and Emergency Medical				
Total				

2. The construction contract for which payment is sought and a description of the work performed:

3. The total amount of progress payments on the construction and other applicable contracts is as follows:

4. All payments made toward the construction and other applicable contracts to date is as follows:

5. An estimate of the percentage of total completion of the Public Improvements is as follows:

6. An estimate of cost to complete the work that is the subject of this Requisition is as follows:

7. If the Requisition is for the cost of the District's purchase of public land from the Developer, the fair market value of the public land is as follows:

8. Funds in the amount of \$_____ are requested to be paid from the Bond Proceeds Account and funds in the amount of \$_____ are requested to be paid from the Johnstown 2016 Taxable Bond Proceeds Account.

9. Certification that any lien waivers required have been obtained and shall be certified by the District Engineer in accordance with the requirements of the Development Agreement and the Verified Eligible Cost requirements.

10. An independent appraisal of the fair market value of the public land is (circle one) attached/not attached. If an appraisal is not attached, the reason is as follows:

11. Payment shall be made to the _____ (District or Developer) as follows:

12. Any additional relevant information is as follows:

I have hereunto set my hand this ____ day of _____, 20 ____.

By: _____
District Representative

I, _____, with _____, the District Engineer hereby certify that that all costs to be paid for Requisition No. _____ constitute Verified Eligible Costs and that Requisition No. _____ contains an estimate of the percentage of total completion of the Public Improvements and the cost to complete the public work that is the subject of said Requisition.

By: _____
District Engineer

TOWN APPROVAL

I, Matt LeCerf, the Town Manager for the Town of Johnstown, have reviewed Requisition No. _____. The Town hereby approves and authorize the Escrow Agent to release funds in the total amount of \$_____ from the Bonds Proceeds Account. The Town hereby approves and authorize the Escrow Agent to release funds in the total amount of \$_____ from the Developer Funds Account.

By: _____
Matt LeCerf, Town Manager

EXHIBIT G

FORM OF SUBDIVISION DEVELOPMENT AND IMPROVEMENT AGREEMENT

SUBDIVISION DEVELOPMENT AND IMPROVEMENT AGREEMENT

FOR

TOWN OF JOHNSTOWN

(LEDGE ROCK CENTER)

This Subdivision Development and Improvement Agreement (“Agreement”), made and entered into by and among **THE TOWN OF JOHNSTOWN, COLORADO**, a home-rule municipality of the Counties of Larimer and Weld, State of Colorado (“Town”), **LEDGE ROCK CENTER, LLC**, a Kansas Limited Liability Company (“Ledge Rock Center”), and **LEDGE ROCK CENTER COMMERCIAL METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the state of Colorado (“District”) (unless the context otherwise provides, Ledge Rock Center and the District shall be collectively referred to herein as “Developer”).

WITNESSETH:

WHEREAS, _____ is the owner of a parcel of land situated in the Town of Johnstown, County of Larimer, State of Colorado, the description of which is set forth on **Exhibit A** attached hereto and incorporated herein by this reference (the “Property”); and

WHEREAS, Developer seeks to develop the Property and to designate such development as Ledge Rock Center (“Development”); and

WHEREAS, Developer has submitted an application to develop the Property known as “Ledge Rock Center” or the “Ledge Rock Center Commercial Subdivision” as shown on the final plat depicting the Development, which final plat submittal is attached hereto as **Exhibit B-1** and incorporated herein by this reference (“Final Plat”); and

WHEREAS, the Town Council approved, or intends to approve, the Final Plat by passage of Resolution No. 20-22____, containing terms and conditions of approval of the Final Plat, which Resolution is, or will be, attached hereto as **Exhibit B-2** and incorporated herein by this reference (“Resolution”); and

WHEREAS, Developer understands and agrees that, as a further condition of approval of the Final Plat, Developer is required to construct certain Subdivision Improvements (defined below) to the Property, that Developer is responsible for the costs and expenses of those Subdivision Improvements unless otherwise provided herein, and that the Subdivision Improvements contemplated herein are reasonable, necessary, appropriate, and directly benefit the Development; and

WHEREAS, Developer acknowledges that approval of the preliminary plat, Final Plat, and site plan along with the subsequent use of the Property will directly impact existing

infrastructure and generate the need for both on-site and off-site improvements, as further described herein; and

WHEREAS, the Town approved the necessary changes of zoning in conjunction with or prior to the approval for the Final Plat, which ordinance, when effective, shall be recorded by the Town with the Weld County Clerk and Recorder's office; and

[ADD IF PHASING] WHEREAS, Developer intends to develop the Property in two or more development phases (each, a "Phase") pursuant to a phasing plan attached hereto as Exhibit "___" (Phasing Plan) describing the period for commencement and completion of all work, the Phase boundaries, sequencing and Improvements to be included within each Phase. This Agreement applies to the entire Development, but shall toll for vesting purposes only for a particular Phase as more particularly set forth on Exhibit "___" (Phasing Plan). For purposes of clarification, this first phase of development includes Phase I as referenced below in Exhibit ___ and the phasing map attached hereto. Developer and Town acknowledge future amendment to this Agreement may be warranted; and

WHEREAS, Developer agrees to undertake and complete the Development in accordance with this Agreement, the Final Plat, the Resolution, the Town's ordinances, resolutions and regulations and all other applicable laws and regulations.

NOW, THEREFORE, in consideration of the premises cited above and the mutual covenants and promises contained herein, the sufficiency of which is acknowledged, the Town and Developer agree as follows:

RECITALS

The Recitals are incorporated as if fully set forth herein.

DEFINITIONS

For the purposes of this Agreement, the following words and terms shall be defined as follows:

1.1 **"Approved Plans"** shall mean: (1) with respect to the Public Improvements, the approved "Civil Engineering Construction Plans" related to the Development and on file with Town; and (2) with respect to the Private Improvements, the approved "the Development Plan" related to the Development and on file with Town.

1.2 **"Developer"** shall mean the owner(s) of the Property described in **Exhibit A** and any heirs, successors, assigns or transferees of any of the Property described in **Exhibit A**.

1.3 **"Civil Engineering Construction Plans"** shall mean the approved engineering plans for construction, installation and improvement of the Public Improvements.

1.4 **"Code"** shall mean the Johnstown Municipal Code, as amended from time to time.

