

**DECLARATION OF COVENANTS
IMPOSING AND IMPLEMENTING
THE JOHNSTOWN PLAZA
PUBLIC IMPROVEMENTS FEES**

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**DECLARATION OF COVENANTS IMPOSING AND IMPLEMENTING
THE JOHNSTOWN PLAZA PUBLIC IMPROVEMENTS FEES**

THIS DECLARATION OF COVENANTS IMPOSING AND IMPLEMENTING THE JOHNSTOWN PLAZA PUBLIC IMPROVEMENTS FEES (this "Declaration") is made as of July 1st, 2016 by JOHNSTOWN PLAZA, LLC, a Kansas limited liability company, with the consent of Scheels All Sports, Inc., a North Dakota corporation (the "Consenting Landowner").

Recitals

This Declaration is made with respect to the following facts:

A. Declarant (as defined below) and the Consenting Landowner are the owners in fee simple of the PIF Property (as defined below). The PIF Property is located in the Town of Johnstown, Colorado, a home-rule municipality of the Counties of Larimer and Weld, State of Colorado (the "Town"). The PIF Property is located within the Larimer County portion of the Town.

B. Declarant (in coordination with the Consenting Landowner) is developing and desires to further develop, and redevelop from time to time, on the PIF Property, and the Additional PIF Property (as defined below), a commercial retail shopping center project known as Johnstown Plaza. Such development will require (initially and from time to time thereafter) numerous infrastructure improvements, including, without limitation, public streets, sidewalks, art, plazas, utilities, parking facilities, storm water management facilities, trail systems, parks and open space and associated land acquisitions (the "Public Improvements").

C. Johnstown Plaza Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District"), was or will be organized pursuant to the Colorado Special District Act, C.R.S. § 32-1-101, *et seq.*, to, among other things, provide for and facilitate the planning, design, engineering, financing, acquiring, construction, completion, ownership, operation, maintenance, replacement and repair of some of the Public Improvements (some of which may be dedicated to or otherwise owned by the Town).

D. Declarant desires that the reasonable and necessary costs of planning, designing, engineering, financing, acquiring, constructing, managing construction of and installing the Public Improvements, together with all land or interests in land necessary for the completion of the Public Improvements (some of which may be acquired by the District from the Declarant), and all other costs and expenses incurred or advanced in connection with the financing, acquisition, construction, completion and redevelopment from time to time of the Public Improvements, including, without limitation, operation, maintenance, repair and replacement costs incurred for the Public Improvements, expenses incurred or advanced for the District's organization, operation or management, all Bond Requirements (as defined below), and including without limitation all "Eligible Costs" as defined in the Comprehensive Agreement (as defined below) (all of such costs together, the "Public Improvements Costs"), be funded, paid and reimbursed, in part, from the Public Improvement Fees (as defined below) imposed and collected pursuant to this Declaration.

E. Subject to and in accordance with the terms and provisions of this Declaration, Declarant desires to impose, and the Consenting Landowner desires to consent to the imposition of, the obligation to collect and pay, and to provide for the implementation of the collection and payment of, the Public Improvement Fees on all Taxable Transactions (as defined below) that occur within or from the PIF Property.

Declaration

In consideration of the facts set forth in the Recitals and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by Declarant, Declarant hereby declares as follows with the consent of the Consenting Landowner:

1. **Defined Terms.** The following capitalized terms, when used in this Declaration, have the following meanings:

“Additional PIF Property” means the real property described on Exhibit B hereto.

“Add-On PIF” means a public improvements fee in the initial amount of two and one-half percent (2.5%) of the gross receipts of each Taxable Transaction imposed pursuant to Section 4 of this Declaration. The percentage rate of the Add-On PIF may be reduced pursuant to Section 7 of this Declaration.

“Affiliate” means any entity associated with or acting at the direction or on behalf of Declarant.

“Annexation Agreements” means the Annexation Agreement dated December 17, 2000, recorded in the Records on June 6, 2001, at Reception No. 2001044189, and the Annexation Agreement 2534 West dated December 4, 2006, recorded in the Records on November 9, 2007, at Reception No. 20070084421.

“Bonds” means any of the bonds, notes, contracts or other multiple fiscal year financial obligations, or the refunding or refinancing of any thereof, issued from time to time by the District in accordance with the terms and conditions of the Public Financing Documents, the proceeds of which are used to pay any Public Improvements Costs or reimburse any Public Improvement Costs that have already been paid by the District, the Declarant, any Affiliate of Declarant, or any other Person and to the payment of which the Regular PIF Revenues or any portion thereof have been Pledged pursuant to the Public Financing Documents.

“Bond Requirements” means the principal, redemption or purchase price, premium, if any, interest, reserves, fees and other amounts, required to be paid with respect to, or in connection with, any Bonds outstanding from time to time or the administration of the proceeds therefrom.

“Bond Trustee” means the trustee or trustees for the holders of any Bonds.

“Commencement Date” means the date on which this Declaration is recorded in the Records.

“Comprehensive Agreement” means that certain Comprehensive Development Agreement, Funding Plan and Intergovernmental Agreement for Johnstown Plaza, Johnstown, Colorado dated effective as of February 18, 2016, by and between the Declarant, the Town, and the District and recorded in the Records on March 11, 2016 at Reception No. 20160015207, as amended by the First Amendment thereto recorded in the Records on June 28, 2016 at Reception No. 20160041115, as it may be further amended from time to time.

“Confidential Information” has the meaning set forth in Section 10 of this Declaration.

“Consenting Landowner” has the meaning set forth in the first paragraph of this Declaration.

“Credit PIF” means a public improvements fee in the amount of two percent (2%) of the gross receipts of each Taxable Transaction imposed pursuant to Section 2 of this Declaration.

“Credit PIF Period” means the period of time during which Taxable Transactions are subject to the Credit PIF, as more fully described in Section 3 of this Declaration.

“Declarant” means Johnstown Plaza, LLC, a Kansas limited liability company, and any successor to such entity designated as the “Declarant” hereunder in a written instrument executed by the then-current Declarant and recorded in the Records.

“Default Rate” means the rate of 18% per annum, but if such rate exceeds the maximum interest rate permitted by applicable law, such rate will be reduced to the highest rate allowed by applicable law under the circumstances.

“Dissemination Agent” means an agent of the District or any Bond Trustee charged with disseminating information on a periodic basis to purchasers of any Bonds or the provider of any credit enhancement in connection with the issuance of any Bonds.

“District” has the meaning set forth in Recital C of this Declaration.

“Enforcing Party” has the meaning set forth in Section 11(b) of this Declaration.

“Judgment PIF” means a public improvements fee in the amount of one percent (1%) (subject to the following sentence) of the gross receipts of each Taxable Transaction that may be imposed pursuant to Section 5 of this Declaration. The percentage rate of the Judgment PIF may be reduced as provided in Section 7 of this Declaration.

“Judgment PIF Commencement Date” means the first day of the second calendar month following the calendar month within which the Town notifies the District in writing that the Town has become required under a court order to pay to any Person any sales or use tax rebates with respect to any Taxable Transactions or use tax transactions that occur within the PIF Property pursuant to the terms of either of the Annexation Agreements. For example, if the Town were to provide such notice to the District in writing on March 20, 2018, then the Judgment PIF Commencement Date would occur on May 1, 2018.

