

When recorded, return to:  
Otten, Johnson, Robinson,  
Neff and Ragonetti, P.C.  
Attn: Kimberly Martin  
930 17<sup>th</sup> Street, Suite 1600  
Denver, Colorado 80202

**RECORDED**  
DOCUMENT WAS RECORDED \_\_\_\_\_

**DECLARATION OF COVENANTS IMPOSING AND IMPLEMENTING  
THE VICTORY RIDGE PUBLIC IMPROVEMENTS FEE**

THIS DECLARATION OF COVENANTS IMPOSING AND IMPLEMENTING THE VICTORY RIDGE PUBLIC IMPROVEMENTS FEE (this "PIF Covenant") is made as of the 22<sup>nd</sup> day of March, 2017 by INTERQUEST WESTSIDE LLC, a Delaware limited liability company (as defined in Exhibit A, "Declarant").

**Recitals**

This PIF Covenant is made with respect to the following facts:

A. Capitalized terms used in this PIF Covenant have the meanings set forth in Exhibit A of this PIF Covenant, and references to Sections and Exhibits refer to Sections and Exhibits of this PIF Covenant unless expressly stated otherwise.

B. Declarant is the owner of all of the PIF Property.

C. Declarant desires to develop and further develop on the PIF Property a mixed-use retail, commercial, lodging, office and/or residential project (the "Project"). Such development will require (initially and from time to time thereafter) numerous improvements and site work, including, without limitation, streets, sidewalks, utilities (both dry and wet), parking lots and other parking facilities, storm water and water quality management facilities, trail systems, landscaping, project and directional signage, right-of-way and easement acquisitions, grading and site preparation, soil and bedrock remediation, environmental remediation, project lighting, traffic control devices and signage and similar improvements, and amenities (collectively, and including all improvements, facilities and infrastructure that may be Financed, owned and/or operated by a Title 32, C.R.S., special district pursuant to Title 32, C.R.S., the "Public Improvements").

D. In furtherance of Declarant's development of the Project, the Districts have been organized pursuant to Colorado law in order to, among other things, provide for and facilitate the planning, design, engineering, financing, acquiring, construction, completion, operation, maintenance, replacement and repair of some or all of the Public Improvements and/or to provide for and facilitate the Project Services.

E. Declarant desires that the District Costs and certain other functions of the Districts be funded, paid and reimbursed from the PIF Revenues as authorized pursuant to this PIF Covenant and from other revenue sources that may be available to the Districts pursuant to their Consolidated Service Plan, as amended.

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D. In furtherance of Declarant’s development of the Project, the Districts have been organized pursuant to Colorado law in order to, among other things, provide for and facilitate the planning, design, engineering, financing, acquiring, construction, completion, operation, maintenance, replacement and repair of some or all of the Public Improvements and/or to provide for and facilitate the Project Services.

E. Declarant desires that the District Costs and certain other functions of the Districts be funded, paid and reimbursed from the PIF Revenues as authorized pursuant to this PIF Covenant and from other revenue sources that may be available to the Districts pursuant to their Consolidated Service Plan, as amended.

F. Subject to and in accordance with the terms and provisions of this PIF Covenant, Declarant desires to impose the obligation to collect and pay, and to provide for the implementation of the collection and payment of, the Public Improvements Fee as applied to PIF Sales and Lodging Activities that occur within 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:

1. Assessment of Public Improvements Fee. From and after the Commencement Date and continuing until the Termination Date, on a periodic basis as established in Section 4, each PIF Obligor will collect and remit the relevant PIF Revenues as follows:

(a) The Public Improvements Fee rate applicable to PIF Sales, expressed as a percentage, will be determined from time to time by District No. 1; provided however, such Public Improvements Fee percentage rate as determined by District No. 1 from time to time (i) will be applied consistently to all similarly situated PIF Obligors engaging in PIF Sales; and (ii) will not exceed 2.0%. The Public Improvements Fee rate applicable to Lodging Activities, expressed as a percentage, will be determined from time to time by District No. 1; provided however, such Public Improvements Fee percentage rate as determined by District No. 1 from time to time (X) will be applied consistently to all similarly situated PIF Obligors engaging in Lodging Activities; and (Y) will not exceed 6.0%. Further, the Public Improvements Fee rate applicable to PIF Sales may differ from the Public Improvements Fee rate applicable to Lodging Activities. Notice of the Public Improvements Fee percentage rate(s) will be Recorded and distributed to all Retailers and Lodging Providers in accordance with the notice provisions of Section 13.