1.5 “**Developer**” shall mean the Developer, the Developer’s agents, representatives, heirs, affiliates, successors or assigns, or any other party authorized by the Developer to provide services, construction, or maintenance of any improvements required by this Agreement.

1.6 “**Development**” shall mean all the Property, property rights and Subdivision Improvements within the legal description in **Exhibit A**.

1.7 “**Development Plan**” shall mean the approved plans for the construction, installation and improvement of the Private Improvements.

1.8 “**Dry Utilities**” shall mean electricity, natural gas, cable and telephone.

1.9 “**Maintenance Guarantee**” shall mean a guarantee that the Public Improvements constructed shall be free from defects and failures as more fully described in Paragraphs 5.2 and 5.4 below.

1.10 “**Notice of Construction Acceptance**” shall mean the written certification that the Public Improvements are accepted, which starts the two-year warranty period as provided herein.

1.11 “**Notice of Final Acceptance**” or “**Final Acceptance**” shall mean the written certification of final acceptance of the Public Improvements and, except as otherwise provided herein, the transfer of maintenance of the Public Improvements to the Town.

1.12 “**Private Improvements**” shall mean, without limitation, the construction, installation and improvement of privately owned and maintained common improvements including, but not limited to, stormwater improvements, landscaping, irrigation, fencing, entry signs, parks, open space, trails and postal service boxes.

1.13 “**Public Improvements**” shall mean, without limitation, the construction, installation, improvement and dedication of public improvements, including, but not limited to public thoroughfares and streets, sanitary sewer facilities, water line facilities, drainage facilities in the public right of way, irrigation structures, if any, that are not exclusively for the benefit of the Development, right-of-way landscaping and irrigation structures, street lighting and signage, and other public facilities and improvements to serve the Development. The Public Improvements include, but are not limited to, the improvements listed on **Exhibit B-3**, in whatever form they are referenced, that will be dedicated to the Town and the improvements listed on **Exhibit C**.

1.14 “**Performance Guarantee**” shall mean a guarantee that the Subdivision Improvements are be constructed in conformance with the Approved Plans.

1.15 “**Subdivision Improvements**” shall mean the Public Improvements and Private Improvements.

1.16 “**Town**” shall mean the Town of Johnstown, Colorado.

1.17 “Town Manager” shall include the Town Manager and such person’s authorized designees.

SUBDIVISION IMPROVEMENTS

2. Public Improvements

2.1 *Pre- Construction*

a. **Engineering Services:** Developer shall furnish, at its own expense, all engineering services in connection with design, construction, installation and improvement of the Public Improvements. Engineering services shall be performed by a professional engineer registered in the State of Colorado. Engineering services shall consist of, but not be limited to, survey, designs, plans and profiles, specifications, drawings, estimates, construction administration, and the furnishing of necessary documents in connection therewith, including but not limited to final engineering drawings, final sewer and water design plans and final drainage plans (the “Civil Engineering Construction Plans”).

b. **Civil Engineering Construction Plans:** Prior to commencing construction of the Public Improvements for the Development, Developer shall submit the Civil Engineering Construction Plans to the Town for review. Construction of the Public Improvements shall not commence until the Town provides written notice of approval of the Civil Engineering Construction Plans. Developer shall not thereafter modify the approved Civil Engineering Construction Plans without the written approval of the Town. The Town’s review and approval of the Civil Engineering Construction Plans shall not limit or affect Developer’s responsibility or liability for design, construction and installation of the Public Improvements, and Developer agrees to save and hold the Town harmless from any claims, fault or negligence attributable to such design, construction and installation, other than negligent designs which are required by the Town over Developer’s written objection.

c. **Phasing of the Public Improvements.** Subdivision plats, planned unit development plans or site plans requiring the construction of Public Improvements may developed in phases provided: (i) such phasing is approved by the Town and is consistent with the subdivision plats, planned unit development plans or site plans and any executed agreements pertaining to the Property; (ii) the phasing plan supports a logical sequence of development such that each phase can function independently or sequentially with a prior phase; and (iii) each sequential phase satisfies the Town’s construction standards and specifications. If phasing of the Public Improvements is approved, construction acceptance, financial security and building permit eligibility may be approved or released according to the approved phasing plan. An approved phasing plan may only be modified upon written approval of the Town.

d. **Pre-Construction Meeting.** Subsequent to the Town's approval of the Civil Engineering Construction Plans and prior to the commencement of construction, the Developer and its contractors shall participate in a pre-construction meeting with the Town's Public Works Department. Among other matters, as determined by the Town, the purpose of the meeting shall be to review: (i) the Approved Plans; (ii) permits needed for construction; (iii) relevant provisions of the Code and the Town's construction standards and specifications; and (iv) the construction inspection process and requirements for construction acceptance.

e. **Rights-of-Way, Easements and Permits:** Prior to commencing construction of the Public Improvements, Developer shall acquire, at its own expense, good and sufficient rights-of-way or easements, clear of any encumbrances, on all lands and facilities, if any, traversed by the proposed Public Improvements. All such rights-of-way and easements shall be conveyed to the Town and the documents of conveyance shall be furnished to the Town for recording. At the Town's request, Developer shall provide at its sole expense a policy of title insurance insuring title in the Town, free and clear of all liens and encumbrances, for all land, property and easements dedicated or conveyed to the Town or for public use. Any agreements or easements to which the Town may effectively become a party upon dedication or acceptance of the improvements shall be provided to the Town for review prior to execution of such agreement or easement and prior to issuance of building permits. In addition, Developer shall obtain all the requisite permits and licenses necessary for construction of the Public Improvements.

2.2 *Construction of Public Improvements*

a. Upon satisfaction of the conditions set forth in Paragraph 2.1 and the notice requirement set forth below, Developer shall construct the Public Improvements at its own expense in accordance with this Agreement, the Final Plat, the Resolution, the Civil Engineering Construction Plans, the Town's ordinances, resolutions and regulations and all other applicable laws and regulations. All Public Improvements shall be installed and constructed within the rights-of-way or easements dedicated to the Town. Unless otherwise approved by the Town in writing, all materials used for constructing the Public Improvements shall be materials set forth on the Town's approved material list. Workmanship and materials shall be of good quality.

b. At least seven (7) days prior to the commencement of construction, Developer shall provide written notice to all property owners within a 600-foot radius of the construction limits indicated on the Civil Engineering Construction Plans and to any other property owners who are reasonably likely to be impacted by the construction of the fact of the construction along with contact information for the Developer. Prior to the commencement of the construction,

such contact list shall be provided to the Town with a copy of the notification. Notification may be by U.S. mail or by delivering a printed flyer left at each affected home or business location.