“Judgment PIF Period” means the period of time commencing on the Judgment PIF Commencement Date and ending at such time as the Town has been paid in full an amount equal to the Town Reimbursement Costs.

“Judgment PIF Revenues” means the net revenues (after payment of all permitted costs of administration and collection permitted by law and the Comprehensive Agreement) generated from the imposition and collection of the Judgment PIF pursuant to this Declaration.

“Owned/Leased PIF Property” means, with respect to any Project Owner, the portion of the PIF Property to which such Project Owner owns fee simple title and, with respect to any Project Occupant, the portion of the PIF Property such Project Occupant has the right to possess or occupy pursuant to its lease, sublease, license, concession or other occupancy agreement.

“Person” means any individual, partnership, corporation, limited liability company, association, trust, government, special district or other type of entity or organization.

“PIF Collecting Agent” means the Person that is designated by the District as its agent from time to time pursuant to the provisions of Section 14 of this Declaration to collect and receive the PIF Revenues and to remit the same to the party entitled thereto pursuant to this Declaration and the applicable Public Financing Documents.

“PIF Guidelines” is defined in Section 8 of this Declaration.

“PIF Property” means the real property in the Town described on Exhibit A-1 of this Declaration, and any additional real property (including without limitation the Additional PIF Property) made a part of the PIF Property pursuant to Section 17 of this Declaration, together with all improvements thereon and appurtenances thereto. The portion of the PIF Property owned by the Consenting Landowner is described on Exhibit A-2 of this Declaration.

“PIF Revenues” means, collectively, the Regular PIF Revenues and the Judgment PIF Revenues.

“PIF Trustee” means a state or national bank or trust company in good standing in or incorporated under the laws of the State of Colorado authorized to exercise trust powers that is selected to receive and hold the Regular PIF Revenues prior to the issuance of Bonds pursuant to terms of Section 12 of this Declaration.

“Pledge” means such assignment, conveyance, transfer, pledge, remittance or other transfer (whether as security for an obligation or as a true sale) as may be customary and necessary or appropriate to create an irrevocable lien and/or pledge of the Regular PIF Revenues for payment of the Bond Requirements.

“Project” means the commercial development project that Declarant is developing and intends to further develop on the PIF Property and the surrounding area, including, without limitation, the Additional PIF Property.

“Project Occupant” means any Person, including without limitation each Project Owner, who has the legal right, pursuant to a deed, lease, sublease, license, concession, easement or other

occupancy agreement of any type or nature (exclusive of utility or governmental easements), to possess or occupy any portion of the PIF Property, including, without limitation, any space within any building constructed on any portion of the PIF Property; provided that a mortgagee, a trustee under or beneficiary of a deed of trust, or any other Person who has such of right of possession primarily for the purpose of securing a debt or other obligation owed to such Person, will not constitute a "Project Occupant" unless and until such Person becomes a Project Owner or a mortgagee in possession or otherwise possesses or occupies a portion of the PIF Property pursuant to such right by an intentional or voluntary act of its own, whereupon the subject mortgagee, trustee, beneficiary or other Person will be a "Project Occupant" hereunder.

"Project Owner" means any Person who owns fee simple title to any portion of the PIF Property.

"Public Financing" means the sale of Bonds or other acquisition of funds to finance, pay for or otherwise reimburse the District, the Declarant, any Affiliate of Declarant or any other Person for any of the Public Improvements Costs.

"Public Financing Documents" means any documents executed or delivered in connection with the closing or arrangement of any Public Financing, including, without limitation, the Comprehensive Agreement.

"Public Improvements" has the meaning set forth in Recital B of this Declaration.

"Public Improvements Costs" has the meaning set forth in Recital D of this Declaration.

"Public Improvements Fees" or "PIF" means, as the context requires, the Add-On PIF and/or the Credit PIF, and/or, in addition, the Judgment PIF during the Judgment PIF Period, if any.

"Records" means the real property records maintained by the Clerk and Recorder of Larimer County, Colorado.

"Regular PIF Revenues" means the net revenues (after payment of all permitted costs of administration and collection permitted by law, the Public Financing Documents, and the Comprehensive Agreement) generated from the imposition and collection of the Add-On PIF and the Credit PIF pursuant to this Declaration.

"Relying Parties" has the meaning set forth in Section 15 of this Declaration.

"Report Recipients" has the meaning set forth in Section 9 of this Declaration.

"Reports" has the meaning set forth in Section 9 of this Declaration.

"Retailer" means any Project Occupant who is a seller of tangible personal property at retail or furnisher of services who engages in any Taxable Transaction.

"Sales Tax" means that tax obligation on the sale of tangible personal property at retail or the furnishing of services levied by the Town pursuant to the Sales Tax Code.

“Sales Tax Code” means Article IV of Chapter 4 of the Municipal Code of the Town, and any regulations promulgated pursuant thereto, as amended and/or replaced from time to time.

“Sales Tax Credit” means the portion of the Sales Tax in the amount of two percent (2%) (the total current Sales Tax rate is three percent (3%), as amended from time to time) on Taxable Transactions as to which the Town has agreed to grant temporarily a credit pursuant Section 4-50 of the Sales Tax Code and Sections 4.2 and 4.4.A of the Comprehensive Agreement.

“Taxable Transaction” means any sale of tangible personal property at retail or the furnishing of services initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of the PIF Property upon which the Sales Tax is payable pursuant to the Sales Tax Code. If the Sales Tax Code is repealed, invalidated or otherwise is terminated for any reason and not replaced with a new provision of the Municipal Code of the Town to implement a Sales Tax, then “Taxable Transaction” will mean any sale of tangible personal property at retail or the furnishing of services initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of the PIF Property upon which the Sales Tax would have been payable pursuant to the Sales Tax Code last in effect.

“Termination Date” means the earlier to occur of: (A) first date on which all of the following have occurred: (i) all Bond Requirements have been paid in full and there are no longer any Bonds outstanding; (ii) Declarant, its Affiliates and the District have been reimbursed for all expenses incurred or moneys advanced by them for any Public Improvements Costs; (iii) all Public Improvements Costs have otherwise been paid in full; and (iv) the District certifies in a written statement recorded in the Records that it has determined, in its complete and absolute discretion, that the District no longer requires any Regular PIF Revenues, or any portion thereof, to fund ongoing or anticipated future Public Improvement Costs such as, for example and without limitation, maintenance, repair or replacement costs for the Public Improvements and/or operation and management costs for the District; or (B) December 31, 2116.

“Town” has the meaning set forth in Recital A of this Declaration.

“Town Reimbursement Costs” means all amounts required to be remitted to the Town pursuant to Section 4.1.C.2 of the Comprehensive Agreement, less any such amounts paid to the Town by Declarant pursuant to Sections 4.1.A, 4.1.B and 6.1 of the Comprehensive Agreement.

