

**DISTRICT/DEVELOPER OPERATIONS  
AND MAINTENANCE AGREEMENT  
FOR  
LEDGE ROCK CENTER COMMERCIAL  
JOHNSTOWN, COLORADO**

**THIS DISTRICT/DEVELOPER OPERATIONS AND MAINTENANCE AGREEMENT FOR LEDGE ROCK CENTER COMMERCIAL, JOHNSTOWN, COLORADO (“Agreement”)** is made and entered into as of the Effective Date by and between **LEDGE ROCK CENTER COMMERCIAL METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the state of Colorado (“**District**”) and **LEDGE ROCK CENTER, LLC**, a Kansas limited liability company (“**Developer**”) (collectively, the “**Parties**”).

**RECITALS**

**WHEREAS**, Developer is the owner and Developer of the destination retail shopping center known as Ledge Rock Center in the District and the Town of Johnstown, a home-rule municipality of the Counties of Larimer and Weld, State of Colorado (“**Town**”) containing many square feet of new retail uses on the property (“**Project**”); and

**WHEREAS**, the District was formed pursuant to the applicable provisions of the Colorado Special District Act by Court Order in Weld County, District Court, Case No. 2021CV30566 and is subject to the service plan approved by the Town of Johnstown Town Council by resolution on September 8, 2021 as the same may be modified from time to time (“**Service Plan**”); and

**WHEREAS**, the District is authorized to finance, design, plan, construct, install, complete, operate and maintain public improvements related to and necessitated by the Project; and

**WHEREAS**, the Service Plan contemplates that the District and the Town execute an operations and maintenance intergovernmental agreement defining the duties and obligations of the District to operate, maintain, repair and replace the public improvements, authorizing the Town to undertake the unfulfilled duties of the District at the District’s expense and providing the Town with access for such undertakings and confirming the District’s authority to raise revenue to pay for such activities by, among other legally available means, compelling the District to impose a mill levy to reimburse the Town for any reasonable costs incurred in the event the Town undertakes the unfulfilled duties of the District; and

**WHEREAS**, the Parties, together with the Town also entered into a Comprehensive Development Agreement, Funding Plan and Intergovernmental Agreement for Ledge Rock Center, Johnstown, Colorado (“**Development and Funding Agreement**”), which provides that the Town and the District enter into an operations and maintenance intergovernmental agreement requiring, among other matters, that the District operate and maintain the public improvements in a condition comparable to the initial installation plans and specifications approved by the Town, authorizing the Town to enter the public spaces to provide repair, maintenance or replacement of

the public improvements in the event the District is in breach of its obligations and compelling the District to impose a mill levy to fund the reimbursement of the Town for costs incurred; and

**WHEREAS**, the District and the Town have entered into that certain Amended and Restated Operations and Maintenance Agreement dated of even date herewith (the “**Amended and Restated Operations and Maintenance Agreement**”); and

**WHEREAS**, the Amended and Restated Operations and Maintenance Agreement provides that the District may contract with the Developer for the funding and operations and maintenance of the Public Improvements to the Maintenance Standard, as defined in the Amended and Restated Operations and Maintenance Agreement (the “**Maintenance Standard**”).

## **AGREEMENT**

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this 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. Definitions. For purposes of this Amended and Restated Agreement, the following terms have the meanings indicated below and in the Recitals:
  - A. Annual Maintenance Report. As defined in Paragraph 4 below.
  - B. CAM. Means the cost of common area maintenance services provided by the Developer.
  - C. CAM Charges. Means the amount of the CAM that is required to be paid to the Developer by every tenant and property owner in the Property.
  - D. District Streets. The streets that will be constructed as a part of the Public Improvements that will not be dedicated to the Town.
  - E. Draft Operations and Maintenance Budget. The draft operations and maintenance budget for the District for the upcoming year, to be submitted to the Town on an annual basis, including all proposed expenditures and revenue sources for the payment of all expenditures to operate and maintain the Public Improvements to the Maintenance Standard. The Draft Operations and Maintenance Budget will also include the budgeted and actual revenues and expenditures from the previous year and the budgeted and estimated year end revenues and expenditures for the current year.
  - F. Effective Date. March 18, 2024.
  - G. Final Operations and Maintenance Budget. The operations and maintenance budget adopted by the District for the upcoming year, to be submitted to the Town on an annual basis, including all proposed expenditures and revenue sources for the payment of

all expenditures to operate and maintain the Public Improvements to the Maintenance Standard. The Final Operations and Maintenance Budget will also include the budgeted and actual revenues and expenditures from the previous year and the budgeted and estimated year end revenues and expenditures for the current year.