2.3 **Construction Schedule:** Developer shall construct the Public Improvements in accordance with the schedule of public improvements set forth on **Exhibit C**, attached hereto and incorporated herein by reference (“Schedule of Public Improvements”). Once construction begins, Developer shall keep the Town informed by periodic status reports of the progress of the work and a projection of when the Public Improvements will be completed as well as the cost of such Public Improvements.

2.4 **Testing:** Developer shall employ, at its own expense, a qualified independent testing company, approved by the Town, to perform all testing of materials or construction that may be reasonably required by the Town. Developer shall furnish certified copies of test results to the Town.

2.5 **Inspection:** At all times during construction of the Public Improvements, the Town shall have the right, but not the duty, to inspect materials and workmanship, at Developer’s cost. All materials and work must conform to the Civil Engineering Construction Plans. Any material or work not conforming to the Civil Engineering Construction Plans shall be promptly removed, repaired or replaced, at Developer’s expense and to the satisfaction of the Town.

2.6 **Completion of Construction:** Developer shall complete construction of the Public Improvements no later than eighteen (18) months from the commencement of the construction, unless such completion date is extended for reasons beyond the reasonable control of Developer and Developer has obtained the Town’s written consent to the extension.

2.7 **Performance Guarantee:** To secure the construction, installation, improvement and completion of the Subdivision Improvements, Developer shall furnish to the Town a cash escrow deposited with the Town or an irrevocable letter of credit in the form attached hereto as **Exhibit D** in which the Town is designated as the beneficiary (“Performance Guarantee”) in an amount equal to 110% of the cost of the improvements, which cost shall be certified by Developer’s professional engineer, licensed in the State of Colorado and approved by the Town. The Performance Guarantee shall be released after the Notice of Construction Acceptance has been provided for the Public Improvements and notice of approval has been provided for the Private Improvements. [ADD IF PHASING] To the extent the Performance Guarantee covers more than one Phase of Development, the amount of the Performance Guarantee shall be reduced from time to time upon issuance of a Notice of Construction Acceptance for each Phase of Development in the amount attributable to the completed Phase.

[IN THE ALTERNATIVE, IF THE DISTRICT REQUIRES PERFORMANCE AND PAYMENT BONDS]

If the District provides evidence of its financial ability to construct and/or install all or part of the Subdivision Improvements and the Town is satisfied with the same, then the Performance Guarantee shall be deemed to have been met if: (i) the District has issued and sold bonds needed to construct and/or install the Subdivision Improvements and furnishes evidence of the placement

of such bonds and the segregation of the proceeds from such bonds in a separate account that cannot be used for other purposes and (ii) the District requires and obtains performance and payment bonds in a form reasonably acceptable to and approved by the Town in an amount equal to one hundred ten percent (110%) of the cost of the construction contract, naming the Town as an additional obligee or insured. The performance and payment bonds shall be issued by a corporate surety company which is acceptable to the Town and the District, is authorized to transact business in the State of Colorado, is rated by A.M. Best as a A-minus or better, and is listed in the current printing of the U.S. Treasury Department Circular 570, listing of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies."

3. **Private Improvements**

3.1 ***Pre- Construction:*** Prior to commencing construction of the Private Improvements, Developer shall submit a Development Plan to the Town. The Development Plan shall contain the proposed Private Improvements for the Development, including a plan for stormwater improvements, an irrigation system, landscaping and soil amendments, fencing, entry-way signage, street signs and posts, street lighting, parks, open space, trails and postal service boxes. Landscaping and fencing shall be designed in accordance with the Town's landscape guidelines. Construction of the Private Improvements shall not commence until the Town provides written notice of approval of the Development Plan. Developer shall not thereafter modify the approved Development Plan without the written approval of the Town. The Town's review and approval of the Development Plan shall not limit or affect Developer's responsibility or liability for design, construction and installation of the Private Improvements, and Developer agrees to save and hold the Town harmless from any claims, fault or negligence attributable to such design, construction and installation, other than negligent designs which are required by the Town over Developer's written objection. In addition, Developer shall obtain all the requisite permits and licenses necessary for construction of the Private Improvements.

3.2 ***Construction of Private Improvements:*** Upon satisfaction of the conditions set forth in Paragraph 3.1, Developer shall construct the Private Improvements at its own expense in accordance with the terms of this Agreement, the Final Plat, the Resolution, the Development Plan, the Town's ordinances, resolutions and regulations and all other applicable laws and regulations. All landscaping services shall be performed by a professional landscape contractor. Certification of required soil amendment shall be signed by Developer and provided to the Town. Unless otherwise approved by the Town in writing, all materials used for constructing the Private Improvements shall be new and both workmanship and materials shall be of good quality.

3.3 ***Inspection:*** At all times during construction and installation of the Private Improvements, the Town shall have the right, but not the duty, to inspect materials and workmanship, at Developer's cost. All materials and work must conform to the Development Plan. Any material or work not conforming to the Development Plan shall be promptly removed, repaired or replaced, at Developer's expense and to the satisfaction of the Town.

3.4 ***Completion of Private Improvements:*** Unless otherwise agreed in writing by the Town, the Private Improvements shall be completed no later than the date that the Public Improvements are completed, unless such completion date is extended for reasons beyond the

reasonable control of Developer and Developer has obtained the Town's written consent to the extension. The Town may, at its discretion, allow Developer to defer completion of the landscaping services between December 1 and March 1 of any given year provided that sufficient surety is provided to the Town. For clarity, the Private Improvements referenced herein do not apply to backyard improvements, which are anticipated to be installed by homeowners.

3.5 Replacement of Private Improvements: As replacement of the Private Improvements is necessary and warranted over time, including but not limited to decorative light fixtures, decorative street signs and all other decorative amenities in the Development, the Private Improvements shall be replaced by, as appropriate, the Developer, the homeowner's association or a metropolitan or special district. The Town shall not be responsible for replacement of the Private Improvements.

