

**WATER SERVICE AGREEMENT
(Ledge Rock Center Commercial Irrigation)**

THIS WATER SERVICE AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2023, by and between LEDGE ROCK CENTER COMMERCIAL METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the state of Colorado (“District”), and THE TOWN OF JOHNSTOWN, a Colorado municipal corporation, (“Town”), collectively sometimes referred to as “the Parties.”

RECITALS:

WHEREAS, the District and Ledge Rock Center, LLC, a Kansas limited liability company (“Developer”), are collectively the owners of land located in Northeast One-Quarter of Section 11, Township 4 North, Range 68 West of the Sixth Principal Meridian, County of Weld, State of Colorado, described more particularly on Exhibit A, attached hereto and incorporated herein by this reference (“Property”); and

WHEREAS, the Property is being developed as a destination retail shopping center containing approximately 385,000 square feet of new commercial and retail uses, to be known as Ledge Rock Center Commercial Phase I (“Project”); and

WHEREAS, the Developer owns the commercial pads and is developing the buildings associated with the Project that will be located on Property; and

WHEREAS, the District owns and will maintain the common areas located on the Property; and

WHEREAS, the District will also maintain the landscape areas associated with the street rights of way of Colorado Highway 60, High Plains Boulevard, Carson Drive, and Payton Drive; and

WHEREAS, to facilitate the development of the Project, the District has requested that the Town grant it the right to use water from the Town’s share of water supplies at the fair market value to serve the irrigation needs of the Project; and

WHEREAS, the Town has an available supply of water to serve the irrigation needs of the Project; and

WHEREAS, the Town obtained an analysis from Economic & Planning Systems, Inc., a California corporation, projecting that the Project will provide substantial economic benefits to the Town, including but not limited to, increased sales tax revenues and new employment opportunities; and

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

WHEREAS, based on the anticipated economic benefits, the additional employment opportunities and the extraordinary opportunity presented by the location of the Project in the Town, subject to the terms of this Agreement, the Town Council desires to accommodate the District's request to pay cash-in-lieu of the required water dedication and finds that this Agreement is in the best interests of the citizens of the Town; and

WHEREAS, on or about October 3, 2022, the Developer and the Town entered into that certain Water and Sewer Service Agreement (Ledge Rock Center Commercial Phase I), recorded in the office of the Weld County Clerk & Recorder at Reception No. 4859264, related to the in-building water needs associated with the Project; and

WHEREAS, the Parties anticipate that, when the Developer submits a development plan for each phase of the Project, the District will submit a water demand analysis to the Town related to the irrigation water needs of such phase of the Project; and

WHEREAS, the District and the Town desire to set forth their agreement concerning the use of the Town's water for the irrigation water needs of the Property and associated rights-of-way and a commitment by the Town for water service.

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. **Creation of a Water Bank.** To facilitate the development of the Project, the Town agrees to allow the District to use up to seven and one-half (7.5) shares of the Consolidated Home Supply Ditch and Reservoir Company (up to 60 acre-feet per year) from the shares owned by the Town for the irrigation water needs of the Project, pursuant to the terms of this Agreement. The water may not be used for any other purpose. Upon the execution of this Agreement, the water shares shall be set aside and placed into a water bank, to be known as the Ledge Rock Center Commercial Irrigation Water Bank. The Town's Water Engineer shall manage the Ledge Rock Center Commercial Irrigation Water Bank and maintain an accurate accounting of the water that is used and the water that is still available for use by the District.

The Ledge Rock Center Commercial Irrigation Water Bank will terminate on December 31, 2025. Water that has not been allocated to the use of the District pursuant to the terms of this Agreement by December 31, 2025, shall revert back to the Town, be available for any and all uses deemed appropriate by the Town and not be available for any use by the District absent a written amendment to this Agreement signed by the Parties.

Notwithstanding anything contained herein, the District shall not be obligated to purchase the right to use water from the Ledge Rock Center Commercial Irrigation Water Bank.

3. ***Water Demand and Approval of Water Use.*** When the District submits a development plan for a phase of the Project, the District shall submit a preliminary water demand analysis to the Town related to the irrigation water needs of such phase. The preliminary analysis shall provide an estimated average annual water demand for the irrigation needs of such phase of the Project. Upon approval of the preliminary analysis by the Town, the Town agrees to provide the District with written authorization to use water from the Ledge Rock Center Commercial Irrigation Water Bank, containing the applicable fees for such use, on the form attached as Exhibit B (“Water Use Authorization”). Each Water Use Authorization that is executed by the Town Manager shall be incorporated herein and become a part of this Agreement as if fully set forth herein.

4. ***Price for Use of Water.*** The District agrees to pay the fair market value for the use of the water as determined by the Town Manager. The District understands and agrees that the fair market value fluctuates and shall be established by the Town, at its sole discretion, when the District submits and the Town approves a preliminary water demand analysis for any portion of the Property.