A. Maintenance Standard. Maintaining the Public Improvements in first-class condition to a level equivalent to the initial installation plans and specifications approved by the Town. The Maintenance Standard includes, in addition to maintenance of the Public Improvements, the requirement that the District ensure the Public Landscaping is consistently maintained to a high quality, to include, but not be limited to, regular grass cutting, tree trimming and seasonal flower planting.

B. Pedestrian Walkways and Trails. The sidewalks, walkways and trails constructed or, as appropriate, installed as a part of the Public Improvements that have not been dedicated to the Town.

C. Property. The property known as Ledge Rock Center within the boundaries of the District.

D. Public Art. The Art located in Public Spaces that has been acquired and installed as a part of the Public Improvements that have not be dedicated to the Town.

E. Public Improvements. The improvements owned and maintained by the District, including but not limited to Public Spaces, the Public Art, the Public Plazas, the Public Parking Facilities, the Pedestrian Walkways and Trails, District Streets and the Public Landscaping.

F. Public Landscaping. The landscaping constructed or, as appropriate, installed in the Public Spaces as a part of the Public Improvements that have not been dedicated to the Town.

G. Public Parking Facilities. The parking lots and structures constructed or installed in the Public Spaces as a part of the Public Improvements that have not been dedicated to the Town.

H. Public Plazas. The plazas constructed or installed in the Public Spaces as a part of the Public Improvements that have not been dedicated to the Town.

I. Public Spaces. The property upon which the Public Art, Public Parking Facilities, Public Plazas, Public Streets and Pedestrian Walkways and Trails are located.

3. Operation and Maintenance of Public Improvements. The Developer acknowledges the obligation of the District under the Amended and Restated Operations and Maintenance Agreement to operate and maintain the Public Improvements to the Maintenance Standard. The Developer agrees to operate and maintain the Public Improvements to the Maintenance Standard or cause it to be done, as set forth in this Agreement and as required under the Amended and Restated Operations and Maintenance Agreement.

4. Annual Maintenance Report. The Developer acknowledges the obligation of the District to provide the Town with an Annual Maintenance Report under the terms of the Amended and Restated Operations and Maintenance Agreement and agrees to provide the District with the information required to assure the timely and comprehensive preparation and delivery of the required Annual Maintenance Report and any revisions that are required to address or conform to the Town's recommendations and requirements provided in response to the submitted Annual Maintenance Report.

5. Annual Budget and Appropriations. The Developer acknowledges the District's responsibility under the terms of the Amended and Restated Operations and Maintenance Agreement to prepare and annually submit a Draft Operations and Maintenance Budget and a Final Operations and Maintenance Budget to budget and appropriate sufficient funds to operate and maintain the Public Improvements to the Maintenance Standard. The Developer will provide the District with the information needed regarding the expenses related to the costs of operation and maintenance of the Public Improvements to the Maintenance Standard and the anticipated CAM Charges to be received for inclusion in the Draft Operations and Maintenance Budget and the Final Operations and Maintenance Budget.

6. CAM Charges.

- a. The Developer will impose, collect and spend the CAM Charges on the operation and maintenance of the Public Improvements as presented in the Final Operations and Maintenance Budget.
- b. If the amount actually collected in any fiscal year is less than what was budgeted, the Developer will provide the District with information regarding the revenues received and expended on the operations and maintenance of the Public Improvements to be used by the District in formulating a plan to address the deficiency to be submitted to the Town as required by the Amended and Restated Operations and Maintenance Agreement.

7. Legal Opinions. On or prior to the seventh day after the Effective Date, Developer will deliver an opinion of its counsel addressed to the District and the Town, solely with respect to this Agreement, which opinion will state in substance that, assuming this Agreement has been duly authorized, executed and delivered by the Parties hereto, the Agreement constitutes a valid and binding agreement of the Developer enforceable according to its terms, subject to any applicable bankruptcy, reorganization, insolvency, moratorium or other law affecting the enforcement of creditors' rights generally and subject to the application of general principles of equity. Such opinion may also contain additional exceptions or qualifications as are agreed to in writing by the Town and the District. From time to time, the District or the Town may request a new opinion from the Developer's counsel at such requesting party's cost and expense.