4. Dry-Utilities

4.1 Utilities: Developer shall obtain all proper conveyances and arrangements for the installation and provision of the Dry Utilities to serve the Development. Developer shall provide proof of such conveyances and arrangements to the Town, which proof may be in the form of contracts for such services, no later than the date that the Public Improvements are completed.

4.2 Easements: All easements approved by the utility companies shall be submitted to the Town.

ACCEPTANCE OF SUBDIVISION IMPROVEMENTS

5.1 Notice of Construction Acceptance: Developer shall make written application to the Town for acceptance of the Public Improvements and for review of the Private Improvements, within thirty (30) days of the completion date of the Subdivision Improvements, with the exception of the improvements for which the Town has authorized an extension of time to complete. With respect to the Public Improvements, among other documents that may be required by the Town, the written application shall include one set of reproducible "as built" drawings and an affidavit executed by Developer affirming that the Public Improvements have been paid in full, certifying the final construction costs and including documentary evidence of the construction costs. If the Town requests, Developer shall provide lien waivers, or other acceptable assurance, from all subcontractors, suppliers and materialmen who have furnished labor, material or services for the design, construction or installation of the Subdivision Improvements. The affidavit and lien waivers may be reviewed by the Town, but the Town assumes no responsibility or liability to or for anyone regarding the veracity of the information so provided.

After the receipt of the written application, the Town shall use reasonable efforts to promptly inspect the Subdivision Improvements. If the Subdivision Improvements are satisfactory, Developer shall be entitled to a Notice of Construction Acceptance of the Public Improvements upon receipt of the Maintenance Guarantee and written approval of the Private Improvements. If the Subdivision Improvements are not satisfactory, the Town, upon coordination with Developer, shall prepare a punch list of all Subdivision Improvements that are not in compliance with the Approved Plans, subject to any changes that have been approved or required by the Town. After curing the defects and matters set forth on the punch list, Developer shall make

a renewed written application to the Town for re-inspection of the Subdivision Improvements, which written application shall contain the items set forth above. The Town shall thereafter use reasonable efforts to promptly re-inspect the Subdivision Improvements. If the Subdivision Improvements are satisfactory, Developer shall be entitled to the issuance of a Notice of Construction Acceptance for the Public Improvements upon receipt of the Maintenance Guarantee and written approval of the Private Improvements.

5.2 **Maintenance Guarantee.** Prior to the issuance of the Notice of Construction Acceptance of the Public Improvements, Developer shall provide the Town with a maintenance guarantee in the form of a cash escrow deposited with the Town or an irrevocable letter of credit in the form attached hereto as **Exhibit D** in which the Town is designated as the beneficiary ("Maintenance Guarantee"). The Maintenance Guarantee shall equal fifteen percent (15%) of the total cost of the Public Improvements. The Maintenance Guarantee shall warrant and guarantee all expenses and costs for maintenance, repairs and replacements of the Public Improvements until Final Acceptance. The Maintenance Guarantee shall be released after Final Acceptance of all of the Public Improvements. The Maintenance Guarantee may also be used to ensure that the installed landscaping, a Private Improvement, is satisfactorily established during the period between the issuance of the Notice of Construction Acceptance and Final Acceptance of the Public Improvements.

5.3 **Delivery of Notice of Construction Acceptance.** Upon satisfaction of the conditions set forth above in Paragraphs 5.1 and 5.2, the Town shall provide written Notice of Construction Acceptance of the Public Improvements and written approval of the Private Improvements to Developer. At its discretion, the Town may issue a written Notice of Construction Acceptance of the Public Improvements and written approval of the Private Improvements prior to completion of all the Subdivision Improvements as long as the Performance Guarantee remains in effect for such uncompleted Subdivision Improvements. In which case, at the Town's discretion, Developer may be entitled to obtain building permits prior to completion of all the Subdivision Improvements, assuming satisfaction of the remaining terms of this Agreement and based on conditions otherwise set forth herein.

5.4 **Maintenance, Repair and Replacement:** Until Final Acceptance, Developer shall warrant the Public Improvements. Developer shall promptly perform all maintenance and make all repairs and replacements of all defects or failures of the Public Improvements at Developer's expense and shall ensure that the installed landscaping is established. If, within ten (10) days after Developer's receipt of written notice from the Town requesting such maintenance, repairs or replacements, Developer shall not have undertaken with due diligence to make the same, the Town may make such maintenance, repairs or replacements at Developer's expense and shall be entitled to draw upon the Maintenance Guarantee, either before undertaking to make such repairs or at any time thereafter, or the Town may charge Developer for the costs thereof. In case of emergency, as determined by the Town, such written notice shall be deemed waived and the Town may proceed as it deems necessary at the expense of Developer or the issuers of the Maintenance Guarantee. Notwithstanding the foregoing, the Town may, at its discretion and upon written advisement to Developer, be responsible for routine maintenance of the Public Improvements (street sweeping, snow removal, etc.).

5.5 **Final Acceptance:** Two (2) years after the Town's issuance of the Notice of Construction Acceptance, which time period may be extended at the Town's discretion due to remedial or repair work that may be required by the Town during the first two (2) years, Developer shall make a written request to the Town for final inspection of the Subdivision Improvements. If the Town determines that the Subdivision Improvements are free of defects in materials and workmanship and have been repaired and maintained to the extent required, the Town shall provide certification of completion by issuance of a Notice of Final Acceptance of the Public Improvements and written approval of the Private Improvements. If the Town determines that the Subdivision Improvements are not free of defects in materials and workmanship and have not been repaired and maintained to the extent required, the Town shall issue a written notice of non-compliance specifying the defects. Developer shall take such action as is necessary to cure the noncompliance and, upon curing the same, provide a new written request to the Town for a final inspection of the Subdivision Improvements. Failure of the Developer to make a timely request for the issuance of a Notice of Final Acceptance shall not limit the Town's rights hereunder nor shall it limit the Town's right to utilize the Public Improvements as the Town deems appropriate.

Upon issuance of the Notice of Final Acceptance, the Maintenance Guarantee shall be released to Developer, and the Town shall thereafter maintain the Public Improvements dedicated to the Town. Notice of Final Acceptance and all releases shall be recorded at the office of the Larimer County Clerk and Recorder.

