

**SECOND AMENDED AND RESTATED DEVELOPMENT AND REIMBURSEMENT
AGREEMENT**

LEDGE ROCK CENTER COMMERCIAL

JOHNSTOWN, COLORADO

DATE: _____, 2022

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**SECOND AMENDED AND RESTATED DEVELOPMENT AND REIMBURSEMENT
AGREEMENT
FOR
LEDGE ROCK CENTER COMMERCIAL
JOHNSTOWN, COLORADO**

THIS SECOND AMENDED AND RESTATED DEVELOPMENT AND REIMBURSEMENT AGREEMENT FOR LEDGE ROCK CENTER COMMERCIAL, JOHNSTOWN, COLORADO (this “**Agreement**”) is made and entered into as of the Effective Date by and between **THE TOWN OF JOHNSTOWN, COLORADO**, a home-rule municipality of the Counties of Larimer and Weld, State of Colorado (“**Town**”), **LEDGE ROCK CENTER, LLC**, a Kansas limited liability company (“**Developer**”), and **LEDGE ROCK CENTER COMMERCIAL METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the state of Colorado (“**District**”).

RECITALS

1. Unless a different meaning is clearly indicated, capitalized terms used in this Agreement have the meanings set forth in these Recitals or in Article 1 of this Agreement.
2. The District was organized pursuant to an Amended and Restated Service Plan approved by the Town on June 6, 2022 (the “**Service Plan**”) to finance, design, construct and operate and maintain the public improvements needed to serve the proposed Ledge Rock Center Commercial development.
3. The Parties previously entered into that certain Development and Reimbursement Agreement for Ledge Rock Center Commercial, Johnstown, Colorado, effective February 18, 2022 (the “**Development and Reimbursement Agreement**”), as amended by that certain First Amendment to Development and Reimbursement Agreement Ledge Rock Center Commercial Johnstown, Colorado, dated April 18, 2022 (the “**First Amendment**”) collectively the Development and Reimbursement Agreement and the First Amendment will be referred to herein as the “**Original Agreement**”).
4. At the time of execution of the Development and Reimbursement Agreement it was anticipated the District would issue Bonds in 2022, ~~however, based.~~ Based on changes in construction costs and in the estimated net proceeds of the Bonds anticipated to be issued by the District in 2022 the Parties desire to amend and restate the Original Agreement in its entirety as indicated herein.
5. The Developer has executed, or shall execute, agreements to purchase approximately 94.~~217~~227 acres of property located within the boundaries of the Town and the service area of the District at the southeast corner of U.S. Interstate 25 and U.S. Highway 60, generally described on the map attached hereto and incorporated herein by reference as **Exhibit A** and the legal descriptions set forth in **Exhibits B-1, B-2, B-3, and B-4** which the Developer intends to develop as a commercial and retail shopping center (the “**Property**”). The Developer may purchase additional property not referenced herein which may, subsequent to purchase and

inclusion in the District, be subject to this Agreement pursuant to an amendment as provided in Section 7.1.

6. The Developer has purchased from a private party approximately 35.857 acres of the Property more specifically described in the legal description attached hereto as Exhibit B-1 (the “**Anderson Parcel**”).

7. Approximately 7.835 acres of the Property, more specifically described in the legal description attached here to as **Exhibit B-2** (“**Oxy Parcel No. 1, Lots 2-5 and Tract A**”), is to be acquired by the Developer from the Town pursuant to that certain Amended and Restated Agreement Concerning Purchase and Sale of Real Property for Ledge Rock Center Commercial of even date herewith (the (“**Amended PSA**”) and will be a part of Phase I of the Project, defined below, (“**First Phase Property**”).

8. The Developer will acquire the First Phase Property from the Town coincident with the issuance of the District’s Limited General Obligation Bonds, Series 2022 (the “**2022 Bonds**”).

9. Phase II of the Project is to be located on property that includes the property that is approximately 50.535 acres, more specifically described in the legal description attached hereto as Exhibit B-43 (“**Oxy Parcel No. 2**”) and Exhibit B-34 (the “**Oxy Parcel No. 1, Lot 1,**” ~~and “**Oxy Parcel No. 2**” also to be,~~), collectively referred to herein as the “**Second Phase Property**”) ~~which the,~~ Developer will have an option to purchase the Second Phase Property as described herein and, in the Amended PSA. (For the avoidance of doubt, the Amended PSA contemplates the terms of the conveyance of Oxy Parcel No. 1, Lot 1 from the Town to the Developer and recognizes that the Town and Developer will execute a subsequent purchase and sale agreement to address conveyance of Oxy Parcel No. 2).

10. It is the intention of the District to issue Bonds to fund the public improvements related to the development of the Second Phase Property coincident with the beginning of the development of the Second Phase Property anticipated to occur in 2025 (the “**2025 Bonds**”).

11. Subject to the terms and conditions for acquisition of the Second Phase Property set forth herein, the Developer will acquire the Second Phase Property from the Town coincident with the issuance of the 2025 Bonds.

12. The Town received conveyance of the First Phase Property for nominal consideration and the Town has determined it to be in the best interests of the Town to convey the First Phase Property to the Developer to become a part of Ledge Rock Center so long as the District and Developer initiate and, in good faith, commit to complete the Project, defined below and convey to the Town any part of the First Phase Property that is required to be Dedicated or used for Public Spaces both as defined below.

13. The Developer intends to construct a retail shopping center containing approximately 785,000,836,500 square feet of new retail uses and two hotels (“**Project**”).

14. The Developer intends to construct the Project over a nine (9) year period from initiation of construction in 2022 to completion and occupancy of all of the anticipated retail spaces in the

locations depicted on the conceptual development shown on **Exhibit C** (the “**Conceptual Development Plan.**”)

15. The Developer estimates that the total private and public construction costs of the Project will be approximately Three Hundred and Fifty Million Dollars (\$350,000,000).

16. Pursuant to the First Amendment, the Developer contributed approximately Five Million Eight Hundred Eighty Eight Thousand Six Hundred Fifty Nine Dollars (\$5,888,659) to the District toward the cost of the Ledge Rock Water and Sewer Pipeline Work, as defined in the First Amendment, from funds reimbursed to an affiliate of the Developer by the Johnstown Plaza Metropolitan District as part of the Johnstown Plaza Metropolitan District \$99,449,000 Limited Tax General Obligation Refunding & Improvement Bonds, Series 2022 (the “**JP Developer Contribution**”).

17. Under no circumstances will the District reimburse the Developer for the JP Developer Contribution.

18. The 2022 Bonds and the 2025 Bonds, together with ~~Bonds anticipated to be issued in 2027 to: (i) refund the 2022 Bonds, (ii) to refund the 2025 Bonds, and (iii) to reimburse the Developer for Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance (defined below) (the “2027 Bonds”, and collectively with the 2022 Bonds and the 2025 Bonds, the “Bonds”)~~Refunding Bonds, will fund the public improvements generally described on **Exhibit D** attached hereto and incorporated herein by this reference (the “Public Improvements”) to net \$150,000,~~0000000~~ (minus the JP Developer Contribution) in Bond proceeds to fund the Public Improvements. The Parties anticipate that the 2022 Bonds, as well as the 2025 Bonds, potentially, will be refinanced in 2027 to: (i) refund the 2022 Bonds, (ii) refund the 2025 Bonds, if at all, (iii) reimburse the Developer for Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance (defined below), and (iv) if funds are available, fund the District Cost Sharing Contribution (the “2027 Bonds”).

19. The Developer intends, as the Declarant, to record on the commercial portions of the Property that it owns at the time of issuance of the 2022 Bonds, and again prior to the issuance of the 2025 Bonds against any additional portions of the Property that it owns, a covenant that requires the payment in lieu of taxes for any uses which are exempt from property taxation under Colorado law prior to the issuance of the Bonds in a form approved by the Town and the District prior to recording and as amended from time to time only with the prior written approval of the Town and the District (“**PILOT Covenant**”).

20. The payment in lieu of taxes made pursuant to the PILOT Covenant shall be known as the “**PILOT Payment.**”

21. The District is authorized pursuant to its Service Plan to finance, design, plan, construct, install and/or complete public improvements, including, but not limited to, streets, parking lots, safety protection, water, sanitation, park and recreation, mosquito control, and transportation improvements, and other facilities and services, together with all necessary and appropriate appurtenances thereto more specifically described below and defined as the Public

Improvements, to enter into contracts for the provision thereof, to maintain the Public Improvements and to pay for such improvements from the proceeds of Bonds.

22. The Parties anticipate that the Bonds will be paid by Credit PIF Revenues, Add-On PIF Revenues, PILOT Payment Debt Revenues and a debt mill levy of no less than 5 mills imposed by the District (the “**Debt Mill Levy**”). The Bonds may also be secured by other revenues as allowed by the Service Plan.

23. At the time the District was organized, it was anticipated that the 2022 Bonds, when issued, would net Seventy Four Million Dollars (\$74,000,000) in Project Funds (the “**Original Project Funds**”). The revenue to be pledged was five (5) mills as the Debt Mill Levy, a 2.5% Add-On PIF, and a 2% credit PIF (the “**Original Pledged Revenues**”).

24. The 2022 Bonds, based on the Original Pledged Revenues, are currently anticipated to net Fifty One Million Dollars (\$51,000,000) in Project Funds (the “**New Project Funds**”).

25. With an increase in the credit PIF to 2.75% for the 2022 Bonds, together with the District pledge of five (5) mills and the 2.5% Add-On PIF (the “**Increased Pledged Revenues**”), the 2022 Bonds are anticipated to net approximately ~~SixtyFifty Seven~~ Million ~~SixSeven~~ Hundred ~~Ninety Eight~~ Thousand ~~Two Hundred Seventy Two~~ Dollars (~~\$60,600,000~~57,798,272) in Project Funds (the “**Increased Project Funds**”). The difference between the Original Project Funds and the Increased Project Funds ~~still~~ leaves a deficit of approximately ~~Thirteen~~Sixteen Million ~~FourTwo~~ Hundred One Thousand Seven Hundred Twenty Seven Dollars (~~\$13,400,000~~16,201,727) that still requires funding, with such amount to be adjusted based on the actual amount of Project Funds at the time of closing on the issuance of the 2022 Bonds (the “**Bond Proceeds Shortfall**”).

26. The Developer has agreed to remit funds to the District in an amount equal to the Bond Proceeds Shortfall (the “**Developer Shortfall Funding Advance**”). The Developer Shortfall Funding Advance will not accrue interest and will not be reimbursed to the Developer by either the Town or the District.

27. The District shall provide funding to the Town for the Town’s use for any lawful purpose an amount equal to the increase of ~~credit~~Credit PIF collected from 2% to 2.75% change in the ~~credit~~Credit PIF for the 2022 Bonds as indicated in Section 4.7 below (the “**District Cost Sharing Contribution**”).

28. The Developer has agreed to ~~make~~deposit the Developer Shortfall Funding Advance ~~to be deposited in~~into the Developer FundFunds Account established under the Amended and Restated Escrow Agreement to be used for construction of vertical improvements no later than the first to occur of the following: the date of sale or refinance of the southern portion of the multi-family parcel more specifically described in **Exhibit H** attached hereto and incorporated herein by this reference, within the Project (the “**Multi-Family Parcel**”), the issuance of a building permit on the Multi-Family Parcel or June 1, 2023.

29. The District intends to issue the Bonds as an “on-behalf of” issuer of the Town.

30. The District intends to design, construct, install and/or complete the Public Improvements required for the Project.

31. The Developer intends to design, construct, install and/or complete the retail development in the Project and to advance funds, as needed, to assure the District can complete the Public Improvements in reliance on the District's commitment to reimburse the Developer for such advances.

32. The Parties desire to enter into this Agreement for the purpose of setting forth the terms and conditions relating to the development, design and maintenance of the Project, the Private Improvements and Public Improvements to the Property, the collection, payment, use and duration of the Credit PIF and the Add-On PIF, the Developer Shortfall Funding Advance, the District Cost Sharing Contribution, and other matters related to the Project.

33. The Parties wish to adopt a comprehensive approach to the orderly and planned development of the Property and to cooperate in the funding of the Public Improvements. The Parties intend for development of the Project to occur under a unified development plan and Comprehensive Funding Plan as more specifically set forth in this Agreement.

34. The legislature of the State of Colorado has adopted C.R.S. § 29-1-203 in order to authorize and enable local governments of the State of Colorado to enter into cooperative agreements, or contracts for certain specified purposes. The Parties intend this Agreement to constitute such an intergovernmental agreement as between the Town and the District, and with respect to the financing and construction of the Public Improvements.