5. ***Future review of water usage and dedication requirements.*** In accordance with the Johnstown Municipal Code, the Town reserves the right to review actual water usage within the Property, or any portion thereof, at any point in time after water usage has been established to confirm the adequacy of the water demand projections contained in the preliminary analyses. If the Town determines that the preliminary analyses, or any of them, underestimated the actual water demand for the irrigation water needs, the District shall be required to pay for the use of additional water from the Ledge Rock Center Commercial Irrigation Water Bank, if the Ledge Rock Center Commercial Irrigation Water Bank has not terminated and water is still available, or dedicate additional water to the Town.

6. ***Payment of Water Court Transfer Fees.*** Upon approval of a Water Use Authorization, the District shall pay to the Town the water court transfer fees required by the Johnstown Municipal Code. The Water Use Authorization shall contain the water court transfer fee. If the actual water demand increases, additional water court transfer fees shall be required.

7. ***Commitment to Provide Water.*** Subject to the District’s performance of all the covenants contained herein, the issuance of a Water Use Authorization, payment of all required fees and issuance of a certificate of occupancy, the Town commits to provide to the Property, or any portion thereof, the committed water supply.

8. ***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
P.O. Box 609
Johnstown, CO 80534
mlecerf@johnstownco.gov

With a copy to:

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

and

Peter J. Ampe
Hill & Robbins, P.C.
1660 Lincoln St., Suite 2720
Denver, CO 80264
peterampe@hillandrobbs.com

If to the District:

Ledge Rock Center, LLC
c/o Michael Schlup
13725 Metcalf Ave. #337
Overland Park, KS 66223
mikeschlup@corbinpark.com

With a copy to:

Allen D. Schlup, Esq.
A.D. Schlup Law, LLC
10950 W. 192nd Place
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.

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 of this Agreement and the burdens hereunder shall inure to and be binding upon the successors and assigns of the District to the extent the successors and assigns occupy the Property.

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 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.

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 claim, proceeding or 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. **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.

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ATTEST:

**TOWN OF JOHNSTOWN, COLORADO
a municipal corporation**

By: _____
Hannah Hill, Town Clerk

By: _____
Troy D. Mellon, Mayor

**EXHIBIT A
PROPERTY**

LEDGE ROCK CENTER COMMERCIAL PHASE 1

RETAIL EAST (40.78 AC.) – Exhibit A-1 Plat

Tract B and Lots 1, 2, 3, 4, and 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, containing approximately 40.78 acres.

-and-

RETAIL WEST (7.83 AC.) – Exhibit A-2 Plat

Lots 2, 3, 4, and 5 of the West Ledge Rock Center Filing No. 1 Subdivision (Rec. 4838311), 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, containing approximately 7.83 acres.

EXHIBIT B

**Ledge Rock Center Phase I Commercial Irrigation
WATER USE AUTHORIZATION
NO. ____**

THIS WATER USE AUTHORIZATION supplements and is incorporated into the WATER SERVICE AGREEMENT (“WSA”) made and entered into on _____, 20__, by and between LEDGE ROCK CENTER COMMERCIAL METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the state of Colorado (“District”), and THE TOWN OF JOHNSTOWN, a Colorado municipal corporation.

1. Water Demand. In compliance with the Johnstown Municipal Code, the District submitted a preliminary water demand analysis to the Town for the irrigation water needs of ___ (legal description and address)_____ (“Subject Property”). The preliminary analysis sets forth an estimated average annual water demand of _____ acre feet per year for irrigation of the Subject Property (___ SFE). Based on the approval of the Town’s water engineer, the preliminary analysis is hereby accepted by the Town as follows:

Development	Demand (AF/YR)	Consumption (AF/YR)
Irrigation		

The foregoing water demand will be satisfied by the use of ___ acre-feet of the Consolidated Home Supply Ditch and Reservoir Company from the Ledge Rock Center Commercial Irrigation Water Bank. Pursuant to Paragraph 5 of the WSA and the Johnstown Municipal Code, the water demand set forth herein is subject to subsequent adjustment based on the actual water usage.

2. Price for Use of Water. Pursuant to Paragraph 4 of the WSA, the price for the use of the ___ acre feet per year is ___ Dollars (\$____.00).

3. Water Court Transfer Fee. Pursuant to Paragraph 6 of the WSA and the Johnstown Municipal Code, the water court transfer fee for the Subject Property is ___ Dollars (\$____.00).

4. Surplus Credit. The Ledge Rock Center Commercial Irrigation Water Bank contains the following surplus water credit:

Water Use Credit:	_____ acre-feet
LESS Estimated demand:	_____ acre-feet
Net current surplus credit:	_____ acre-feet

Dated: _____, 20__.

By: _____
Matthew LeCerf, Town Manager

Accepted by Ledge Rock Center Commercial District

By: _____
_____, President