

## LEDGE ROCK WATER AND SEWER PIPELINE ESCROW AGREEMENT

This **LEDGE ROCK WATER AND SEWER PIPELINE 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**, 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 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 (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, the Town, the Developer, and the District entered into the Development and Reimbursement Agreement for Ledge Rock Center on January 3, 2022 (the “**Original Ledge Rock Development Agreement**”) for the purpose of establishing the terms and conditions of the overall development of the Project; and

WHEREAS, pursuant to that certain Second Amendment to the Comprehensive Development Agreement, Funding Plan and Intergovernmental Agreement for Johnstown Plaza, Johnstown, Colorado between the Town, the Johnstown Plaza Metropolitan District (the “**JPMD**”), and the Johnstown Plaza, LLC (the “**Johnstown Developer**”) (the “**Second Amendment**”) effective December 13, 2021, certain funds in the amount not to exceed to Seven Million (\$7,000,000.00) Dollars (the “**2022 Reimbursement**”) were potentially made available for the Project, provided those funds were certified as Developer Verified Eligible Costs (“**Johnstown Developer Verified Eligible Costs**”). Those funds, which are referred to as the Refunding and New Money Bonds in the Second Amendment were issued by the Johnstown Plaza Metropolitan District on April 7, 2022 as a part of the Johnstown Plaza Metropolitan District \$99,449,000, Limited Tax General Obligation Refunding & Improvement Bonds, Series 2022 (the “**JPMD Bonds**”); and

WHEREAS, the actual amount of the Johnstown Developer Verified Eligible Costs in the JPMD Bonds Project Fund is approximately \$5,888,659 plus any interest earned on the fund from the date of the issuance of the JPMD Bonds and prior to distribution as set forth herein (“**Series 2022 Project Fund**”) which funds are also referred to as the JP Contribution to the Project; and

WHEREAS, the disbursement of funds within the Series 2022 Project Fund is subject to the requirements of the Second Amendment as summarized within this Escrow Agreement; and

WHEREAS, the Cost Certifier for JPMD certified to JPMD that the Johnstown Developer submitted documentation sufficient for expenditures by the Johnstown Developer of costs that were determined to be Johnstown Developer Verified Eligible Costs under the Second Amendment in an amount equal to the balance in the Series 2022 Project Fund and that the procedures related to the reimbursement of the Johnstown Developer for Johnstown Developer Verified Eligible Costs under the Second Amendment were satisfied; and

WHEREAS, the Johnstown Developer has provided written consent to JPMD and the Town as to the Johnstown's Developer intent for the balance in the Series 2022 Project Fund to constitute the JP Contribution and for the JP Contribution to be deposited in the Ledge Rock Water and Sewer Pipeline Escrow Account being established by way of this Agreement (the "**Johnstown Developer Consent Letter**"); and

WHEREAS, concurrently herewith, the Town, the Developer, and the District are entering into the First Amendment to the Development and Reimbursement Agreement for Ledge Rock Center (the "**First Amendment to the Ledge Rock Development Agreement**" collectively with the Original Ledge Rock Development Agreement to be referred to herein as the "**Ledge Rock Development Agreement**") for the purpose of removing the obligation for the deposit of the JP Contribution into the Escrow Agreement as defined in the Original Ledge Rock Development Agreement and in the alternative, requiring the JP Contribution to be deposited into the Ledge Rock Water and Sewer Pipeline Escrow Account, as established herein; and

WHEREAS, the Town, the Developer and the District agree the JP Contribution should be used for the funding of the Ledge Rock Water and Sewer Pipeline Work as described in scope and cost on **Exhibit A** attached hereto and incorporated herein by this reference (the "**the Ledge Rock Water and Sewer Pipeline Work**"); and

WHEREAS, the Town, the Developer and the District now desire to enter into this Ledge Rock Water and Sewer Pipeline Escrow Agreement 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 Ledge Rock Development Agreement)*

1. Pursuant to the terms of the Second Amendment, the JP Contribution funds shall be released by the JPMD Bonds Trustee when the JPMD Bonds Trustee has received written direction from the Town and the Johnstown Plaza Metropolitan District (the "**Release Notice**") that the milestones set forth in the Second Amendment (the "**Release Triggers**") have been met. Additionally, the District will be awarding a contract for labor and materials related to certain of

the water and sanitary sewer pipelines portion of the public improvements (respectively the “**Ledge Rock Water and Sewer Pipeline Work**” and the “**Ledge Rock Water and Sewer Pipeline Work Contractor**”) that it is authorized to provide under the Service Plan for the District approved by the Town on September 8, 2021 (the “**Service Plan**”) in compliance with the process set forth in the Original Ledge Rock Development Agreement. To date the District has done or will do the following:

(a) Follow all statutory procurement procedures applicable to the District for the public bidding of the Ledge Rock Water and Sewer Pipeline Work and secure public bids for the Ledge Rock Water and Sewer Pipeline Work before any Ledge Rock Water and Sewer Pipeline begins:

(b) Award the contract for the Ledge Rock Water and Sewer Pipeline Work to the lowest reasonable and responsive bidder;

(c) Advertise and publish the public bidding of the Ledge Rock Water and Sewer Pipeline Work as required by the Original Ledge Rock Development Agreement.

