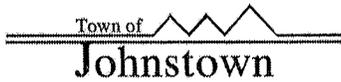


***SPECIAL  
TOWN COUNCIL  
MEETING  
PACKET***

**June 13, 2016**



*Special Town Council Meeting*



*Agenda*  
**Monday, June 13, 2016**  
**Town Hall, Council Chambers**  
**450 So. Parish Avenue**  
**7:00 P.M.**

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**MISSION STATEMENT**-*"The mission of the government of the Town of Johnstown is to provide leadership based upon trust and integrity, commitment directed toward responsive service delivery, and vision for enhancing the quality of life in our community."*

---

- 1) CALL TO ORDER**
    - A) Pledge of Allegiance
  - 2) ROLL CALL**
  - 3) AGENDA APPROVAL**
  - 4) NEW BUSINESS**
    - A) Consider First Amendment to the Comprehensive Development Agreement, Funding Plan and Intergovernmental Agreement for Johnstown Plaza, LLC
    - B) Consider Resolution No. 2016-06, Authorizing Johnstown Plaza Metropolitan District to Incur Debt, Certify a Mill Levy and Collect and Expend Funds
  - 5) ADJOURN**
- 



**NOTICE OF ACCOMODATION**

If you need special assistance to participate in the meeting, please contact the Town Clerk at (970) 587-4664. Notification at least 72 hours prior to the meeting will enable the Town to make reasonable arrangements to ensure accessibility to the meeting.

**AGENDA ITEM 4A**

**FIRST AMENDMENT**

**(Comprehensive Development Agreement,  
Funding Plan and  
Intergovernmental Agreement)**

**(Johnstown Plaza, LLC)**

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## TOWN COUNCIL AGENDA COMMUNICATION

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**AGENDA DATE:** January 13, 2016

**ITEM NUMBER:** 4A

**SUBJECT:** Consider First Amendment to the Comprehensive Development Agreement, Funding Plan and Intergovernmental Agreement for Johnstown Plaza (“First Amendment”)

**ACTION PROPOSED:** Approve First Amendment to the Comprehensive Development Agreement, Funding Plan and Intergovernmental Agreement for Johnstown Plaza

**PRESENTED BY:** Town Attorney

**AGENDA ITEM DESCRIPTION:** Effective February 18, 2016, the Town, Johnstown Plaza, LLC (“Developer”) and the Johnstown Plaza Metropolitan District (“District”) entered into a Comprehensive Development Agreement, Funding Plan and Intergovernmental Agreement for Johnstown Plaza (“Agreement”) for the purpose of setting forth the terms and conditions relating to, among other matters, the financing of the development. The Agreement provided that the District was entitled to issue bonds for Phase I of the project in two series: (1) Phase 1 - Series A Bonds up to \$40 million could be issued upon presentation of a 25 year covenant of Scheels to open and operate a 240,000 square feet retail store; and (2) Phase 1 - Series B Bonds up to an additional \$25 million could be issued when leases evidencing an additional 100,000 square feet of retail space were executed. The Agreement contemplated and allowed for the combination of these two issuances into one issuance with the consent of the Town “in order to achieve cost savings and efficiencies” on the condition that “replacement assurances relating to the leasing of Phase I Retail-Additional are in place.”

The Developer has obtained the Scheels covenant, but has not entered into leases evidencing an additional 100,000 square feet of retail space. The Developer is requesting that the Town waive the 100,000 square feet pre-lease requirement for the issuance of the Phase 1 - Series B Bonds and allow for one issuance of bonds that produce net proceeds of up to \$65 million. The Developer agrees to provide replacement assurances to the Town.

The First Amendment would permit the District to issue bonds in a single issuance, with net proceeds up to \$65 million. If the District is able to issue the full amount, then \$36,460,000 would be considered unrestricted funds, available for immediate use by the District/Developer, subject to escrow agreement conditions and bond restrictions; \$25,000,000 would be placed into a restricted account and such funds would be available for use, subject to the same conditions, based on the status of the leasing of the property; and \$3,540,000, representing the cost of the accelerated issuance of all the debt in one issuance, would also be placed into a restricted account and be available for use in the same manner as the \$25,000,000. The \$3,540,000 satisfies the required “replacement assurances” to the Town. If the District is not able to issue the full \$65,000,000, then the funds available for each of the three categories would be recalculated. The Town Manager, with approval of the Town Attorney, would be entitled to approve the recalculation.