(b) Every PIF Obligor will collect from the purchaser or the recipient of goods or services in each PIF Sales transaction initiated, consummated, conducted, transacted or otherwise occurring from or within the portion of such Occupant's Owned/Leased PIF Property that is possessed or occupied by such PIF Obligor, and remit to the PIF Collecting Agent (or to the extent the PIF Sales Guidelines or any other notice provided by District No. 1 or PIF Collecting Agent on behalf of District No. 1 in accordance with Section 13 requires such PIF Revenues to be remitted to any other Person, to such other Person) the PIF Revenues with respect to such transaction.

(c) Every PIF Obligor will collect from the purchaser or the recipient of lodging accommodations services in each Lodging Activity transaction initiated, consummated, conducted, transacted or otherwise occurring from or within the portion of such Occupant's Owned/Leased PIF Property that is possessed or occupied by such PIF Obligor, and remit to the PIF Collecting Agent (or to the extent the Lodging Activities Guidelines or any other notice provided by District No. 1 or PIF Collecting Agent on behalf of District No. 1 in accordance with Section 13 requires such PIF Revenues to be remitted to any other Person, to such other Person) the PIF Revenues with respect to such transaction.



(d) Every Owner or Occupant who leases or subleases any portion of its Owned/Leased PIF Property to a PIF Obligor, or who permits a PIF Obligor 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 Owner or Occupant and such PIF Obligor by virtue of which such PIF Obligor is given the right to possess or occupy any portion of such Owned/Leased PIF Property, that such PIF Obligor (i) will collect from the purchaser or the recipient of goods or services in each PIF Sales transaction initiated, consummated, conducted, transacted or otherwise occurring from or within the portion of the PIF Property possessed or occupied by such PIF Obligor pursuant to such lease, sublease, license, concession or other occupancy agreement, and remit to the PIF Collecting Agent (or to the extent the PIF Sales Guidelines or any other notice provided by District No. 1 or PIF Collecting Agent on behalf of District No. 1 in accordance with Section 13 requires such PIF Revenues to be remitted to any other Person, to such other Person) the PIF Revenues with respect to such transaction; and (ii) will collect from the purchaser or the recipient of lodging accommodations services in each Lodging Activity transaction initiated, consummated, conducted, transacted or otherwise occurring from or within the portion of the PIF Property possessed or occupied by such PIF Obligor pursuant to such lease, sublease, license, concession or other occupancy agreement, and remit to the PIF Collecting Agent (or to the extent the Lodging Activities Guidelines or any other notice provided by District No. 1 or PIF Collecting Agent on behalf of District No. 1 in accordance with Section 13 requires such PIF Revenues to be remitted to any other Person, to such other Person) the PIF Revenues with respect to such transaction.

2. PIF Sales Guidelines. In accordance with the definition of PIF Sales set forth in Exhibit A, District No. 1 in its sole discretion (but subject to any applicable terms of any Financing Documents) may from time to time establish uniform guidelines for the calculation, collection and remittance of PIF Revenues, and for further clarifying or delineating which transactions are included in the definition of "PIF Sales" ("**PIF Sales Guidelines**"). Subject to Section 1(a), the PIF Sales 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. District No. 1 or successor PIF Collecting Agent will deliver the PIF Sales Guidelines to all Retailers (and for purposes of determining the names and addresses of Retailers, any Owner will, within 10 business days after receipt of a written request therefor from District No. 1 or any successor PIF Collecting Agent, provide such requesting party with the name and address of all Retailers that then occupy any PIF Property owned by such Owner). Each Retailer will be entitled to rely on the PIF Sales Guidelines for purposes of compliance with this PIF Covenant. In addition to the Public Improvements Fee, each Retailer is subject to all sales taxes that may be imposed by the state, the county and/or any other applicable taxing authority.