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:

ARTICLE I DEFINITIONS

1.1 Definitions. For purposes of this Agreement, the following terms have the meanings indicated below.

- (a) 2022 Bonds. As defined in Recital 8.
- (b) 2025 Bonds. As defined in Recital 10.
- (c) 2027 Bonds. As defined in Recital 18.
- (d) 30 Day Submittal. As defined in Section 4.5(a)(ix).
- (e) Additional Refunding and New Money Bonds. As defined in Section 4.7(b)(ii).

(f) Add-On PIF. The component of the PIF which is set at the rate of two and one-half percent (2.5%) in accordance with the terms and conditions of the PIF Covenant, and which is applied to Taxable Transactions before the calculation of applicable sales taxes.

(g) Add-On PIF Revenue Fund. As defined in Section 4.4(d)(iii) of this Agreement.

(h) Add-On PIF Revenues. The revenues generated from imposition of the Add-On PIF, net of the costs of collection, which are to be utilized by the District during the Credit PIF Period for the purpose of funding, financing or refinancing the Verified Eligible Costs, and after the Credit PIF Period, for any legal purpose, as further described in this Agreement and the Service Plan.

(i) Advance Reimbursement and Payment Agreement. An agreement to be entered into between the District and the Developer, pursuant to which the Developer will advance funds to the District for the Public Improvements as further described in Section 3.3(c)(ii).

(j) Amended and Restated Escrow Agreement. An amended and restated escrow agreement to be executed by the District, the Town and the Developer prior to the issuance of the 2022 Bonds, in a form substantially similar to the form attached hereto as Exhibit E.

(k) Amended PSA. As defined in Recital 7.

(l) Anderson Parcel. As defined in Recital 6.

(m) Agreement. This Second Amended and Restated Development and Reimbursement Agreement for Ledge Rock Center Commercial, Johnstown, Colorado, and any amendments hereto.

(n) Bond Proceeds Shortfall. As defined in Recital 25.

(o) Bonds. Bonds, notes, contracts or other multiple fiscal year financial obligations issued by the District that are (i) payable from the Credit PIF Revenues, the Add-On PIF Revenues and the PILOT Payment Debt Revenues; (ii) issued within the Credit PIF Period; and (iii) issued for the purposes of (a) funding Verified Eligible Costs, which net proceeds that pay for Verified Eligible Costs together with the portion of the principal amount of any Developer Bonds spent on Verified Eligible Costs, are not in excess of the Cap Amount or (b) refunding any outstanding Bonds or Developer Bonds. Bonds can be senior or subordinate obligations. Bonds must be fully amortized to a date on or before, the later of: (i) thirty (30) years from the date of issuance or (ii) ~~April~~December 1, 2052. Bonds include Developer Bonds but do not include Other Obligations. Developer Bonds shall not be amortized to be repaid with Credit PIF beyond December 1, ~~2047~~2051.

(p) Bond Participants. As defined in Section 4.8 of this Agreement.

(q) Bond Trustee. A state or national bank or trust company in good standing located in or incorporated under the laws of the State of Colorado that is authorized to exercise trust powers, which is selected by the District, with the written approval of the Town, to serve as bond trustee in connection with the issuance of one or more series of Bonds.

(r) Cap Amount. The Cap Amount is \$150,000,000 (minus the JP Developer Contribution) being the maximum amount of net proceeds of the Bonds together with the portion of the principal amount of any Developer Bonds available to the District for the payment, reimbursement or financing of Verified Eligible Costs. The following amounts are not counted in the Cap Amount: (i) interest costs referenced in Section 4.10(b)(i); reserve funds and the costs traditionally associated with the issuance of public debt; (ii) increases in principal amount of Bonds necessary to issue Refunding Bonds; (iii) interest earning on the investment of proceeds of Bonds; (iv) proceeds of Other Obligations; and (v) bonds or other obligations issued after the Credit PIF Period.

(s) Code. The Johnstown Municipal Code, as well as the ordinances of the Town of Johnstown, including but not limited to land use regulations, zoning regulations, subdivision regulations, the public works standards and specifications, parks and recreation park and open space standards and commercial site planning and site design standards, and any additional rules, regulations and master plans that may be promulgated under any of the foregoing, as amended from time to time, unless expressly stated otherwise. If there are any conflicts in the provisions of the above elements of the Code, the more restrictive provision shall apply.

(t) Comprehensive Funding Plan. Article IV of this Agreement.

(u) Comprehensive Plan. The Johnstown Area Comprehensive Plan, adopted November 1, 2021, as may be amended time to time.

(v) Conceptual Development Plan. The conceptual development plan for the Project attached as Exhibit C to this Agreement, which describes the Parties' intent with respect to the uses and other development matters affecting the Project and which is intended to establish a general conceptual framework within which the Site Development Plan and plats for the Project will be formulated, processed, adopted and implemented.

(w) Cost Certifier. As defined in Section 4.10(b).

(x) Credit PIF. The component of the PIF that will be:

(i) Imposed at the rate of two and seventy-five hundredths percent (2.75%) pursuant to the PIF Covenant for the repayment of the 2022 Bonds that will be applied to Taxable Transactions before the calculation of sales taxes occurring during the Credit PIF Period and as otherwise provided in Section 4.4. of this Agreement; and

(ii) Imposed at the rate of two hundredths percent (2.00%) pursuant to the PIF Covenant for the repayment of the First Refunding and New Money Bonds and Additional Refunding and New Money Bonds, if any, the 2025 Bonds, and other Bonds as approved by the Town, that will be applied to Taxable Transactions before the calculation of

sales taxes occurring during the Credit PIF Period and as otherwise provided in Section 4.4. of this Agreement.

(y) Credit PIF Period. As defined and more specifically set forth in Section 4.4(e) of this Agreement.

(z) Credit PIF Revenues. The revenues generated from the Credit PIF, which are to be utilized by the District during the Credit PIF Period for the purpose of funding, financing, or refinancing the Verified Eligible Costs, as further described in this Agreement.

(aa) Credit PIF Revenue Fund. The Credit PIF Revenue Fund is the fund by that name defined in Section 4.4(d)(iii).

(bb) Debt Service Fund. As defined in Section 4.4(d)(iv) of this Agreement.

(cc) Dedicate or Dedication. The conveyance to the Town, after acquisition by the District or the Developer, of real property (excluding the dedication of water or water rights), free and clear of all monetary liens and those non-monetary encumbrances that are consistent with the public purpose for Dedication. Dedication can be accomplished either by Recordation of a plat, acceptance by the Town, or by execution and delivery of a special warranty deed or easement, as determined by the Town.

(dd) Developer Bonds. Developer Bonds means Bonds, promissory notes, contracts or other multiple fiscal year financial obligations issued by the District to the Developer that will be subject to the following limitations: (i) be payable from Credit PIF Revenues, Add-On PIF Revenues and PILOT Payment Debt Revenues; (ii) the pledge of Credit PIF Revenues to terminate on the earlier of December 1, 2047 or the date all of the principal and interest on Developer Bonds has been paid in full; (iii) be payable, at the District's discretion, from other revenues legally available to the District; (iv) accrue interest at the Developer Bond Interest Rate; and (v) be issued for the purposes of funding Verified Eligible Costs, which, together with the proceeds of all other Bonds, shall not fund Verified Eligible Costs in excess of the Cap Amount. However, Developer Bonds specifically do not include the Developer Shortfall Funding Advance.

(ee) Developer Bond Interest Rate. Developer Bond Interest Rate shall be a market interest rate as certified by an External Financial Advisor at the time of the issuance of Developer Bonds, for bonds having comparable risks, terms and maturities as Developer Bonds being issued; provided, however, that the Developer Bond Interest Rate shall not exceed 7.0% simple interest.

(ff) Developer Contribution Agreement. As defined in Section 4.6(b).

(gg) Developer Shortfall Funding Advance. As defined in Recital 26.

(hh) District. Ledge Rock Center Commercial Metropolitan District.

(ii) District Accountant. The qualified person or firm engaged by the District to perform governmental accounting services for the District.

(jj) District Cost Sharing Contribution. As defined in Recital 27.

(kk) District Fees. Such fees, rates, tolls, penalties or charges for services, programs or facilities furnished by the District as the District may fix and, from time to time, increase or decrease pursuant to Colorado law.

(ll) District Public Improvement(s). The improvements generally described in **Exhibit D** that will be owned and maintained by the District.

(mm) District Streets. The streets that will be constructed as a part of the Public Improvements that will not be Dedicated.

(nn) Effective Date. The date that this Agreement is fully executed by all the Parties, which shall be the date the Agreement is executed by the District.

(oo) Eligible Costs. The reasonable and necessary costs of the Public Improvements as actually expended for such improvements, including the cost of acquisition of the land and easements necessary for the construction and location of the Public Improvements and the design, permitting, construction, general contractor fees, construction management fees, project development fees, legal fees, engineering costs and accounting costs related thereto. Eligible Costs also include all reasonable and necessary costs, fees and, expenses of organizing the District and establishing the PIF Covenant and the District's operation and maintenance expenses and other reasonable and necessary soft costs.

(pp) Escrow Agreement. An escrow agreement in a form substantially similar to the form attached hereto as **Exhibit F** and incorporated herein by this reference and with mutually acceptable terms to the Parties, to be executed by the Trustee, the District, the Town and the Developer prior to the issuance of the 2025 Bonds, the 2027 Bonds and any other Bonds except the 2022 Bonds. The Amended and Restated Escrow Agreement in the form attached hereto as **Exhibit E** will be executed by the Trustee, the District and the Town prior to the issuance of the 2022 Bonds.

(qq) Exhibits. The following Exhibits to this Agreement, all of which are incorporated by reference into and made a part of this Agreement.

- EXHIBIT A Map of the Property
- EXHIBIT B-1 Legal Description: Anderson Parcel Property
- EXHIBIT B-2 Legal Description: Oxy Parcel No. 1, Lots 2-5 and Tract A Property
- EXHIBIT B-3 Legal Description: Oxy Parcel No. 2 Property
- EXHIBIT B-4 Legal Description: Oxy Parcel No. 1, Lot 1 Property
- EXHIBIT C Conceptual Development Plan
- EXHIBIT D List of Public Improvements
- EXHIBIT E Form of Amended and Restated Escrow Agreement
- EXHIBIT F Form of Escrow Agreement

EXHIBIT G Form of Subdivision Development and
Improvement Agreement
EXHIBIT H The Multi-Family Parcel

(rr) Feasibility Analysis. As defined in Section 4.5(a)(ix)(5) of this Agreement.

(ss) Final Allocation of Proceeds. As defined in Section 4.4(d)(ii) of this Agreement.

(tt) Final Plat. A cadastral map, drawn to scape, showing the division of the Property or portions thereof.

(uu) First Amendment. As defined in Recital 3.

(vv) First Phase Property. As defined in Recital 7.

(ww) First Refunding and New Money Bonds. As defined in Section 4.7(b)(i).

(xx) Increased Pledged Revenues. As defined in Recital 25.

(yy) Increased Project Funds. As defined in Recital 25.

(zz) Indemnitees. As defined in Section 3.5.

(aaa) Indenture. As defined in Section 4.4(c) of this Agreement.

(bbb) Independent Engineer. An Engineer, such as Ranger Engineering, LLC, a Colorado limited liability company, or a consultant with similar expertise, who has not worked for the Developer on any project, is approved by the Town and will review and provide a certification of the Verified Eligible Costs.

(ccc) JP Developer Contribution. As defined in Recital 16.

(ddd) Land Acquisition Costs. The cost of the acquisition of the easements or right of way for the Public Spaces and the land to be subject to Dedication, including reasonable transaction costs. This definition does not include payment for any real estate interests or access to the Public Spaces or the land to be subject of Dedication located in the Oxy Parcel No. 1 as it is the intent of the Parties that no payment or reimbursement is to be made to the Developer for such interests under any circumstances.

(eee) Intentionally Omitted.

(fff) Intentionally Omitted.

(ggg) Ledge Rock Water and Sewer Pipeline Escrow Agreement. As defined in Section 4.13.

(hhh) Market Analyst. As defined in Section 4.5(a)(ix)(5) of this Agreement.

(iii) Multi-Family Parcel. As defined in Recital 28.

(jjj) New Project Funds. As defined in Recital 24.

(kkk) Operations and Maintenance Intergovernmental Agreement. The Intergovernmental Agreement between the Town and the District establishing the rights and responsibilities of the District and the Town regarding the maintenance of the Public Spaces and the pledge of the District of PILOT Payment General Fund Revenues to the funding of operations and maintenance expenses.

(lll) Original Agreement. As defined in Recital 3.