5.6 **Owners Association or Metropolitan District:** Prior to issuance of the Notice of Final Acceptance and prior to the sale of lots or homes in the Development, Developer shall establish an owners' association for the Development or shall delegate covenant enforcement and design review services to the District. If an owners' association is created, Developer shall provide the Town with proposed covenants, bylaws and articles of incorporation for the homeowners' association. Upon written approval of the covenants, bylaws and articles of incorporation by the Town, the same shall be recorded with the Larimer County Clerk and Recorder and the owners' association shall thereafter be deemed to be established.

5.7 **Dedication and Maintenance of Subdivision Improvements:** Unless otherwise agreed by the Town and Developer: (1) the Public Improvements shall be owned, operated and maintained by the Town; (2) the Private Improvements shall be owned, operated and maintained by the Developer, the homeowner's association or a metropolitan district; and (3) the Dry Utilities shall be owned, operated and maintained, as appropriate and otherwise authorized, by the Developer, the homeowner's association, a metropolitan or special district or the appropriate public utility company.

WATER AND SEWER SERVICE

6.1 The Town and Developer shall enter into a Water and Sewer Service Agreement setting forth their agreement concerning water rights dedication, preliminary projections of water and sewer demand and a commitment by the Town for water and sewer service to the Development. The Water and Sewer Service Agreement, whenever executed, shall be incorporated into this Agreement and made a part hereof.

6.2 If the Developer hereinafter desires to utilize a non-potable water system to irrigate the Property, or any part thereof, the Town and Developer shall enter into a subsequent agreement regarding such system and, if appropriate, amend the Water and Sewer Service Agreement.

6.3 The District shall own and maintain the stormwater infrastructure for the Development. Developer shall provide the Town with a proposed operations and maintenance manual" for the stormwater infrastructure for review and approval concurrently with the Civil Engineering Construction Plans. Upon approval, Developer shall execute an operations and maintenance agreement with the Town addressing, among other issues, notification and remedies related to the operations, maintenance and repair of the stormwater infrastructure. The operations and maintenance agreement shall be executed prior to issuance of the Notice of Construction Acceptance.

BUILDING PERMITS

7.1 The Town shall not issue building permits or install water meters for the Development until: (1) the Final Plat has been recorded with the Larimer County Clerk and Recorder; (2) Developer has paid all applicable use tax due and owing to the Town and all other fees required by the Town, including but not limited to water and tap fees, impact fees, storm drainage fees and cash-in-lieu payments due, if any, to the Thompson School District R2-J; (3) Developer has received written notice of Notice of Construction Acceptance of the Public Improvements and written notice of approval of the Private Improvements, with the exception of the improvements for which the Town has authorized an extension of time to complete; (4) Developer has provided the Maintenance Guarantee; (5) meter and curb stop pass inspection; (6) the parties have entered into a Water and Sewer Service Agreement; (7) Developer has executed the operations and maintenance agreement related to the stormwater infrastructure; (8) if required, Developer has established an owners association as set forth in Paragraph 5.6 above; and (9) all terms of this Agreement have been faithfully kept by Developer.

7.2 Notwithstanding the foregoing, the Town may, at its sole discretion, issue building permits prior to completion of certain of the less critical Subdivision Improvements, as determined by the Town, on the condition that the Performance Guarantee remains in effect and such improvements be completed prior to the issuance of certificates of occupancy. In its discretion, the Town may also issue a limited number of building permits for the construction of model homes for the purpose of early sales.

7.3 If at any time the Town determines that Developer is not in compliance with this Agreement, the Final Plat, the Resolution or the Approved Plans, the Town may withhold the issuance of building permits.

OPERATION STANDARDS

8.1 Construction activity shall occur only during the times set forth in the Code.

8.2 Developer shall control all weeds growing within the Development. Prior to the commencement of construction, Developer shall provide a weed management plan to the Town,

outlining the manner and frequency in which the weeds shall be controlled. The Town shall have the right to object to the weed management plan. Developer further agrees to use the appropriate herbicide and undertake mowing of the property within the Development.

8.3 Developer shall, at all times, keep the public right-of-way free from accumulation of waste material, rubbish, dirt and mud caused by Developer's operation. Developer shall remove such waste material, rubbish, dirt and mud no less than weekly and, at the completion of the work, shall promptly remove all debris waste materials, rubbish, dirt, mud, tools, construction equipment, machinery, building materials, trash containers, and portable toilets from the public right-of-way.

8.4 Whenever the Town determines that any activity is occurring which is not in compliance with the requirements of any federal or state regulations applicable to water quality or stormwater control, the Town may order all construction activity stopped upon service of written notice. Developer, or its contractors, shall immediately stop all activity until authorized in writing by the Town to proceed. If Developer or a responsible party is not on the site or cannot be located, the notice to stop work shall be posted in a conspicuous place upon the area where the activity is occurring and shall state the nature of the violation. It shall be unlawful for any person to fail to comply with a stop work order.

8.5 In the event that Developer fails to perform the work specified in Paragraphs 8.2, 8.3 or 8.4 within a reasonable time period after receiving written notice from the Town, as determined by the Town, the Town may, in addition to other remedies, including those set forth in Paragraph 7.3, perform the work required and charge Developer for said cost. Developer shall pay the Town for all costs incurred by the Town in the performance of the above said service within ten (10) days of the Town submitting an invoice for said services. If Developer does not remit the costs, in addition to other remedies, the Town may draw on the Performance Guarantee or Maintenance Guarantee.

8.6 Developer shall ensure that Developer's subcontractors cooperate with the Town's construction inspectors in all manners. Developer shall take all steps necessary to prevent its construction activities from damaging adjacent properties.

DEVELOPMENT STANDARDS

9.1 Developer shall comply with the requirements contained in the Annexation Agreement and any other duly executed agreement related to the Property, except as specifically amended by this Agreement.

9.2 Except as otherwise provided in this Agreement, the Final Plat, the Resolution or Approved Plans, Developer shall comply with the Code, the Town's zoning ordinances, subdivision regulations, landscape guidelines and construction standards and specifications and the Johnstown Design Guidelines or, if operative with respect to the Development, the approved design guidelines.

