

## **WATER AND SEWER SERVICE AGREEMENT** **(Ledge Rock Center Multifamily South)**

THIS WATER AND SEWER SERVICE AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022 (“Effective Date”), by and between LEDGE ROCK CENTER, LLC, a Kansas limited liability company (“Developer”), and THE TOWN OF JOHNSTOWN, a Colorado municipal corporation, (“Town”), collectively sometimes referred to as “the Parties.”

### **RECITALS**

**WHEREAS**, the Developer is the owner of land known as 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 6<sup>th</sup> Principal Meridian, Town of Johnstown, County of Weld, State of Colorado, containing approximately 23.856 acres, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (“Property”); and

**WHEREAS**, the Developer is developing the Property as the Ledge Rock Center Multifamily South development, which is anticipated to contain, subject to final development approvals, apartment buildings and a clubhouse; and

**WHEREAS**, the Ledge Rock Center Multifamily South development is part of a larger project, known collectively as the Ledge Rock Center, which is anticipated to contain a destination retail shopping center to be developed in two (2) phases, with approximately 785,000 square feet of new retail uses (“Project”); and

**WHEREAS**, the Town obtained an analysis from Economic & Planning Systems, Inc., a California corporation, projecting that the commercial portion of the Project will provide substantial economic benefits to the Town, including but not limited to, increased sales tax revenues and new employment opportunities; and

**WHEREAS**, to facilitate the development of the Project and subject to the terms of this Agreement, the Developer has requested that the Town permit the Developer to use water from the Town’s share of water supplies at the fair market value to serve the Property; and

**WHEREAS**, the Town has an available supply of water to serve the Property; and

**WHEREAS**, Colorado municipalities are entitled to encourage new and expanded retail development through inducements and incentives; and

**WHEREAS**, based on the anticipated economic benefits, the additional employment opportunities and the extraordinary opportunity presented by the location of the Ledge Rock Center development in the Town, the Town Council desires to accommodate the Developer’s request and finds that this Agreement is in the best interests of the citizens of the Town; and

**WHEREAS**, to effectuate the foregoing, the Town and the Developer desire to set forth their agreement concerning the use of the Town's water, preliminary estimates of the raw water demands associated with the Property and a commitment by the Town for water and sewer service for the Property based on subsequent agreed-upon projections of the raw water needs.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual promises hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. ***Recitals.*** The Recitals are incorporated into the Agreement as if fully set forth herein.
2. ***Water and Sewer Demand Studies.***
  - a. Preliminary Analysis. Based on similarly situated developments in the Town, the Town projects that the estimated water supply needs for the Property will require approximately 156.6 acre-feet of raw water per year, equivalent to nineteen and six-tenths (19.6) shares of the Consolidated Home Supply Ditch and Reservoir Company ("Home Supply").
  - b. Subsequent Analysis. Because the scope of the development of the Property is not fully known at the time of the execution of this Agreement, prior to submitting an application for a building permit for the Property or any portion thereof, the Developer shall be required to submit a revised water and sewer demand analysis to the Town and obtain approval of such revised analysis from the Town's Water Engineer ("Subsequent Water Demand Analysis"). The Parties shall thereafter execute an amendment to this Agreement setting forth the revised projected water needs associated with the Property.
3. ***Water Rights Purchase.*** To facilitate development of the Project, the Town agrees to allow the Developer to use nineteen and six-tenths (19.6) shares of the Home Supply shares owned by the Town ("Water Shares"). The Developer agrees to pay the fair market value for the Water Shares in the amount of Five Hundred and Fifty Thousand Dollars (\$550,000) per share, in the total amount of Ten Million Seven Hundred Eighty Thousand Dollars (\$10,780,000). Such payment shall be made on or before the earlier to occur of the following: (i) Ledge Rock Center, LLC, a Kansas limited liability company, sells the Property or any portion thereof to a third-party purchaser or (ii) the Town issues a building permit for the Property or any portion thereof. If the Subsequent Water Demand Analysis establishes that the raw water needs of the Property exceed the water available from the Water Shares, the Town agrees to sell the Developer additional water at the fair market value on the date of such sale.

4. ***Limitation on Use of the Water Shares.*** The Water Shares may only be used to satisfy the in-building and irrigation raw water needs associated with the Property, and, unless otherwise agreed by the Town in the form of an amendment to this Agreement, may not be used, or sold to a third-party for use, at a different location. If, upon submission and approval of the Subsequent Water Demand Analysis, the Town determines that the water needs associated with the Property equate to less than 156.6 acre-feet of raw water per year, then, unless otherwise agreed by the Town in the form of an amendment to this Agreement, the Developer shall be required to sell the excess amount of the Water Shares to the Town. The Town shall pay the equivalent of the price paid by the Developer, which is Sixty-Eight Thousand Seven Hundred and Fifty Dollars (\$68,750) per acre-foot.

5. ***Contingent Subsequent.*** If the Developer has not paid for the Water Shares by July 1, 2023, or does not pay for the Water Shares as set forth in Paragraph 3 above, unless otherwise agreed by the Town in the form of an amendment to this Agreement, this Agreement shall be void and without any effect under its own terms and without any action by the Town.

6. ***Commitment to Serve.*** Subject to the Developer's performance of all the covenants contained herein and payment of all required costs and fees, the Town commits to provide to the Property up to 156.6 acre-feet per year of water supply for residential in-building and irrigation use.