3. Lodging Activities Guidelines. In accordance with the definition of Lodging Activities set forth in Exhibit A, District No. 1 in its sole discretion (but subject to any applicable terms of any Financing Documents) may from time to time establish uniform guidelines for the calculation, collection and remittance of PIF Revenues, and for further clarifying or delineating which transactions are included in the definition of "Lodging Activities" ("**Lodging Activities Guidelines**"). Subject to Section 1(a), the Lodging Activities 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. District No. 1 or successor PIF Collecting Agent will deliver the Lodging Activities Guidelines to all Lodging Providers (and for purposes of determining the names and addresses of Lodging Providers, any Owner will, within 10 business days after receipt of a written request therefor from District No. 1 or any successor PIF Collecting Agent, provide such requesting party with the name and address of all Lodging Providers that then occupy any PIF Property owned by such Owner). Each Lodging Provider will be entitled to rely on the Lodging Activities Guidelines for purposes of compliance with this PIF Covenant. In addition to the Public Improvements Fee, each Lodging Provider is subject to all sales taxes that may be imposed by the state, the county and/or any other applicable taxing authority.

4. Payment of Public Improvements Fee.

(a) PIF Sales and Lodging Activities. Whether or not collected from its customers (provided that the foregoing will not be construed to permit any PIF Obligor to fail to implement and assess the Public Improvements Fee), each PIF Obligor will remit the Public Improvements Fee assessed or assessable against each PIF Sales transaction and each Lodging Activities transaction pursuant to this PIF Covenant periodically (the frequency of which will correspond to the reporting period within which sales tax obligors in the City are required to file a Sales Tax report with and remit Sales Taxes to the City or the Colorado Department of Revenue) in arrears, in an amount equal to the percentage rate determined by District No. 1 from time to time in accordance with Section 1(a) as applied to all PIF Sales and Lodging Activities initiated, consummated, conducted, transacted or otherwise occurring during the immediately preceding reporting period from or within the portion of the PIF Property occupied by such PIF Obligor during such reporting period. The Public Improvements Fee will be due and payable without notice within 20 days after the close of each such applicable reporting period, and each PIF Obligor will pay the same directly to the PIF Collecting Agent (or to the extent the PIF Sales Guidelines, Lodging Activities Guidelines or any other notice provided by District No. 1 or PIF Collecting Agent on behalf of District No. 1 in accordance with Section 13 requires such PIF Revenues to be remitted to any other Person, to such other Person). The procedures for reporting, assessment, collection, segregation and payment of the Public Improvements Fee (but not for calculation) will be consistent in all material respects to those procedures employed by the City in collecting the Sales Tax, and each PIF Obligor will report PIF Sales and Lodging Activities and remit the applicable Public Improvements Fee as required by the PIF Sales Guidelines or the Lodging Activities Guidelines, as applicable, employing reporting forms and following procedures provided by District No. 1 (or PIF Collecting Agent on behalf of District No. 1), intended to be substantially similar to those used and required by the City for the remittance of the Lodging Tax. The Public Improvements Fee will be calculated and imposed on transactions at the applicable rate prior to the calculation and assessment of any City, county or state sales tax or lodging tax, and before any sales taxes or lodging taxes of any other taxing authority required to be imposed by law, meaning the Public Improvements Fee will be added to the sales price for each PIF Sales transaction and each Lodging Activities transaction prior to the calculation of all sales taxes or lodging taxes, respectively, that are levied thereon.