(d) Provide the form of invitation to bid and the bid documents to the Town prior to the District publishing the invitation to bid; and

(e) Pay project management fees in an amount that does not exceed the amount certified by the Cost Certifier to be reasonable for the services provided.

2. The Town shall also be provided the following after award of the Ledge Rock Water and Sewer Pipeline Work contract:

(a) The bid tab sheets for all bids submitted;

(b) All service agreements related to construction and all construction contracts, after award and approval at a regular or special District Board meeting; and

(c) If the District does not choose the lowest numerical bidder, the basis for the decision.

3. Prior to the award of the contract for the Ledge Rock Water and Sewer Pipeline Work, the District and the Developer will enter into an agreement which will require, among other provisions the following:

(a) The District and the Developer will acknowledge that the 2022 Reimbursement, when released will be deposited into the Ledge Rock Water and Sewer Pipeline Work Escrow Account, defined below, pursuant to this Agreement, will be known as the JP Developer Contribution, and under no circumstances will the District reimburse the Developer for the JP Developer Contribution.

(b) The Developer will direct the deposit of the funds, consistent with the Johnstown Developer Consent Letter to the Ledge Rock Water and Sewer Pipeline Work Escrow

Account, defined below, for payment of the Ledge Rock Water and Sewer Pipeline Work Contractor and related soft costs.

(c) The District will release funds from the JP Developer Contribution only for the payment of the costs of the Ledge Rock Water and Sewer Pipeline Work and only after the costs have been verified by the District Accountant, Independent Engineer or other qualified and independent third party reviewer approved by the Town and the District (collectively, the “**Cost Certifier**”) as Verified Eligible Costs (“**Verified Eligible Costs**”). Prior to the release of the JP Developer Contribution, or any portion thereof, the Developer shall provide to the District lien waivers and indemnifications from the contractor verifying that all amounts due to the contractor, subcontractors, material providers or suppliers have been paid in full, in a form acceptable to the District; copies of all contracts, pay requests, change orders, invoices, the final AIA payment form (or similar form) approved by the Cost Certifier when final payment has been made, canceled checks and any other requested documentation to verify the amount requested.

(d) In the alternative, if a part or all of the JP Contribution is to be used to advance funds to the contractor for the Ledge Rock Water and Sewer Pipeline Work to order pipelines and other materials (“**Pipeline and Related Cost Advances**”), the District shall only do so after receipt of written confirmation from the Cost Certifier that the proposed Pipeline and Related Cost Advances will qualify as Verified Eligible Costs and only after compliance with the processes for Disbursement Requests and Funds Requisition set forth in Section 6 below; and

(e) Upon completion of the Water and Sewer Pipeline Work, an executed Bill of Sale conveying the Ledge Rock Water and Sewer Pipeline Work to the Town, in form acceptable to the Town. Additionally, when completed, as built drawings for any completed Water and Sewer Pipeline Work shall be provided to the Town. The District shall work with the Cost Certifier to have prepared a certification of the Verified Eligible Costs. The terms of the dedication of the Water and Sewer Pipeline Work to the Town, including but not limited to the requirement for a performance and/or maintenance guarantee, may be set forth in subsequent agreements among the Town, the District and/or the Developer, at the Town’s discretion and as required by the Town.

4. 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 account for the purpose of holding the JP Contribution and all interested earned (the “**Escrow Funds**”): the **Ledge Rock Water and Sewer Pipeline Escrow Account** (the “**Ledge Rock Water and Sewer Pipeline Escrow Account**” or “**Account**”).” Monies in the Account shall be distributed by the Escrow Agent pursuant to the provisions of this Agreement, and all deposits made into the Account 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) Investment of Funds in Accounts: The Escrow Agent may conclusively rely upon the District’s written instruction as to both the suitability and legality of the directed investments regarding the Account. If the District fails to provide written directions concerning investment of moneys held by the Escrow Agent in the Account, 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 for the Account shall confirm that the investment transactions identified therein accurately reflect the investment directions of the District, unless the District 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.