9.3 If the Property is included in a metropolitan district, Developer shall dedicate all outlots and tracts containing open space, park areas, and trails to such metropolitan district. The open spaces, parks, and trails shall be available for public use.

9.4 Upon completion of construction, Developer shall provide complete construction drawings and final as-built drawings to the Town in print and digital form, in a manner that conforms to the Town's format and content requirements.

9.5 Developer shall take all necessary steps to prevent its construction activities from harming water quality, water bodies and wetlands. All drainage and holding ponds shall be kept free of standing water by whatever means possible including, but not limited to, pumping water out of any holding ponds.

LIABILITY, INSURANCE AND COST REIMBURSEMENT

10.1 **Indemnification:** To the extent permitted by law with respect to the District's indemnity obligations, the District and Developer hereby agree to indemnify and hold the Town, its employees, agents, representatives, insurers and self insurance pool harmless from and against any and all suits, demands, actions, damages, liability, losses, claims, fees and expenses, including attorney's fees, resulting or arising in any way from any breach or default of this Agreement or any acts or omissions of Developer, its employees, agents, consultants, representatives or subcontractors, except to the extent caused by gross negligence or willful misconduct of the Town. Developer shall promptly investigate, handle, respond to, and provide defense for and defend against any such liability, claims or demands at the sole expense of Developer. Developer also agrees to bear all costs, expenses and attorney's fees related thereto whether or not such liability, claims or demands are groundless, false or fraudulent. Further, the Town shall promptly provide written notice to District and Developer of any suit or claim that, in the Town's reasonable opinion, may or would trigger the obligations of the District or Developer to indemnify or hold the Town harmless under this Sub-Section 10.1.

10.2 **Insurance:** Developer shall for itself and for its contractors, subcontractors, representatives and agents engaged in the design, construction or installation of the Public Improvements and Private Improvements maintain such liability insurance including general liability, contractors liability, professional liability, comprehensive automobile liability and sufficient public liability insurance as will protect the Town, its employees, agents and representatives against any and all potential liability, claims, damage, demands, losses, and expenses which may be incurred or asserted pursuant to Paragraph 10.1 above. Liability insurance shall be in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate, or such greater amounts as may be established by the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S. ("Act"), as may be amended. Developer shall list the Town, its officers, employees, agents and representatives, as additional insured on such liability policies. Whenever requested by the Town, Developer agrees to promptly submit certificates of insurance evidencing sufficient amounts, types and duration of insurance and showing the Town, its officers, employees, agents and representatives, as additional insureds. Developer shall not be relieved of any liability, claims, demands or other obligations assumed or set forth in this Development Agreement by reason of its failure to procure or maintain such insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types. In addition to the insurance specified above, Developer shall maintain workers compensation insurance, if so required by law, and shall require its contractors, subcontractors, representatives and agents engaged in the design, construction or installation of improvements to maintain workers compensation insurance in the amount required by law.

10.2.1 Notwithstanding the foregoing, the District may maintain liability insurance in the minimum amount of three hundred thirty thousand dollars (\$330,000.00) for injury to one person, or nine hundred ninety-thousand dollars (\$990,000.00) for injury to two or more persons in any single occurrence, or such greater amounts as may be established by the Act.

10.3 **Drainage Liability:** Developer shall indemnify and hold the Town harmless from any liability the Town may have on account of any change in the nature, direction, quantity, or quality of drainage flow resulting from the Development. In addition, Developer shall reimburse the Town for any and all costs, fees, and expenses, including attorney's fees, which the Town incurs in acquiring any rights-of-way or easements which the Town is required to acquire or condemn or which the Town is held to have acquired or condemned for drainage as a result of this Development. This provision shall survive Final Acceptance and the termination of this Agreement.

10.4 **Tax Liability:** Developer shall pay all outstanding taxes, encumbrances or obligations on any property dedicated or conveyed to the Town prior to or at the time of such dedication or conveyance, and shall indemnify and hold the Town harmless from any and all encumbrances, obligations or tax liability incurred prior to the dedication or conveyance to the Town.

10.5 **Use Tax:** Developer shall pay all applicable use tax due and owing to the Town prior to the commencement of construction.

10.5 **Cost Reimbursement to Town:** Developer shall reimburse the Town for professional consultants, including, but not limited to engineers, testing and inspection companies and attorneys, engaged by the Town to process and complete the Development.

10.6 **Colorado Governmental Immunity Act:** Nothing in this Agreement shall be construed to waive, limit or otherwise modify any governmental immunity that may be available by the law to the Town, the District, or their respective employees, or agents, or any other person acting on behalf of the Town or the District (as applicable) and, in particular, governmental immunity afforded pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as amended.

DEFAULTS AND REMEDIES

11.1 A default by Developer shall exist if Developer fails to fulfill or perform any material obligation contained in this Agreement, the Final Plat, the Resolution, or the Approved Plans, or Developer fails to comply with the Town's ordinances, resolutions and regulations and all other applicable laws and regulations. In the event of a default, the Town shall deliver written notice to Developer of such default and Developer shall have ten (10) days from receipt of such notice to cure the default. If the default is not of a type that may be cured within such ten (10) day period, Developer may provide written notice to the Town within such period that it is actively and diligently pursuing such cure and Developer shall thereafter have a reasonable time to cure the default, provided that Developer is at all times within that extended period actively and diligently

pursuing a cure. In case of emergency, as determined by the Town, such written notice shall be deemed waived and the Town may proceed as it deems necessary at the expense of Developer or the issuers of the Performance Guarantee or Maintenance Guarantee.

11.2 If the default arises subsequent to the issuance of the Notice of Construction Acceptance and the default is not timely cured, the Town may draw on the Maintenance Guarantee. If the default relates to the improvement secured by the Performance Guarantee and the default is not timely cured, the Town may draw on the Performance Guarantee. In addition, and without limitation, if the default is not timely cured, the Town may withhold approval of any or all building permits, certificates of occupancy, water meters or tap hook-ups for any area within the Development. Notwithstanding these rights and remedies, the Town may pursue whatever additional remedies it may have against Developer or anyone, either at law, equity or pursuant to this Agreement. The Town's remedies shall be cumulative.