Because of the accelerated nature of the full \$65 million and because of other aspects of the Developer’s financing, the parties also intend to enter into an escrow agreement. The funds that are released from the accounts created under the First Amendment will be placed into an escrow account. The escrow agreement will allow the Town to approve the order and amount of the payment of verified expenditures.

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**LEGAL ADVICE:** The First Amendment was drafted by the Town Attorney, the Town’s special counsel, McGeady Becher, P.C., and by counsel for the Developer and the District.

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**FINANCIAL ADVICE:** N/A

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**RECOMMENDED ACTION:** Approve First Amendment to the Comprehensive Development Agreement, Funding Plan and Intergovernmental Agreement for Johnstown Plaza.

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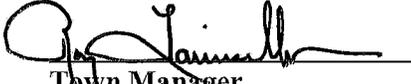
**SUGGESTED MOTION:**

**For Approval:** I move to approve the First Amendment to the Comprehensive Development Agreement, Funding Plan and Intergovernmental Agreement for Johnstown Plaza and authorize the Mayor to sign it.

**For Denial:** I move to deny approval of the First Amendment to the Comprehensive Development Agreement, Funding Plan and Intergovernmental Agreement for Johnstown Plaza.

---

**Reviewed:**

  
Town Manager

# FIRST AMENDMENT

**FIRST AMENDMENT TO THE  
COMPREHENSIVE DEVELOPMENT AGREEMENT,  
FUNDING PLAN  
AND  
INTERGOVERNMENTAL AGREEMENT  
FOR  
JOHNSTOWN PLAZA  
JOHNSTOWN, COLORADO  
DATE: JUNE 13, 2016**

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**ARTICLE 4. COMPREHENSIVE FUNDING PLAN.....3**

**EXHIBIT**

EXHIBIT A Legal Description

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

THIS FIRST AMENDMENT TO THE COMPREHENSIVE DEVELOPMENT AGREEMENT, FUNDING PLAN AND INTERGOVERNMENTAL AGREEMENT FOR JOHNSTOWN PLAZA, JOHNSTOWN, COLORADO (the “**First Amendment**”) is made and entered into as of the Effective Date by and among 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**”). The Effective Date shall be the date that this First Amendment is fully executed by all the Parties.

**RECITALS**

A. Effective February 18, 2016, the Town, the Developer and the District 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. The Original Agreement, as amended by the First Amendment, is the “**Agreement**”.

B. Section 4.5A of the Original Agreement provides for the issuance of Phase I Bonds in two series: (1) Phase 1 - Series A Bonds up to \$40 million of the Cap Amount could be issued upon presentation of a 25 year covenant of Scheels to open and operate a 240,000 square feet retail store; and (2) Phase 1 - Series B Bonds up to an additional \$25 million of the Cap Amount could be issued when leases evidencing an additional 100,000 square feet of retail space were executed. The Original Agreement specifically contemplated and allowed for the combination of these two issuances into one issuance with the consent of the Town “in order to achieve cost savings and efficiencies” on the condition that “replacement assurances relating to the leasing of Phase I Retail-Additional are in place.”

C. Developer anticipates having executed leases for 60,000 square feet of space, over and above the Scheels store, by the end of June 2016 and will likely have additional executed leases for 30,000 – 60,000 square feet by the end of September 2016.

D. The Developer is requesting the Town waive the 100,000 square feet pre-lease requirement for the issuance of the Phase 1 - Series B Bonds and allow for one issuance of Bonds that produce net proceeds of up to \$65 million of the Cap Amount.

E. The Developer agrees to provide replacement assurances to the Town, as evidenced by the Phase I Costs Holdback and other provisions of this First Amendment.