8. Term. This Agreement shall commence on the date first shown above and may be terminated by either the Developer or the District by the provision of no less than ninety (90) days prior written notice by the terminating party to the non-terminating Party. Provided, however, understanding the District will not have any funds from property taxes until the tax

collection cycle following the year of termination, no termination will be effective unless and until the District has received from the Developer a payment equal to the amount of CAM Charges in the District's Final Operations and Maintenance Budget for payment of operating and maintaining the Public Improvements to the Maintenance Standard in the year in which the termination notice is provided plus the amount of CAM Charges required to continue such operation and maintenance through May 1 of the following year.

9. Modification and Amendments. This Agreement, including but not limited to the Maintenance Standard referenced herein, may only be modified, amended, terminated or superseded in writing by the Parties, in an amendment to this Agreement that has been previously approved in writing by the Town, and properly approved and executed by the Parties, in accordance with applicable law.

10. Notices. Any notice or communication required under this Agreement must be in writing, and may be given either personally, sent by certified mail, return receipt requested or delivered by electronic mail. If personally delivered, a notice will be deemed to have been given when delivered to the party to whom it is addressed. If given by 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 certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If sent by electronic mail, a notice will be deemed to have been given upon acknowledgement of receipt of the electronic mail by the intended recipient. A party may, by giving written notice to the other party, designate additional persons to whom notices or communications shall be given or designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall 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@johnstownco.gov

With a copy to:

Avi Rocklin, Town Attorney  
19 Old Town Square, Suite 238  
Fort Collins, CO 80524  
avi@rocklinlaw.com

and

MaryAnn M. McGeady  
Elisabeth A. Cortese  
McGeady Becher P.C.  
450 East 17<sup>th</sup> Avenue, Suite 400  
Denver, CO 80203-1254  
legalnotices@specialdistrictlaw.com

If to the District:

Ledge Rock Center Metropolitan  
District  
c/o Spencer Fane LLP  
1700 Lincoln Street, Suite 2000  
Denver, CO 80203  
doleary@spencerfane.com

With a copy to:

David O'Leary  
Spencer Fane LLP  
1700 Lincoln Street, Suite 2000  
Denver, CO 80203  
doleary@spencerfane.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. 192<sup>nd</sup> PL.  
Spring Hill, KS 66083  
allen.schlup@adschluplaw.com

11. No Waiver. Delays in enforcement or the waiver of any one or more breaches of this Agreement shall not constitute a waiver of any of the remaining terms or obligations.

12. Assignment; Binding Effect. This Agreement shall not be assignable by the Developer without the prior written consent of the District and the Town and any attempted assignment without the District's and the Town's prior written consent will be void and without effect. The Developer may contract with other entities to cause the operation and maintenance of the Public Improvements to the Maintenance Standard so long as thirty (30) days prior written notice of the entity contracting to cause the operation and maintenance of the Public Improvements is provided to the District and the Town together with a copy of the contract.

13. No Joint Venture or Partnership. No form of joint venture or partnership exists between the Parties hereto, and nothing contained in this Agreement will be construed as making the Parties joint venturers or partners.

14. Town is a Third Party Beneficiary and There Are No Other Third Party Beneficiaries. The District and the Developer acknowledge that the Town is a third party beneficiary of the representations, warranties and covenants set forth in this Agreement and is entitled to notice if notice is to be provided to a Party under this Agreement and is entitled to enforce the terms of this Agreement as if it were an original party hereto. No person or entity, other than a Party to this Agreement and the Town, shall have any right of action under this Agreement including, but not limited to, lenders, lot buyers and materialmen, laborers or others providing work, services or materials for the Public Improvements. In its capacity as a third party beneficiary the Town has:

- a. No obligation to assert the rights of the District under this Agreement and its assertion of any or all of the rights of the District under this Agreement or its failure to assert any or all of the rights of the District under this Agreement shall not constitute a waiver or any of the District's obligations under the Amended and Restated Operations and Maintenance Agreement.

- b. No obligation to inspect, operate, maintain, repair or replace the Public Improvements. The Town's undertaking of any of the District's obligations as set forth in the Amended and Restated Operations and Maintenance Agreement shall not relieve the Developer from the continuing obligations to inspect, operate, maintain, repair or replace the Public Improvements as set forth in this Agreement.
- c. The right to enforce the obligation of the Developer to make payment of CAM Charges anticipated to be paid as set forth in a Final Operations and Maintenance Budget delivered to the Town under this Agreement.

