

**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 _____, 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 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 Sixty Million Six Hundred Thousand Dollars (\$60,600,000) 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 Thirteen Million Four Hundred Thousand Dollars (\$13,400,000) 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 Fund under this Agreement and used for construction of vertical improvements; 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, (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, including but not limited to the Developer Shortfall Funding Advance shall be “**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 Five Million Six Hundred Thousand Dollars (\$25,600,000) 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.

(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, \$25,600,000 of the 2022 Bond Proceeds are required to be deposited into the Developer Funds Account for disbursement pursuant to Section 3(b) below.

(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.(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 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 LeCerf, Town Manager
mlecerf@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 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 LeCerf, 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:

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

With a copy to:

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 Arbiter 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].

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

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 instrument was acknowledged before me this ____ day of _____, 2022, by _____, as President and Secretary of Ledge Rock Center Commercial Metropolitan District, a quasi-municipal corporation of the State of Colorado.

Witness my hand and official seal.

My commission expires: _____

Notary Public

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 _____,
2022, 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:

Diana Seele, Town Clerk

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:

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: _____