2. Assessment of Credit PIF. From and after the Commencement Date and continuing until the end of the Credit PIF Period:

(a) every Retailer will collect from the purchaser or the recipient of goods or services in each Taxable Transaction initiated, consummated, conducted, transacted or otherwise occurring from or within such Retailer’s Owned/Leased PIF Property, and pay to the PIF Collecting Agent on behalf of the District, the Credit PIF with respect to each such Taxable Transaction from and after the first date of opening for sales occurring from or within such Retailer’s Owned/Leased PIF Property; and

(b) every Project Owner or Project Occupant who leases or subleases any portion of its Owned/Leased PIF Property to a Retailer, or who permits a Retailer to occupy any portion of its Owned/Leased PIF Property by license, concession or otherwise, will

require, pursuant to the lease, sublease, license, concession or other occupancy agreement between such Project Owner or Project Occupant and such Retailer by virtue of which such Retailer is given the right to possess or occupy any portion of such Owned/Leased PIF Property, that such Retailer will collect from the purchaser or the recipient of goods or services in each Taxable Transaction initiated, consummated, conducted, transacted or otherwise occurring from or within the portion of the PIF Property possessed or occupied by such Retailer pursuant to such lease, sublease, license, concession or other occupancy agreement, and pay to the PIF Collecting Agent on behalf of the District, the Credit PIF with respect to each such Taxable Transaction from and after the first date of opening for sales occurring from or within such Retailer's Owned/Leased PIF Property. The failure of a Project Owner or Project Occupant to incorporate such terms into or in conjunction with its lease, sublease, license, concession or other occupancy agreement with a Retailer shall not in any way excuse, exonerate, or release such Retailer from its obligation to collect the Credit PIF with respect to each Taxable Transaction and pay the same to the PIF Collecting Agent pursuant to this Declaration.

3. Credit PIF Period. The Credit PIF Period will commence on the Commencement Date and terminate at 11:59 p.m. on the earlier to occur of: (A) December 1, 2047; or (B) the date as of which the District has paid in full all of the Bond Requirements for all Bonds issued for the purpose of financing, refinancing or reimbursing the Verified Eligible Costs (as defined in the Comprehensive Agreement), including any re-financing or re-issue thereof, which net proceeds do not exceed the Cap Amount (as defined in the Comprehensive Agreement), as certified by the District in a written supplement to this Declaration recorded in the Records by the District pursuant to Section 4.4.E of the Comprehensive Agreement; provided, however, that the District may extend the Credit PIF Period with the consent of the Town Council of the Town pursuant to the terms of Section 4.4.E of the Comprehensive Agreement, and any such permitted extension of the Credit PIF Period will be memorialized by the recording of a supplement to this Declaration executed on behalf of the District and the Mayor of the Town and recorded in the Records. Notwithstanding the foregoing provisions, with respect to any Taxable Transaction initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of the Additional PIF Property that is included as part of the PIF Property pursuant to Section 17 of this Declaration, the Credit PIF Period will not commence unless and until the Phase II Credit PIF Condition Precedent (as defined in the Comprehensive Agreement) has been satisfied pursuant to Section 4.1.B of the Comprehensive Agreement.

4. Assessment of Add-On PIF. From and after the Commencement Date and continuing until the Termination Date:

(a) every Retailer will collect from the purchaser or the recipient of goods or services in each Taxable Transaction initiated, consummated, conducted, transacted or otherwise occurring from or within the such Retailer's Owned/Leased PIF Property, and pay to the PIF Collecting Agent on behalf of the District, the Add-On PIF with respect to each such Taxable Transaction from and after the first date of opening for sales occurring from or within such Retailer's Owned/Leased PIF Property; and

(b) every Project Owner or Project Occupant who leases or subleases any portion of its Owned/Leased PIF Property to a Retailer, or who permits a Retailer to occupy

any portion of its Owned/Leased PIF Property by license, concession or otherwise, will require, pursuant to the lease, sublease, license, concession or other occupancy agreement between such Project Owner or Project Occupant and such Retailer by virtue of which such Retailer is given the right to possess or occupy any portion of such Owned/Leased PIF Property, that such Retailer will collect from the purchaser or the recipient of goods or services in each Taxable Transaction initiated, consummated, conducted, transacted or otherwise occurring from or within the portion of the PIF Property possessed or occupied by such Retailer pursuant to such lease, sublease, license, concession or other occupancy agreement, and pay to the PIF Collecting Agent on behalf of the District, the Add-On PIF with respect to each such Taxable Transaction from and after the first date of opening for sales occurring from or within such Retailer's Owned/Leased PIF Property. The failure of a Project Owner or Project Occupant to incorporate such terms into or in conjunction with its lease, sublease, license, concession or other occupancy agreement with a Retailer shall not in any way excuse, exonerate, or release such Retailer from its obligation to collect the Add-On PIF with respect to each Taxable Transaction and pay the same to the PIF Collecting Agent pursuant to this Declaration.

5. Assessment of Judgment PIF. Beginning on the Judgment PIF Commencement Date and continuing until the end of the Judgment PIF Period:

(a) every Retailer will collect from the purchaser or the recipient of goods or services in each Taxable Transaction initiated, consummated, conducted, transacted or otherwise occurring from or within the such Retailer's Owned/Leased PIF Property, and pay to the PIF Collecting Agent on behalf of the District and the Town, the Judgment PIF with respect to each such Taxable Transaction from and after the Judgment PIF Commencement Date; and

(b) every Project Owner or Project Occupant who leases or subleases any portion of its Owned/Leased PIF Property to a Retailer, or who permits a Retailer to occupy any portion of its Owned/Leased PIF Property by license, concession or otherwise, will require, pursuant to the lease, sublease, license, concession or other occupancy agreement between such Project Owner or Project Occupant and such Retailer by virtue of which such Retailer is given the right to possess or occupy any portion of such Owned/Leased PIF Property, that such Retailer will collect from the purchaser or the recipient of goods or services in each Taxable Transaction initiated, consummated, conducted, transacted or otherwise occurring from or within the portion of the PIF Property possessed or occupied by such Retailer pursuant to such lease, sublease, license, concession or other occupancy agreement, and pay to the PIF Collecting Agent on behalf of the District and the Town, the Judgment PIF with respect to each such Taxable Transaction from and after the Judgment PIF Commencement Date. The failure of a Project Owner or Project Occupant to incorporate such terms into or in conjunction with its lease, sublease, license, concession or other occupancy agreement with a Retailer shall not in any way excuse, exonerate, or release such Retailer from its obligation to collect the Judgment PIF with respect to each Taxable Transaction and pay the same to the PIF Collecting Agent pursuant to this Declaration.

