

**AMENDED AND RESTATED AGREEMENT CONCERNING PURCHASE AND SALE
OF REAL PROPERTY FOR LEDGE ROCK CENTER COMMERCIAL**

THIS AMENDED AND RESTATED AGREEMENT CONCERNING PURCHASE AND SALE OF REAL PROPERTY FOR LEDGE ROCK CENTER COMMERCIAL (“Amended Agreement”) is made and entered into on this ___ 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”), and LEDGE ROCK CENTER COMMERCIAL METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the state of Colorado (“District”) (collectively, the “Parties”).

RECITALS

WHEREAS, the Town is the owner of a parcel of land situated in the Northwest ¼, Section 11, Township 4 North, Range 68 West of the 6th P.M., Town of Johnstown, County of Weld, State of Colorado, and recorded at Reception Number 4838311, on June 28, 2022 in the Weld County Clerk and Recorder’s Office, consisting of approximately 33.22 acres, more particularly described on Exhibit A attached hereto and incorporated herein by reference (“Property”); and

WHEREAS, the District and Developer intend to develop the Property, along with other real property, as a commercial retail center to be known as the Ledge Rock Center containing approximately 785,000 square feet of new retail uses (“Project”); and

WHEREAS, on or about February 23, 2022, the Parties entered into that certain Agreement Concerning Purchase and Sale of Real Property for Ledge Rock Center Commercial and, on or about June 20, 2022, the Parties entered into that certain First Amendment to Agreement Concerning Purchase and Sale of Real Property for Ledge Rock Center Commercial (collectively, the “Agreement”); and

WHEREAS, pursuant to the Agreement, the Town agreed to convey the Property to the Developer upon terms and conditions set forth therein; and

WHEREAS, based on the development trajectory, due to changes in the bond market, and for the reasons set forth herein, the Parties desire to enter into a new agreement, this Amended Agreement, that will supersede and replace the Agreement and set forth the Parties’ agreement that, upon the first issuance of Bonds, the Town will only convey a portion of the Property to the Developer and will convey the remaining portion of the Property at a subsequent date; and

WHEREAS, the District is developing the Project in two phases; and

WHEREAS, the first phase of the Project includes development of the portion of the Property known as Tract A and Lots 2-5, 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 7.835 acres (“First Phase Property”); and

WHEREAS, the second phase of the Project includes development of the remaining portion of the Property known as 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 (“Second Phase Property”); and

WHEREAS, the Town desires to convey the Property to the Developer in two separate transactions; and

WHEREAS, this Amended Agreement relates to conveyance of the First Phase Property and contemplates that the Town will convey the Second Phase Property at a subsequent date upon terms and conditions substantially consistent as those set forth herein, except as may be modified by the Second Amended and Restated Development and Reimbursement Agreement for Ledge Rock Center Commercial executed contemporaneously herewith by and among the Parties; and

WHEREAS, in consideration of the Developer’s agreement to convey the First Phase Property, excepting the portions of the First Phase Property upon which Private Improvements will be constructed, to the District at no cost to the District, and to facilitate the development of the Project, the Developer has requested that the Town convey the First Phase Property to the Developer for nominal consideration; and

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

WHEREAS, the Town has determined the Project will serve a public use and promote the health, safety, prosperity, security and general welfare of the citizens of the Town; and

WHEREAS, in furtherance of the development of the Project, on or about January 3, 2022, the Town, the District and the Developer entered into that certain Development and Reimbursement Agreement for Ledge Rock Center Commercial, Johnstown, Colorado (“Development Agreement”); and

WHEREAS, pursuant to the Development Agreement, and the District’s and Developer’s representations made therein regarding the construction and installation of the Project on the Property, the Town agreed to negotiate a purchase and sale agreement with the Developer and the District regarding conveyance of the Property; and

WHEREAS, based on the foregoing, including the anticipated economic benefits and additional employment opportunities presented by the location of the Project in the Town, the Town desires to accommodate the Developer’s request for conveyance of the First Phase Property to the Developer for nominal consideration; and

WHEREAS, pursuant to C.R.S. § 29-1-203, the Parties are authorized to enter into cooperative agreements and contracts for certain specified purposes, and intend that, as between the Town and the District, this Amended Agreement constitute such an intergovernmental agreement with respect to the conveyance of the First Phase Property; and

WHEREAS, capitalized terms used herein not otherwise defined shall have the meaning set forth in the Development Agreement; and

WHEREAS, to effectuate the foregoing, the Parties desire to enter into this Amended Agreement.