5. Use of Funds in the Ledge Rock Water and Sewer Pipeline Account. The Escrow Funds deposited into the Account shall be used to fund Verified Eligible Costs related to the acquisition, construction and installation of the Ledge Rock Water and Sewer Pipeline Work contracted for by the District.

6. Requests to Release Funds from the Account. The District may submit requests for the release of Escrow Funds as follows:

(a) The District may submit written requests to the Town for the payment of Verified Eligible Costs from the Account for costs related to the Ledge Rock Water and Sewer Pipeline Work (“**Disbursement Request**”). The written request shall be in the form of a Requisition from the Account as set forth on **Exhibit B** attached hereto and incorporated herein by reference (a “**Funds Requisition**”). Upon receipt of an executed Funds Requisition from the District, the Town shall approve or object to all, or a portion of, the Disbursement Request. Each Funds Requisition shall be provided by the twentieth (20<sup>th</sup>) 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 Funds Requisition shall contain the information set out in **Exhibit B** 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:

(b) Reference to the underlying construction contract of the District for the Ledge Rock Water and Sewer Pipeline Work or basis for payment and a description of the work performed for which payment is being requested;

(c) Reference to the total amount of progress payments on the construction of the Ledge Rock Water and Sewer Pipeline Work;

(d) The total amount of the requested funds;

(e) Detail of the total amount of progress payments on the construction for the Ledge Rock Water and Sewer Pipeline Work 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;

(f) 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 Ledge Rock 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;

(i) Any other information reasonably requested by the Town.

(g) 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 Funds Requisition. The Town's review of the Disbursement Request and approval of the 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 shall work together in good faith to resolve any Town Objection consistent with the intent of the Ledge Rock 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 21. If the Town provides a Town Objection to a portion, but not all, of the Disbursement Request, the Town shall indicate on the Funds Requisition the amount of Escrow Funds that are authorized to be released.

The Town Manager may approve and execute a Funds Requisition on behalf of the Town. The Town Manager, in the Town Manager's sole discretion, in order to expedite construction and 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 Funds Requisition.

The Town's review of a Disbursement Request and approval of a Funds Requisition is solely administrative and shall not limit or waive any rights the Town may have nor shall it affect the District's or the Developer's responsibility and liability for the design, construction and installation of, and payments for, the Ledge Rock Water and Sewer Pipeline Work. The Town shall be entitled to rely upon the contents of the Disbursement Request without a corresponding obligation to independently verify the same.

(h) Disbursement by the Escrow Agent. Upon receipt of a Funds Requisition signed by the District and the Town, the Escrow Agent shall make disbursement of the authorized amount of Escrow Funds to the District within two (2) business days. Upon receipt of a Funds Requisition that is not signed by the Town and a certification by the District attesting to the delivery of the 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, of the full amount of the 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 the District within two (2) business days. The Escrow Agent may conclusively rely as to the completeness and accuracy of all statements in a Funds Requisition or Certification if executed by the proper parties and the Escrow Agent, in good faith, believes the Funds Requisition or Certification is genuine. The Escrow Agent shall not be required to make any independent investigation in connection therewith.

7. 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 Ledge Rock Water and Sewer Pipeline Account to the District except (1) to pay or reimburse Verified Eligible Costs and upon compliance with the requisition process set forth in this Agreement.

8. 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 Account and all disbursements therefrom. Any Party may request a statement of the Account, to include, among other details, the balance of the Account and disbursements therefrom, from the Escrow Agent.

9. Expenses and Compensation Relating to Escrow. The Escrow Agent shall charge the District a reasonable and customary fee for its services in connection with this Agreement and shall invoice the District for the same on a quarterly basis (the “**Compensation**”). The Escrow Agent shall also receive from the District a one-time acceptance fee. 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.

10. 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.

11. 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.

12. 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





If to the District: Ledge Rock Center Commercial District  
c/o Spencer Fane LLP  
1700 Lincoln Street, Suite 2000  
Denver, CO 80203

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 6, must be given in accordance with this Section 15(b) hereof unless waived in writing by Escrow Agent.

(ii) Any notice or communication required under this Agreement 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 17<sup>th</sup> Avenue, Suite 400  
Denver, CO 80203-1254  
Phone: 303-592-4380  
Email: legalnotices@specialdistrictlaw.com

If to the District:

Ledge Rock Center Commercial  
District  
c/o Spencer Fane LLP  
1700 Lincoln Street, Suite 2000  
Denver, CO 80203

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. 192<sup>nd</sup> PL.  
Spring Hill, KS 66083

and

If to the Escrow Agent:

UMB Bank, n.a.  
Corporate Trust & Escrow Services  
1670 Broadway  
Denver, CO 80210

16. 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.