6. Payment of Public Improvements Fees.

(a) Taxable Transactions. Whether or not collected from customers, each Retailer will pay the Public Improvements Fees monthly, in arrears, with respect to all Taxable Transactions initiated, consummated, conducted, transacted or otherwise occurring during the immediately preceding monthly payment period from or within the portion of the PIF Property occupied by such Retailer during such monthly payment period. The Public Improvements Fees will be due and payable without notice within twenty (20) days after the close of each monthly payment period and each Retailer will pay the same directly to the PIF Collecting Agent. Each Retailer will report Taxable Transactions and remit the Public Improvements Fees on such Taxable Transactions to the PIF Collecting Agent on a monthly basis when such Retailer reports and remits sales taxes to the State of Colorado (or any other governmental entity or agency which assumes under applicable law responsibility for collection of sales taxes levied with respect to the PIF Property), employing reporting forms and following the procedures required by the PIF Collecting Agent. The reporting forms used by the PIF Collecting Agent will be modeled on the Sales Tax reporting forms used for remittance of the Sales Tax by the Retailers. The Public Improvements Fees will be calculated and imposed on Taxable Transactions at the percentage rates established pursuant to this Declaration prior to the calculation and assessment of any Town Sales Taxes or any Larimer County or State of Colorado sales taxes and before any sales taxes of any other taxing authority required to be imposed by law, meaning the Public Improvements Fees will be added to, and be considered part of, the gross receipts for each Taxable Transaction prior to the calculation of all sales taxes that are levied thereon.

(b) Generally. Declarant hereby acknowledges, any other Project Owner, by acquiring fee simple title to any portion of the PIF Property, will be deemed to have acknowledged, any other Project Occupant, by acquiring the right to possess or occupy any portion of the PIF Property, will be deemed to have acknowledged, and each Project Owner and Project Occupant will cause any Retailer whom such Project Owner or Project Occupant permits to possess or occupy (by lease or otherwise) any portion of its Owned/Leased PIF Property to acknowledge, prior to conducting any business from any portion of the PIF Property, **THAT THE PUBLIC IMPROVEMENTS FEES ARE NOT A TAX IN ANY FORM AND THAT THE AUTHORITY OF THE PIF COLLECTING AGENT TO RECEIVE PUBLIC IMPROVEMENTS FEES IS DERIVED THROUGH THIS DECLARATION.** However, the failure of a Project Owner or Project Occupant to cause a Retailer to make such acknowledgement shall not in any way excuse, exonerate, or release such Retailer from its obligation to collect the Public Improvements Fees with respect to each Taxable Transaction and pay the same to the PIF Collecting Agent pursuant to this Declaration. In the event the District changes the PIF Collecting Agent for the Public Improvements Fees (as further described in Section 14 of this Declaration), the District will promptly notify each Project Occupant of the same and provide appropriate direction for payment and reporting of the Public Improvements Fees thereafter. For purposes of compliance with this Section 6, each Retailer will be entitled to rely upon written notice from the District that the PIF Collecting Agent has changed.

7. PIF Amounts and Limitations. The percentage rate of the Credit PIF established pursuant to the definition of Credit PIF in Section 1 of this Declaration will not be changed except by an amendment to this Declaration made in accordance with Section 26 of this Declaration. The percentage rate of the Judgment PIF established pursuant to the definition of Judgment PIF in Section 1 of this Declaration will not be changed except by the District with the written approval of the Town. For the duration of the Credit PIF Period, the percentage rate of the Add-On PIF established pursuant to the definition of Add-On PIF in Section 1 of this Declaration will not be changed except by an amendment to this Declaration made in accordance with Section 26 of this Declaration. Following the termination of the Credit PIF Period, but subject to the terms of any Public Financing Documents then in effect and additionally subject to the written approval of the Declarant if the Declarant is a Project Owner at that time and the written approval of the Consenting Landowner if it is a Project Owner at that time, the percentage rate of the Add-On PIF may be reduced (but not increased) by the District by the recording in the Records of a supplement to this Declaration executed on behalf of the District and stating the new percentage rate of the Add-On PIF and the date as of which such new percentage rate will take effect, which date will not be sooner than the ninetieth (90th) day following the date of recording of such supplement to this Declaration.

8. PIF Guidelines. The District and the PIF Collecting Agent may from time to time establish, subject to the Public Financing Documents, uniform guidelines further clarifying and delineating the procedures to be followed for the collection and remittance of the Public Improvements Fees by the Retailers, including the reporting forms to be used in remitting the Public Improvements Fees to the PIF Collecting Agent (the "PIF Guidelines"). The PIF Guidelines will apply and be enforced in a uniform and consistent manner to all of the PIF Property and each portion of the PIF Property. The PIF Guidelines will be delivered to all Retailers in writing (and for purposes of determining the names and addresses of Retailers, any Project Owner or applicable Project Occupant will, within 10 business days after receipt of a written request therefor from the District or the PIF Collecting Agent, provide such requesting party with the name and address of all Retailers that then occupy any PIF Property of such Project Owner or Project Occupant). Each Retailer will be entitled to rely on the then-current PIF Guidelines for purposes of complying with this Declaration. FAILURE OF ANY RETAILER TO RECEIVE THE PIF GUIDELINES SHALL NOT IN ANY WAY EXCUSE, EXONERATE, OR RELEASE SUCH RETAILER FROM ITS OBLIGATIONS PURSUANT TO THIS DECLARATION, AND EACH RETAILER SHALL BE FULLY BOUND BY THE TERMS OF THIS DECLARATION NOTWITHSTANDING SUCH RETAILER'S RECEIPT OR POSSESSION OF THE PIF GUIDELINES.

9. Additional Reporting Requirements. Each Retailer will deliver to the District, the PIF Collecting Agent, and, at the express written direction of the District, to the Town or any Bond Trustee (collectively, "Report Recipients"), true and complete copies of all written reports, returns, statements, records and declarations, including any supplements or amendments thereto (collectively the "Reports") made or provided to the Town or the State of Colorado by such Retailer in connection with all Sales Taxes for the corresponding tax period or activity at the same time such Reports are delivered to the Town or the State of Colorado. If any subsequent adjustments, additions or modifications are made to any Sales Taxes or the Public Improvements Fees reported, remitted or, paid, or Report made, by a Retailer to the Report Recipients, the Town or the State of Colorado with respect to Sales Taxes, or the Public Improvements Fees, such

Retailer will provide the Report Recipients with true and complete copies of all revised Reports or other written material issued or received by such Retailer in regard thereto. If any such adjustment increases the amount of the Public Improvements Fees a Retailer is required to remit or pay, or results in a refund of such Public Improvements Fees, such Retailer will immediately pay such additional Public Improvements Fee in the amount due, or will, in the discretion of the PIF Collecting Agent receive either an appropriate refund or an appropriate credit against the next Public Improvements Fees due from such Retailer in the amount of such excess Public Improvements Fees. Any such Retailer will claim such credits or pay such additional Public Improvements Fees with respect to Taxable Transactions in the next applicable reporting period by use of the standard reporting and remittance forms. All Reports made or provided by a Retailer will be maintained by such Retailer for at least three years from the date of submission thereof to the Town and/or State of Colorado, and upon written request, will be made available at the Retailer's expense to the Report Recipients for inspection and audit. Subject to Section 10 of this Declaration, Reports received by Declarant, the PIF Collecting Agent, the District or any Bond Trustee will remain confidential and be used only for purposes of collecting the Public Improvements Fees due, enforcing Retailers' obligations hereunder, and otherwise monitoring compliance with the provisions of this Declaration.