7. ***Future Review of Water Usage and Dedication Requirements.*** In accordance with the Ordinance, the Town reserves the right to review actual water usage within the Property, or any portion thereof, at a point in time after water usage has been established to confirm the adequacy of the water demand projections. If the Town determines that the preliminary water and sewer demand analysis, as amended by the Subsequent Water Demand Analysis, underestimates the actual water demand for the Property, the Developer shall be required to dedicate additional water and/or pay cash-in-lieu, at the Town's discretion, based on actual water usage.

8. ***Payment of Water Court Transfer Fees.*** At the time of payment for the Water Shares, the Developer shall also pay to the Town the sum of Forty-Six Thousand Nine Hundred Eighty Dollars (\$46,980.00) as payment of the water court transfer fees required by the Ordinance. If future review of actual water use requires the dedication of additional water, additional water court transfer fees will be required at the time of such dedication.

9. ***Water and Sewer Taps.*** Upon the issuance of a building permit for the Property, the Developer shall be required to obtain the appropriate water and sewer taps from the Town.

10. ***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, sent by messenger service, or forwarded by electronic mail delivery, but only upon confirmation of receipt of such 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 LeCerf, Town Manager  
Town of Johnstown  
450 South Parish Avenue  
P.O. Box 609  
Johnstown, CO 80534  
[mlecerf@townofjohnstown.com](mailto:mlecerf@townofjohnstown.com)

With a copy to:

Avi Rocklin, Town Attorney  
1437 N. Denver Avenue #330  
Loveland, CO 80538  
[avi@rocklinlaw.com](mailto:avi@rocklinlaw.com)

and

Peter J. Ampe  
Hill & Robbins, P.C.  
1660 Lincoln St., Suite 2720  
Denver, CO 80264  
[peterampe@hillandrobbsins.com](mailto:peterampe@hillandrobbsins.com)

If to the Developer:

Ledge Rock Center, LLC  
c/o Michael Schlup  
13725 Metcalf Ave.  
Overland Park, KS 66223  
[mikeschlup@corbinpark.com](mailto:mikeschlup@corbinpark.com)

With a copy to:

Allen D. Schlup, Esq.  
A.D. Schlup Law, LLC  
10950 W. 192<sup>nd</sup> PL  
Spring Hill, KS 66083  
[allen.schlup@adschluplaw.com](mailto:allen.schlup@adschluplaw.com)

The addresses for notices may be changed by written notice given to the other Party in the manner provided above.

11. ***Default.*** In the event of default by either Party hereunder, the non-defaulting Party shall notify the defaulting Party in writing of such default(s), specifying the nature and extent thereof. If such default is not cured within thirty (30) days, the non-defaulting Party shall be entitled to such remedies as are provided by law, including the Town's ordinances.

12. ***Successors and Assigns.*** The benefits and the burdens of this Agreement shall inure to and be binding upon the successors and assigns of the Developer and the occupants of the Property.

13. ***Amendment or Modification.*** No amendment or modification of this Agreement shall be of any force or effect unless in writing and executed by the Parties hereto with the same formality as this Agreement.

14. ***Attorney's Fees and Costs.*** If any judicial proceedings may hereafter be brought to enforce or defend any of the provisions hereof, the Town, if the prevailing party, shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

15. ***Waiver.*** The waiver of any breach of any of the provisions of this Agreement by either Party shall not constitute a continuing waiver of any subsequent breach by said Party, concerning either the same or any other provision of this Agreement.

16. ***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.

17. ***Non-severability.*** Each paragraph of this Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties hereto.

18. ***Choice of Laws and Venue.*** This Agreement and the rights and obligations of the Parties hereto shall be governed by the laws of the State of Colorado. Venue for any claim, proceeding or action shall be in the County of Weld, State of Colorado.

19. ***Entire agreement and Authorization.*** This Agreement constitutes the entire agreement between the Parties related to the subject matter hereof and any prior agreements pertaining thereto whether oral or written have been merged or integrated into this Agreement. Each of the undersigned represents to the others that he/she is authorized by his/her respective entity to execute this Agreement on behalf of that entity.

20. ***No Presumption.*** Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. 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. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and 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.

21. ***Recordation.*** This Agreement will be recorded by the Town at Developer's expense in the office of the Clerk and Recorder of Weld County, Colorado, shall run with the Subject property, be binding upon the Parties hereto and the permitted successors and assigns of the Developer and constitute notice to all persons or entities not parties hereto.

22. ***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 laws, regulations and policies of the Town.

[The remainder of the page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

LEDGE ROCK CENTER, LLC

By: \_\_\_\_\_  
Michel L. Schlup, Authorized Member

STATE OF KANSAS                    )  
                                              ) ss.  
COUNTY OF JOHNSON            )

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2022,  
by Michel L. Schlup, as the authorized member of Ledge Rock Center, LLC.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_  
Address

**ATTEST:**

**TOWN OF JOHNSTOWN, COLORADO**  
**a municipal corporation**

By: \_\_\_\_\_  
Hannah Hill, Town Clerk

By: \_\_\_\_\_  
Gary Lebsack, Mayor

**EXHIBIT A**  
**PROPERTY**

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 6<sup>th</sup> Principal Meridian, Town of Johnstown, County of Weld, State of Colorado, containing approximately 23.856 acres