(b) Generally. Declarant hereby acknowledges, any other Owner, by acquiring fee title to any portion of the PIF Property subject to this PIF Covenant, will be deemed to have acknowledged, any other Occupant, by acquiring the right to possess or occupy any portion of the PIF Property subject to this PIF Covenant, will be deemed to have acknowledged, and each Owner and Occupant will cause any PIF Obligor whom such Owner or 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 of the PIF Property, (i) THAT THE PUBLIC IMPROVEMENTS FEE IS NOT A TAX IN ANY FORM AND IS A FEE IMPOSED UNDER PRIVATE COVENANT AND NOT THROUGH THE EXERCISE OF THE CITY OR ANY OTHER GOVERNMENTAL TAXING AUTHORITY; (ii) THAT THE PIF REVENUES ARE NOT TAX REVENUES IN ANY FORM AND THE PUBLIC IMPROVEMENTS FEE WILL NOT BE ENFORCEABLE BY THE CITY OR ANY OTHER GOVERNMENTAL ENTITY OR QUASI-GOVERNMENTAL ENTITY (EXCEPT BY JUDICIAL ENFORCEMENT PURSUANT TO AN ENFORCEMENT ACTION BROUGHT BY DISTRICT NO.1 OR OTHER PERSON AUTHORIZED TO ENFORCE THIS PIF COVENANT); AND (iii) THAT THE AUTHORITY OF DISTRICT NO. 1 AND/OR PIF COLLECTING AGENT TO RECEIVE THE PUBLIC IMPROVEMENTS FEE IS DERIVED THROUGH THIS PIF COVENANT.

5. Additional Reporting Requirements. Each PIF Obligor will deliver to the PIF Collecting Agent true and complete copies of all written PIF returns made or provided pursuant to this PIF Covenant, the PIF Sales Guidelines and/or the Lodging Activities Guidelines, as applicable (“**PIF Returns**”), and true and complete copies of all written reports, returns, statements, records and declarations, including any supplements or amendments thereto (together with the PIF Returns, the “**Reports**”) made or provided to the City and, as applicable, the Colorado Department of Revenue, by such PIF Obligor in connection with all Sales Tax, Lodging Tax and/or Theater Tax, as applicable, for the corresponding tax reporting period at the same time such Reports are delivered to the City and, as applicable, the Colorado Department of Revenue. Each PIF Obligor will be under a continuing duty to make such adjustments, additions, modification or supplements to the Reports as may be necessary to correct any mistake in a previously delivered Report or to otherwise cause such Reports to accurately reflect the PIF Sales and/or Lodging Activities, as applicable, conducted by such PIF Obligor during any current or prior reporting period. If any such subsequent adjustments, additions, modifications or supplements are made to any Sales Taxes, Lodging Taxes, Theater Taxes and/or the Public Improvements Fee reported, remitted or paid, or Report made, by a PIF Obligor to the PIF Collecting Agent, the City or the Colorado Department of Revenue with respect to Sales Taxes, Lodging Taxes, Theater Taxes and/or the Public Improvements Fee, such PIF Obligor will provide the PIF Collecting Agent with true and complete copies of all revised Reports or other written material issued or received by such PIF Obligor in regard thereto. If any such adjustment increases the amount of the Public Improvements Fee a PIF Obligor is required to remit or pay, such PIF Obligor will immediately pay such additional Public Improvements Fee in the amount due. If any such adjustment decreases the amount of the Public Improvements Fee a PIF Obligor is required to remit or pay, such PIF Obligor will, in the discretion of the PIF Collecting Agent, receive a refund or an appropriate credit against the next Public Improvements Fee payment due from such PIF Obligor in the amount of such excess Public Improvements Fee. Any such PIF Obligor will claim such credits or pay such additional Public Improvements Fee with respect to

PIF Sales or Lodging Activities, as applicable, in the next reporting period by use of the standard reporting and remittance forms. All Reports made or provided by a PIF Obligor will be maintained by such PIF Obligor for at least three years from the date of submission thereof to the City and, as applicable, the Colorado Department of Revenue, and upon written request, will be made available to the PIF Collecting Agent for inspection and audit. Subject to Section 6, Reports received by the PIF Collecting Agent will remain confidential and be used only for purposes of collecting the Public Improvements Fee due, enforcing PIF Obligors' obligations hereunder, and otherwise monitoring compliance with the provisions of this PIF Covenant.