10. Audits and Release of Information by the PIF Collecting Agent. By acquiring its possessory interest in and to its Owned/Leased PIF Property subject to the terms and conditions of this Declaration, each Retailer hereby specifically authorizes the PIF Collecting Agent and the Town to audit the books and records of such Retailer, upon 30 days' prior written notice and at the principal place of business of such Retailer or another mutually agreed location, to determine compliance with the Public Improvements Fees collection and remittance obligations of such Retailer pursuant to this Declaration and, subject to the restrictions set forth in the next sentence, to release to the District, any PIF Trustee, any Bond Trustee and any Dissemination Agent for distribution to purchasers of any Bonds (but not to any other person or entity, except as required by law) such audited information and any Public Improvements Fees-related Reports, returns (including sales tax returns) and other documents as are delivered to the PIF Collecting Agent by such Retailer and any relevant information gathered by the PIF Collecting Agent or the Town (or the State of Colorado to the extent it is collecting any Sales Taxes on behalf of the Town) during an audit or in reviewing such reports, returns or other documents (collectively, the "Confidential Information"); provided, however, that all Confidential Information, together with the contents thereof, will be kept confidential and will not be disclosed or otherwise published by any person to whom the PIF Collecting Agent so releases Confidential Information, except for such disclosures or publications as may be required by applicable laws. Without limiting the foregoing confidentiality and non-disclosure requirements, to the fullest extent permitted under applicable laws, any publication or disclosure of Confidential Information submitted by or pertaining to a specific Retailer (or the contents of such Confidential Information) by the PIF Collecting Agent, the Town, the District, any PIF Trustee, any Bond Trustee or any Dissemination Agent (or by anyone else to whom the PIF Collecting Agent is required by law to disclose Confidential Information) that is otherwise required to be made, will be made only on an aggregated basis with the similar information submitted by other Retailers and without separate identification (direct or indirect) of the Public Improvements Fees or sales of such specific Retailer. Each Retailer will write "CONFIDENTIAL COMMERCIAL INFORMATION" on every Report that it furnishes to the District, the Town (or the State of Colorado to the extent it is collecting any Sales Taxes on behalf of the Town) or the PIF Collecting Agent to assist with the maintenance of confidentiality,

notwithstanding the Colorado Open Records Act, as the same may be amended from time to time; provided, however, that a Retailer will not be required to include such statement on its regular monthly returns for remittance of the Public Improvements Fees to the PIF Collecting Agent and the failure of a Retailer to include such statement on any Report will not affect the status of such report as Confidential Information pursuant to the preceding terms of this Section 10.

11. Compliance and Enforcement.

(a) Taxable Transactions. Each Retailer will comply with all policies and requirements of the District and the PIF Collecting Agent regarding notification to customers of the assessment and collection of the Public Improvements Fees on Taxable Transactions as such policies and requirements are contained in the PIF Guidelines or otherwise disseminated from time to time. The failure or refusal of any Retailer to assess, collect or remit the Public Improvements Fees, or to comply with the requirements concerning notification to customers as required in this Declaration, will constitute a default by such Retailer under the terms of this Declaration. **THE DISTRICT, ANY PIF TRUSTEE, ANY BOND TRUSTEE, AND THE PIF COLLECTING AGENT (AND THE TOWN WITH RESPECT TO THE JUDGMENT PIF) ARE HEREBY EXPRESSLY MADE THIRD PARTY BENEFICIARIES OF THE RETAILERS' OBLIGATIONS UNDER THIS DECLARATION, INCLUDING, BUT NOT LIMITED TO, THE ASSESSMENT, COLLECTION AND REMITTANCE OF THE PUBLIC IMPROVEMENTS FEES.** Declarant hereby acknowledges, any other Project Owner, by acquiring fee title to any portion of the PIF Property, will be deemed to have acknowledged, any Project Occupant, by acquiring the right to possess or occupy any portion of the PIF Property subject to this Declaration, will be deemed to have acknowledged, and each Project Owner and Project Occupant will cause any Retailer whom such Project Owner or Project Occupant permits to possess or occupy (by lease or otherwise) any portion of its Owned/Leased PIF Property to acknowledge, prior to conducting any business from any part of the PIF Property, **THAT THE DISTRICT, ANY PIF TRUSTEE, ANY BOND TRUSTEE, AND THE PIF COLLECTING AGENT (AND THE TOWN WITH RESPECT TO THE JUDGMENT PIF) WILL HAVE A DIRECT CAUSE OF ACTION AND FULL RIGHT AND AUTHORITY TO ENFORCE EACH RETAILER'S OBLIGATIONS UNDER THIS DECLARATION, AND THAT NO DEFAULT BY A RETAILER'S LANDLORD (OR EQUIVALENT) UNDER ANY PROVISION OF THE LEASE OR OTHER OCCUPANCY AGREEMENT PURSUANT TO WHICH SUCH RETAILER OCCUPIES ANY PART OF THE PIF PROPERTY WILL ENTITLE SUCH RETAILER TO ANY OFFSET, DEDUCTION OR OTHER DEFENSE TO PAYMENT OF THE PUBLIC IMPROVEMENTS FEES DUE HEREUNDER.**

(b) Default Rate, Late Charge and Enforcement Costs. Any payment of the Public Improvements Fees not paid when due hereunder will bear interest at the Default Rate, and the defaulting Retailer will bear all costs of enforcement and collection thereof, including reasonable attorneys' fees and costs. In addition, if a Retailer fails to pay any Public Improvements Fee when due, the PIF Collecting Agent may charge such Retailer, and such Retailer will be obligated to pay the PIF Collecting Agent, a late charge in an amount equal to the greater of 10% of the delinquent Public Improvements Fees or \$100.00 (which \$100 amount will be automatically increased by 15% every five years beginning

on January 1 of the fifth full calendar year following the recording of this Declaration). Notwithstanding anything to the contrary contained in this Declaration, Declarant, the District, any PIF Trustee, any Bond Trustee, the PIF Collecting Agent (and the Town with respect to the Judgment PIF), or any third party designated by any of the foregoing (collectively, an "Enforcing Party"), will have the right to enforce the provisions of this Declaration against any Retailer that fails to abide by any of the terms and conditions of this Declaration. An Enforcing Party will be awarded and recover from such defaulting Retailer all costs and expenses incurred by such Enforcing Party in successfully enforcing the obligations of such Retailer under this Declaration in any legal proceedings brought (or defended) by such Enforcing Party.

12. Use and Pledge of Regular PIF Revenues. The Regular PIF Revenues are and will be the property of the District, and the Add-On PIF and Credit PIF are imposed for the benefit of the District, subject to the terms of this Declaration and the terms of any Pledge. The Regular PIF Revenues generated by the Add-On PIF and Credit PIF imposed pursuant to this Declaration will be used only for the payment or reimbursement of Public Improvements Costs as provided in this Declaration and the Public Financing Documents. Prior to the issuance of Bonds, the PIF Collecting Agent will deliver all Regular PIF Revenues to the PIF Trustee designated by the District and approved by the Town pursuant to terms of Section 4.4.C of the Comprehensive Agreement, such Regular PIF Revenues to be held and disbursed by such PIF Trustee in accordance with the Public Financing Documents. For so long as any Bonds remain outstanding, the Regular PIF Revenues will be used for the payment of the Bond Requirements in accordance with the Public Financing Documents. The District is hereby expressly authorized to Pledge for the payment of Bond Requirements all Regular PIF Revenues generated from the Add-On PIF and the Credit PIF imposed pursuant to this Declaration and received or receivable by the PIF Collecting Agent. For so long as any Bond Requirements remain unsatisfied, the PIF Collecting Agent is hereby instructed and required to pay such Regular PIF Revenues received by it as may be so Pledged to the party entitled thereto pursuant to the applicable Public Financing Documents. All Regular PIF Revenues that are received following the satisfaction of all Bond Requirements will be delivered by the PIF Collecting Agent to the District (and/or such other Person(s) designated by the District from time to time) for the payment or reimbursement of Public Improvements Costs, subject to the requirements of any applicable Public Financing Documents.

