

**SECOND AMENDMENT TO THE
COMPREHENSIVE DEVELOPMENT AGREEMENT,
FUNDING PLAN,
AND
INTERGOVERNMENTAL AGREEMENT
FOR
JOHNSTOWN PLAZA
JOHNSTOWN, COLORADO
DATE: DECEMBER 13, 2021**

**SECOND AMENDMENT TO THE
COMPREHENSIVE DEVELOPMENT AGREEMENT,
FUNDING PLAN,
AND
INTERGOVERNMENTAL AGREEMENT
FOR
JOHNSTOWN PLAZA
JOHNSTOWN, COLORADO**

THIS SECOND AMENDMENT TO THE COMPREHENSIVE DEVELOPMENT AGREEMENT, FUNDING PLAN AND INTERGOVERNMENTAL AGREEMENT FOR JOHNSTOWN PLAZA, JOHNSTOWN, COLORADO (the “**Second Amendment**”) is made and entered into as of the ____ day of December, 2021 (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**”), **JOHNSTOWN PLAZA, LLC**, a Kansas Limited Liability Company (“**Developer**”), and **JOHNSTOWN PLAZA METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the state of Colorado (“**District**”).

RECITALS

A. Effective February 18, 2016, the Parties entered into a Comprehensive Development Agreement, Funding Plan and Intergovernmental Agreement for Johnstown Plaza, Johnstown, Colorado (the “**Original Agreement**”) for the purpose of setting forth the terms and conditions relating to the development, design and maintenance of the Project, the improvements to the Property, the collection, payment, use, and duration of the Credit PIF and the Add-On PIF and other matters related to the Project.

B. The Original Agreement contemplates the issuance of Bonds, specifically, the Phase I Bonds and the Phase II Bonds, as well as the Developer Bonds, in a total amount not to exceed the Cap Amount of \$95,000,000, as further described in the Original Agreement, in order to finance the carrying out of the purpose of the Original Agreement, including the reimbursement of the Developer for Verified Eligible Costs, among other items.

C. Effective June 13, 2016, the Parties entered into a First Amendment to the Comprehensive Development Agreement, Funding Plan and Intergovernmental Agreement for Johnstown Plaza, Johnstown, Colorado (the “**First Amendment**,” and together with the Original Agreement, the “**Agreement**”) for the purpose of waiving a requirement under Section 4.5A of the Original Agreement relating to the issuance of the Phase I – Series B Bonds, enabling for one issuance of Bonds (the 2016 Bonds) that produced net proceeds of up to \$65 Million of the Cap Amount.

D. The use of the proceeds from the Bonds are limited by certain requirements set forth in the Agreement, including, without limitation, that the proceeds be used to finance certain of the Verified Eligible Costs, relating to, without limitation, funding the Public Improvements.

E. As of the Effective Date, the 2016 Bonds have been issued to the extent allowed under the Agreement and the Project, as set forth in the Agreement, is substantially complete.

F. The Final Allocation of Proceeds were used, among other permitted uses, to reimburse the Developer for certain Verified Eligible Costs; however, there are remaining Verified Eligible Costs incurred by the Developer that have not been reimbursed (the “**Remaining Developer Verified Eligible Costs**”).

G. The interest rates on bonds issued by special districts in 2021 have been at historic low rates and it is anticipated that the interest rates in the first quarter of 2022 will continue to be at historic low rates.

H. The District desires to issue Refunding Bonds in order to refinance the 2016 Bonds at a lower interest rate as well as issue additional Bonds to pay the Remaining Developer Verified Eligible Costs (the “**Refunding and New Money Bonds**”), and the District requests that the Town approve of the provisions of this Second Amendment in order to allow the District to effectuate the same under the terms of the Agreement, as amended, including, without limitation, the issuance of Bonds to reimburse all of the Remaining Developer Verified Eligible costs up to Seven Million (\$7,000,000.00) Dollars (the “**2022 Reimbursement**”), as set forth below.

I. The Town approves of the District’s issuance of Refunding Bonds in order to refinance the Bonds, and funding the 2022 Reimbursement, on the conditions set forth below.

J. Unless a different meaning is clearly indicated, capitalized terms used in this Second Amendment have the meanings set forth in the Agreement.

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this Second Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as set forth below.

AGREEMENT

1.1 The Parties agree to amend the Original Agreement, as amended by the First Amendment, to authorize the issuance of the Refunding and New Money Bonds to provide for the 2022 Reimbursement on the following terms and conditions:

(a) At closing on the issuance of the Refunding and New Money Bonds, the 2022 Reimbursement shall be deposited in the Project Fund; and

(b) The 2022 Reimbursement shall not be released by the Trustee until the Trustee has received written direction from the Town and the District (the “**Release Notice**”).

(c) The parties recognize and agree that the Release Notice shall not be issued until:

(i) The Town, the Ledge Rock Center Commercial Metropolitan District (the “**Ledge Rock District**”) and Ledge Rock Center, LLC, a Kansas limited liability company (“**Ledge Rock Center**”), have entered into a Development and Reimbursement

Agreement for Ledge Rock Center (“**Development and Reimbursement Agreement**”) with mutually acceptable terms, including, but not limited to, the terms and conditions for the release of the Ledge Rock District bond proceeds and the release of the 2022 Reimbursement, which may be referenced therein as the JP Developer Contribution; and

(ii) The Town, the Ledge Rock District and Ledge Rock Center have entered into an Escrow Agreement with mutually acceptable terms, including, but not limited to, the terms and conditions for distribution of the Ledge Rock District bond proceeds and for distribution of the 2022 Reimbursement, which may be referenced therein as the JP Developer Contribution.

(d) If the Trustee receives the Release Notice on or before 4:00 p.m. on October 3, 2022, the Trustee shall distribute the 2022 Reimbursement into an escrow account as set forth in such notice; and

(e) If the Trustee does not receive the Release Notice on or before 4:00 p.m. on October 3, 2022, the Trustee shall use the 2022 Reimbursement to prepay principal on the Refunding and New Money Bonds no later than the December 1, 2022 principal payment date on the Refunding and New Money Bonds (the “**Extraordinary Mandatory Call**”).

1.2 The District agrees to include in the Indenture for the Refunding and New Money Bonds the provisions regarding the alternatives for distribution of the 2022 Reimbursement and for the Extraordinary Mandatory Call as set forth herein.

1.3 The Developer and the District recognize and agree that the 2022 Reimbursement shall only be used for the construction of improvements agreed to by the Town and that such improvements shall be subject to public bidding, the requirements of which shall be more fully set forth in the Development and Reimbursement Agreement.

1.4 Unless otherwise specifically amended by this Second Amendment, all terms and provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

[The Remainder of this Page Intentionally Left Blank]

JOHNSTOWN PLAZA, LLC, a Kansas
limited liability company

By: _____
Its President

Date: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Second Amendment to the Comprehensive Development Agreement,
Funding Plan and Intergovernmental Agreement for Johnstown Plaza, Colorado was
acknowledged before me this ____ day of _____, 2021, by _____, as
_____ of Johnstown Plaza, LLC, a Kansas limited liability company.

Witness my hand and official seal.

My commission expires: _____

Notary Public

ACKNOWLEDGED:

Town of Johnstown, Colorado

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

By: _____
Gary Lebsack, Mayor

Date: _____

ATTEST:

Diana Seele, Town Clerk