15. Colorado Governmental Immunity Act.

- a. Nothing in this Agreement shall be construed to waive, limit or otherwise modify any governmental immunity that may be available by the law to the District, District Board of Directors or Officials, employees, contractors, or agents, or any other person acting on behalf of the District and, in particular, governmental immunity afforded pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101 et seq., C.R.S., as amended.
- b. Nothing in this Agreement shall be construed to waive, limit or otherwise modify any governmental immunity that may be available by the law to the Town, Town Officials, employees, contractors, or agents, or any other person acting on behalf of the Town and, in particular, governmental immunity afforded pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101 et seq., C.R.S., as amended.

16. Insurance. Developer shall, at a minimum, carry insurance in the types and amounts set forth below:

- a. Developer shall acquire and maintain, during the entire term of the Agreement, statutory workers' compensation insurance coverage, commercial general liability insurance coverage and automobile liability insurance coverage in no less than the amounts set forth in subparagraph D below. The District and the Town shall be named as an additional insured on Developer's commercial general liability insurance and automobile liability insurance. Such additional insured coverage provides defense and indemnity coverage only for actions arising from Developer's acts, actions, omissions or neglect but shall not provide defense or indemnity coverage for either the District or the Town's own acts, actions, omissions or neglect or for unproven allegations. Any such policy of insurance obtained to comply with this paragraph shall provide that the District and the Town shall receive thirty (30) days written notice prior to the policy's cancellation, non-renewal or modification to any provisions of such policy affecting the insurance coverage requirements under the Agreement.

- b. Prior to commencing any work under the Agreement, Developer shall provide Town with a certificate or certificates evidencing the insurance required by this paragraph, as well as the amounts of coverage for the respective types of coverage. If the coverage required under this paragraph expires during the term of the Agreement, Developer shall provide replacement certificate(s) evidencing the continuation of the required policies.
- c. If any policy obtained by Developer is a claims-made policy, the following conditions shall apply: the policy shall provide Developer the right to purchase, upon cancellation or termination by refusal to renew the policy, an extended reporting period of not less than two (2) years. Developer agrees to purchase this extended reporting period. If the policy is a claims-made policy, the retroactive date of any renewal of such policy shall not be later than the date the Agreement is signed by the parties to the Agreement. If Developer purchases a subsequent claims-made policy in place of any prior policy, the retroactive date of such subsequent policy shall be no later than the date the Agreement is signed by the parties to the Agreement.
- d. Developer shall acquire and maintain during the entire term of the Agreement, statutory workers' compensation insurance coverage, comprehensive general liability insurance coverage, and automobile liability insurance coverage in the following amounts:
  - i. Workers' Compensation Insurance in accordance with applicable law, including employers' liability.
  - ii. Commercial general liability insurance in the amount of \$1,000,000.00 combined single limit bodily injury and property damage, each occurrence; \$2,000,000.00 general aggregate. Coverage shall include all major divisions of coverage and be on a comprehensive basis including:
    - a. premises operations;
    - b. personal injury liability without employment exclusion;
    - c. blanket contractual;
    - d. broad form property damages;
    - e. medical payments;
    - f. Independent contractor's coverage.
  - iii. Commercial automobile liability insurance in the amount of \$1,000,000.00 combined single limit bodily injury and property damage, each accident covering any auto.



- iv. All coverages specified above shall waive any right of subrogation against the District and Town and their respective Board of Directors and Council members, officers, agents, and employees; such waiver of subrogation shall apply solely to acts, actions, omissions or neglect of Developer, and in no way limits the right of subrogation for acts, actions, omissions or neglect of Town, the District or others. The policies shall state: “Permission is expressly granted to the insured to waive any right of subrogation against an individual, firm or corporation in accordance with the terms of the agreement provided such waiver is executed in writing prior to any occurrence giving rise to claims hereunder.”

17. Developer Indemnity. The Developer will defend the District and the Town and the Developer shall defend, indemnify, assume all responsibility for and hold the District and the Town, and their respective Board and Council members, officers, agents, and employees, collectively the “**Indemnified Parties**” or singularly, each an “**Indemnified Party**”) harmless, including without limitation, for attorney’s fees and costs, from all claims or suits for and damages to property and injuries to persons, including accidental death, that may be caused by any of the Developer’s activities undertaken pursuant to this Agreement.