6. Audits and Release of Information. By acquiring its possessory interest in and to its Owned/Leased PIF Property subject to the terms and conditions of this PIF Covenant, each Occupant hereby (A) specifically authorizes the PIF Collecting Agent to release the Reports to Declarant, District No. 1, the issuer of any Bonds (if other than District No. 1), any Bond Trustee and any party to a Financing (collectively, "**Report Recipients**"); and (B) specifically authorizes the PIF Collecting Agent and the Report Recipients to: (i) audit the books and records of such Occupant to determine compliance with the Public Improvements Fee collection and remittance obligations of such Occupant under this PIF Covenant; and (ii) subject to the restrictions set forth in the next sentence, to release to the other Report Recipients, including without limitation, any purchasers/owners of Bonds or the provider of any credit enhancement in connection with the issuance of any Bonds (but not to any other Person, except as required by law), such audited information, the Reports and any Public Improvements Fee-related reports and returns, and other documents as are delivered by such Occupant pursuant to Section 5 and this Section 6 and any relevant information gathered by any auditing party pursuant to this Section 6 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 strictly confidential and will not be disclosed or otherwise published by any Person to whom Confidential Information is so released, 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 Occupant (or the contents of such Confidential Information) by the PIF Collecting Agent or any Report Recipients, will be made only on an aggregated basis with the similar information submitted by other Occupants and without separate identification of the Public Improvements Fee or sales of such specific Occupant. Promptly upon the written request of District No. 1 or the PIF Collecting Agent, each Occupant will complete, execute and deliver a waiver of confidentiality substantially in form as required by District No. 1 or the PIF Collecting Agent.

7. Compliance and Enforcement.

(a) General. Each PIF Obligor will comply with all policies and requirements of Declarant, District No. 1 and the PIF Collecting Agent, as applicable, regarding notification to customers of the assessment and collection of the Public Improvements Fee on PIF Sales and Lodging Activities as such policies and requirements are communicated to such PIF Obligor in writing from time to time. The failure or refusal of any PIF Obligor to assess, collect or remit the Public Improvements Fee, or to comply with the requirements concerning notification to customers as required in this PIF Covenant, will constitute a default by such PIF Obligor under the terms of this PIF



Covenant. DISTRICT NO. 1, ANY ASSIGNEE OF DISTRICT NO. 1 PURSUANT TO SECTION 8 (EACH, AN "ASSIGNEE") AND ANY BOND TRUSTEE (COLLECTIVELY, THE "RELYING PARTIES") ARE HEREBY EXPRESSLY MADE THIRD-PARTY BENEFICIARIES OF THE PIF OBLIGORS' OBLIGATIONS UNDER THIS PIF COVENANT, INCLUDING, BUT NOT LIMITED TO, THE ASSESSMENT, COLLECTION AND REMITTANCE OF THE PUBLIC IMPROVEMENTS FEE. Declarant hereby acknowledges, any other Owner, by acquiring fee title to any portion of the PIF Property, will be deemed to have acknowledged, any Occupant, by acquiring the right to possess or occupy any portion of the PIF Property subject to this PIF Covenant, will be deemed to have acknowledged, and each Owner and Occupant will cause any Retailer and any Lodging Provider whom such Owner or 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 RELYING PARTIES WILL HAVE A DIRECT CAUSE OF ACTION AND FULL RIGHT AND AUTHORITY TO ENFORCE EACH PIF OBLIGOR'S OBLIGATIONS UNDER THIS PIF COVENANT, AND THAT NO DEFAULT BY A RETAILER'S LANDLORD OR A LODGING PROVIDER'S LANDLORD UNDER ANY PROVISION OF THE LEASE OR OTHER OCCUPANCY AGREEMENT PURSUANT TO WHICH SUCH PIF OBLIGOR OCCUPIES ANY PART OF THE PIF PROPERTY WILL ENTITLE SUCH PIF OBLIGOR TO ANY OFFSET, DEDUCTION OR OTHER DEFENSE TO PAYMENT OF THE PUBLIC IMPROVEMENTS FEE DUE HEREUNDER.