13. Collection and Use of Judgment PIF Revenues.

(a) Implementation. At such time as the Town notifies the District in writing that the Town has become required under a court order to pay to any Person any sales or use tax rebates with respect to any Taxable Transactions or use tax transactions that occur within the PIF Property pursuant to the terms of either of the Annexation Agreements, the District shall cause the PIF Collecting Agent to take all actions and measures necessary to implement the Judgment PIF and cause the Retailers to begin collecting the Judgment PIF beginning on the Judgment PIF Commencement Date and thereafter remit the Judgment PIF to the PIF Collecting Agent as required by this Declaration and the Comprehensive Agreement.

(b) Use. The Judgment PIF Revenues are and will be the property of the Town, and the Judgment PIF is imposed for the benefit of the Town, subject to the terms of this

Declaration and the Comprehensive Agreement. The District will cause the PIF Collecting Agent to remit the Judgment PIF Revenues to the Town until such time as the Town Reimbursement Costs have been paid in full and the Judgment PIF Period therefore terminates. Any Judgment PIF Revenues remaining after the Town Reimbursement Costs have been paid in full shall be remitted to the District and will be used by the District for the payment or reimbursement of Public Improvements Costs, subject to the requirements of any Public Financing Documents.

(c) Acknowledgment. Declarant, for itself and all Project Owners and Project Occupants, acknowledges that the Town has entered into the Comprehensive Agreement with the expectation that the Town will not incur any Town Reimbursement Costs. But for the provisions of this Declaration establishing the Judgment PIF for the purpose of creating a revenue source to pay any Town Reimbursement Costs incurred by the Town, the Town would not have entered into the Comprehensive Agreement and the development of the Project on the PIF Property would not be possible in the manner contemplated by Declarant and as described in the Comprehensive Agreement. Accordingly, Declarant, for itself and all Project Owners and Project Occupants, acknowledges and agrees that adequate consideration exists for the imposition of the Judgment PIF pursuant to this Declaration and the obligation to collect and pay the Judgment PIF pursuant to the terms of this Declaration is a covenant that benefits, touches and concerns the PIF Property and will run with title to the PIF Property as a real covenant.

14. PIF Collecting Agent Designation. The PIF Collecting Agent will be an accounting firm, management company or other Person that is reasonably qualified to collect the Public Improvements Fees pursuant to this Declaration. The PIF Collecting Agent will not be Declarant or any Affiliate of Declarant. Subject to the terms of the Public Financing Documents, the District will have the right to appoint, terminate and replace the PIF Collecting Agent from time to time upon not less than 45 days' prior written notice to the Project Occupants, except that in the event of an emergency or the resignation of the then-existing PIF Collecting Agent on short notice less than 45 days' prior written notice will be permitted. If the PIF Collecting Agent is changed on less than 45 days' prior written notice pursuant to the preceding sentence, then any Retailer who remits Public Improvements Fees to the prior PIF Collecting Agent within 45 days after receiving such written notice will be deemed in compliance with this Declaration and the District will cause the prior PIF Collecting Agent to forward any such remittances to the new PIF Collecting Agent. The PIF Collecting Agent will be entitled to receive a commercially reasonable fee in consideration for collecting and disbursing the PIF Revenues pursuant to this Declaration and the Public Financing Documents.

15. General Acknowledgement. Declarant hereby acknowledges, any other Project Owner, by acquiring fee title to any portion of the PIF Property, will be deemed to have acknowledged, and any Project Occupant, by acquiring the right to possess or occupy any portion of the PIF Property, will be deemed to have acknowledged, prior to conducting any business at any PIF Property, THAT THE PROVISIONS OF THIS DECLARATION HAVE BEEN OR WILL BE AGREED TO OR OTHERWISE APPROVED BY THE DISTRICT AND ACKNOWLEDGED BY EACH BOND TRUSTEE (THE "RELYING PARTIES"), AND THAT THE RELYING PARTIES ARE OR WILL BE RELYING UPON THESE PROVISIONS IN TAKING CERTAIN ACTIONS WITH RESPECT TO THE PUBLIC IMPROVEMENTS FEES

AND THE PUBLIC IMPROVEMENTS WITH THE UNDERSTANDING THAT THIS DECLARATION WILL NOT BE AMENDED, MODIFIED OR WAIVED WITHOUT THEIR PRIOR WRITTEN CONSENT. ACCORDINGLY, DECLARANT HEREBY DECLARES, AND ALL OTHER PROJECT OWNERS AND PROJECT OCCUPANTS WILL BE DEEMED TO HAVE AGREED, THAT NO AMENDMENT OR MODIFICATION WILL BE MADE TO, NOR ANY WAIVER MADE OR ACCEPTED BY DECLARANT, ANY PROJECT OWNER OR ANY PROJECT OCCUPANT WITH RESPECT TO THIS DECLARATION, AND THAT ANY SUCH PURPORTED AMENDMENT, MODIFICATION OR WAIVER WILL BE VOID AND OF NO FORCE AND EFFECT UNLESS AND TO THE EXTENT CONSENTED TO IN WRITING BY THE RELYING PARTIES. Each Project Owner and Project Occupant will cause any Retailer whom such Project Owner or Project Occupant permits to possess or occupy (by lease or otherwise) any portion of its Owned/Leased PIF Property to acknowledge, prior to conducting any business from any part of the PIF Property, THAT THE PROVISIONS OF THIS DECLARATION HAVE BEEN OR WILL BE AGREED TO OR ACKNOWLEDGED BY THE RELYING PARTIES, AND THAT THE RELYING PARTIES ARE OR WILL BE RELYING UPON THIS DECLARATION IN TAKING CERTAIN ACTIONS WITH RESPECT TO THE PUBLIC IMPROVEMENTS FEES AND THE PUBLIC IMPROVEMENTS WITH THE UNDERSTANDING THAT THIS DECLARATION WILL NOT BE AMENDED, MODIFIED OR WAIVED WITHOUT THEIR PRIOR WRITTEN CONSENT; ACCORDINGLY, SUCH RETAILER WILL BE DEEMED TO HAVE AGREED THAT NO AMENDMENT OR MODIFICATION WILL BE MADE TO, NOR ANY WAIVER MADE OR ACCEPTED BY SUCH RETAILER WITH RESPECT TO THIS DECLARATION, AND THAT ANY SUCH PURPORTED AMENDMENT, MODIFICATION OR WAIVER WILL BE VOID AND OF NO FORCE AND EFFECT UNLESS AND TO THE EXTENT CONSENTED TO IN WRITING BY THE RELYING PARTIES. The Town will be considered one of the Relying Parties with respect to any amendment to this Declaration that would modify any of the terms hereof concerning the Judgment PIF or otherwise would conflict with, or purport to modify, the terms of the Comprehensive Agreement.

