

**WATER AND SEWER SERVICE AGREEMENT
FOR
LEDGE ROCK CENTER RETAIL EAST – BUILDING “8E”
4450 LEDGE ROCK DRIVE**

THIS WATER AND SEWER SERVICE AGREEMENT (“Agreement”) is made and entered into this ___ day of _____ 2023, 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” and singularly as “Party.”

WITNESSETH:

WHEREAS, Developer owns an interest in land located in a portion of the Northwest Quarter of the Northeast Quarter of Section 11, Township 4 North, Range 68 West of the Sixth Principal Meridian, Town of Johnstown, County of Weld, State of Colorado, known by street address as 4450 Ledge Rock Drive, Johnstown, CO 80534 (“Subject Property”); and

WHEREAS, Developer is developing the Subject Property as “Building 8e of the Ledge Rock Center Retail East” development (“Project”); and

WHEREAS, a separate agreement between the Town and the Ledge Rock Center Commercial Metropolitan District, a quasi-municipal corporation and political subdivision of the state of Colorado, will address the raw water dedication requirement for irrigation of the landscaped areas of the Project; and

WHEREAS, Developer and the Town desire to set forth their agreement concerning water rights dedication, preliminary projections of water and sewer demand and a current commitment by the Town for water and sewer service for the Project.

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. Water and Sewer Demand Studies. In compliance with the Town Water Rights Dedication Ordinance (“Ordinance”), Developer submitted to the Town a preliminary water and sewer demand analysis for the Project dated January 4, 2023. Said analysis is on file with the Town and, as modified by the Town’s Water Engineer by memoranda dated January 23, 2023, is hereby accepted by the Town. The analysis provides that the projected water and sewer demand for the in-building raw water demands of Project is as follows:

Development Building 8e	Demand (AF/YR)	Consumption (AF/YR)
In-building	9.55	0.48
Building Adjacent Irrigation	0.22	0.19
TOTAL	9.77	0.67

2. Water Rights Dedication and Credits. Developer dedicated twenty-six (26) shares of the Consolidated Home Supply Ditch & Reservoir Company (“Home Supply”) to the Town totaling 200 acre-feet, consisting of the following: 14 shares, represented by Certificate No. 7113 (112 acre-feet of raw water credit); 1 share, represented by Certificate No. 7114 (8 acre-feet of raw water credit); 5 shares, represented by Certificate No. 7115 (40 acre-feet of raw water credit based on a recorded dry-up covenant); 5 shares, represented by Certificate No. 7145 (32 acre-feet of raw water credit); and 1 share, represented by Certificate No. 7148 (8 acre-feet of raw water credit). Developer has also dedicated 1/3 share of Big Thompson Ditch and Manufacturing (“Big Thompson”) to the Town totaling 19 acre-feet. The Home Supply and Big Thompson water are collectively referred to herein as the “Water Shares.” The dedication credit from the Water Shares totaled 219.00 acre-feet and was deposited into the Ledge Rock Center Water Bank (a water bank created by the Town’s Water Engineer to maintain an accounting of Developer’s raw water credits). Developer allocated a portion of the raw water credit in the Ledge Rock Center Water Bank for other uses but retains a surplus dedication credit with the Town sufficient to supply the raw water demands of the Project in the amount of 9.77 acre-feet.

3. Surplus dedication credit. Subsequent to allocation of raw water credit from the Ledge Rock Center Water Bank for the Project, Developer shall have a surplus raw water credit with the Town. The raw water credit is calculated as follows:

Credit Balance:	20.68 acre-feet
Less estimated demand:	<u>9.77 acre-feet</u>
Net surplus credit:	10.91 acre-feet

4. Commitment to serve. Subject to Developer's performance of all the covenants contained herein and payment of all required fees, the Town commits to provide to the Project up to 9.55 acre-feet per year of water supply for in-building use, as described above.