- a. If any claim relating to the matters indemnified against pursuant to this Agreement is asserted against an Indemnified Party that may result in any damage for which any Indemnified Party is entitled to indemnification under this Agreement, then the Indemnified Party shall promptly give notice of such claim to the Developer.
- b. Upon receipt of such notice, the Developer shall have the right to undertake, by counsel or representatives of its own choosing, the good faith defense, compromise or settlement of the claim, such defense, compromise or settlement to be undertaken on behalf of the Indemnified Party.
- c. The Indemnified Party shall cooperate with the Developer in such defense at the Developer’s expense and provide the Developer with all information and assistance reasonably necessary to permit the Developer to settle and/or defend any such claim.
- d. The Indemnified Party may, but shall not be obligated to, participate at its own expense in a defense of the claim by counsel of its own choosing, but the Developer shall be entitled to control the defense unless the Indemnified Party has relieved the Developer from liability with respect to the particular matter.
- e. If the Developer elects to undertake such defense by its own counsel or representatives, the District shall give notice of such election to the Indemnified Party within ten (10) days after receiving notice of the claim from the Indemnified Party.

- f. If the Developer does not so elect or fails to act within such period of ten (10) days, the Indemnified Party may, but shall not be obligated to, undertake the sole defense thereof by counsel or other representatives designated by it, such defense to be at the expense of the Developer.
- g. The assumption of such sole defense by the Indemnified Party shall in no way affect the indemnification obligations of the Developer.

18. Mediation.

- a. If a dispute arises under this Agreement that the Parties and the Town 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 and the Town shall attempt to agree upon a mediator and shall endeavor to find a mediator having experience in construction-related matters. If the Parties and the Town are unable to agree upon a mediator, either Party or the Town 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.
- b. If a dispute arises under the Amended and Restated Operations and Maintenance Agreement between the District and the Town, that the District and the Town are not able to mutually resolve, prior to commencing litigation, the District shall first submit the matter to mediation conducted by a neutral mediator and the Developer agrees to participate in the mediation to address issues relevant to the Developer's responsibilities under this Agreement and the dispute. The Developer acknowledges that the District and the Town will determine who the mediator is pursuant to the provisions of the Amended and Restated Operations and Maintenance Agreement. The Developer will share in the District's cost of the mediation required to be paid under the Amended and Restated Operations and Maintenance Agreement, including but not limited to the District's share of the Town's costs under the Mediation, if determined to be payable by the District by the Mediator.

19. Governing Law and Venue. This Agreement and the interpretation thereof shall be governed by the laws of the State of Colorado and Municipal Code of the Town of Johnstown. Venue for any claim, proceeding or action arising out of this Agreement shall be in Larimer or Weld County, Colorado.

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

21. Costs and Attorneys' Fees. If the Developer breaches this Agreement, the Developer shall pay the District's reasonable costs and expenses, including attorney's fees, incurred in the enforcement of the terms, conditions and obligations of this Agreement and the District's and the Town's reasonable costs and expenses, including attorneys fees, in enforcing the District's compliance with the District's responsibilities under the Amended and Restated Operations and Maintenance Agreement.

22. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties and supersedes all prior agreements or understandings.

23. 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 Agreement and with respect to all matters set forth herein. 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.

24. Findings. The District hereby finds and determines that execution of this Agreement is in the best interests of the property owners and taxpayers of the District.

25. 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 Agreement, and to carry out and effectuate this Agreement in order to provide and secure to the other Parties the full and complete enjoyment of their rights and privileges under this Agreement.

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

27. Compliance with the Law. The Developer shall comply with all federal, state and local laws and regulations in the performance of the obligations under this Agreement.

28. 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 Agreement.

29. Counterparts. This 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.

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

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**LEDGE ROCK CENTER, LLC**, a Kansas  
limited liability company

By: \_\_\_\_\_  
Managing Member

Date: \_\_\_\_\_

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

The foregoing District/Developer Operations and Maintenance Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_, as \_\_\_\_\_ of Ledge Rock Center, LLC, a Kansas limited liability company.

Witness my hand and official seal.

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

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

THIRD PARTY BENEFICIARY:

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

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Troy D. Mellon, Mayor

ATTEST:

\_\_\_\_\_  
Hannah Hill, Town Clerk