AGREEMENT

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

1. Recitals. The Recitals set forth above are incorporated herein by reference.
2. Conveyance. Based upon the terms and conditions set forth herein, contemporaneously with the District's first issuance of Bonds, the Town shall convey the First Phase Property to the Developer by special warranty deed, in substantially the same form as attached hereto and incorporated herein by reference as Exhibit A ("Conveyance Date"). If the District has not issued Bonds by October 31, 2022, then, unless the Town consents to an extension of time, this Amended Agreement shall terminate and the Town shall not be obligated to convey the Property to the District.
3. Completion of Public Improvements. As a material term of this Amended Agreement, the District and Developer agree to complete construction of the Public Improvements required for commercial use of the First Phase Property, the scope of which shall be agreed upon by the Parties, within five (5) years of the Conveyance Date. If, after due diligence, the District and Developer anticipate that they will not be able to complete the Public Improvements within the five (5) year period, within at least three and one-half years (3.5) from the Conveyance Date, the District and Developer may submit a written request to the Town for an extension of time to complete the Public Improvements along with an explanation of the reason for the request. The Town shall review the request and, if agreeable, at the Town's discretion, provide written consent to the extension of time in the form of an amendment to this Amended Agreement. If the request is based on good cause, as determined by the Town, the Town's approval shall not be unreasonably withheld, delayed or conditioned.
4. Conveyance of First Phase Property to District. As a material term of this Amended Agreement, the Developer agrees to convey the First Phase Property to the District, excepting the portions of the First Phase Property upon which Private Improvements will be constructed, within four (4) months of the Conveyance Date. The Developer further agrees to convey the First Phase Property to the District at no cost.
5. Restrictive Covenants. Absent written consent of the Town in the form of an amendment to this Amended Agreement recorded in the Weld County Clerk and Recorder's Office, except as otherwise set forth herein, the Developer and the District shall not:
 - a. Convey the First Phase Property to a third-party, except that the Developer may convey the First Phase Property to the District as set forth herein;

- b. Secure any financing for Public Improvements with a mortgage or other encumbrance on the First Phase Property except for any PILOT which may exist on the First Phase Property; or
- c. Secure any financing for Private Improvements with a mortgage or other encumbrance on the First Phase Property except for (i) financing by a third-party who purchases portions of the First Phase Property pursuant Paragraph 6; or (ii) financing approved by the Town pursuant to Paragraph 7. Without limiting the Town's rights, the Town commits and affirms that, if the Town determines that the Developer is making substantial progress toward development of the First Phase Property, upon the written request of the Developer, the Town would be inclined to agree to release the foregoing restriction with respect to the Private Property.

6. Conveyance of Portions of the First Phase Property to Third-Party Retailers. Notwithstanding the foregoing, the Town understands and agrees that, as the Project develops, the Developer may desire to convey portions of the First Phase Property proposed for pad sites to third-parties for Private Improvements and the construction of buildings for commercial use. Such conveyance shall be subject to the following:

- a. Conditions of Sale. The Developer shall only be entitled to convey portions of the First Phase Property proposed for pad sites on the condition that the purchase and sale agreement between the Developer and the third-party purchaser contain provisions requiring that the third-party purchaser submit an application to the Town for a building permit within six (6) months of the acquisition of the property and commence construction of the Private improvements within three (3) months of the issuance of a building permit, except that, for good cause, the purchaser may provide a written request for an extension of either of the deadlines to the Town Manager at least thirty (30) days before the expiration of such deadline and the Town Manager may, at the Town Manager's discretion, extend the deadline upon a finding of good cause, which consent shall not be unreasonably withheld, delayed or conditioned if the request is based on good cause. If those conditions are not satisfied, the purchase and sale agreement shall provide that the third-party purchaser be required to reconvey the property to the Developer and that the Developer be required to accept reconveyance of the property from the third-party. The Developer shall also prohibit the third-party purchaser from selling the property to a different purchaser absent the Developer's consent and the new purchaser's assumption of the development obligations set forth above. Prior to the sale of the property by the Developer to a third-party, the Developer shall provide the portions of the purchase and sale agreement containing the above-conditions to the Town for review and approval.
- b. Developer Funds. Upon the sale of property to a third-party, the Developer shall not be entitled to Developer Funds, as defined in the Escrow Agreement, for such portion of the First Phase Property absent written approval of the Town Manager, at the Town Manager's discretion. To determine whether to allow