5. Future review of water usage and dedication requirements. In accordance with the Ordinance, the Town reserves the right to review actual water usage within the Project at a point in time after water usage has been established to confirm the adequacy of the water demand projections made by the Developer, and to require additional water rights dedication and/or cash-in-lieu payments, if necessary, based on actual water usage.

6. Payment of Water Court Transfer fees. The Water Shares dedicated to the Town consist of 128 acre-feet of water changed by the Division 1 water court to include municipal use and 91 acre-feet that has not been changed. The total water court transfer fees required by the Ordinance for the Water Shares is Ninety-Three Thousand Dollars (\$93,000.00). Upon execution of this Agreement, Developer shall pay to the Town the sum of **Five Thousand Eight Hundred Fifty Dollars (\$5,850.00)** as payment for the dedication of 9.77 acre-feet per year of estimated

water demand and estimated consumptive use of 0.67 acre-feet per year, equivalent to 19.5 single family equivalent (“SFE”), for the Project.

7. West Johnstown Water Tank. Within ten (10) days of the execution of this Agreement, Developer agrees to pay the Town a cash-in-lieu amount for a proportional share of the planned West Johnstown Water Tank at a calculated pro rata cost of \$970.00 per SFE, multiplied by the Project’s total demand of 19.5 SFEs, for a total of payment of **Eighteen Thousand, Nine Hundred Fifteen Dollars (\$18,915.00).**

8. Notices. All notices required or permitted to be given hereunder shall be in writing and shall be deemed given: (a) upon hand delivery, (b) upon deposit with Federal Express, UPS or other nationally recognized overnight courier service, receipt required, or (c) when transmitted via email, provided the sending party receives a read-receipt for the email or the receiving party acknowledge receipt thereof. All notices shall be addressed as follows:

TO DEVELOPER:

Ledge Rock Center, LLC
Attn: Michael Schlup
6909 W 135th Street Suite B13
Overland Park, KS 66223
mikeschlup@corbinpark.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

TO TOWN:

Town of Johnstown
Attn: Town Manager
450 S. Parish Avenue
P.O. Box 609
Johnstown, CO 80534
MLeCerf@JohnstownCO.gov

with a copy to:

Avi S. Rocklin, Esq.
Law Office of Avi S. Rocklin, LLC
1437 N. Denver Avenue, #330
Loveland, CO 80538
avi@rocklinlaw.com

Peter Ampe, Esq.
Hill & Robbins, P.C.
3401 Quebec St., Suite 3400
Denver, CO 80207
peterampe@hillandrobbins.com

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

9. Default. In the event of default by either Party hereunder, the non-defaulting Party shall notify the defaulting Party in writing of such default(s), specifying the nature and extent

thereof. If such default is not cured within thirty (30) days, the non-defaulting Party shall be entitled to such remedies as are provided by law, including the Town's ordinances.

10. Successors and assigns. The benefits and burdens of this Agreement shall respectively inure to and be binding upon the successors and assigns of the Parties hereto. This agreement shall not be assigned without the prior written consent of the other Party, which shall not be unreasonably withheld.

11. 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.

12. Attorney's fees and costs. If any judicial proceedings may hereafter be brought to enforce any of the provisions hereof, including an action for specific performance and/or damages, 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.

13. 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.

14. 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.

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

16. 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 legal action shall be in the County of Weld, State of Colorado.

17. Entire agreement. 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.

18. 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.

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

(Signature pages to follow)

TOWN OF JOHNSTOWN, COLORADO,
a Colorado municipality

By: _____
Troy D. Mellon, Mayor

ATTEST:

By: _____
Hannah Hill, Town Clerk

EXHIBIT
SUBJECT PROPERTY

The easternmost portion of Lot 5 of the East Ledge Rock Center Filing No. 2 Subdivision (Rec. 4853717), situate in the NE 1/4 of Section 11, Township 4 North, Range 68 West, of the 6th P.M., Town of Johnstown, County of Weld, State of Colorado. Approx. 85,000 square feet.