

DEVELOPER CONTRIBUTION AGREEMENT

THIS DEVELOPER CONTRIBUTION AGREEMENT (“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 6th 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 generally depicted on Exhibit B, attached hereto and incorporated herein, and anticipated to contain a destination retail shopping center with approximately 785,000 square feet of new retail uses, known as Ledge Rock Center Commercial (“Commercial Project”); and

WHEREAS, the Town obtained an analysis from Economic & Planning Systems, Inc., a California corporation, projecting that the Commercial 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 Ledge Rock Center and subject to the terms of a Water and Sewer Service Agreement executed by the Parties contemporaneously herewith, 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, in consideration of the Town’s agreement to sell the Developer raw water, the Developer agrees to contribute funds toward the construction and completion of the Commercial Project; and

WHEREAS, the Town, the Developer and Ledge Rock Center Commercial Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (“District”), have executed that certain Second Amended and Restated Development and

Reimbursement Agreement for Ledge Rock Center (“Development Agreement”), defining the Developer Shortfall Funding Advance; and

WHEREAS, the Town, the Developer and the District have executed that certain Amended and Restated Escrow Agreement (2022 Limited Tax General Obligation Bonds Ledge Rock Center Commercial District) (“Escrow Agreement”), which is anticipated to be executed by the escrow agent, UMB Bank, N.A., a national banking association, when the District issues bonds; and

WHEREAS, the Escrow Agreement anticipates the creation of the Developer Funds Account (defined therein) for the purpose of depositing funds to secure the construction and completion of the Private Improvements (defined in the Development Agreement) associated with the Commercial Project; and

WHEREAS, to memorialize the foregoing, the Parties desires to enter into this Agreement.

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 Rights Purchase.** To facilitate development of the Ledge Rock Center, the Town agrees to allow the Developer to use nineteen and six-tenths (19.6) shares of the Consolidated Home Supply Ditch and Reservoir Company (“Water Shares”) from the shares owned by the Town for the in-building and irrigation water needs of the Property. The Developer agrees to pay the fair market value for the Water Shares.
3. **Contribution to Commercial Project.** In consideration of the Town’s agreement to sell the Water Shares to the Developer, and for other good and valuable consideration, the Developer agrees to contribute the Developer Shortfall Funding Advance into the Developer Funds Account (“Developer Contribution”) on or before the earlier to occur of the following: (i) the sale of the Property or any portion thereof to a third-party; (ii) the refinancing of the Property; or (iii) June 1, 2023. Upon deposit of the Developer Contribution, the funds shall be released from the Developer Funds Account as provided in the Escrow Agreement.
4. **Covenants.** As security for the Developer Contribution, upon the execution of this Agreement, the Developer agrees that the Covenants Securing Funding Commitment, attached hereto and incorporated herein by reference as Exhibit C (“Covenants”), shall be recorded against the Property in the office of the Clerk and Recorder of Weld County, Colorado. The Covenants shall thereafter run with the Property and be binding upon and inure to the benefit of the Parties, their respective heirs, personal representatives, successors and assignees.

5. **Remedy for Failure to Deposit Developer Contribution.** If the Developer fails to deposit the Developer Contribution as provided in Paragraph 3, in addition to any other remedies available to the Town, the Town shall be entitled to withhold the issuance of building permits for the Property.

6. **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
Johnstown, CO 80534
mlecerf@townofjohnstown.com

With a copy to:

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

and

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

If to the Developer:

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

With a copy to:

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

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

7. **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.

8. **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.

9. **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.

10. **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.

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

12. **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.

13. **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.

14. **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.

15. **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

EXHIBIT B
Ledge Rock Center Depiction

EXHIBIT C
Covenants

COVENANTS SECURING FUNDING COMMITMENT

1.0 PARTIES. These covenants (the “Covenants”) are made and entered into as of August 29, 2022, by and between LEDGE ROCK CENTER, LLC, a Kansas limited liability company (the “Developer”), and the TOWN OF JOHNSTOWN, COLORADO, a home rule municipality of the Counties of Larimer and Weld, State of Colorado (the “Town”). The Developer and the Town are referred to herein collectively as the “Parties” and individually as a “Party.”

2.0 RECITALS. The following recitals are incorporated into and made a part of these Covenants.

2.1 The Multi-Family Parcel. The Developer owns certain real property described as the “Multi-Family Parcel,” 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 6th Principal Meridian, Town of Johnstown, County of Weld, State of Colorado, containing approximately 23.856 acres.

2.2 The Development and Reimbursement Agreement. The Parties and the Ledge Rock Center Commercial Metropolitan District, a political subdivision of the State of Colorado (the “District”), entered into that certain Second Amended Development and Reimbursement Agreement dated as of August 29, 2022 (and as may be further amended, the “DRA”). The role of the District is to finance and facilitate the design and construction of public improvements that will serve the health, safety, prosperity, security and general welfare of the citizens of the Town.