11.3 Should Developer default in any obligation under this Agreement, the Town may, at its discretion, complete such Subdivision Improvements at Developer's expense. The Town shall estimate the cost of such improvements and give notice to Developer to pay such cost estimate. The Town shall use such payment for said improvements and refund any money collected in excess of the actual cost of said improvements. Should payment not be made within thirty (30) days of such notice, the Town may assess the amount of the cost estimate, plus ten percent (10%) to defray the cost of collection as provided by state law, to the Property and file a lien against the Property, such lien to have priority over all liens except general taxes and prior special assessments and be placed upon the tax list for the current year to be collected in the same manner as taxes are collected. The Town may file such lien at any time after said thirty (30) days while Developer is in default of this Agreement.

SPECIAL PROVISIONS

12.1 The additional terms, conditions or provisions relating to the Development are set forth in **Exhibit B-3**, which is attached hereto, incorporated herein by this reference, and made a part of this Agreement.

MISCELLANEOUS

13.1 **No Waiver:** Delays in enforcement or the waiver of any one or more breaches of this Agreement by the Town shall not constitute a waiver of any of the remaining terms or obligations.

13.2 **Severability:** If any provisions or parts of this Agreement are judged to be unenforceable or invalid, to the extent practicable, such judgment shall not affect, impair or invalidate the remaining parts of this Agreement, the intention being that the various parts and provisions hereof are severable.

13.3 **Recording of Agreement:** This Agreement shall be recorded with the approved Final Plat and shall be a covenant running with and against all the Property, property rights and improvements contained within the Development described in **Exhibit A** in order to put

prospective owners, purchasers, successors, assigns, and others acquiring any interest in the property on notice as to the terms and obligations herein. No lots, tracts or parcels may be separately conveyed prior to recording the Agreement and the Final Plat.

13.4 **Binding Effect:** Unless otherwise provided herein, this Agreement shall be binding upon Developer's heirs, successors, assigns, transferees and any other person or entity acquiring or purchasing any interest in any of the Property described in the attached **Exhibit A**.

13.5 **Transfer or Assignments:** In the event of a sale or transfer of any portion of the Development, the seller or transferor and the purchaser or transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless, prior to the transfer or the sale, a written agreement satisfactory to the Town delineating and allocating the various rights and obligations for the Subdivision Improvements has been approved and executed by the Town.

13.6 **Title and Authority:** Developer expressly warrants and represents to the Town that it is the record owner of the Property and further represents and warrants that the undersigned has full power and authority to enter into this Agreement. Developer understands that the Town is relying on the representations and warranties contained herein in approving in entering into this Agreement.

13.7 **Notice:** All notices, consents, applications or other instruments provided for under this Agreement shall be deemed properly given and received: (1) when personally delivered and received, when sent by messenger service, or when forwarded by facsimile or electronic mail delivery, but only upon confirmation of receipt of such facsimile or electronic mail; (2) on the next day after deposit for delivery with a nationally-recognized overnight courier service; or (3) three business days after deposit in the United States mail, by certified mail with return receipt requested. Such notices or communications will be given to the parties at their addresses set forth below:

If to the Town:

Matt LeCeref, Town Manager
Town of Johnstown
450 South Parish Avenue
Johnstown, CO 80534
mleceref@townofjohnstown.com

With a copy to:

Avi Rocklin, Town Attorney
1437 N. Denver Avenue #330
Loveland, CO 80538
avi@rocklinlaw.com

and

MaryAnn M. McGeady
Elisabeth A. Cortese
McGeady Becher P.C.
450 East 17th Avenue, Suite 400
Denver, CO 80203-1254
mmcgeady@specialdistrictlaw.com

If to the District:

Ledge Rock Center Commercial
Metropolitan District
c/o Spencer Fane LLP
1700 Lincoln Street, Suite 2000
Denver, CO 80203

With a copy to:

David O'Leary
Spencer Fane LLP
1700 Lincoln Street, Suite 2000
Denver, CO 80203
doleary@spencerfane.com

If to the Developer:

Ledge Rock Center, LLC
c/o A.D. Schlup Law, LLC
6917 West 135th Street, Suite B-29
Overland Park, KS 66223
allen.schlup@adschluplaw.com

With a copy to:

Allen D. Schlup, Esq.
A.D. Schlup Law, LLC
6917 West 135th Street, Suite B-29
Overland Park, KS 66223
allen.schlup@adschluplaw.com

13.8 **Costs and Attorney Fees.** If the Developer breaches this Agreement, the Developer shall pay the Town's reasonable costs and expenses, including attorney's fees, incurred in the enforcement of the terms, conditions and obligations of this Agreement. Nothing herein shall be construed to prevent or interfere with the Town's rights and remedies specified elsewhere in the Agreement.

13.9 **Vested Right.** The Final Plat shall have vested rights for a period of three (3) years from the date of this Agreement. If, after such time, no reasonable and substantial efforts have commenced to construct the Subdivision Improvements, as determined by the Town at its sole discretion, said plat may be vacated by action of the Town.

13.10 **Warranty of Developer:** Developer warrants that the Subdivision Improvements shall be installed in a good and workmanlike manner and in compliance with the Approved Plans, this Agreement, the Final Plat, the Resolution, the Town's ordinances, resolutions and regulations and all other applicable laws and regulations and shall be substantially free of any defects in materials and workmanship.

13.11 **Governing Law and Venue.** This Agreement and the interpretation thereof shall be governed by the laws of the State of Colorado and Municipal Code of the Town of Johnstown. Venue for any claim, proceeding or action arising out of this Agreement shall be in Larimer or Weld County, Colorado.

13.12 **No Presumption.** Each party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. In the event of any dispute, disagreement or controversy arising from this Agreement, the parties shall be considered joint authors and no provision shall be interpreted against any party because of authorship.

13.13 *Entire Agreement.* This Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior agreements or understandings. Any amendment to this Agreement must be in writing and signed by the parties.

13.14 *Compliance with the Law.* Developer shall comply with all federal, state and local laws and regulations in the performance of the obligations under this Agreement.

13.15 *No Third-Party Beneficiaries.* No person or entity, other than a party to this Agreement, shall have any right of action under this Agreement including, but not limited to, lenders, lot or home buyers and materialmen, laborers or others providing work, services or materials for the Subdivision Improvements shall not have any right of action under this Agreement.