F. Town agrees to amend Section 4.5A of the Original Agreement and allow for the issuance of the Phase I Bonds in one series, subject to the terms and conditions contained herein and the terms and conditions that shall be set forth in the Escrow Agreement, as defined below.

G. Unless a different meaning is clearly indicated, capitalized terms used in this First Amendment have the meanings set forth in these Recitals or in the Original Agreement.

H. The legal description of the real property that is within the boundaries of the District as of the date of this First Amendment is set forth in Exhibit A.

### AGREEMENT

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

#### ARTICLE 1. DEFINITIONS

1.1 A. The parties wish to add the following definitions to Article 1 as follows:

RRRR. Escrow Account. As defined in Section 4.5 A.2.(a).

SSSS. Escrow Agreement. As defined in Section 4.5 A.2.(a).

TTTT. Phase I Bonds. As defined in Section 4.5 A.1.

UUUU. Phase I Costs Holdback. As defined in Section 4.5 A.2.(a).

VVVV. Phase I Bonds – Net Proceeds. As defined in Section 4.5 A.2.

WWWW. Phase I Bonds Restricted Project Fund Release Conditions. As defined in Section 4.5.

XXXX. Restricted Project Account. As defined in Section 4.5 A.2.(a).

YYYY. Restricted Project Funds. As defined in Section 4.5 A.2.(b).

ZZZZ. Unrestricted Project Funds. As defined in Section 4.5 A.2.(a).

AAAAA. Scheels Covenant. As defined in Section 4.5 A. 1.

B. The parties wish to delete the following definitions to Article 1 as follows:

WW. Phase I – Series A Bonds.

XX. Phase II – Series B Bonds.

## ARTICLE 4. COMPREHENSIVE FUNDING PLAN

1.1 The parties wish to delete Section 4.5A of the Original Agreement in its entirety and replace it with a new Section 4.5A as follows:

4.5 Bonds. It is anticipated that Bonds will be issued in more than one series to finance Verified Eligible Costs. Phase I Bonds to fund Verified Eligible Costs up to \$65 million of the Cap Amount may be issued at one time or from time to time in one series or multiple series, with the District's ability to utilize bond proceeds for payment of Verified Eligible Costs coinciding with: (i) the construction and development of Scheels; (ii) the leasing of specified square footage amounts of additional Phase I Retail -Additional space meeting targets to be determined by market conditions at the time of offering the Phase I Bonds and the requirements of the Town, that shall be set forth in the Indenture (the "**Phase I Bonds Restricted Project Fund Release Conditions**"); and (iii) the satisfaction of the conditions set forth in the Escrow Agreement. Prior to the issuance of any Bonds, the following conditions must occur unless any condition is specifically waived by the Town in writing, which waiver may be exercised by the Town Manager, in his discretion, with the approval of the Town Attorney.

### A. Phase I Bonds.

1. Phase I Bonds. The Phase I Bonds to fund Verified Eligible Costs up to Sixty Five Million and No/100th Dollars (\$65,000,000.00) of the Cap Amount (the "Phase I Bonds") may be issued only after the Developer has provided the District and the Town with written documentation evidencing a twenty-five (25) year covenant of Scheels to open and operate a no less than 240,000 square foot retail store beginning in the fall of 2017 (the "**Scheels Covenant**"). Upon presentation of the Scheels Covenant and subject to the provisions of Section 4.5 D. below, the District may issue the Phase I Bonds. Prior to the time the Scheels Covenant has been provided to the Town, Other Obligations may be issued to the Developer to pay for actual Verified Eligible Costs with the approval of the Town, which approval will not be unreasonably withheld.