disbursement of Developer Funds, the Town Manager may request, among other information, documentation evidencing: (i) the identity of the purchaser of the property and the anticipated retail use; (ii) the anticipated construction schedule and date by which the purchaser intends to be open for retail business; and (iii) as between the Developer and the third-purchaser, the financial terms of the construction of the Private Improvements.

7. Encumbrance on Private Property.

- a. Pad Sites. Notwithstanding the foregoing, as provided in this Paragraph 7, the Developer may mortgage or encumber portions of the First Phase Property proposed for pad sites for Private Improvements when the Developer is prepared to commence construction of the Private Improvements on such pad site(s). In such case, the Developer shall provide written notice to the Town Manager. The Town Manager shall review and, if acceptable, at the Town Manager's discretion, provide written consent to the mortgage or encumbrance. The Town Manager's approval shall not be unreasonably withheld, delayed or conditioned.
- b. Consent to Encumber Lots 2, 3, 4 and 5. Developer has indicated that, as of the effective date of this Amended Agreement, Developer intends to commence construction of the Public Improvements and thereafter the Private Improvements associated with Lots 2, 3, 4, and 5 ("Lots"), as such Lots are preliminarily shown and depicted on Exhibit A attached hereto and incorporated herein by reference. The Town hereby provides consent for the mortgage or encumbrance of those Lots.

8. Consent to Transfer. Upon the conveyance of the First Phase Property from the Developer to the District, the District shall not be entitled to transfer or convey the First Phase Property to the Developer or to a third party absent the written consent of the Town.

9. Remedy. If the Developer and/or the District fail to comply with any term or conditions of this Amended Agreement, the Developer and/or the District, as the case may be, shall be liable to the Town for the fair market value of the First Phase Property at the time of such failure, determined by an independent appraisal obtained at the Developer's expense. The Town shall be entitled to any and all other remedies available, including the right, at its discretion, to seek to rescission of the conveyance and transfer of the First Phase Property in violation of the terms of this Amended Agreement. The Parties acknowledge that the Escrow Agreement will contain a cross default provision that will suspend the distribution of any Developer Funds until such time as any default by the Developer or the District under this Amended Agreement has been cured.

10. References to First Phase Property. Each and every reference herein to the "First Phase Property" shall mean and include the whole of the First Phase Property or portions thereof.

11. Consent of the Town. Except as otherwise provided herein, the requirement to obtain the consent of the Town shall mean the consent of the Town Council of the Town of Johnstown.

12. Mediation. If a dispute arises under this Amended Agreement that the Parties are not able to mutually resolve, prior to commencing litigation, the non-breaching Party 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, either 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.

13. Governing Law and Venue. This Amended Agreement and the interpretation thereof shall be governed by the laws of the State of Colorado. Venue for any claim, proceeding or action arising out of this Amended Agreement shall be in the County of Weld, State of Colorado.

14. Severability. If any term, provision, covenant or condition of this Amended Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Amended Agreement shall 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 Amended Agreement. The Parties shall cooperate in reforming this Amended Agreement to the extent required to most fully effect the intent of any such invalid, void or unenforceable term, provision, covenant or condition.

15. Recordation. This Amended Agreement shall be recorded in the Weld County Clerk and Recorder's Office.

16. Runs with the Land. The terms and provisions of this Amended Agreement shall constitute covenants running with the land (the First Phase Property) and shall be binding upon and inure to the benefit of the respective successors, assigns, transferees, personal representatives and heirs of the Parties hereto.

17. Costs and Attorneys' Fees. If the Developer or the District breaches this Amended Agreement, the Developer or the District, as the case may be, 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 Amended Agreement.

18. Entire Agreement. This Amended Agreement constitutes the entire agreement and understanding between the Parties related to the subject matter contained herein and supersedes all prior agreements or understandings.