16. Project Owner/Project Occupant Obligations. Each Project Owner and Project Occupant will cause any Retailer to whom such Project Owner or Project Occupant leases or whom such Project Owner or Project Occupant otherwise permits to occupy any portion of its Owned/Leased PIF Property, in its lease or other occupancy agreement with such Retailer pursuant to which such Retailer occupies any portion of such Project Owner's or Project Occupant's Owned/Leased PIF Property, to acknowledge and agree to (in a manner that causes such Retailer to be bound by) all provisions of this Declaration that pertain to such Retailer.

17. Inclusion of Additional Property. Declarant may include any of the Additional PIF Property, or any other property within the service area of the District, as part of the PIF Property at any time by recording in the Records a supplement to this Declaration setting forth the legal description of such included property and stating that, from and after the date of such recording, such additional property will be included within the PIF Property for all purposes under this Declaration. If the property to be included as part of the PIF Property is owned by any Person other than Declarant, then such supplement to this Declaration must, in addition to being executed by Declarant, be executed by the owner in fee simple of the property to be included and consented to by the holder of any deed of trust, mortgage or other security for an obligation encumbering such property. From and after the date any such supplement is properly executed and recorded,

the property described therein will become a part of the PIF Property for all purposes under this Declaration. Until such time as such additional property becomes part of the PIF Property pursuant to the foregoing provisions, such additional property (including any part of the Additional PIF Property not so included) will not be bound, encumbered or benefitted in any manner by this Declaration. The legal description of the Additional PIF Property is attached to this Declaration for informational purposes only and not with the intent of creating any obligations on, or benefits for, the Additional PIF Property.

18. Exclusion of Property. Except as provided in any of the Public Financing Documents (any one or more of which may require the consent of one or more parties before Declarant may exclude any property from the PIF Property), Declarant may, without the prior consent of any other party, exclude any property from the PIF Property by recording in the Records a notice of such exclusion describing the property to be excluded from the PIF Property (an "Exclusion Notice"); provided, however, that any such Exclusion Notice will require the written consent of the Consenting Landowner if it is a Project Owner at such time. Notwithstanding the foregoing, the exclusion of any property from the PIF Property during the Credit PIF Period shall require the prior written consent of the Town. Upon the recording of any Exclusion Notice (or upon the effective date specified in the Exclusion Notice if different from the date of recording), the property described in the Exclusion Notice will be excluded from the PIF Property and will no longer be subject to the terms, obligations, covenants and requirements of this Declaration, except with respect to Public Improvements Fee obligations or other obligations arising under this Declaration prior to the effectiveness of such exclusion.

19. No Dominion or Control By Declarant. Except as expressly provided in this Section 19 and the Public Financing Documents, the District will have all right, title and interest in and to the Add-On PIF, the Credit PIF and the Regular PIF Revenues in accordance with this Declaration and the Public Financing Documents. Declarant does not have and will not be legally entitled, authorized or empowered to exercise any dominion or control over any of the Regular PIF Revenues collected pursuant to this Declaration and the Public Financing Documents, unless, and until such time as, if ever, Declarant becomes entitled under the Public Financing Documents to receive the Regular PIF Revenues or any portion thereof to reimburse Declarant for Public Improvements Costs paid or otherwise advanced by Declarant. If and to the extent that Declarant is deemed to have any right, title or interest in or to the Add-On PIF or the Credit PIF that is not provided for in the Public Financing Documents, all right, title and interest of Declarant in and to the Add-On PIF and the Credit PIF and the obligations of the Retailers hereunder with respect thereto will irrevocably, absolutely and unconditionally be transferred, sold, assigned and conveyed by Declarant to the District for financing or otherwise paying the Public Improvements Costs. Unless and to the extent the Public Financing Documents provide otherwise, to the extent any Regular PIF Revenues are collected by Declarant, Declarant is merely acting on behalf of the District or the PIF Collecting Agent in implementing this Declaration and providing for the collection and payment of Regular PIF Revenues under this Declaration and the Public Financing Documents. Subject to the express terms of this Section 19: (a) the Add-On PIF and Credit PIF are fees imposed on Retailers to pay Public Improvements Costs as provided herein, (b) the nature of the Add-On PIF and Credit PIF are that of fees imposed under private covenant and not through the exercise of any Town or District taxing authority; (c) the Regular PIF Revenues are not tax revenues in any form and the Add-On PIF and the Credit PIF will not be enforceable by the Town (except to the extent the Town receives Sales Taxes for which the Sales Tax Credit did not apply

due to a Retailer's failure to pay the Credit PIF and remits such Sales Taxes for the payment of Bond Requirements pursuant to the Public Financing Documents); and (d) the Regular PIF Revenues are to be used for the payment of the Bond Requirements and as otherwise may be provided in this Declaration or the Public Financing Documents.

20. Dissolution of District. If the Town takes any action toward dissolving the District or the District otherwise comes under threat of dissolution by any other means, then the District may assign all of its rights, interests and privileges under this Declaration (including without limitation its rights to receive the Add-On PIF and Credit PIF) to any entity that agrees to assume all of the District's obligations under this Declaration. Any such assignment and assumption will be made in the form of a written agreement recorded in the Records. If the District is dissolved before entering into such an assignment and assumption, then Declarant will have the right to designate a successor to the rights, interests and privileges of the District by recording a written declaration to such effect in the Records.

21. Notices to Project Occupants. Whenever a notice is required to be given pursuant to the provisions of this Declaration to "all" Project Occupants, the notice given will be deemed sufficient if given to all Project Occupants the names and addresses of which were known to the party giving such notice after a reasonably diligent effort to ascertain the names and addresses of all Project Occupants. Notwithstanding the foregoing, any notice to be given pursuant to this Declaration to a Retailer who is a Project Occupant by virtue of a lease, sublease, license, concession, or other occupancy agreement will be given to such Retailer at the notice address(es) contained in such Retailer's occupancy agreement and the landlord, sublessor, licensor, concessionor or other granting party under such occupancy agreement will provide such notice address(es) for any Retailer upon demand to any party who has a right to send any notice pursuant to this Declaration.

22. Tax Obligations. In addition to the Public Improvements Fees, each Retailer is subject to all sales and use taxes that may be imposed and otherwise not waived or credited by the State of Colorado, the Town, Larimer County or any other applicable taxing authority.

23. Governing Laws. This Declaration will be governed by, and enforced in accordance with, the laws of the State of Colorado. Venue for all actions hereunder shall be in the District Court in and for Larimer County, Colorado.