(mmm) Original Pledged Revenues. As defined in Recital 23.

(nnn) Original Project Funds. As defined in Recital 23.

(ooo) Other Obligations. Debt instruments, bonds and other obligations that may be issued or entered into by the District including agreements between the District and the Developer or other third parties for reimbursement of sums advanced or paid for Verified Eligible Costs, provided that no Credit PIF Revenues may be used to repay the Other Obligations and, during the Credit PIF Period, no Add-On PIF Revenues may be used to repay the Other Obligations and, all revenue pledged to repay the Other Obligations will also be pledged by the District to repay the Bonds and the Developer Bonds and the obligations of the District to pay on the Other Obligations will be subordinate in all ways to the Bonds and the Developer Bonds. Other Obligations specifically do not include the Developer Shortfall Funding Advance.

(ppp) Oxy Parcel No. 1. Oxy Parcel No. 1, Lot 1 and Oxy Parcel No. 1, Lots 2-5 and Tract A.

(qqq) Oxy Parcel No. 1, Lot 1. As defined in Recital 79.

(rrr) Oxy Parcel No. 1, Lots 2-5 and Tract A. As defined in Recital 7.

(sss) Oxy Parcel No. 2. As defined in Recital 9.

(ttt) Party(ies). Individually, or collectively, as the context dictates, the Town, the District, and the Developer and their respective successors in interest as designated pursuant to Section 7.14.

(uuu) Pedestrian Walkways and Trails. The sidewalks, walkways and trails to be constructed as a part of the Public Improvements that will not be Dedicated.

(vvv) Phase I. As defined in Section 3.2.

(www) Phase I Credit PIF. The Credit PIF derived from Taxable Transactions on Phase I of the Project in the amount of 2.75% as modified to 2.00% as provided in this Agreement.

(xxx) Phase II. As defined in Section 3.2.

(yyy) Phase II Credit PIF. The Credit PIF derived from Taxable Transactions on Phase II of the Project in the amount of 2.00%.

(zzz) PIF. Collectively, the Credit PIF and the Add-On PIF, which are public improvement fees imposed by the Developer through Recordation of the PIF Covenant, the purpose of which is to contribute to the financing of the Public Improvements.

(aaaa) PIF Collecting Agent. The collecting agent for the Credit PIF Revenues and the Add-On PIF Revenues pursuant to a PIF Collection Services Agreement as in effect from time to time as defined in the PIF Covenant.

(bbbb) PIF Collection Services Agreement. An agreement pursuant to which the District will contract with a PIF Collecting Agent for collection of the PIF Revenues in accordance with the terms and conditions of this Agreement.

(cccc) PIF Covenant. That certain privately imposed Declaration of Covenants Imposing and Implementing the PIF, recorded on the Phase I Property and on the Phase II Property, as amended or re-recorded from time to time in accordance with its terms.

(dddd) PIF Property. The property that is subject to the PIF Covenant.

(eeee) PIF Revenues. The combined Credit PIF Revenues and Add-On PIF Revenues.

(ffff) PIF Trustee. A state or national bank or trust company in good standing and incorporated under the laws of the State of Colorado authorized to exercise trust powers that is selected by the District, and approved by the Town, and authorized to undertake the duties of the PIF Trustee as described in Section 4.4(c) of this Agreement.

(gggg) PIF Trustee Agreement. As defined in Section 4.4(c) of this Agreement.

(hhhh) PILOT Covenant. As defined in Recital ~~15~~19.

(iiii) PILOT Payment. As defined in Recital ~~16~~20.

(jjjj) PILOT Payment - Debt. The PILOT Payment determined pursuant to the PILOT Covenant by application of the District mill levy for payment of Debt.

(kkkk) PILOT Payment Debt Revenues. Revenues received from the PILOT Payment - Debt.

(llll) PILOT Payment - General Fund. The portion of the PILOT Payment determined pursuant to the PILOT Covenant by application of the District mill levy for the payment of general fund expenses.

(mmmm) PILOT Payment General Fund Revenues. Revenues received from the PILOT Payment - General Fund.

(nnnn) PILOT Payment Revenues. Revenues received from the PILOT Payment Debt Revenues and the PILOT Payment General Fund Revenues.

(oooo) PILOT Revenue Fund. The fund defined in Section 4.4(d)(iii).

(pppp) Private Improvements. Private Improvements shall mean, without limitation, the construction and installation of all improvements that are not otherwise designated as Public Improvements.

(qqqq) Project. The retail project to be known as “**Ledge Rock Center**” and developed on the Property as generally described in Recital 13 and more particularly described or to be described in the Site Development Plan or plat for any Sites.

(rrrr) Project Fund. As defined in Section 4.4(d)(i) of this Agreement.

(ssss) Property. Collectively, the Property legally described in **Exhibits B-1, B-2, B-3, and B-34** and depicted on **Exhibit A**.

(tttt) Public Art. The art located in Public Spaces that will be acquired and installed as a part of the Public Improvements that will not be Dedicated and as approved by the Town in writing as set forth in Section 4.5(a)(ix)(4).

(uuuu) Public Improvements. The District Public Improvements and the Town Public Improvements.

(vvvv) Public Landscape Areas. The landscaping that will be constructed or, as appropriate, installed in the Public Spaces as a part of the Public Improvements that will not be Dedicated.

(wwww) Public Parking Facilities. The parking lots and structures that will be constructed or, as appropriate, installed in the Public Spaces as a part of the Public Improvements that will not be Dedicated.

(xxxx) Public Plazas. The plazas that will be constructed or, as appropriate, installed in the Public Spaces as a part of the Public Improvements that will not be Dedicated.

(yyyy) Public Spaces. The property upon which the Public Art, Public Parking Facilities, Public Plazas, Public Streets and Pedestrian Walkways and Trails are to be located.

(zzzz) Recital(s). Individually, one of the Recitals numbered 1 through 34 above, and, collectively, each of the Recitals set forth above.

(aaaaa) Record/Recordation. The filing of an instrument in the office of the Weld County, Colorado, Clerk and Recorder.

(bbbbb) Refunding and New Money Bonds. As defined in Section 4.7(b).

(ccccc) Refunding Bonds. Bonds issued to refund Bonds and Developer Bonds.

(ddddd) Review Period. As defined in Section 4.5(a)(ix)(6).

(eeeee) Revenue Fund. As defined in Section 4.4(d)(iii) of this Agreement.

(fffff) Sales Tax. The tax obligation on the sale of tangible personal property at retail or the furnishing of services as more fully described in Article IV of Chapter 4 of the Johnstown Municipal Code.

(ggggg) Sales Tax Credit. The two and seventy-five hundredths percent (2.75%) credit against sales tax obligations on Taxable Transactions for payment on the 2022 Bonds and the two percent credit (2.0%) for payment on the First Refunding and New Money Bonds, Additional Refunding and New Money Bonds, the 2025 Bonds, the 2027 Bonds and other Bonds as approved by the Town, which the Town will implement in accordance with Section 4.4 of this Agreement, the rate of which will be equivalent at all times during the Credit PIF Period to the rate of the Credit PIF.

(hhhhh) Second Phase Property. As defined in Recital 9.

(iiii) Service Plan. The Amended and Restated Service Plan for the Ledge Rock Center Commercial Metropolitan District approved by Town Council by resolution on June 6, 2022, and, if further amended, then as amended.

(jjjj) Site. One or more lot(s) or other tract(s) or parcel(s) of real property within the Project intended for development.

(kkkkk) Site Development Plan. The plans approved by the Town for the construction, installation and improvements of the Private Improvements.

(llll) State. The State of Colorado.

(mmmm) Street Standards. The technical standards and specifications for Dedication, design and construction of streets and rights-of-way as required by the Town.

(nnnn) Subdivision Development and Improvement Agreement. The Subdivision Development and Improvement Agreement that relates to development of the Property or any portion thereof in the form attached hereto and incorporated herein by reference at **Exhibit G**.

(oooo) Taxable Transaction. The sale or provision of goods or services which are subject to Town sales taxes.

(ppppp) Town. The Town of Johnstown, Colorado, a home-rule municipality of the Counties of Larimer and Weld, State of Colorado.

(qqqqq) Town Council. The governing body of the Town.

(rrrrr) Town Engineer. The professional engineer designated by the Town Manager to perform the obligations set forth in this Agreement.

(sssss) Town Fees. The fees lawfully assessed by the Town in relation to the development of real property within the Town in the amount and for the purposes determined by Town Council from time to time, including but not limited to impact fees, water and sewer tap fees and storm water utility fees, as set forth in the Code, together with applicable or additional fees, or modifications or amendments thereto, which are adopted by the Town and applied on a uniform and non-discriminatory basis within the Town. The amount of Town Fees will be as existing at the time payment is made.

(ttttt) Town Manager. The Town Manager and his or her authorized designees.

(uuuuu) Town Official(s). The Town Manager, Town Attorney, Town Treasurer, Town Engineer, Town Planner and their authorized designees.

(vvvvv) Town Public Improvements. Improvements that will be Dedicated to the Town.

(wwwww) Verified Eligible Costs. Eligible Costs that have been reviewed and certified as being costs incurred for the Public Improvements, and as being reasonable and comparable for similar projects as constructed or incurred in the Denver Metropolitan Area by the Independent Engineer or the District Accountant, as further discussed in Section 4.10. For purposes of acquisition of rights-of-way, easements or other land pursuant to Section 4.10, the appraisal, presented and processed pursuant to Section 4.10, shall be deemed to have verified the cost to be paid for the interest in land being acquired.

(xxxxx) Vested Property Rights Statute. Sections 24-68-101, et seq., of the Colorado Revised Statutes.

ARTICLE II GENERAL PROVISIONS

2.1 Covenants. The provisions of this Agreement constitute covenants or servitudes that will, upon Recordation, touch, attach to and run with the land comprising the Property. The burdens and benefits of this Agreement will bind and inure to the benefit of all Parties hereto and all successors in interest to the Parties to this Agreement, except as otherwise provided in Section 7.14 of this Agreement.

2.2 Recitals. The Recitals are incorporated into this Agreement as if fully set forth herein.

2.3 Original Agreement Superseded. The Original Agreement is hereby superseded and replaced in its entirety by this Agreement.

ARTICLE III DEVELOPMENT AGREEMENT

3.1 Allocation of Development Obligations. Subject to the terms and conditions of this Agreement, the Service Plan and any additional agreements that may be executed, including but not limited to the Operations and Maintenance Intergovernmental Agreement, any Escrow Agreements and the Amended and Restated Escrow Agreement, and in consideration of the Developer's performance and the Town's performance of its obligations under this Agreement, the District agrees to finance the design, construction, maintenance and operation, as applicable, of the Public Improvements as and when reasonably needed to support development of the Project and further subject to the availability of funds therefor. References to the Developer or the District in the context of the Public Improvement obligations addressed in this Agreement shall be construed to include by reference the other party to the extent such other party has assumed the obligations of the District with respect to the Public Improvements pursuant to the terms of this Agreement or otherwise.

3.2 The Project. The Parties recognize and agree that the issuance of Bonds by the District and the payment of Eligible Costs are related to the construction of the Project. The Project, as generally set out on the Conceptual Development Plan, **Exhibit C**, contains an estimated total of 785,000 square feet of commercial and retail development. Phase I of the Project contains approximately 385,000 square feet of retail and a 90-unit hotel, and will be developed on the Anderson Parcel and the Oxy Parcel No. 1, Lots 2-5 and Tract A Property ("Phase I of the Project"). Phase II of the Project contains an estimated total of 451,500,000 square feet of retail and one 90-unit hotel and will be developed on Oxy Parcel No. 1, Lot 1, and Oxy Parcel No. 2 ("Phase II of the Project"). The Parties recognize and agree that the final development may differ based upon final approved development plans and changes approved by the Town. The Project includes the anticipated construction of Public Improvements and Private Improvements. Unless otherwise agreed in writing, Bonds, including Developer Bonds and Other Obligations may only be issued in accordance with this Agreement.

3.3 Construction of the Project.

(a) Subdivision Development and Improvement Agreement. The Parties recognize and agree that, at the time of execution of this Agreement, some of the Property is not subject to a Final Plat. On or before approval of a Final Plat by the Town Council, or at such time as required by the Town, the District and the Developer shall enter into a Subdivision Development and Improvement Agreement in substantially the same form as attached hereto as **Exhibit G**. This Agreement and the Subdivision Development and Improvement Agreement shall be read harmoniously. To the extent of a conflict between a provision of the agreements, the more restrictive provision shall control.