17. 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.

18. Binding Agreement. This Agreement shall inure to and be binding on the heirs, executor, administrators, successors, and assigns of the Parties hereto.

19. 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.

20. 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.

21. 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 Arbitrator 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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 \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as President and Secretary of the 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 \_\_\_\_\_,  
20\_\_\_\_, 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



ESCROW AGENT:

**UMB BANK, N.A.**, a national banking association, having an office and corporate trust offices in Denver, Colorado

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as the \_\_\_\_\_ of UMB Bank, n.a., Escrow Agent.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

## EXHIBIT A

### SCOPE AND BUDGET OF LEDGE ROCK WATER AND SEWER PIPELINE WORK (DRAFT - SUBJECT TO FINAL PLAN APPROVAL)

- Sanitary Sewer system materials and construction, to generally include the following: \$3.5MM
    - Sewer mains within Weld County Road 46, Purcell property, Payton, Carson, High Plains roadways and stubs into parcels;
    - Manholes;
    - Underdrain systems;
    - Associated appurtenances as outlined on the plans.
  - Water mains(domestic) materials and construction, to generally include the following: \$1.2MM
    - Water mains within Payton, Carson, High Plains roadways and stubs into parcels;
    - Fire Hydrants, master meters, fittings, lowering, blowoffs;
    - Associated appurtenances as outlined on the plans.
  - Underdrain system materials and construction, to generally include the following: projected at \$500K-750K
    - Underdrain mains with the sewer mains listed above and as located on the site, shown on the plans;
    - Cleanouts/manholes;
    - Associated appurtenances as outlined on the plans.
  - Storm Drainage Facilities materials and construction, to generally include the following: TBD sewer and water are most important
    - Pond(s) grading;
    - Underdrain systems below ponds, if necessary;
    - Water quality structures;
    - Detention control structures;
    - Swales, riprap, concrete channels, conveyance elements;
    - Associated appurtenances as outlined on the plans.
  - Overlot Grading construction, to generally include the following: \$3.5MM
    - Highway 60, Payton, Carson, High Plains Roadway grading;
- Add demolition and irrigation ditch relocation***
- Commercial site grading;
  - Associated appurtenances as outlined on the plans.
- Erosion Control Elements for above listed areas, both materials and construction of the following: \$400K
    - Erosion, sediment, dust, etc. control device materials and construction
    - Permitting and monitoring
    - Maintenance and repair
  - Construction Survey: \$150K
  - Construction Material Testing: \$300K
  - Construction Management: \$400K

- Entitlements associated with above referenced work, Fees, Permitting costs. Estimated at \$500K-\$1MM

**EXHIBIT B**  
**FORM OF ESCROW ACCOUNT REQUISITION**  
**LEDGE ROCK CENTER COMMERCIAL METROPOLITAN DISTRICT**

**THE LEDGE ROCK WATER AND SEWER PIPELINE WORK**

Requisition No. \_\_\_\_

Ledge Rock Center Commercial Metropolitan District  
(in the Town of Johnstown, Colorado)

The undersigned certifies that s/he is a District Representative under that certain Ledge Rock Water and Sewer Pipeline Escrow Agreement dated as of \_\_\_\_\_, 202\_\_\_\_ (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 District Representative also certifies:

(a) The construction contract for the Ledge Rock Water and Sewer Pipeline Work for which payment is sought and a description of the work performed:

(b) The total amount of progress payments on the construction of the Ledge Rock Water and Sewer Pipeline Work is as follows:

(c) Funds in the amount of \$\_\_\_\_\_ are requested to be paid from the Ledge Rock Water and Sewer Pipeline Escrow Account.

(d) Any lien waivers required have been obtained and shall be certified by the District Engineer in accordance with the requirements of the Ledge Rock Development Agreement and the Verified Eligible Cost requirements.

(e) All amounts being requested hereunder are Verified Eligible Costs.

1. Payment shall be made to the \_\_\_\_\_ (District) as follows:

2. 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 Ledge Rock Water and Sewer Pipeline Work and the cost to complete the Ledge Rock Water and Sewer Pipeline Work that is the subject of said Requisition.

By: \_\_\_\_\_  
District Engineer

The above payment obligations have been or will be properly incurred, is or will be a proper charge against the Ledge Rock Water and Sewer Pipeline Escrow Account, and have not been the basis of any previous withdrawal. The disbursement requested herein will be used solely for the payment of Ledge Rock Water and Sewer Pipeline Work.

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 Ledge Rock Water and Sewer Pipeline Escrow Account.

By: \_\_\_\_\_  
Matt LeCerf, Town Manager