



Town of Johnstown

TOWN COUNCIL AGENDA COMMUNICATIONS

AGENDA DATE:	August 29, 2022
SUBJECT:	Amended and Restated Escrow Agreement for Ledge Rock Center Commercial
ACTION PROPOSED:	Consider Amended and Restated Escrow Agreement for Ledge Rock Center Commercial
ATTACHMENTS:	1. Amended and Restated Escrow Agreement for Ledge Rock Center Commercial (“Escrow Agreement”)
PRESENTED BY:	Matt LeCerf, Town Manager Avi Rocklin, Town Attorney Elisabeth Cortese, Special Counsel

AGENDA ITEM DESCRIPTION: The Town of Johnstown (“Town”), Ledge Rock Center, LLC (“Developer”) and Ledge Rock Center Commercial Metropolitan District (“District”) 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”). Because of changes in the estimated net proceeds of the bonds anticipated to be issued by the District in 2022, and pursuant to the Second Amended and Restated Development and Reimbursement Agreement, Ledge Rock Center Commercial, Johnstown, Colorado dated August 29, 2022 (“Development Agreement”), the District and the Developer have requested that the Town execute an Amended and Restated Escrow Agreement (“Amended Escrow Agreement”) prior to the issuance of the 2022 Bonds (defined therein).

At the time the District was organized, it was anticipated that the 2022 Bonds, when issued, would net \$74,000,000 in project funds. The 2022 Bonds are currently anticipated to net \$51,000,000 in project funds. Pursuant to the Development Agreement, the Town has committed to an increase in the Credit PIF to 2.75%. Based on the increased Credit PIF, together with the District’s pledge of five (5) mills and the 2.5% Add-On PIF, approximately \$60,600,000 is anticipated to be available for the project, leaving a deficit of approximately \$13,400,000 (the “Bond Proceeds Shortfall”).

The Amended Escrow Agreement, in addition to the terms in the Original Escrow Agreement, contemplates that the Developer will advance funds to the District in an amount equal to the Bond Proceeds Shortfall, referenced therein as the “Developer Shortfall Funding Advance.” The Developer will deposit the Developer Shortfall Funding Advance into the Developer Funds Account to be distributed for the construction of the private improvements associated with Ledge Rock project as provided in the Amended

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Escrow Agreement. The remaining terms of the Amended Escrow Agreement are essentially the same as the Original Escrow Agreement. Certain of those material terms are as follows:

- The creation of two accounts: (i) the Bond Proceeds Account and (ii) the Developer Funds Account.
- The Bond Proceeds Account will hold bond funds that will be released to pay verified eligible costs for public improvements, the payment of soft costs incurred prior to the bond issuance and the purchase of land.
- The Developer Funds Account will hold funds transferred from the Bond Proceeds Account subsequent to verification and be used to pay for private improvements, including vertical construction of the retail buildings and tenant improvements.
- The Town Manager will have administrative discretion to disburse funds from the Bond Proceeds Account and the Developer Funds Account.
- Funds from the Developer Funds Account will be released based on either of two methodologies, at the Town Manager's discretion:
 - The lease verification methodology, allowing the release of \$160 per square foot upon evidence of an executed lease and related information and an additional \$40 per square foot upon the tenant opening for business or issuance of a certificate of occupancy; or
 - The construction progression methodology, allowing the release of \$200 per square foot incrementally based on construction thresholds, such as issuance of a building permit, tenant improvement permit and certificate of occupancy.
- The Amended and Restated Escrow Agreement will terminate when all the funds from the Bond Proceeds Account and Developer Funds Account are released.
- If funds remain in the Bond Proceeds Account after a certain amount of time, the Town and the District will decide how to utilize the funds or the funds will be returned to the bond trustee to pay the bonds.

LEGAL ADVICE:

The Town Attorney and the Town's Special Counsel, MaryAnn McGeady, prepared the Amended and Restated Escrow Agreement for Ledge Rock Center Commercial.

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FINANCIAL ADVICE:

N/A

RECOMMENDED ACTION: Approve the Amended and Restated Escrow Agreement for Ledge Rock Center Commercial.

SUGGESTED MOTIONS:

For Approval: I move to approve the Amended and Restated Escrow Agreement for Ledge Rock Center Commercial, authorize the Town Manager and Town Attorney to revise the Amended and Restated Escrow Agreement, if warranted, after the issuance of bonds by the Ledge Rock Center Commercial Metropolitan District to modify the allocation of bond proceeds between the Bond Proceeds Account and Developer Funds Account, and thereafter authorize the Mayor to execute the Amended and Restated Escrow Agreement.

For Denial: I move to deny approval of the Amended and Restated Escrow Agreement for Ledge Rock Center Commercial.

Reviewed and Approved for Presentation,



Town Manager

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