(b) Compliance with Law and Town Policies. The Project shall be designed, constructed and inspected in compliance with all applicable provisions of the law, including, but not limited to the Code, the Town's policies, procedures and regulations related to land development and, unless subsequently amended, revoked or terminated, all outstanding

agreements, covenants, restrictions and similar items that are recorded against or binding upon the Property. The Town Public Improvements shall be dedicated as required in this Agreement and pursuant to Town Code and the Town's policies, procedures and regulations.

(c) Public Bidding. In addition to the provisions contained in the Subdivision Development and Improvement Agreement, the District shall follow all statutory procurement procedures applicable to the District, including the public bidding of the construction of the Public Improvements. In addition, the District will:

(i) Secure Public bids for the Public Improvements before work begins on the Project;

(ii) Prior to the award of a construction contract, enter into an Advance Reimbursement and Payment Agreement;

(iii) Advance funds on a monthly basis for payment of the contractor;

(iv) Have the Cost Certifier provide a report on the amount of the monthly costs that are Verified Eligible Costs;

(v) Agree that the Bond Trustee will deposit, pursuant to the Amended and Restated Escrow Agreement, the reimbursement amounts due to the Developer to be released to the Developer in accordance with the provisions of the Amended and Restated Escrow Agreement;

(vi) Award the construction contracts for the Public Improvements to the lowest reasonable and responsive bidder;

(vii) Advertise formal bid purchases or formal contracts for construction of Public Improvements as follows:

(1) All notices and solicitations of bids shall state the time and place of the bid opening. The request for bids will be published online and in hard copies of the Daily Journal and the Johnstown Breeze and, if the District has a website, posted on the District's website at least ten (10) days prior to the bid deadline. The request shall include an adequate description of the scope of work to be completed, any specifics which may be required of the vendor, including the amount of any bid bond, all contractual terms, and conditions applicable to the public project;

(2) Notices and solicitations of bids shall include information that these are sealed bids and that they should be so identified on the envelope;

(3) Notices and solicitations of bids shall plainly state to whom the sealed bid(s) should be addressed;

(4) All available means for advertising the invitation to bid shall be used to the extent possible, to encourage full and open competition; and

(5) General contractor fees are anticipated to be included in the public bid and shall not exceed the industry standard amount;

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

(ix) Provide the bid tab sheets to the Town for all bids submitted;

(x) Award all service agreements related to construction and all construction contracts at a regular or special District Board meeting; and

(xi) If the District does not choose the most responsive and lowest numerical bidder, provide the basis for the decision to the Town allowing the Town an opportunity to object.

3.4 Project Management Fees. Project management fees to be paid by the District on the Public Improvement costs will be negotiated between the Parties and will not exceed the amount certified by the Cost Certifier to be reasonable for the services provided.

3.5 Contractor Indemnity. To the fullest extent permitted by Colorado law, the District shall cause contractor(s) to indemnify, defend and hold the District and the Town and its affiliated entities or other persons or entities designated by the District and the Town and their respective directors, trustees, officers, members, managers, agents and employees (collectively, for purposes of this Section, the “**Indemnitees**”), harmless from any and all claims, demands, damages, losses, liabilities, actions, lawsuits and expenses, including, but not limited to, the reimbursement of attorneys’ fees and costs, arising out of death or bodily injury to persons or damage to property in such amount that is represented by the degree or percentage of negligence or fault attributable to the contractor and/or its agents, representatives, subcontractors, suppliers or any person for whom the contractor is responsible. In addition, the District shall cause the contractor(s) to indemnify, defend and hold the Indemnitees harmless from any and all claims, demands, damages, losses, liabilities, actions, lawsuits and expenses, including, but not limited to, the reimbursement of attorneys’ fees and costs when the same, in whole or in part, results from or arises out of (i) any claimed failure of the contractor, its subcontractors, suppliers or any person for whom the contractor is responsible to fully perform each and every provision of this contract; or (ii) any failure of the contractor, its subcontractors, suppliers or any person for whom the contractor is responsible to pay for all labor, materials services, suppliers and equipment, which failure of payment results in any lien, encumbrance, demand or claim being made or asserted against the Project, the work or against the Indemnitees or any surety on the Project. The foregoing indemnification shall include, without limitation, any losses suffered by the Indemnitees resulting from a failure of the contractor, its subcontractors, suppliers or any person for whom the contractor is responsible to comply with local, State or federal laws and regulations.

3.6 Performance and Payment Assurances. The District shall cause the contractor(s) to furnish, prior to commencement of the work and at its sole cost and expense, performance and payment bonds, letter of credit, security or other assurance in a form reasonably acceptable to the Town. The purpose of such assurance is to provide a warranty on all improvements to be owned

by the Town or the District based upon the requirements of the Town, contained in the Code or otherwise, and to assure prompt payment of all amounts lawfully due to all persons supplying or furnishing such person or such person's subcontractors with labor, laborers, materials, rental machinery, tools, or equipment used or performed in the prosecution of work on the Public Improvements. Any assurance related to the warranty shall remain in effect until two (2) years after the date of final payment or, if Dedicated, until final acceptance by the Town as provided in the Subdivision Development and Improvement Agreement. All bonds shall be executed by sureties authorized to do business in the State of Colorado as listed in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. Each bond, security or assurance shall be accompanied by a "Power of Attorney" authorizing the attorney-in-fact to bind the Surety and certified to include the date of the Bond. If the Surety on any bond furnished by contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in Colorado, contractor shall, within five (5) days thereafter, substitute another bond and Surety acceptable to the District. Notwithstanding the foregoing, the Developer may provide such other security, reasonably acceptable to the Town as it is authorized by C.R.S. § 38-26-106.

3.7 Insurance Requirements. Unless otherwise expressly modified in the Subdivision Development and Improvement Agreement, the District shall comply with the insurance requirements contained herein.

(a) The District shall cause contractor(s) to purchase and maintain during the entire term of its contract(s), including any extensions of time resulting from change orders, such commercial general liability and other insurance as will provide protection from claims set forth below which may arise out of or result from contractor's performance of the work and contractor's other obligations under the contract, whether such performance is by contractor, by any subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

(i) Claims under workers' or workmen's compensation, disability benefits and other similar employee benefit acts;

(ii) Claims for damages because of bodily injury, occupational sickness or disease, or death of contractor's employees;

(iii) Claims for damages because of bodily injury, sickness or disease, or death of any person other than contractor's employees;

(iv) Claims for damages insured by personal injury liability coverage which are sustained by any person other than an employee of the contractor;

(v) Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

(vi) Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle;

(vii) Claims for bodily injury or property damage arising out of completed operations; and

(viii) Claims involving tort liability assumed in this contract, to the extent granted in an unendorsed industry standard (“ISO”) Commercial General Liability policy, or broader.

(b) The insurance required of the contractor(s) shall include the specific coverages and corresponding limits of liability provided herein, or as required by law, whichever is greater, shall meet all requirements specified herein and shall be placed with insurance companies rated at least “A:XIII” by A.M. Best Company, or as otherwise accepted by the Town and the District. All coverages shall be underwritten by carriers authorized to do business in Colorado and acceptable to the District and the Town. All such insurance shall contain a provision that the coverage afforded will not be canceled or renewal refused until at least thirty (30) days’ prior written notice has been given to the contractor, or until at least ten (10) days’ prior written notice has been given where there has been a non-payment of premiums. To the extent that the insurance company provides such notice of cancellation or non-renewal, contractor shall immediately provide the District with a copy of such notice. All such insurance shall remain in effect until final payment and at all times thereafter when contractor may be correcting, removing or replacing defective work. In addition, contractor shall maintain the Products and Completed Operations insurance as shown herein for at least two (2) years after final payment and furnish the District with evidence of continuation of such insurance at final payment and one (1) year thereafter.

(c) Contractor(s) shall obtain and maintain insurance coverage as provided herein, including the following:

(i) Worker’s Compensation and Employers’ Liability

(1) State: Statutory

(2) Employers’ Liability

a) \$500,000 Each Accident

b) \$500,000 Disease, Policy Limit

c) \$500,000 Disease, Each Employee

(3) A Waiver of Subrogation in favor of the District, its directors, officers and employees shall be attached to the policy as a separate endorsement.

(ii) Commercial General Liability (Occurrence Form):

(1) Combined Bodily Injury and Property Damage:

a) \$1,000,000 each occurrence

- b) \$1,000,000 Personal and Advertising Injury
- c) \$2,000,000 General Aggregate
- d) \$2,000,000 Products/Completed Operations

Aggregate

(2) The policy shall be written on an ISO Commercial General Liability form (CG0001), or an acceptable equivalent, which shall include, but not limited to, the following coverages:

- a) Premises and Operations Liability
- b) Liability for Acts of Independent Contractors
- c) Explosion and Collapse Hazard
- d) Underground Hazard
- e) Contractual, to the extent insurance is available
- f) Broad Form Property Damage
- g) Personal/Advertising Injury
- h) General Aggregate Limit per Project (applies to

each project)

i) Products and Completed Operations Insurance shall be maintained by the contractor for a minimum of two (2) years after final payment, and the contractor shall continue to provide evidence of such coverage to the District on an annual basis during the aforementioned period. The District and engineer shall also be named as Additional Insureds.

j) Subcontractors shall comply with all provision of this Section.

k) A waiver of subrogation endorsement in favor of the District, its directors, officers and employees shall be attached to the policy as a separate endorsement.

- l) Deletion of the subsidence exclusion.

(3) Automobile Liability:

- a) Combined Single Limit Bodily Injury and Property

Damage:

- i) \$1,000,000 each Accident

- b) The following automobiles must be included:
 - i) Owned automobiles
 - ii) Non-owned and hired automobiles

herein:

- (4) Umbrella Liability, to apply over all coverages required

- a) \$6,000,000

- (5) Builder's Risk Insurance:

- a) The builder's risk insurance policy shall be on an "all risk" basis for the entire project and shall include (i) coverage for any loss from faulty workmanship, defective materials, and omission or deficiency in design or specifications; (ii) coverage against damage or loss caused by earthquake, flood, fire, hail, lightning, wind, explosion, smoke, water damage, theft, vandalism and malicious mischief, and machinery accidents and operational testing; (iii) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, facilities, fixtures and all other properties constituting a part of the project; (iv) transit coverage, with sub-limits sufficient to insure the full replacement value of any equipment item; and (v) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the site. The policy shall provide for coverage in the event an occupancy or use permit is issued for any portion or portions of the work prior to substantial completion of the work. Builder's risk insurance shall be written in completed value form and shall protect the contractor, subcontractors, the Town and the District. It shall also include soft costs in amounts satisfactory to the contractor, subcontractors, the Town and the District.

- b) Builder's risk insurance shall provide for losses to be payable to contractor, subcontractors, the Town and the District as their interests may appear. The policy shall contain a provision that in the event of payment for any loss under the coverage provided the insurance company shall have no rights of recovery against the contractor, the Town or the District.

- c) To the extent that contractor's work, or work under its direction, may require blasting, explosive conditions, or underground operations, the commercial general liability coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damage to underground property.

- d) Insured losses under policies of insurance which include the District's interests shall be adjusted with the District and made payable to the District as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause. The District as trustee shall have the right to adjust and settle losses with the insurers. The District shall have no liability for damages caused by fire or other perils.

- (6) Insurance Certificates/Policy. Prior to the commencement of any work, the contractor(s) shall furnish to the District and the Town proof of liability

coverage on ACORD Form 25, and proof of coverage under any property policies on ACORD Form 27 or the equivalents, and copies of the applicable insurance policies and policy endorsements to prove that all required insurance is in force. Insurance obtained by the contractor(s) shall be subject to approval by the District and the Town for adequacy of protection. Neither approval by the District or the Town of any insurance supplied by contractor, nor failure to disapprove such insurance shall relieve the contractor of its obligation to maintain in full force during the life of the contract documents all required insurance as set forth herein.

(d) Additional Requirements.

(i) No insurance coverages required to be obtained by contractor(s) pursuant to the requirements of this Agreement shall have a deductible greater than \$5,000 or as reasonably approved by the District and the Town. The contractor(s) is solely responsible for the payment of the deductible(s).

(ii) If any policy required is a claims made policy, the policy shall provide the contractor the right to purchase, upon cancellation or termination by refusal to renew the policy, an extended reporting period of not less than one (1) year. The District shall require the contractor(s) to purchase such an extended reporting period. The contractor's failure to purchase such an extended reporting period as required by this Section shall not relieve it of any liability under its contract. If the policy is a claims made policy, the retroactive date of any such renewal of such policy shall be not later than the date any contract is executed by the contractor and the District. If the contractor(s) 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 contract is executed by the contract and the District.