13.16 *Force Majeure.* Neither party shall be liable for a failure to perform hereunder if such failure is the result of force majeure, which shall mean causes beyond the reasonable control of a party such as acts of God, labor strikes, war, terrorism, fire, pandemic or epidemic or action or inaction of government authorities.

13.17 *Headings.* The paragraph headings herein are for the convenience and reference of the parties and are not intended to define or limit the scope or intent of this Agreement.

IN WITNESS WHEREOF, and agreeing to be fully bound by the terms of this Agreement, the parties have set their hands below on this ____ day of _____, 2022.

LEDGE ROCK CENTER COMMERCIAL METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the state of Colorado

By: _____
Its: President
Date: _____

Attest:

Secretary

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Subdivision and Development Agreement for Ledge Rock Center was acknowledged before me this ____ day of _____, 2022, by _____, as

President and Secretary Ledge Rock Center Metropolitan District, a quasi-municipal corporation
of the state of Colorado.

Witness my hand and official seal.

My commission expires: _____

Notary Public

THE TOWN OF JOHNSTOWN,
a home-rule municipality of the County of Weld,
State of Colorado

By: _____
Gary Lebsack, Mayor

Date: _____

Attest:

Hannah Hill, Town Clerk

**SUBDIVISION DEVELOPMENT AND IMPROVEMENT AGREEMENT
FOR
THE TOWN OF JOHNSTOWN
(Ledge Rock Center)**

EXHIBITS

TABLE OF CONTENTS

EXHIBIT A:	Legal Description of the Property
EXHIBIT B-1:	Copy of Final Plat
EXHIBIT B-2:	Town Resolution Approving Development
EXHIBIT B-3:	Additional Terms, Conditions or Provisions
EXHIBIT C:	Schedule of Public Improvements
EXHIBIT D:	Irrevocable Letter of Credit Form

EXHIBIT A

**LEGAL DESCRIPTION
(Property)**

{00997975.DOCX v:1 }

G-23

EXHIBIT B-1

PLAT

(SEE ATTACHED)

{00997975.DOCX v:1 }

G-24

EXHIBIT B-2
(RESOLUTION APPROVING PLAT)
(SEE ATTACHED)

{00997975.DOCX v:1 }

G-25

EXHIBIT B-3

ADDITIONAL TERMS, CONDITIONS OR PROVISIONS

{00997975.DOCX v:1 }

G-26

EXHIBIT C
SCHEDULE OF PUBLIC IMPROVEMENTS
(ATTACHED)

{00997975.DOCX v:1 }

G-27

EXHIBIT D

FORM--IRREVOCABLE LETTER OF CREDIT*

NAME OF ISSUING BANK _____

ADDRESS OF ISSUING BANK _____

Town of Johnstown
450 So. Parish
P. O. Box 609
Johnstown, CO 80534

ATTENTION: TOWN OF JOHNSTOWN ATTORNEY AND TOWN MANAGER

We hereby establish, at the request and for the account of this Irrevocable Letter of Credit in favor of the Town of Johnstown in the amount of \$ _____. The purpose of this Letter of Credit is to secure performance of a Development Agreement for Ledge Rock Center, dated _____ of _____, 2022, among the Town of Johnstown, Ledge Rock Center, LLC, a Kansas limited liability company, and Ledge Rock Center Commercial Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado.

You are hereby authorized to draw on sight by drafts or written demands up to the aggregate amount of \$ _____. The sole condition for payment of any demand made or draft drawn against this Irrevocable Letter of Credit is that the Town's demand or draft be accompanied by a letter, on the Town's stationery, signed by the Town Manager to the effect that "the Town of Johnstown has declared a default under the Development Agreement."

Partial and multiple drawings are permitted hereunder.

We hereby agree with the Town of Johnstown and its drawers, endorsers, and bona fide holders of demands made or drafts negotiated under this Letter of Credit that the same shall be duly honored upon presentation and delivery of the documents as specified above.

This Irrevocable Letter of Credit is not transferable.

This Letter of Credit shall be for a twelve (12) month term from the date of execution hereof. It is a condition of this Letter of Credit that it shall be automatically renewed, without amendment, for additional periods of one year each from the present or any future expiration date, unless, at least sixty (60) calendar days prior to the effective expiration date, the Town Manager notifies you in writing delivered by certified U.S. mail, return receipt requested, to your address set forth above that the Town of Johnstown elects not to renew this Letter of Credit for any further additional period. Upon your receipt of our written notification of impending expiration, you may draw the unused balance of this Irrevocable Credit upon your written demand or your sight draft.

With the exception of C.R.S. §4-5-108(b) concerning the period of time in which to honor or reject a draft, demand or credit, this Letter of Credit shall be governed and construed in accordance with

the laws of the State of Colorado. In the event of a conflict between the provisions of the Colorado Uniform Commercial Code and the provisions hereof, the provisions hereof shall control.

Signed this _____ day of _____, 20 _____.

Issuing Bank: _____

By: _____

Officer's Title: _____

Address: _____

STATE OF _____)
) ss.
COUNTY OF _____)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20_____, by _____ as the _____ of _____.

WITNESS my hand and official seal.

My commission expires:

Notary Public

* May be substituted for a different form if the guarantor is the District.

1. The Developer anticipates purchasing the Property in phases. The Parties agree that Oxy Parcel No. 1, Lot 1 must be conveyed to the District and Oxy Parcel No. 2 must be conveyed to the Developer before, or simultaneously with, the District's issuance of any additional Bonds after the 2022 Bonds. At that time, the Developer shall pay a purchase price for Oxy Parcel No. 2 to be agreed upon by the Developer and the Town pursuant to a purchase and sale agreement (the "**Oxy 2 Purchase and Sale Agreement**"), and the District must pay the District Cost Sharing Contribution before either Oxy Parcel No. 1, Lot 1 or Oxy Parcel No. 2 are conveyed by the Town. The Parties agree that the District and the Developer will make a good faith effort to complete these conveyances within five (5) years of this Agreement.

EXHIBIT H

MULTI-FAMILY PARCEL

Lot 8 and Tract F, East Ledge Rock Center Subdivision Filing No. 2, situated in the Northeast Quarter of Section 11, Township 4 North, Range 68 West of the 6th Principal Meridian, Town of Johnstown, County of Weld, State of Colorado, containing approximately 23.856 acres

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H-1