19. 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 Amended Agreement and with respect to all matters set forth herein. In the event of any dispute, disagreement or controversy arising from this Amended Agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

20. Findings. The Town hereby finds and determines that execution of this Amended Agreement is in the best interests of the public health, safety and general welfare of the citizens of the Town. The District hereby finds that this Amended Agreement is in the best interests of the District.

21. Further Assurances. Each Party shall 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 Amended Agreement, and to carry out and effectuate this Amended Agreement in order to provide and secure to the other Parties the full and complete enjoyment of their rights and privileges under this Amended Agreement.

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

23. 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 Amended Agreement.

24. Counterparts. This Amended 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.

25. Effect of Amended Agreement. This Amended Agreement shall supersede and replace the Agreement. The Agreement shall no longer be of any force or effect.

26. Second Phase Property. The Town affirms that it intends to convey the Second Phase Property at a subsequent date upon terms and conditions substantially consistent as those set forth herein, except as such terms are modified by the Second Amended and Restated Development and Reimbursement Agreement for Ledge Rock Center Commercial (“Second DRA”) executed contemporaneously herewith by and among the Parties. In addition, the Town intends to acquire Oxy Parcel No. 2, referenced in the Second DRA and known as Lot 4 on the 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. Once Oxy Parcel No. 2 is acquired by the Town: (i) the Parties intend to negotiate and execute a purchase and sale agreement wherein the Town will convey such parcel to the Developer upon mutually agreeable terms and (ii) the definition of Second Phase Property for the purposes of this Amended Agreement will include Oxy Parcel No. 2, but be subject to the terms of the subsequent purchase and sale agreement. For the avoidance of doubt, unless otherwise agreed by the Town in a written agreement, the Town shall not be obligated to convey the Second Phase Property to the Developer unless and until the Developer purchases the Oxy Parcel No. 2.

27. Effective Date. This Amended Agreement shall be effective on the date set forth above in the opening paragraph.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Amended Agreement as of the set forth above.

LEDGE ROCK CENTER, LLC, a Kansas limited liability company

By: _____
Its: President
Date: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Amended Agreement Concerning Purchase and Sale of Real Property for Ledge Rock Center Commercial was acknowledged before me this ____ day of _____, 20____, by _____, as _____ of Ledge Rock Center, LLC, a Kansas limited liability company.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A
SPECIAL WARRANTY DEED

THIS DEED, made this ___ day of _____, 2022, between the TOWN OF JOHNSTOWN, a Colorado home rule municipality located in County of Weld, State of Colorado (“**Grantor**”), and LEDGE ROCK CENTER, LLC, a Kansas limited liability company (“**Grantee**”):

GRANTOR, for the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm unto Grantee, its heirs and assigns forever, all the real property together with improvements, if any, situate, lying and being in the County of Weld, State of Colorado, described as follows:

Tract A and Lots 2-5, West Ledge Rock Center Subdivision Filing No. 1, a subdivision of Lot 2 of 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 7.835 acres.

TOGETHER with all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever of the Grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances;

TO HAVE AND TO HOLD the said premises above bargained and described with the appurtenances, unto the Grantee, its heirs and assigns forever. The Grantor, for itself, its heirs and personal representatives or successors, does covenant and agree that it will WARRANT AND FOREVER DEFEND the above-bargained premises in the quiet and peaceable possession of the Grantee, its heirs and assigns, against all and every person or persons claiming the whole or any part thereof, by, through or under the Grantor. Said warranty is subject to rights-of-way, easements, covenants, plats, agreements and other restrictions of record as of the date of this Deed and any other exceptions or exclusions or rights of third parties not shown by the public records of which Grantee has actual knowledge, and subject to the inclusions of the property within any special taxing district. The singular shall include the plural and the plural the singular and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, Grantor has executed this Deed on the date set forth above.

TOWN OF JOHNSTOWN

By: _____
Title: Gary Lebsack, Mayor

STATE OF COLORADO)
)ss.
COUNTY OF WELD)

The foregoing instrument was acknowledged before me by Gary Lebsack, Mayor of the Town of Johnstown this _____ day of _____, 2022.

Witness my hand and official seal.
My commission expires_____.

Notary Public