2. Access to Phase I Bond Proceeds. In addition to Scheels, it is anticipated that approximately 310,000 square feet of retail development will be constructed in Phase I (the "**Phase I Retail-Additional**"). The Phase I Bonds are therefore being issued based upon the anticipated construction and leasing of a total of approximately 550,000 square feet of retail development. In order to achieve cost savings and efficiencies, Phase I Bonds are being issued in advance of the securing of all leases for the Phase I Retail – Additional to fund Verified Eligible Costs up to \$65,000,000 (Sixty Five Million Dollars) of the Cap Amount (the "**Phase I Bonds – Net Proceeds**"). The District's rights to access the Phase I Bonds – Net Proceeds is subject to the following provisions:

(a) Unrestricted Project Funds. Assuming \$65 million in net proceeds is produced by the Phase I Bonds, then up to \$36,460,000 (Thirty Six Million Four Hundred Sixty Thousand Dollars) of the Phase I Bonds – Net Proceeds (the “**Unrestricted Project Funds**”) may be requisitioned by the District immediately upon closing on the Phase I Bonds for deposit and expenditure pursuant to the terms of the Escrow Agreement, subject to the provisions of Section 4.8 of the Agreement regarding Verified Eligible Costs, and provided that an additional amount of up to \$3,540,000 (Three Million Five Hundred Forty Thousand Dollars) (the “**Phase I Costs Holdback**”) be placed in a restricted account within the Project Fund (the “**Restricted Project Account**”) as further provided below. If less than \$65 million in net proceeds is produced by the Phase I Bonds, then the Unrestricted Project Fund and Phase I Costs Holdback shall be recalculated as set forth in Subsection 4.5A.2(d) below. The Phase I Costs Holdback is required to offset the costs related to the accelerated issuance of the Restricted Project Funds, defined below, in advance of the Developer and the District having provided written evidence that the required square feet of Phase I Retail - Additional leased has been secured in accordance with the Phase I Bonds Restricted Project Fund Release Conditions set forth in the Indenture.

(b) Restricted Project Funds.

(i) The Phase I Costs Holdback shall be held within the Restricted Project Account of the Project Fund. In the event that the Developer and District provide written evidence to the Bond Trustee that satisfies the Phase I Bonds Restricted Project Fund Release Conditions applicable to the Phase I Costs Holdback, some or all of the Phase I Costs Holdback shall be eligible for transfer, in accordance with the Indenture, for deposit in an Escrow Account (the “**Escrow Account**”) established and maintained under a separate Escrow Agreement by and among the Developer, the Town, the District and an escrow agent (the “**Escrow Agreement**”), to be disbursed only with written approval of the Town pursuant to the terms of the Escrow Agreement.

(ii) The Indenture shall provide that \$25,000,000 (Twenty Five Million Dollars) of the Phase I Bonds – Net Proceeds (the “**Restricted Project Funds**”) be deposited in the Restricted Project Account of the Project Fund held by the Bond Trustee and, upon the Developer and District providing written documentation to the Bond Trustee evidencing that the Phase I Bonds Restricted Project Fund Release Conditions applicable to the Restricted Project Funds have been met, some or all of the Restricted Project Funds shall be transferred for deposit to the Escrow Account, in accordance with the Indenture, to be disbursed with written approval of the Town pursuant to the terms of the Escrow Agreement.

(c) Release Conditions. In the event the Developer and the District fail to provide written evidence that satisfies all of the Phase I Bonds Project Fund Release Conditions allowing the Restricted Project Funds to be transferred to the Escrow Account, then on or as soon as practicable after December 1, 2018, or sooner if required by the bondholders, funds remaining on deposit in the Restricted Project Account, including all or the remaining portion of the Restricted Project Funds, all or the remaining portion of the Phase I Costs Holdback and a pro-rata portion of the reserve fund established for the designated series of the Phase I Bonds, shall be used by the Bond Trustee for extraordinary redemption of the respective series of Phase I Bonds, which shall be more fully described in the Indenture.

(d) Alternative Financing. In the event that less than \$65 million in net proceeds is produced by the Phase I Bonds, then the Town may, in writing, approve alternative financing plans, including but not limited to a modification of the specific dollar amounts set out in this Agreement related to the Unrestricted Project Funds, the Phase I Costs Holdback and the Restricted Project Funds. The Town Manager, in his discretion, may provide the written approval contemplated herein with the approval of the Town Attorney.

