

**AGREEMENT FOR INCLUSION OF PROPERTY
(Ledge Rock Center Commercial Metropolitan District)**

THIS AGREEMENT FOR INCLUSION OF PROPERTY (the “Agreement”) is made and entered into as of this ____ day of _____, 2022, by and between the **LEDGE ROCK CENTER COMMERCIAL METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (“District”), and the **TOWN OF JOHNSTOWN**, a home-rule municipality of the Counties of Larimer and Weld, State of Colorado (“Town” or “Petitioner”) (the District and the Petitioner may each be referred to herein individually as a “Party” or collectively as the “Parties,” as the context implies).

RECITALS

WHEREAS, the District is a duly and validly created quasi-municipal corporation and political subdivision of the State of Colorado located in the Town of Johnstown, Weld County, Colorado, created in accordance with the provisions of the Special District Act, Section 32-1-101, et seq., C.R.S. (the “Act”), with the general power and authority to provide certain public infrastructure improvements and services and to incur debt or other financial obligations for the purpose of providing and supporting the public infrastructure improvements and services needs for the properties, residents and taxpayers within the District’s Service Area in conformance with the District’s Service Plan; and

WHEREAS, the Town is the owner of a parcel of land known as Tract A and Lots 2-5, West Ledge Rock Center Subdivision Filing No. 1, a subdivision of Lot 2 of Plat of Oxy Land Subdivision, situated in the Northwest Quarter of Section 11, Township 4 North, Range 68 West of the 6th P.M., Town of Johnstown, County of Weld, State of Colorado, recorded at the Office of the Weld County Clerk and Recorder at Reception No. 4838311 consisting of approximately 7.835 acres (“Property”); and

WHEREAS, on or about February 23, 2022, the Parties entered into that certain Agreement Concerning Purchase and Sale of Real Property for Ledge Rock Center Commercial and, on or about June 20, 2022, the Parties entered into that certain First Amendment to Agreement Concerning Purchase and Sale of Real Property for Ledge Rock Center Commercial, and on or about September 1, 2022, the Parties entered into that certain Amended and Restated Agreement Concerning Purchase and Sale of Real Property for Ledge Rock Center Commercial (collectively, the “Purchase and Sale Agreement”); and

WHEREAS, the Purchase and Sale Agreement and the Second Amended and Restated Development and Reimbursement Agreement, executed between the Parties and Ledge Rock Center, LLC, a Kansas limited liability company (“Developer”), dated on or about September 1, 2022 (“Development Agreement”), contemplate the District’s issuance of Bonds; and

WHEREAS, the Town has agreed to include the Property into the District and, pursuant to the Purchase and Sale Agreement, convey the Property to the Developer, upon terms and conditions set forth in the Purchase and Sale Agreement and in the Development Agreement, provided, however, that if the District has not issued Bonds by October 31, 2022, then, unless the

Town consents to an extension of time, the Purchase and Sale Agreement shall terminate and the Town shall not be obligated to convey the Property to the Developer; and

WHEREAS, the District and the Town have also agreed to exclude the Property from the District if the District has not issued Bonds by October 31, 2022, unless the Town consents to an extension of time.

AGREEMENT

NOW THEREFORE, for and in consideration of the foregoing recitals, which are incorporated herein, the promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Inclusion; Inclusion Process.

(a) Concurrent with Petitioner's execution of this Agreement, Petitioner shall execute and submit to District the petition for inclusion attached hereto as Exhibit A, which Petition for Inclusion requests the inclusion of the entirety of the Property into the District (the "Petition for Inclusion").

(b) The District shall schedule and hold a public meeting and hearing on the Petition for Inclusion within thirty (30) days following receipt of the Petition for Inclusion (the "Public Meeting"). If the District's Board of Directors (the "Board") approves the Petition for Inclusion at the Public Meeting, the Board shall also adopt a resolution approving the Petition for Inclusion (the "Inclusion Resolution").