(iii) The District shall require the contractor(s) to provide for the District and the Town and their respective directors, officers, agents and employees to be designated as Additional Insureds on the contractor's commercial general liability insurance and as Insureds under the automobile liability insurance, and the same shall be clearly indicated on the applicable certificates of insurance provided to comply with these requirements.

(iv) The District shall require the contractor(s) to provide for any claims related to the provision of services by the contractor, contractor's insurance to be the primary insurance with respect to the District and the Town and their respective directors, officers, employees and agents. Any insurance maintained by the District or the Town (or their respective directors, officers, employees and agents) shall be in excess of contractor's insurance and shall not contribute with it.

(v) The District shall require the contractor's insurance apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(vi) The District shall require any failure on the part of the contractor(s) to comply with reporting provisions or other conditions of the policies shall not affect the obligation of the contractor to provide the required coverage to the District and the Town and their respective directors, officers, employees and agents.

ARTICLE IV COMPREHENSIVE FUNDING PLAN

4.1 Credit PIF Revenues. In consideration of the Developer's agreement to impose the Credit PIF on Taxable Transactions pursuant to the PIF Covenant and of the Developer's agreement to impose the Add-On PIF on Taxable Transactions and to assign the PIF Revenues to the District, and in further consideration of the District's agreement to utilize Credit PIF Revenues, the Add-On PIF Revenues, the PILOT Payment Debt Revenues, the Debt Mill Levy and other of the District's revenues to finance the design and construction of the Public Improvements, the Town will grant the Sales Tax Credit to retailers who are subject to and actually pay the Credit PIF to the PIF Collecting Agent during the Credit PIF Period in accordance with the terms and conditions of this Agreement.

4.2 Add-On PIF Revenues. The Add-On-PIF may extend beyond the Credit PIF Period. The Developer and the District agree to collect the Add-On PIF during the entire Credit PIF Period and further agree not to reduce the rate of the Add-On PIF during the Credit PIF Period; provided the Sales Tax Credit is also in effect. While any Bonds payable from PIF Revenues remain outstanding, the District agrees to deposit all PIF Revenues net of collection costs with the Bond Trustee in accordance with Section 4.4(d)(iii) hereof unless otherwise provided in the Bond Documents.

4.3 PILOT Payment Revenues. The Developer agrees to record the PILOT Covenant on the commercial portions of the Property owned by the Developer, in a form acceptable to the Town, prior to the issuance of the 2022 Bonds, the 2025 Bonds, the First New Money and Refunding Bonds, Additional New Money and Refunding Bonds and any other Bonds and not to amend or release the PILOT Covenant during the entire Credit PIF Period. The District agrees to collect the PILOT Payment Revenues during the entire Credit PIF Period. While any Bonds payable from the PILOT Payment Debt Revenues remain outstanding, the District agrees to deposit all PILOT Payment Debt Revenues, net of collection costs, with the Bond Trustee in accordance with Section 4.4(d)(iii).

4.4 Implementation of Sales Tax Credit.

(a) Approval of Sales Tax Credit Ordinance. In order to implement the Town's obligation under this Agreement with respect to the Sales Tax Credit, the Town Council shall consider and, if appropriate, adopt an ordinance amending the Code provisions regarding municipal sales tax to provide for and implement the Sales Tax Credit. Such Sales Tax Credit shall be automatic and will take effect immediately upon the applicable retailer's first Taxable Transaction and payment of the Credit PIF Revenues to the PIF Collecting Agent. During the Credit PIF Period, the Town will coordinate with the District, the Developer and the State of Colorado Department of Revenue (i) to endeavor to assure that each retailer liable to collect and pay Sales Tax to the Town on Taxable Transactions within the Property, that collects and pays the Credit PIF to the PIF Collecting Agent, will receive the Sales Tax Credit against such Sales Tax in the amount and at the rate of the Sales Tax Credit; (ii) to make any necessary modifications to the Sales Tax reporting forms for reporting with respect to the Taxable Transactions by all retailers within the PIF Property during the Credit PIF Period; and (iii) to appropriate and remit to the District any Sales Tax collections of the Town that should have been part of the Sales Tax Credit, but were not collected by the PIF Collecting Agent due

to the Department of Revenue's timing of implementation of the Sales Tax rate change for any retailer or any other reason. The transaction and payments supporting the Sales Tax Credit for any given period will nevertheless be subject to audit to the same extent, for the same limitations periods and in the same manner as the items which are required to be reported on the taxpayer's return relating to the period in which the transaction occurs.

(b) Cap Amount. The Town has established the Cap Amount based upon a review of the estimated Verified Eligible Costs that are representative of the costs of those improvements. The Cap Amount may only be amended by an amendment of this Agreement pursuant to Section 7.1.

(c) PIF Trustee and Bond Trustee. The District, with the consent of the Town, will appoint a PIF Trustee (the "**PIF Trustee**") who will perform the duties set forth in this Agreement and in an agreement (the "**PIF Trustee Agreement**") that will be executed by the PIF Trustee and the District, and approved by the Town. After the issuance of any Bonds or Developer Bonds payable from the PIF Revenues, the PIF Trustee shall serve as Bond Trustee for such Bonds and any Developer Bonds, or the District may appoint a different entity to serve as Bond Trustee, with the consent of the Town. The Bond Trustee's duties shall be set forth in an indenture (the "**Indenture**") executed by the Bond Trustee and the District, which Indenture shall contain the provisions required in this Agreement and shall be subject to approval by the Town in accordance with the provisions of this Agreement. The PIF Trustee Agreement shall provide, without limitation, the following minimum provisions, unless any such provisions are waived in writing by both the District and the Town:

(i) Prior to the issuance of any Bonds or any Developer Bonds, the PIF Trustee shall receive all PIF Revenues from the PIF Collecting Agent net of collection costs and PILOT Payment Debt Revenues, if any, and shall hold all PIF Revenues and PILOT Payment Debt Revenues in a segregated account;

(ii) The PIF Revenues and PILOT Payment Debt Revenues shall be invested by the PIF Trustee as directed by the District and in accordance with applicable law;

(iii) The PIF Trustee shall keep accurate books and records of all deposits of all Credit PIF and Add-on PIF Revenues and PILOT Payment Debt Revenues and investment earnings thereon, which books and records shall be available for inspection during regular business hours by the District and the Town;

(iv) The PIF Trustee Agreement shall not be amended with respect to the duties of the PIF Trustee's administration of the Credit PIF Revenues without the prior written consent of the Town; and

(v) Upon the issuance of Bonds payable in whole or in part from PIF Revenues and PILOT Payment Debt Revenues and all moneys on deposit with the PIF Trustee shall be transferred to the Bond Trustee, if a different entity than the PIF Trustee, in accordance with the terms and provisions of the Indenture. Thereafter, all PIF Revenues and PILOT Payment Debt Revenues shall be deposited with the Bond Trustee during the PIF Period and shall be disbursed in accordance with the terms and provisions of the Indenture.

(d) Indenture Provisions. Each Indenture authorizing the issuance of Bonds and Developer Bonds shall provide, without limitation, the following minimum provisions, unless such provisions are waived in writing by the District and the Town:

(i) The net proceeds from all Bonds and Developer Bonds, except Refunding Bonds, (after paying costs of issuance, satisfying required deposits to debt service reserve funds, etc.) shall be deposited in a project fund, or similar fund established under the Indenture (hereinafter referred to as the “**Project Fund**”), and disbursed by the Bond Trustee upon proper requisitions received by the Bond Trustee from the District in accordance with the Amended and Restated Escrow Agreement. Such requisitions shall set forth, at a minimum, the amount of District Bond proceeds being expended on Public Improvements;

(ii) After all of the moneys on deposit in the Project Fund have been disbursed in accordance with the Indenture, the Bond Trustee shall determine, based solely on the requisitions received from the District, the actual amount of Bond proceeds spent on Verified Eligible Costs, without including any investment earnings thereon, or any of the costs identified in Section 1.1(r)(i) through (v) (the “**Final Allocation of Proceeds**”). The Bond Trustee shall submit a written copy of the Final Allocation of Proceeds to the District and to the Town, which Final Allocation of Proceeds shall be used, in part, to confirm that the distribution of Bond proceeds used for Verified Eligible Costs did not exceed the Cap Amount;

(iii) All Credit PIF Revenues, Add-On PIF Revenues and PILOT Payment Debt Revenues shall be deposited by the Bond Trustee in revenue funds or similar funds created under the Indenture (hereinafter referred to as the “**Credit PIF Revenue Fund**” the “**Add-On PIF Revenue Fund**” and the “**PILOT Revenue Fund**” (collectively the “**Revenue Fund**”);

(iv) The Indenture shall create or establish a debt service fund or similar fund (hereinafter referred to as the “**Debt Service Fund**”) to be used to make debt service payments on outstanding Bonds as the same become due;

(v) On or prior to each debt service payment date, the Bond Trustee shall determine the amount required to be transferred from the Revenue Fund to the Debt Service Fund to make the debt service payments on Bonds. The Bond Trustee shall transfer from the Credit PIF Revenue Fund, the Add-On PIF Revenue Fund, the PILOT Revenue Fund and other revenues pledged by the District, if any, to the Debt Service Fund an amount necessary to pay the debt service requirements, together with the revenue from the Debt Mill Levy, on Bonds then coming due as provided in the Indenture;

(vi) After moneys on deposit in the Revenue Fund have been used for the payment of debt service requirements on outstanding Bonds that have a senior lien on the Revenue Fund, the Indenture shall provide how remaining moneys on deposit in such Revenue Funds may be spent and shall set forth a priority of expenditures. By way of example, the Indenture shall provide, at minimum, for (i) the replenishment of a reserve fund created for the security of Bonds; (ii) the funding of a surplus reserve fund, if any; (iii) the payment of debt service on any subordinate Bonds; (iv) the prepayment of senior Bonds or subordinate Bonds until such Bonds are repaid; (v) the payment of various fees and expenses; and (vi) the

repayment of the Developer for Verified Eligible Expenses in an amount equal to the Shortfall Funding Advance; (v) payment of the District Cost Sharing Contribution and (vi) the payment of principal and interest on Developer Bonds;

(vii) The Indenture shall provide that the sections thereof implementing the terms of this Agreement may not be amended in a manner materially inconsistent with the terms of this Agreement without the prior written approval of the Town, which approval shall not be unreasonably withheld, conditioned or delayed;

(viii) The Indenture shall provide that no additional Bonds may be issued unless the District is in substantial compliance with all indentures authorizing the issuance of additional Bonds; and

(ix) The Indenture shall provide that the District and the Town have the right to inspect the books and records of the Bond Trustee during regular business hours.

(e) Duration of Credit PIF Period. The Credit PIF Period will commence for the Phase I Credit PIF and the Phase II Credit PIF on the date that the Sales Tax Credit becomes effective. The Credit PIF will continue until the earliest to occur of: (i) December 1, 2051; or (ii) the District's repayment in full of all of Bonds issued for the purpose of financing, refinancing or reimbursing the Verified Eligible Costs, including any re-financing or re-issue thereof, which net proceeds do not exceed the Cap Amount. The occurrence of subpart (ii) above shall be promptly certified by the District in a written supplement to the PIF Covenant recorded in the office of the Clerk and Recorder for Weld County, terminating the Credit PIF. At the time of issuance of any Bonds, the District may request an extension of the Credit PIF Period if an extension of the Credit PIF Period is anticipated to result in a lower interest or other favorable terms for issuance of Bonds. The Town will thereafter consider, but not be obligated to approve, an extension of the Credit PIF Period. No extension of the Credit PIF Period shall be effective unless approved by the Town Council, and any such permitted extension of the Credit PIF Period will be memorialized by the recording of a supplement to the PIF Covenant in the office of the Clerk and Recorder for Weld County, extending the duration of the Credit PIF.

(i) Adjustment of Credit PIF. The Credit PIF related to the 2022 Bonds will be reduced from 2.75% to 2% from the date of issuance of the Refunding and New Money Bonds and thereafter to the termination date of the Credit PIF.

(f) Disposition of Funds at the Termination of the Credit PIF Period. At the termination of the Credit PIF Period and after all Bonds are no longer outstanding under the terms of their respective indentures, if there are Credit PIF Revenues remaining on deposit with the Bond Trustee, the Bond Trustee shall remit all remaining Credit PIF Revenues to the Town. The Bond Trustee shall remit all remaining Add-On PIF Revenues, PILOT Payment Debt Revenues and any other pledged District funds to the District.