1.2 Recordation of Agreement. This Agreement will be Recorded promptly after execution by all the Parties hereto.

1.3 Unless otherwise specifically amended by this First Amendment, all other 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

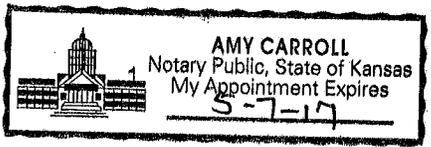
By: Allen Schlup  
Its President Managing Member  
Date: 6-8-16

STATE OF COLORADO KANSAS )  
 ) ss.  
COUNTY OF JOHNSON )

The foregoing Comprehensive Development Agreement, Funding Plan and Intergovernmental Agreement for Johnstown Plaza, Colorado was acknowledged before me this 8 day of June, 2016, by Allen Schlup, as Managing Member of Johnstown Plaza, LLC, a Kansas limited liability company.

Witness my hand and official seal.

My commission expires: 5-7-17



Amy Carroll  
Notary Public

ACKNOWLEDGED:

Town of Johnstown, Colorado  
\_\_\_\_\_

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

By: \_\_\_\_\_  
Scott James, Mayor

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

ATTEST:

\_\_\_\_\_  
Diana Steele, Town Clerk

## EXHIBIT A

### LEGAL DESCRIPTION

2534 Filing No. 13, being a Minor Re-Subdivision of Lot 1, A Portion of Lot 8, Block 3, 2534, Lot 2, Block 1, 2534 Filing 11, located in the Northwest Quarter of Section 14, Township 5 North, Range 68 West of the 6th P.M., Town of Johnstown, County of Larimer, State of Colorado.

2534 Filing No. 14, being a Minor Re-Subdivision of Lots 5 & 6, Block 2, 2534, located in the Northeast Quarter of Section 15, Township 5 North, Range 68 West of the 6th P.M., Town of Johnstown, County of Larimer, State of Colorado.

Amended Plat of Lot 4, Block 1, being a Replat of Lot 2, Block 1, Replat of Lot 6, Block 1, 2534 Filing No. 4, located in the Northwest Quarter of Section 14, Township 5 North, Range 68 West of the 6th P.M., Town of Johnstown, County of Larimer, State of Colorado.

Lot 1, 2534 Filing No. 16, being a Replat of Block 12, 2534, located in the Northwest Quarter of Section 14 and the Northeast Quarter of Section 15, Township 5 North, Range 68 West of the 6th P.M., Town of Johnstown, County of Larimer, State of Colorado.

Said described parcels of land contain approximately 59.269 acres, more or less ( $\pm$ )



**AGENDA ITEM 4B**

**AUTHORIZATION  
TO  
INCUR DEBT, CERTIFY A MILL LEVY  
AND  
COLLECT/EXPEND FUNDS  
(Johnstown Plaza)  
(Resolution No. 2016-06)**

## TOWN COUNCIL AGENDA COMMUNICATION

---

**AGENDA DATE:** June 13, 2016

**ITEM NUMBER:** 4B

**SUBJECT:** Consider Resolution Authorizing Johnstown Plaza Metropolitan District to Incur Debt, Certify a Mill Levy and Collect and Expend Funds

**ACTION PROPOSED:** Consider Approval of Resolution Authorizing Johnstown Plaza Metropolitan District to Incur Debt, Certify a Mill Levy and Collect and Expend Funds

**PRESENTED BY:** Town Attorney

---

**AGENDA ITEM DESCRIPTION:** Town Council approved the Service Plan for the Johnstown Plaza Metropolitan District ("District") on August 17, 2015 by adoption of Resolution No. 2015-11. The Service Plan contemplates that Johnstown Plaza, LLC ("Developer") would acquire approximately 98.49 acres of property ("Property") and that, after such acquisition and the satisfaction of certain other conditions, the District's boundaries would include the Property.