(c) Following its approval of the Inclusion Resolution, the District shall submit either the Petition for Inclusion and Inclusion Resolution to the District Court for Weld County, Colorado (the "District Court") or take any other action to further the inclusion.

(d) The District shall submit the Inclusion Resolution and the Petition for Inclusion to the District Court, seek an order and decree from the District Court to include the Property into the boundaries of the District (the "Order for Inclusion"), and record the Order for Inclusion in the public records of Weld County to complete the inclusion process in conformance with the provisions of the Act.

(e) Petitioner agrees to cooperate in good faith with District in connection with the Public Meeting and in ultimately obtaining the Order for Inclusion from the District Court consistent with the terms and conditions of this Agreement.

(f) In the event the District fails to issue Bonds by October 31, 2022, unless an extension is agreed to by the Town, then this Agreement shall terminate and the Parties shall cooperate and work together to complete the exclusion of the Property from the District.

(g) Notwithstanding anything to the contrary contained herein, the District shall comply with all of the requirements of the Act, regarding inclusions and exclusions as necessary and in connection with the inclusion of the Property into the boundaries of the District or the exclusion of the Property from the District should the District not issue Bonds by October 31, 2022.

2. Conditions of Inclusion. In the event the Order for Inclusion is entered by the District Court and/or recorded by the District or by any other party, whether intentionally or unintentionally, for any reason, inconsistent with the provisions of this Agreement and the foregoing conditions, the Parties shall cooperate with one another and take any and all actions reasonably necessary to reverse and nullify the effects of the Order for Inclusion.

3. Effect of Inclusion. Petitioner acknowledges and agrees that upon inclusion of the Property into the boundaries of the District, the Property shall, subject to the terms of this Agreement, and other jurisdiction of the District consistent with the provisions of the Act and other applicable law.

4. No Effect on Other District Agreements. Nothing contained in this Agreement shall be deemed or construed to amend, modify or otherwise alter any other agreements or instruments to which the District and the Town is a party, or otherwise bound, including without limitation, the District's Service Plan.

5. Unique to Property. The provisions of this Agreement are deemed to be unique and special with regard to the Property, and do not create a precedent for future inclusions or matters pertaining to other properties.

6. Entire Contract. This Agreement constitutes the entire agreement between the Parties with regard to the subject matter hereof and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement with regard to the subject matter hereof are of no force and effect.

7. Enforcement; Governing Law; Venue. The Parties acknowledge and agree that this Agreement may be enforced in law or in equity by decree of specific performance, damages, or other legal and equitable relief as may be available to the Parties, subject to the provisions of the statutes of the State of Colorado. The Parties agree that in any action to enforce any provision of this Agreement, the Town, if the prevailing party, shall be entitled to recover attorney fees from the District. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, and the Parties agree that the exclusive venue for judicial resolution of any dispute relating to the terms and provisions of this Agreement shall be the District Court in and for the County of Weld, State of Colorado.

8. Further Assurances; Fair Dealing. The Parties shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other Parties may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby. In all cases where the consent or approval of one Party is required before the other may act, or where the agreement or cooperation of the

Parties is separately or mutually required as a legal or practical matter, then in that event the Parties agree that each will act in a fair and reasonable manner with a view to carrying out the intents and goals of this Agreement as the same are set forth herein, subject to the terms hereof; provided, however, that nothing herein shall be construed as imposing on any Party any greater duty or obligation to another, other than that which already exists as a matter of Colorado law, including, but not limited to any fiduciary duty or other responsibility greater than that of reasonable parties contracting at arms length.

9. Notice. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via Federal Express or other nationally recognized overnight air courier service, by electronic mail delivery or by depositing same in the United States mail, postage prepaid, 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 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
Elisabeth Cortese
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

With a copy to:

David O'Leary
Spencer Fane LLP
1700 Lincoln Street, Suite 2000
Denver, CO 80203

10. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the Parties. It is the express intention of the Parties that any person other than the Parties shall be deemed to be only an incidental beneficiary under this Agreement.