24. Covenants Run with the Land; Termination. The covenants, agreements, promises and duties as set forth in this Declaration will be construed as real covenants, and not as conditions, and all such covenants will run with title to and affect the PIF Property. Each such covenant to do or refrain from doing some act on or with respect to activities on any portion of the PIF Property under this Declaration (i) is a burden upon such portion of the PIF Property and is for the benefit of the remainder of the PIF Property, (ii) will be a covenant running with the land with respect to both the burdened and benefited portions of the PIF Property, and (iii) will be binding upon of each Project Occupant and each successor thereto in the PIF Property and will inure to the benefit of Declarant, the other Project Owners, the District, the PIF Collecting Agent, the Town, and, to the extent applicable, each PIF Trustee and each Bond Trustee. All covenants and agreements under this Declaration will terminate and expire on the Termination Date, except with respect to any obligation arising under this Declaration that has not been paid, discharged or satisfied in full

as of the Termination Date. If and to the extent that any of the covenants or other provisions herein would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provisions concerned will continue and endure only until the expiration of a period of 90 years after the Commencement Date.

25. Residential Use Prohibition; CCIOA Exemption. No portion of the PIF Property may be used for "residential use" as defined in the Colorado Common Interest Ownership Act, C.R.S § 38-33.3-101 *et seq.*, and this Declaration shall not be subject to Colorado Common Interest Ownership Act.

26. Amendment. Subject to the terms of the Public Financing Documents and the following sentence of this Section 26, this Declaration may be amended by a written instrument that is recorded in the Records and executed by or on behalf of all of the following: (a) Declarant, so long as Declarant is a Project Owner; (b) the Relying Parties; (c) the then-current holder of any "Encumbrance" identified in any Subordination and Consent of Lender attached to this Declaration; and (d) Project Owners (which may include Declarant) that collectively own more than fifty percent (50%) of the total land area within the PIF Property, excluding all publicly owned lands, including, without limitation, all rights-of-way, open space areas and similar areas that are owned by any public entity, quasi-public entity, or political subdivision. This Declaration may not be amended to increase the percentage rate of the Credit PIF or the Add-On PIF without the written consent of more than fifty percent (50%) of the Retailers located within the Project at the time such amendment is made.

27. Severability. Invalidation of any of the provisions contained in this Declaration, or of the application thereof to any person or entity, by judgment or court order, will in no way affect any of the other provisions of this Declaration or the application of the terms hereof to any other person or entity or circumstance and the remainder of this Declaration will remain in effect; provided, however, that in the event such invalidation would render the remaining portions of this Declaration ineffective to carry out the material intentions of Declarant as expressed or implied by this Declaration, then the objectionable provision(s) hereof will be construed, and this Declaration will be deemed amended, as if such provision were replaced with an enforceable provision which effectuates, as nearly as possible, the material intentions of Declarant.


28. Consent of Consenting Landowner. The Consenting Landowner hereby: (a) agrees and acknowledges that it has received adequate consideration for its consent to the making and recording of this Declaration; (b) consents and agrees to the making of this Declaration and the recording of this Declaration in the Records against the portion of the PIF Property owned by the Consenting Landowner; and (c) agrees that this Declaration and all of the terms and conditions of this Declaration shall be binding on the portion of the PIF Property owned by the Consenting Landowner as a real covenant running with the land with the same force and effect as if the portion of the PIF Property owned by the Consenting Landowner were owned by Declarant as of the making and recording of this Declaration. Notwithstanding the foregoing, the Consenting Landowner shall not be considered Declarant under this Declaration and shall not have any of the obligations of Declarant under this Declaration, unless and to the extent that the Consenting Landowner subsequently is expressly designated as a successor Declarant in a written instrument

executed by the then-current Declarant and the Consenting Landowner and recorded in the Records. The preceding sentence shall not affect or diminish the Consenting Landowner's obligations as a Project Occupant and a Retailer pursuant to, and subject to the terms of, this Declaration. Nothing in this Declaration shall be construed as obligating the Consenting Landowner to pay any Public Improvements Fees twice on the same Taxable Transaction because it is both a Project Owner and a Retailer.

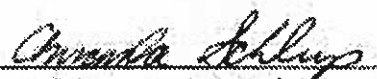
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CONSENT BY DISTRICT:

**JOHNSTOWN PLAZA METROPOLITAN
DISTRICT**, a quasi-municipal corporation and political
subdivision of the State of Colorado

By: 
ALLEN SCHUMP, President

Attest:

By: 
Name: AMANDA SCHUMP
Title: SECRETARY

**SUBORDINATION AND CONSENT OF LENDER
(ASPEN SQUARE, INC.)**

The undersigned Aspen Square, Inc. ("Lender"), as holder of that certain Deed of Trust with Assignment of Rents recorded on February 10, 2016 at Reception No. 20160008235 (as it may be amended or extended from time to time, the "Encumbrance") encumbering all or a portion of the real estate described on Exhibit A-1 attached hereto, hereby consents to the above and foregoing Declaration of Covenants Imposing and Implementing the Johnstown Plaza Public Improvements Fees (the "Declaration"), and Lender hereby subordinates the lien of the Encumbrance to the Declaration and agrees that the terms and conditions of the Declaration the rights of parties thereunder will not be disturbed in the event of a foreclosure under the Encumbrance. Further, the terms and conditions of the Declaration will be binding upon Lender or any third party as the purchaser at foreclosure or any deed in lieu thereof under the Encumbrance.

Lender:

Aspen Square, Inc.

By: Michael S. Schlupe
Name: MICHAEL SCHLUPE
Title: PRESIDENT

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

The foregoing instrument was acknowledged before me as of the 28 day of JUNE, 2016, by MICHAEL SCHLUPE, as PRESIDENT of Aspen Square, Inc.

WITNESS my hand and official seal.

Amy Carroll
Notary Public

My Commission Expires:

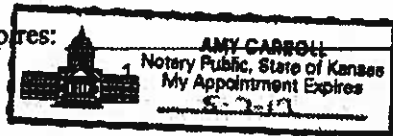


EXHIBIT A-1
LEGAL DESCRIPTION OF THE PIF PROPERTY

LOTS 1, 2, 3, 4, 5, BLOCK 2, 2534 FILING NO. 14, A SUBDIVISION OF THE TOWN OF JOHNSTOWN, COUNTY OF LARIMER, STATE OF COLORADO;

AND

LOTS 1, 2, 3, 4, 6, 7, 8, BLOCK 3, 2534 FILING NO. 13, A SUBDIVISION OF THE TOWN OF JOHNSTOWN, COUNTY OF LARIMER, STATE OF COLORADO;

AND

LOT 4, BLOCK 1, AMENDED PLAT OF LOT 4, BLOCK 1, REPLAT OF LOT 2, BLOCK 1, REPLAT OF LOT 6, BLOCK 1, 2534 FILING NO. 4, A SUBDIVISION OF THE TOWN OF JOHNSTOWN, COUNTY OF LARIMER, STATE OF COLORADO.

EXHIBIT A-2
LEGAL DESCRIPTION OF THE PORTION OF THE PIF PROPERTY OWNED BY
THE CONSENTING LANDOWNER

LOT 6, BLOCK 3, 2534 FILING NO. 13, A SUBDIVISION OF THE TOWN OF JOHNSTOWN,
COUNTY OF LARIMER, STATE OF COLORADO.

EXHIBIT B
LEGAL DESCRIPTION OF THE ADDITIONAL PIF PROPERTY

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