(g) Collection of PIF Revenues. The PIF Covenant requires the engagement of a PIF Collecting Agent. As more particularly set forth in a PIF Collection Services Agreement, the PIF Collecting Agent will be designated to receive the PIF Revenues and

PILOT Payment Revenues on behalf of the District, to collect the PIF Revenues from retailers within the Project and remit all of the PIF Revenues, less an agreed upon administrative fee and any PILOT Payment Debt Revenues to the PIF Trustee (prior to the issuance of Bonds) or to the Bond Trustee (while any Bonds payable from PIF Revenues remain outstanding). Following the Town's adoption of a Sales Tax Credit ordinance as contemplated in Section 4.4 of this Agreement, the District and the PIF Collecting Agent will enter into a PIF Collection Services Agreement in a form mutually acceptable to the Parties. The PIF Collecting Agent will remit all of the PILOT Payment Revenues – General Fund, less an agreed upon administration fee, to the District.

(h) The District's Use of PIF Revenues. The District will construct the Public Improvements prior to expiration of the Credit PIF Period using net Bond proceeds and net proceeds from Developer Bonds and the Developer Shortfall Funding Advance up to the Cap Amount and funds available from Other Obligations, if any. Subject to and pursuant to the provisions of this Agreement, the District may use Credit PIF Revenues and Add-On PIF Revenues for costs related to the issuance of Bonds and repayment of Bonds, as set forth in the indentures or agreements, as applicable, authorizing the issuance of and the security for Bonds, and for cash disbursements associated with and directly related to the design and construction of Public Improvements and payment or repayment of Verified Eligible Costs up to the Cap Amount. In addition to the purposes set forth above, the Add-On-PIF Revenues may be used for any purpose permitted by law after the expiration of the Credit PIF Period.

(i) Audits. Within thirty (30) days of completion, but not later than August 15 of each year during the Credit PIF Period, the District will provide to the Town copies of its annual audit reports, year-end financial reports for the preceding fiscal year and budget for the current fiscal year, and will provide such other and additional information as reasonably requested by the Town regarding the use of the PIF Revenues. Upon reasonable notice, the Town will have the right at its own expense to audit the District's books and records and the PIF Trustee's and Bond Trustee's books and records, and the District will have the right at its own expense to audit the Town's books and records and the Bond Trustee's books and records, related to their respective obligations under this Comprehensive Funding Plan, including, but not limited to, the Public Improvements, the Sales Tax Credit and the PIF Revenues, other District debt obligations and the District's use of the PIF Revenues and the PILOT Payment Revenues. Nothing herein or elsewhere, however, shall obligate the Town to furnish to the District confidential information that the Town has obtained from the State or elsewhere.

(j) Audit of Retailers; Enforcement. Pursuant to the PIF Covenant, any person or entity who engages in a Taxable Transaction is subject to audit by the Town or the District regarding Taxable Transactions that are subject to the PIF. The Town and the District acknowledge that it is their intent to minimize their respective administrative costs and the administrative burdens imposed upon retailers within the Project and agree that, in the event one of the Parties exercises its right to audit the Taxable Transactions of a retailer within the Project, it will provide the other party with the opportunity to cooperatively participate in such audit upon payment of fifty-percent (50%) of the audit costs, provided that such retailer provides its written consent to such cooperative audit to the extent such consent is required under the terms and conditions of the PIF Covenant or applicable law.

If the PIF Collecting Agent is unable to collect all or any portion of the Credit PIF due to delinquency, deficiency or failure to file, such that the Sales Tax Credit is not received for any Taxable Transaction, the PIF Collecting Agent will notify the District of such fact. Upon receipt of any such notice, the District may, in addition to exercising all of its remedies under the PIF Covenant or otherwise, notify the Town in writing and the Town may institute the procedures authorized under the Code to enforce and collect the corresponding Sales Tax, together with any applicable interest, penalties and/or costs. The Town will then remit any such collected tax revenues to the District, subject to annual appropriation by the Town and subject to the further following conditions: (i) the Town will be entitled to retain an amount equal to its costs incurred in enforcing its collection of taxes under the Code, as well as an administrative fee equal to ten percent (10%) of any tax and one hundred percent (100%) of any penalty and/or interest actually collected; (ii) the Town will have no responsibility to collect any Add-On PIF amounts that may be due and unpaid; (iii) the Town does not guarantee or ensure that it will be able to collect any delinquent or deficient Credit PIF amounts; and (iv) under no circumstances will the Town be subject to any legal liability to the District, the Developer, or any Bond Participant on account of the Town's failure to collect some or all of the delinquent or deficient Credit PIF obligations on behalf of the District or any Bond Participant. If the person or entity who failed to timely pay such Credit PIF subsequently remits the Credit PIF, such payment will result in the application of the Sales Tax Credit against such person or entity's tax obligation, which Sales Tax Credit will fully satisfy any corresponding liability to the Town for unpaid sales or use tax. In such circumstances, the Town will nevertheless be entitled to recover its administrative fee and any costs incurred in the enforcement and recovery of such Credit PIF Revenues.

(k) On an ongoing basis, the Town, Bond Trustee, the District and the Developer will reasonably cooperate to implement the terms of this Comprehensive Funding Plan as they relate to application of the PIF, the Sales Tax Credit or otherwise implementing the Credit PIF Revenues and Add-On PIF Revenues commitment with respect to internet sales, mail order sales, and other similar transactions occurring within the Property (i.e., transactions deemed to have occurred within the Property because delivery is made within the Property) and which otherwise would be subject to the Town's Sales Tax, including implementation of a means of the Town accounting for the occurrence of such transactions and Sales Tax receipts derived therefrom, to the extent possible, it being understood that such transactions are a growing trend and that the means for adequately identifying, tracking and collecting Sales Tax and PIF Revenues from such transactions may not presently be adequate but are expected to improve over time.

4.5 Bonds. It is anticipated that Bonds will be issued in more than one series to finance Verified Eligible Costs. It is currently anticipated that there will be three issuances of Bonds, the 2022 Bonds, the 2025 Bonds and the 2027 Bonds. It is anticipated that the 2027 Bonds will be issued as the First Refunding and New Money Bonds. Prior to the issuance of any Bonds, the following conditions must occur unless such condition is specifically waived by the Town in writing or is specifically modified in writing by the Town, the District and the Developer.

(a) Conditions Precedent to Bond Issuance. Prior to the issuance of Bonds by the District, the following conditions precedent shall be satisfied, unless specifically waived

by the Town or modified by the Town with the written consent of the District and the Developer:

(i) Service Plan Amendment. Confirmation by the Town that no Service Plan Amendment is necessary prior to the issuance of any Bonds;

(ii) Preliminary Plat. The Town Council, by resolution, shall have approved a preliminary plat for the Property or the portion thereof that is subject to the construction of Public Improvements from the Bonds;

(iii) Advance Reimbursement and Payment Agreement. The District shall provide for the Town's review and comment, the Advance Reimbursement and Payment Agreement. The District and the Developer shall have executed the Advance Reimbursement and Payment Agreement;

(iv) Sales Tax Ordinance. The Town Council shall have, by ordinance, adopted the Sales Tax Credit;

(v) PIF Covenant. The Developer shall have recorded the PIF Covenant against the portion of the Property it owns.

(vi) PILOT Covenant. ~~The~~The Developer shall have recorded the PILOT Covenant against the portion of the Property it owns;

(vii) Escrow Agreement. Prior to the issuance:

(1) Of the 2022 Bonds, the Parties shall have executed the Amended and Restated Escrow Agreement, with completed terms that are mutually acceptable to the Parties and the Trustee, in substantially the form attached hereto as **Exhibit E**; and

(2) Of the 2025 Bonds, the 2027 Bonds, ~~or~~and any other Bonds, the Parties shall have executed the Escrow Agreement if determined by the Town to be required, with completed terms that are mutually acceptable to the Parties and the Trustee, in substantially the form attached hereto as **Exhibit F**.

(viii) Operations and Maintenance Agreement. The Parties acknowledge that the Operations and Maintenance Intergovernmental Agreement has been executed, as required; and

(ix) Thirty (30) Day Submittals. No less than thirty (30) days prior to the issuance of any Bonds or any Developer Bonds, the District shall have submitted to the Town the following ("**30 Day Submittal**"):

(1) The financing plan for the proposed issuance which shall include the build out assumptions and revenue assumptions for the repayment of Bonds, including Developer Bonds, together with any other outstanding Bonds and outstanding Developer Bonds to be repaid from the same pledged revenues, the estimated amortization schedule and summary of all of the terms related to the issuance of Bonds and Developer Bonds,

including the estimated or assumed interest rate, call protection provisions, description of pledged revenues and flow of funds to be included in the Indenture. Bonds shall not be amortized to be repaid beyond the end of the Credit PIF Period without the written consent of the Town. Developer Bonds shall not be amortized to be repaid for a Credit PIF beyond December 1, 2047;

(2) Unless satisfied or otherwise established through the Feasibility Analysis (defined below), written documentation evidencing or otherwise confirming the tenant commitments supporting the build out assumptions and revenue assumptions. To the extent permitted by law, the Town agrees that all such documentation shall be delivered directly to legal counsel for the Town, kept confidential and not subject to release to the general public and agrees to cooperate with the Developer and the District with respect to achieving such confidentiality;

(3) The schedule for the proposed issuance;

(4) The anticipated use of proceeds for the issuance, including the specific Public Improvements to be funded with the net Bond proceeds and the net Developer Bond proceeds and including the description of the Public Art to be included in the Public Improvements to be funded from the Bonds, the cost of which shall be at least 1.0% of the total Project Fund. The location, scope and specifications for the Public Art shall be submitted in writing and approved in writing by the Town prior to installation;

(5) A feasibility analysis, or if a feasibility analysis was previously issued, an update to the feasibility analysis, from a third party market research firm or a market research analyst that has been engaged in analyzing commercial market conditions for at least five (5) years (the “**Market Analyst**”), stating that it has developed the financial projections utilized in sizing the proposed Bond issuance including, but not limited to, absorption rates, valuation, growth and inflation rates and has evaluated the same in comparison to current and projected market conditions for such areas as deemed by such Market Analyst to be comparable, and that such financial projections are reasonable (the “**Feasibility Analysis**”). Provided, however, the District shall not be obligated to provide a Feasibility Analysis for the repayment of Developer Bonds, unless the District has otherwise had a Feasibility Analysis prepared for Developer Bonds; and

(6) No less than fifteen (15) days prior to the issuance of any Bonds or Developer Bonds, the District shall submit all material updates to the information provided in the 30-Day Submittal and shall also submit the following documentation in draft form: (i) the Indenture; (ii) the offering document, if any, for the issuance of Bonds and Developer Bonds, if any; and (iii) form of enforceability and tax-exempt opinion anticipated to be provided at the time of issuance of Bonds and Developer Bonds, if any.

Understanding that time is of the essence, the Town agrees to endeavor to expeditiously review the 30-Day Submittal within 30 days of receipt by the Town (the “**Review Period**”). If the 30-Day Submittal materials are submitted in full, there are no material modifications to the terms of this Agreement and the analysis contained therein supports the issuance of Bonds, the Town Manager may, in his or her discretion, approve the 30-Day Submittal in writing and the District

may proceed to issue the applicable Bonds substantially on the terms provided in the 30-Day Submittal.

(b) Limitation on Time. Upon the satisfaction of all the conditions set forth in Section 4.5(a) above and the delivery of all the information required by Section 4.5(a)(ix) above, the District shall notify the Town in writing of the commencement of the 30-Day Submittal period. If the Town does not object to the 30-Day Submittal within thirty (30) days of receipt, the 30-Day Submittal shall be deemed approved and the District may proceed to issue the applicable Bonds and Developer Bonds substantially on the terms provided in the 30-Day Submittal.

(c) Limit on Amount of Issuance Costs. The issuance costs for any issuance of the Bonds shall not exceed four (4%) percent of the aggregate par value of the Bonds.

(d) Developer Bonds. Developer Bonds may only be issued in accordance with the provisions and limitations of this Agreement and the Service Plan. The Developer shall use commercially reasonable, best efforts to work with the Town and District to refinance any Developer Bonds with Refunding Bonds as soon as practicable after issuance.

(i) The obligation of the District to make payment of Land Acquisition Costs to the Developer will be documented in a Developer Bond unless otherwise approved in writing by the Town.

(e) Other Obligations. The District intends to issue Bonds and Developer Bonds with proceeds in amounts sufficient to equal the Cap Amount, but the Cap Amount is not expected to cover all of the Verified Eligible Costs of the Project. The parties to this Agreement acknowledge that the District may issue Other Obligations with proceeds sufficient to net an amount not to exceed the difference between the Cap Amount and the total Verified Eligible Costs. The District and the Developer acknowledge any revenue pledged to repay the Other Obligations shall also be pledged to pay the Bonds, the repayment of the Developer for Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance, the payment of the District Cost Sharing Contribution and Developer Bonds. Therefore, any pledge to repay the Other Obligations shall be fully subordinated to the Bonds, the repayment of the Developer for Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance, the payment of the District Cost Sharing Contribution, and the Developer Bonds, in that priority.