Paragraph 23(b) of the Service Plan provides that, unless otherwise approved by resolution of Town Council, the District does not have authority to incur debt, certify a mill levy or collect or expend any funds if the Developer does not, on or before December 1, 2016, acquire all or substantially all of the Property. As of the date hereof, the Developer has acquired approximately 59.269 acres of property and may not acquire the remaining acreage prior to December 1, 2016.

The District seeks authority to incur debt, certify a mill levy and collect or expend funds despite the fact that the Developer has not acquired all or substantially all of the Property. More specifically, the District desires to incur debt in July of 2016 and thus seeks the current authorization to do so.

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**LEGAL ADVICE:** The attached Resolution Authorizing Johnstown Plaza Metropolitan District to Incur Debt, Certify a Mill Levy and Collect and Expend Funds was drafted by the Town Attorney.

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**FINANCIAL ADVICE:** N/A

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**RECOMMENDED ACTION:** Approve the Resolution Authorizing Johnstown Plaza Metropolitan District to Incur Debt, Certify a Mill Levy and Collect and Expend Funds.

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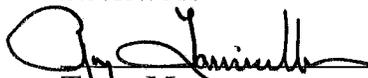
**SUGGESTED MOTIONS:**

**For Approval:** I move to approve the Resolution Authorizing Johnstown Plaza Metropolitan District to Incur Debt, Certify a Mill Levy and Collect and Expend Funds.

**For Denial:** I move to deny approval of the Resolution Authorizing Johnstown Plaza Metropolitan District to Incur Debt, Certify a Mill Levy and Collect and Expend Funds.

---

**Reviewed:**

  
Town Manager

# **RESOLUTION**

**No. 2016-06**

**TOWN OF JOHNSTOWN, COLORADO**

**RESOLUTION NO. 2016-06**

**AUTHORIZING JOHNSTOWN PLAZA METROPOLITAN DISTRICT TO  
INCUR DEBT, CERTIFY A MILL LEVY AND COLLECT AND EXPEND FUNDS**

**WHEREAS**, the Town Council of the Town of Johnstown approved a Service Plan for the Johnstown Plaza Metropolitan District (“District”) on August 17, 2015 by adoption of Resolution No. 2015-11; and

**WHEREAS**, the Service Plan contemplates that Johnstown Plaza, LLC (“Developer”) intended to acquire approximately 98.49 acres of property (“Property”) and that, after such acquisition and the satisfaction of certain other conditions, the District’s boundaries would include the Property; and

**WHEREAS**, Paragraph 23(b) of the Service Plan provides that, unless otherwise approved by resolution of Town Council, the District does not have authority to incur debt, certify a mill levy or collect or expend any funds if the Developer does not, on or before December 1, 2016, acquire all or substantially all of the Property; and

**WHEREAS**, as of the date hereof, the Developer has acquired approximately 59.269 acres of property, which constitute the current boundaries of the District; and

**WHEREAS**, the District seeks authority to incur debt, certify a mill levy and collect or expend funds despite the fact that the Developer has not acquired all or substantially all of the Property; and

**WHEREAS**, the Town Council desires to authorize the District to incur debt, certify a mill levy and collect or expend funds, as long the District’s actions are otherwise in compliance with the Service Plan, the Comprehensive Development Agreement, Funding Plan and Intergovernmental Agreement, dated February 18, 2016, and any amendments thereto, and all other outstanding agreements and binding obligations of the District.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, THAT:**

1. The Johnstown Plaza Metropolitan District is hereby authorized to incur debt, certify a mill levy and collect or expend funds on the condition that the District’s actions are in compliance with the Service Plan, the Comprehensive Development Agreement, Funding Plan and Intergovernmental Agreement, dated February 18, 2016, and any amendments thereto, and all other outstanding agreements and binding obligations of the District.

PASSED, SIGNED, APPROVED, AND ADOPTED this 13<sup>th</sup> day of June, 2016.

**TOWN OF JOHNSTOWN, COLORADO**

**ATTEST:**

By: \_\_\_\_\_  
Diana Seele, Town Clerk

By: \_\_\_\_\_  
Scott James, Mayor