11. Governmental Immunity. Nothing in this Agreement or in any actions taken by the District pursuant to this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S.

12. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

13. Contract Modification. This Agreement may not be amended, altered, or otherwise changed except by a written agreement between the Parties.

14. Severability. The invalidity or unenforceability of any portion or previous version of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and, in such event, the Parties shall negotiate in good faith to replace such invalidated provision in order to carry out the intent of the Parties in entering into this Agreement.

15. Construction and Interpretation. Captions to sections and subsections are for convenience and reference purposes only and will not affect the construction of the meaning of the terms and provisions of this Agreement. Unless another agreement is indicated or the context otherwise requires, references herein to attachments, recitals, sections, and subsections are to attachments, recitals, sections, and subsections of this Agreement. Whenever the context requires or permits, the singular will include the plural, the plural will include the singular, and the masculine, feminine, and neuter will be freely interchangeable. The terms “herein,” “hereinafter,” and “hereof” mean and refer to sections and provisions contained in this Agreement.

16. Counterparts; Electronic Execution. This Agreement may be executed in multiple counterparts, and the signature of a Party affixed to a counterpart signature of the other Party shall be deemed to constitute execution of this Agreement. The Parties acknowledge and agree that this Agreement and all related documents may be executed by electronic means, which electronic signatures shall be considered as original signatures for all purposes and shall have the same force and effect as original signatures.

[remainder of page intentionally left blank; signature pages follow]

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

**Exhibit A
Form of Petition for Inclusion**

IN THE MATTER OF THE)
)
LEDGE ROCK CENTER COMMERCIAL)
METROPOLITAN DISTRICT) **PETITION FOR INCLUSION**
)
WELD COUNTY, COLORADO)

The undersigned hereby respectfully petitions the Ledge Rock Center Commercial Metropolitan District (the “District”), acting by and through its Board of Directors, for the inclusion of the hereinafter described real property into the boundaries of the District, which real property is situated within the County of Weld, State of Colorado.

The undersigned hereby consents that the herein described property be included in said District and that an Order may be entered in the District Court in and for the County of Weld, State of Colorado, including said land into the boundaries of the District.

The undersigned represents to the District that it is current record owner of the property hereinafter described and that no other persons, entity or entities own an interest therein except as beneficial holders of encumbrances.

The undersigned further represents to the District that the area sought to be included into the District is located entirely within the County of Weld, State of Colorado, and does not include property within any other county or incorporated city, town, or city and county, and that no notice of the proposed inclusion under Section 32-1-207(2), C.R.S., as amended, is required.

Acceptance of the Petition shall be deemed to have occurred at that time when the Board of Directors of the District sets the date for the public hearing for consideration of the Petition.

The name and address of the petitioner and legal description of the property are as follows:

Petitioners: Town of Johnstown, a Colorado home rule municipal corporation

Address: Attention: Town Manager
450 So. Parish
P. O. Box 609
Johnstown, CO 80534
Email: MLeCerf@JohnstownCO.gov

Legal Description: See Exhibit 1

PETITIONER:

Town of Johnstown, a Colorado home rule municipal corporation

By: _____

Name: Gary Lebsack

Title: Mayor

ATTEST:

Hannah Hill, Town Clerk

EXHIBIT 1

Legal Description for Inclusion Area for Ledge Rock Center Commercial Metropolitan District

Legal Description:

Tract A and Lots 2-5, West Ledge Rock Center Subdivision Filing No. 1, a subdivision of Lot 2 of Plat of Oxy Land Subdivision, located in the Northwest Quarter of Section 11, Township 4 North, Range 68 West of the 6th P.M., Town of Johnstown, County of Weld, State of Colorado, recorded at the Office of the Weld County Clerk and Recorder at Reception No. 4838311, consisting of approximately 7.835 acres, more or less.