(f) Condition Precedent to Release of Bond Proceeds. Prior to the release of any funds from the Bond Proceeds Account, as defined in the Amended and Restated Escrow Agreement (“**Bond Proceeds Account**”), the Subdivision Development and Improvement Agreement, in substantially the form attached hereto as **Exhibit G**, shall be executed. The Parties acknowledge that they have entered into the Subdivision Development and Improvement Agreement for Town of Johnstown (Ledge Rock Center Commercial) for Phase I of the Project.

(g) First Requisition from the Bond Proceeds Account for Payment of Verified Eligible Costs. The first requisition from the Bond Proceeds Account for each Bond

issuance shall be used to fund a specific amount of Land Acquisition Costs, Verified Eligible Costs related to soft costs incurred prior to that Bond issuance or other Verified Eligible Costs as agreed upon by the Parties, which shall be deposited in the Developer Fund Account, as defined in the Amended and Restated Escrow Agreement (“**Developer Funds Account**”), prior to the requisition of any other amounts from the Bond Proceeds for payment of any other Verified Eligible Costs. As the provisions related to the first requisition from the Bond Proceeds Account and the deposit and release of funds from the Developer Fund Account will be determined prior to every Bond issuance and will be set forth in the Amended and Restated Escrow Agreement, in the event there is a conflict between the provisions of the Amended and Restated Escrow Agreement and this Section 4.5(g), the provisions of the Amended and Restated Escrow Agreement shall control.

4.6 Shortfall Funding.

(a) The Developer will advance funds to the District for the Developer Shortfall Funding Advance, which will not be repaid by the District. The District anticipates reimbursing the Developer for Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance on a subordinate basis to the 2022 Bonds, the 2025 Bonds and any other Bonds issued to complete the Public Improvements required for Phase I of the Project and Phase II of the Project. In no event will the District be obligated to pay, and the District shall not pay, to the Developer any interest on the Developer Shortfall Funding Advance. It is anticipated the Developer will be reimbursed for Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance from the issuance of the First Refunding and New Money Bonds and Additional Refunding and New Money Bonds. The Developer Shortfall Funding Advance shall be deposited upon receipt into the Developer Funds Account established under the Amended and Restated Escrow Agreement.

(b) The Developer has committed to the make the Developer Shortfall Funding Advance in exchange for the commitment of the Town to sell the Developer up to ~~twenty two (22)~~ nineteen and six-tenths (19.6) shares of water at Five Hundred Fifty Thousand Dollars (\$550,000) per share (the “**Water Shares**”) for the Multi-Family Parcels to be memorialized in an agreement between the Town and the Developer (the “**Developer Contribution Agreement**”). Developer’s payment of the Developer Shortfall Funding Advance shall be deposited in the Developer Funds Account established under the Amended and Restated Escrow Agreement and the purchasing of the Water Shares shall close on or before the earlier to occur of the following:

(i) the conveyance of any interest of the Developer in any portion of the Multi-Family Parcel; ~~or~~

(ii) the refinancing of the loan secured by the deed of trust currently recorded against the Multi-Family Parcel; or

(iii) June 1, 2023.

(c) The Covenants Securing Funding Commitment attached to the Developer Contribution Agreement ~~and the related declaration of covenants will~~ shall be recorded against the Multi-Family Parcel.

(d) The sale of a portion of the Multi-Family Parcel together with the payment of the Developer Shortfall Funding Advance is currently anticipated to close February 2023. The Parties agree that the Developer Shortfall Funding Advance shall be deposited by the Developer in the Developer Fund under the Escrow Agreement no later than June 1, 2023.

(e) The sum of the Developer Shortfall Funding Advance deposited into the Developer Funds Account may be released upon request pursuant to leases and/or construction progression as detailed in the Amended and Restated Escrow Agreement.

(f) The payment to the Town of the District Cost Sharing Contribution shall be made on a subordinated basis to the reimbursement by the District to the Developer for Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance.

4.7 District Cost Sharing Contribution: The District shall provide funding to the Town for the Town's use for any lawful purpose an amount equal to the increase collected in the Credit PIF from 2% to 2.75% for the 2022 Bonds with no interest accrual included in the calculation (the "**District Cost Sharing Contribution**") upon the earlier to occur of the following ~~(the "**Second Phase Property Purchase Option Expiration Date**")~~:

(a) Simultaneously with the acquisition of the first to occur of the acquisition by the Developer of either the Oxy Parcel No. 1, Lot 1, the Oxy 2 Parcel, or both; or

(b) Simultaneously with the issuance of Bonds in an amount sufficient to refund the 2022 Bonds, pay Verified Eligible Costs in an amount equal to the Developer Shortfall Advance and ~~to~~ fund the District Cost Sharing Contribution (the "**Refunding and New Money Bonds**").

(i) The District shall have the obligation to issue the first of the Refunding and New Money Bonds when it can achieve a net present value savings for the portion of the Refunding and New Money Bonds issued to redeem the 2022 Bonds, including transaction costs, while having sufficient capacity to repay a part or all of Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance and a part or all of the District Cost Sharing Contribution with the Original Pledged Revenues (the "**First Refunding and New Money Bonds**"). The Credit PIF will be reduced from 2.75% to 2% from the date of issuance of the First Refunding and New Money Bonds and thereafter to the termination date of the Credit PIF.

(ii) In the event the First Refunding and New Money Bonds is not in an amount sufficient to pay all of the Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance and the District Cost Sharing Contribution, the District may issue the Refunding and New Money Bonds in an amount that will repay all or a portion of Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance and not any or all of the District Cost Sharing Contribution. In these circumstances, the District shall be

obligated to issue Additional Refunding and New Money Bonds to pay first any remaining amount due to repay Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance and to pay all of the District Cost Sharing Contribution as soon as it has capacity to do so (“**Additional Refunding and New Money Bonds**”). Any Verified Eligible Costs advanced by the Developer in excess of an amount equal to the Developer Shortfall Funding Advance cannot be refunded or reimbursed by the District until Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance has been fully repaid and the District Cost Sharing Contribution has been made to the Town.

(iii) The District will seek the input of an underwriter or municipal financial advisor at least once a year after the date of issuance of the 2022 Bonds to access its ability to issue the Refunding and New Money Bonds, and any Additional Refunding and New Money Bonds, as needed to fulfill its commitment to pay the District Cost Sharing Contribution.

~~(iv) ——— The Developer acknowledges that its rights to acquire the Second Phase Property under the Amended PSA is:~~

~~(v)(iv) Conditioned on the issuance by the District is conditioned on the District’s payment of the full amount of the District Cost Sharing Contribution by and through the purchase of the Second Phase Property, or a portion thereof, or the District’s reissuance of the Refunding and New Money Bonds in an amount sufficient for payment by the District to the Town of the full amount of the District Cost Sharing Contribution; and, whichever occurs first. If the District does not provide the District Cost Sharing Contribution to the Town as provided herein, unless otherwise agreed by the Town in the form of an amendment to this Agreement, the Developer shall not be entitled to purchase the Second Phase Property.~~

~~(vi) ——— Will expire on the Second Phase Property Purchase Option Expiration Date unless the Developer, the District and the Town have executed an amendment to this Agreement to extend that date.~~

4.8 Legal Opinions. The District shall issue Bonds and Developer Bonds and the District, the District counsel, and the Bond Trustee (“**Bond Participants**”) will rely on the Town’s commitments regarding the Credit PIF Revenues as set forth herein in connection with issuance and marketing of Bonds and the issuance of the Developer Bonds. Accordingly, each Party affirms and warrants for the benefit of the other Parties and the Bond Participants that it is fully authorized to enter into and execute this Agreement, that all necessary actions, notices, meetings and/or hearings pursuant to any law required to authorize its execution of this Agreement have been made, and that this Agreement is enforceable against such Party in accordance with its terms and conditions. Each of the Parties hereby covenants that it will not assert in any context that the performance of its obligations hereunder is not fully enforceable. On or prior to the seventh day after the Effective Date, the District and the Developer will deliver an opinion of their respective outside counsel addressed to the other Parties to this Agreement, 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 other Parties hereto, the Comprehensive Funding Plan constitutes a valid and binding agreement of such Party 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. The Developer's counsel will provide a similar opinion concerning the PIF Covenant at the time the PIF Covenant is recorded. Such opinions may also contain additional exceptions or qualifications as are agreed to in writing by the Town and the District. With at least thirty (30) days' written notice by the District, outside counsel to the Town will provide the District with a similar opinion letter concerning the Comprehensive Funding Plan and the ordinance authorizing the Sales Tax Credit at the time of the issuance of any Bonds at the District's cost and expense. From time to time, a Party to this Agreement may otherwise request a new opinion from the other Parties' outside counsel at such requesting Party's cost and expense.

4.9 Third Party Beneficiary; Assignment. The Parties hereby express their intent and agreement that the Bond Participants will be made third-party beneficiaries of the Town's obligations under this Comprehensive Funding Agreement with respect to implementation of the Sales Tax Credit and the District's right to receive the Credit PIF Revenues. Additionally, the District will be entitled to assign its rights to receive the Credit PIF Revenues, the Add-On PIF Revenues and the PILOT Payment Debt Revenues to the Bond Trustee in connection with the issuance of Bonds and Developer Bonds to finance Public Improvements. The District will provide prompt written notice to the Town of any such assignment upon execution and delivery thereof.

4.10 Payment of Verified Eligible Costs.

(a) Land Acquisition. It is anticipated the District will acquire the rights of way and easements necessary for the Public Improvements. The District shall secure an appraisal that will establish that the District is not paying more than fair market value for the interests to be acquired and shall provide a copy of the appraisal or appraisals to the Town prior to District closing on the acquisition of any interest in real estate for more than nominal monetary consideration. The Town shall have fifteen (15) days from the date of receipt of the appraisal to object to the appraisal. If the Town does not respond, the Town will be deemed to have no objection. As the Town has conveyed the Oxy Parcel No. 1, Lots 2-5 and Tract A to the District for nominal consideration, under no circumstances will the District pay for the acquisition or dedication of Public Spaces or interests in real estate to be Dedicated on the Oxy Parcel No. 1, Lots 2-5 and Tract A.

(b) Verification of Incurred Costs.

(i) Developer Incurred Costs. The Developer has incurred Eligible Costs prior to the organization of the District in anticipation of this Agreement and may continue to incur Eligible Costs in anticipation of the future issuance of Bonds and Developer Bonds by the District. The Developer may be reimbursed from the proceeds of Bonds and Developer Bonds so long as the Eligible Costs have been verified by the District Accountant, Independent Engineer or other independent third party reviewer approved by the Town and the District (collectively, the "**Cost Certifier**") as Verified Eligible Costs. The Developer shall provide to the District as built drawings for any completed Public Improvements; lien waivers and indemnifications from each contractor verifying that all amounts due to contractors, 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 Independent Engineer, canceled checks and any other requested documentation to verify the amount requested; and an executed Bill of Sale conveying the Public Improvements to the District or to the Town, in form acceptable to the District and, if applicable, the Town. The District shall work with the District Accountant, the Independent Engineer or other Cost Certifier to have prepared a certification of the Verified Eligible Costs. The District's obligation to repay the Verified Eligible Costs shall include interest thereon to be accrued at the Developer Bond Interest Rate from the date of expenditure through the date of repayment. The payment of interest shall not count against the Cap Amount as it is a cost of financing to be paid in addition to the Cap Amount.

(ii) District Incurred Eligible Costs.

(1) The District shall incur Eligible Costs and shall receive funding for Verified Eligible Costs from the net proceeds of Bonds or Developer Bonds in an amount, together with the Verified Eligible Costs reimbursed to the Developer pursuant to an Advance Reimbursement and Payment Agreement, which shall not exceed the Cap Amount.

(2) The District acknowledges that the total amount of Verified Eligible Costs to be paid from Credit PIF Revenues and Add-On PIF Revenues collected during the Credit PIF Period shall not exceed the Cap Amount. Therefore, the District shall provide an accounting of all Verified Eligible Costs paid directly from Credit PIF Revenues, from Add-On PIF Revenues collected during the Credit PIF Period, from the PILOT Payment Revenues and from the net proceeds of Bonds or the portion of the principal amount of any Developer Bonds spent on Verified Eligible Costs. The District shall provide the Town, upon the Town's written request, the complete reports, reports related to the Verified Eligible Costs and all backup documentation related to the Verified Eligible Costs paid from Credit PIF Revenues, Add-On PIF Revenues and PILOT Payment Revenues collected during the Credit PIF Period. The District shall retain all reports and documentation related to the Verified Eligible Costs until the end of the Credit PIF Period. The District shall also be obligated to provide an accounting of Verified Eligible Costs paid for or evidenced by Other Obligations.