2.3 The Developer Contribution Agreement. The Parties entered into that certain Developer Contribution Agreement dated August 29, 2022, wherein the Developer agreed to deposit the Developer Shortfall Funding Advance (as defined in the DRA) into the Developer Funds Account, as such term is defined in the Amended and Restated Escrow Agreement by and among the Parties, the District, and UMB Bank n.a. (the “Escrow Agent”), executed by the Parties of even date herewith and anticipated to be executed by the Escrow Agent when the District issues bond (the “Escrow Agreement”).

2.4 Public Purpose. The public purpose of these Covenants is to assist and facilitate the provision of such public improvements for the benefit of taxpayers and occupants of the District and the Town and further to encourage new and expanded retail development in the Town while protecting and securing performance of the covenants of the Developer described in Sections 4.0 and 4.1, below.

3.0 CONSIDERATION. In consideration of the Recitals and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree to the following provisions set forth in these Covenants.

4.0 WATER SHARES. Pursuant to the Developer Contribution Agreement and related agreements, the Town has agreed to sell and transfer to the Developer 19.6 shares of water (the “Water Shares”) for \$550,000 per share in return for the Developer’s deposit of the Developer Shortfall Funding Advance into the Developer Funds Account described in the Escrow Agreement. The Water Shares shall be used exclusively for the benefit of the Multi-Family Parcel and shall not (a) be used by the Developer for any other use, and (b) shall not be sold, assigned, or otherwise transferred by Developer without the prior written consent of the Town while these Covenants are in place.

4.1 Timing. The Developer shall deposit the Developer Shortfall Funding Advance in the Developer Funds Account described in the Escrow Agreement on or before the first to occur of the following: (a) at the time of any sale or refinance of any part of the Multi-Family Parcel by the Developer; (b) at the time of issuance of a building permit for construction of any improvements on the Multi-Family Parcel; or (c) June 1, 2023. For the purposes of this Agreement, the Developer Shortfall Funding Advance shall be confirmed in writing by the Escrow Agent.

4.2 Subordinate Lien. The lien created by these Covenants shall run with the title to the Multi-Family Parcel but shall in all respects be subordinate to the lien of any purchase money mortgage or deed of trust imposed as a first lien pursuant to Developer’s purchase of such Multi-Family Parcel.

5.0 COVENANTS BURDENING THE LAND. These Covenants shall be construed as covenants and not as conditions affecting the Multi-Family Parcel. To the fullest extent legally possible, each such covenant shall run with title to the Multi-Family Parcel and any portion of it.

6.0 SATISFACTION AND RELEASE. Within thirty (30) days after receipt of written confirmation from the Escrow Agent that the Developer has deposited the full amount of the Developer Shortfall Funding Advance in the Developer Funds Account in accordance with Section 4.1, above, the Town will deliver the Release (the “Release”) in the form attached hereto and made part of these Covenants as Exhibit 1, which Release shall be a conclusive satisfaction of the obligations of the Developer with respect to the Developer Shortfall Funding Advance as required by these Covenants. The Release shall operate as a full and complete release of any lien or other burden on the Multi-Family Parcel with respect to the obligations of the Developer recited in these Covenants and may be relied upon as such for all purposes.

7.0 ENFORCEMENT. 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. These Covenants will be governed by, and enforced in accordance with, the laws of the State of Colorado and venue shall be exclusively in the District Court in and for Weld County, Colorado.

8.0 NO THIRD-PARTY BENEFICIARIES. Enforcement of the terms and conditions of these Covenants, and all rights of action relating to such enforcement, shall be strictly reserved to

the Town and nothing contained in these Covenants shall give or allow any such claim or right of action by any other party.

9.0 PROVISIONS NOT MERGED WITH DEED. None of the provisions of these Covenants are intended to or shall be merged by reason of any deed transferring possession or title to the Multi-Family Parcel to any successor in interest, and such deed shall not be deemed to affect or impair the provisions of these Covenants.

IN WITNESS WHEREOF, the Parties have executed these Covenants as of the date first set forth above.

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

ATTEST:

Gary Lebsack, Mayor

Hannah Hill, Town Clerk

LEDGE ROCK CENTER, LLC, a Kansas limited liability company

, Member/Manager

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2022, by _____ as a Member of Ledge Rock Center, LLC.

Witness my hand and official seal.
My commission expires _____.

[SEAL]

Notary Public

EXHIBIT 1

RELEASE

THE TOWN OF JOHNSTOWN, a home-rule municipality of the State of Colorado (the “Town”) hereby certifies that LEDGEROCK CENTER, LLC, a Kansas limited liability company (the “Developer”) has fully complied with the requirements set forth in the Covenants dated as of August 29, 2022, recorded _____, 2022 in the records of the Clerk and Recorder of Weld County, Colorado at reception no: _____ (the “Covenants”).

This Release shall be conclusive evidence that the Developer Shortfall Funding Advance required by the Covenants has been made and by the Developer and that the lien of the Declaration is hereby released by the Town.

This Release is specific and applies only to the obligations of the Developer under the Covenants and shall not relieve the Developer from complying with duties and covenants made under other documents.

Signed and delivered as of _____, 202_

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

ATTEST:

Matthew LeCerf, Town Manager

Hannah Hill, Town Clerk