4.11 Oxy Parcel No. 1 Restriction. Under no circumstances will the Developer secure any financing for the Public Improvements with a mortgage or other encumbrance on any part of the Oxy Parcel No. 1.

4.12 Mortgage Restriction. Under no circumstances will the District secure any financing for the Public Improvements on any of the Property with a mortgage or any encumbrance beyond the pledge of revenues from the Credit PIF Revenues, the Add On PIF Revenues, the PILOT Payment Revenues and the ad valorem mill levy of the District.

4.13 Developer Contribution Initial Deposit. The Developer will remit the JP Developer Contribution to the District prior to the closing on the 2022 Bonds and the District will provide written notice of the receipt of such remittance to the Town prior to the closing on the 2022 Bonds. The JP Developer Contribution shall be deposited into the Ledge Rock Water and Sewer Pipeline Escrow Agreement established pursuant to the Ledge Rock Water and Sewer Pipeline Escrow Agreement, and thereafter disbursed to the Developer as set forth in the Ledge Rock Water and Sewer Pipeline Escrow Agreement. The Developer and the District

acknowledge that the JP Developer Contribution is, under no circumstances, either directly or indirectly, to be reimbursed to the Developer, or any other party, from any revenues of the Town or the District or from the proceeds of any of the Bonds or Other Obligations.

4.14 Developer Contribution Restriction. The District will use the JP Developer Contribution for the payment of Public Improvement costs and will not use the JP Developer Contribution for any other purposes, including, but not limited to, the payment of the costs of issuance of the Bonds.

ARTICLE V DEFAULT; REMEDIES; TERMINATION

5.1 Default by Town. A “breach” or “default” by the Town under this Agreement will be defined as the Town’s failure to fulfill or perform any express material obligation of the Town stated in this Agreement.

5.2 Default by the Developer and the District; No Cross-Defaults. A “breach” or “default” by the Developer or the District will be defined as such Party’s failure to fulfill or perform any express material obligation of that Party stated in this Agreement. No default or breach by the Developer or the District of any obligation of that Party under this Agreement will be construed as or constitute a default or breach of any other Party or constitute a basis for the Town to assert or enforce any remedy against any Party other than the particular Party whose action or failure to act constitutes or gives rise to the default or breach. No default or breach by the Developer or the District of any obligation of that Party arising under any agreement other than this Agreement will be construed as or constitute a default or breach of this Agreement or constitute a basis for the Town or the Town to assert or enforce any remedy against any Party under the terms of this Agreement. No default by any Party to this Agreement in the performance of any obligation of that Party under this Agreement will constitute or be deemed to constitute a default of any obligation of that Party under any other agreement or to excuse the performance by any other Party under any other agreement to which that Party is a party.

5.3 Notices of Default. In the event of a default by any Party under this Agreement, the non-defaulting Party will deliver written notice to the defaulting Party of the default, at the address specified in this Agreement (as may be amended from time to time), and the defaulting Party will have thirty (30) days from and after receipt of the notice to cure the default without liability for the default. If the default is not of a type which can be cured within such thirty (30) day period and the defaulting Party gives written notice to the non-defaulting Party within such thirty (30) day period that it is actively and diligently pursuing a cure, the defaulting Party will have a reasonable period of time given the nature of the default following the end of the 30-day period to cure the default, provided that the defaulting Party is at all times within the additional time period actively and diligently pursuing the cure. Any claim for breach of this Agreement brought before the expiration of the applicable cure period will not be prosecuted by the non-defaulting party until the expiration of the applicable cure period and will be dismissed by the non-defaulting party if the default is cured in accordance with this Section 5.3.

5.4 Remedies. If any default under this Agreement is not cured as described in Section 5.3 of this Agreement, the non-defaulting Party will have the right to enforce the defaulting Party’s obligations hereunder by an action for injunction or specific performance. In

no event may the Town interfere with, terminate or suspend the PIF Trustee's or the Bond Trustee's receipt of the Credit PIF Revenues or the Sales Tax Revenues or the Town's obligations under the Comprehensive Funding Plan, including, but not limited to, its obligations with respect to the Credit PIF Revenues, the Sales Tax Revenues, the Sales Tax Credit or the Credit PIF during the Credit PIF Period.

ARTICLE VI DEVELOPER AND DISTRICT INDEMNITY

6.1 Developer Indemnity. The Developer shall defend, indemnify, assume all responsibility for and hold the Town and District, its members of its governing body, 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 or the Developer's activities regarding the financing, development, improvement, redevelopment, construction, repair, maintenance, management, acquisition, leasing, sale, disposition or other conduct or activities, related to the Project, whether such activities are undertaken by the Developer or anyone directly or indirectly employed by or under contract to the Developer or contractor of the Developer and whether such damage shall accrue or be discovered before or after termination of this Agreement. The Developer's obligations under this Section 6.1 shall not apply to losses, damages or claims arising from acts or omission of the Indemnified Parties.

(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 Developer 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.

(h) Notwithstanding the foregoing, the Town may, at its sole discretion, assume the defense of any claims asserted against it. Such defense shall in no way affect the indemnification obligations of the Developer.

6.2 District Indemnity. To the extent permitted by law, if any, and without waiving or limiting the application of governmental immunity, the District shall defend, indemnify, assume all responsibility for and hold the Town, its 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 District’s activities undertaken pursuant to this Agreement or the District’s activities regarding the financing, development, improvement, redevelopment, construction, repair, maintenance, management, acquisition, disposition or other conduct or activities, including use of Bond proceeds or the Developer Bond proceeds, of the District related to the Project, whether such activities are undertaken by the District or anyone directly or indirectly employed by or under contract to the District or contractor of the District and whether such damage shall accrue or be discovered before or after termination of this Agreement. The District’s obligations under this Section 6.2 shall not apply to losses, damages or claims arising from acts or omission of the Indemnified Parties.

(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 District.

(b) Upon receipt of such notice, the District 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 District in such defense at the District’s expense and provide the District with all information and assistance reasonably necessary to permit the District 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 District shall be entitled to control the defense unless the Indemnified Party has relieved the District from liability with respect to the particular matter.

(e) If the District 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 District 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 District.

(g) The assumption of such sole defense by the Indemnified Party shall in no way affect the indemnification obligations of the District.

(h) Notwithstanding the foregoing, the Town may, at its sole discretion, assume the defense of any claims asserted against it. Such defense shall in no way affect the indemnification obligations of the District.

6.3 Litigation. To the extent not otherwise provided herein, the District and the Developer will cooperate with the Town in taking reasonable actions to defend against any litigation brought by a third party against the Town concerning the Project, the Public Improvements or this Agreement.

ARTICLE VII MISCELLANEOUS

7.1 Amendment of this Agreement.

(a) Written Amendment Required. Except as otherwise set forth in this Agreement, this Agreement may only be amended, terminated or superseded by mutual consent in writing of each of the Parties hereto.

(b) Effectiveness and Recordation. Any such written amendment will be effective upon the later to occur of (i) execution by all required Parties or (ii) the effective date of the District's resolution approving such amendment. Promptly after any amendment to this Agreement becomes effective, the Town will cause it to be Recorded as deemed necessary by the Town. As between the Parties, the validity or enforceability of such an amendment will not be affected by any delay in or failure to Record the amendment as provided herein.

7.2 Recordation of Agreement. This Agreement will be Recorded promptly after execution by all the Parties hereto, and passage of resolution by the District authorizing such execution.

7.3 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.

7.4 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.

7.5 Colorado Governmental Immunity Act. 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. 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 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.

7.6 Reimbursement of Town Costs. The Developer and the District shall be jointly and severally responsible for reimbursement of any and all reasonable and necessary costs incurred by the Town in the preparation of this Agreement and in the processing of any applications, review of documentation related to the issuance of Bonds, the Developer Bonds, the preparation of the Subdivision Development and Improvement Agreement, the preparation of the Operations and Maintenance Intergovernmental Agreement, the preparation of the Amended and Restated Escrow Agreement and any other actions to be taken by the Town or its outside consultants to exercise its responsibilities or protect its rights under this Agreement.

7.7 Waiver. No waiver of one or more of the terms of this Agreement will constitute a waiver of other terms. No waiver of any provision of this Agreement in any instance will constitute a waiver of such provision in other instances.

7.8 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 Comprehensive Plan and development laws, regulations and policies of the Town. The District Board finds that this Agreement is in the best interests of the District.

7.9 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 will 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 will 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.

7.10 Further Assurances. Each Party will 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.

7.11 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.

7.12 Notices. Any notice or communication required under this Agreement between the Parties must be in writing, and may be given either personally by registered or certified mail, return receipt requested, or by electronic mail on the condition that the intended recipient of the electronic mail acknowledges receipt thereof. 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 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) five days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by electronic mail, the same will be deemed to have been given and received upon acknowledgement by the intended recipient. Any Party may at any time, by giving written notice to the other Parties hereto as provided in this Section, 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
mlecerf@townofjohnstown.com

With a copy to:

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

and

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

If to the District:

Ledge Rock Center Commercial
Metropolitan 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
doleary@spencerfane.com

If to the Developer:

Ledge Rock Center LLC

With a copy to:

Allen D. Schlup, Esq.

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

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

7.13 Consent. Where any of the Parties to this Agreement have the right of approval or consent, such consent shall not be unreasonably withheld, conditioned or delayed.

7.14 Assignment; Binding Effect. This Agreement will be binding upon and, except as otherwise provided in this Agreement, will inure to the benefit of the successors in interest or the legal representatives of the Parties hereto. The Developer, upon the delivery of written notice to the Town of the Developer's intent, will have the right to assign or transfer all or any portion of its respective interests, rights or obligations under this Agreement to the District or to third parties acquiring an interest or estate in all or any part of the Property, including, but not limited to, joint venture partners, purchasers or long term ground lessees of individual lots, parcels, or of any improvements now or hereafter located within the Property; provided that to the extent the Developer assigns any of its respective obligations under this Agreement, the assignee of such obligations shall expressly assume the obligations contained in this Agreement. Unless further consented to by the Town as set forth below, any such assignee shall be jointly and severally liable with the Developer under this Agreement. Any assignment by the Developer of the Developer's interests, rights or obligations under this Agreement, without provision of written notice to the Town, shall not be effective or enforceable. Subject to the Town's prior written consent, the express assumption of any of the Developer's obligations under this Agreement by an assignee or transferee will, in the Town's discretion, relieve the Developer of any further obligations under this Agreement and release the other Parties from further obligation to the Developer with respect to the matter so assigned and assumed. If the Town does not provide such written consent, the Developer shall remain liable for the obligations under this Agreement. Subject to the Town's prior written consent, the District may, in the Town's discretion, assign its obligation under this Agreement with respect to design, construction and financing of the Public Improvements; provided, however, that the District's assignment of its right to receive the Credit PIF Revenues will be governed by Section 4.4 of this Agreement.

7.15 Venue and Choice of Law; Waiver of Trial by Jury; Construction. This Agreement will be construed and enforced according to the laws of the State of Colorado. Venue will be in Weld County, Colorado. To reduce the cost of 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. In the event of ambiguity in this Agreement, any rule of construction which favors one Parties' interpretation as a non-drafting party will not be applied, and the ambiguous provision will be interpreted as though neither Party was the drafter.

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

7.17 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.

7.18 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 Effective Date.

[The Remainder of this Page Intentionally Left Blank]

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 Development and Reimbursement Agreement for Ledge Rock Center Commercial, Johnstown, Colorado was acknowledged before me this ____ day of _____, 2022, by _____, as President and Secretary Ledge Rock Center Metropolitan District, a quasi-municipal corporation of the state of Colorado.

Witness my hand and official seal.

My commission expires: _____

Notary Public

LEDGE ROCK CENTER, LLC, a Kansas
limited liability company

By: _____
Its: President
Date: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Development and Reimbursement Agreement for Ledge Rock Center Commercial, Johnstown, Colorado was acknowledged before me this ____ day of _____, 20____, by _____, as _____ of Ledge Rock Center, LLC, a Kansas limited liability company.

Witness my hand and official seal.

My commission expires: _____

Notary Public

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

By: _____
Gary Lebsack, Mayor

Date: _____

Attest:

Hannah Hill, Town Clerk