(b) Default Rate, Late Charge and Enforcement Costs. Any payment of the Public Improvements Fee not paid when due hereunder will bear interest at the Default Rate, and the defaulting PIF Obligor will bear all costs of enforcement and collection thereof, including reasonable attorneys' fees and costs incurred in collecting any amount due hereunder. In addition, if a PIF Obligor fails to pay any Public Improvements Fee when due and such failure continues for more than 10 days after notice thereof is given to such PIF Obligor by District No. 1 or the PIF Collecting Agent, District No. 1 or the PIF Collecting Agent may charge such PIF Obligor, and such PIF Obligor will be obligated to pay District No. 1 or PIF Collecting Agent, a late charge in an amount equal to the greater of 10% of the delinquent Public Improvements Fee or \$100.00 (which \$100.00 amount will automatically be increased by 15% every five years beginning on January 1 of the fifth full calendar year following recordation of this PIF Covenant). Notwithstanding anything to the contrary contained in this PIF Covenant, the PIF Collecting Agent and the Report Recipients, and third party designated by any of the foregoing (each, an "Enforcing Party"), will have the right to enforce the provisions of this PIF Covenant against any PIF Obligor that fails to abide by any of the terms and conditions of this PIF Covenant. An Enforcing Party will be awarded and have the right to recover from a defaulting PIF Obligor all costs and expenses incurred by such Enforcing Party in successfully enforcing the obligations of such PIF Obligor under this PIF Covenant in any legal proceedings brought (or defended) by such Enforcing Party.

8. Use of PIF Revenues; Dominion and Control Over PIF Revenues. The PIF Revenues generated by the Public Improvements Fee imposed pursuant to this PIF Covenant may be used for the payment or reimbursement of District Costs or otherwise as expressly

provided in this PIF Covenant. Declarant hereby assigns any and all right, title, and interest of Declarant in the PIF Revenues to District No. 1, and District No. 1 will have all right, title and interest in the PIF Revenues in accordance with this PIF Covenant unless and until such time as Declarant, an Affiliate, another District or another Person becomes entitled under any applicable Financing Documents, or otherwise, to receive the PIF Revenues or any portion thereof. District No. 1 may from time to time, but is not obligated to, assign, pledge or transfer all or any portion of such PIF Revenues to an issuer of Bonds, another District or any other Person in connection with one or more Financings, provided that any PIF Revenues assigned to and received by a Person in connection with such Financing will be used only for the purposes set forth in this PIF Covenant.

9. PIF Collecting Agent Succession. District No. 1 will be the initial PIF Collecting Agent. District No. 1 will have the right to appoint, terminate and replace any successor PIF Collecting Agent upon not less than 30 days' prior written notice to the Occupants. In the event District No. 1 changes the PIF Collecting Agent for the Public Improvements Fee, District No. 1 will promptly notify each Occupant of the same and provide appropriate direction for payment and reporting of the Public Improvements Fee thereafter. For purposes of compliance with this Section 9, each PIF Obligor will be entitled to rely upon written notice from District No. 1 that the PIF Collecting Agent has changed and, in such event, upon specific instructions regarding reporting forms and payment procedures for the Public Improvements Fee provided in writing to such PIF Obligor by District No. 1 or the successor PIF Collecting Agent on behalf of District No. 1.

10. Owner/Occupant Obligations. Each Owner and Occupant will cause any Retailers and any Lodging Providers to whom such Owner or Occupant leases or whom such Owner or Occupant otherwise permits to occupy any portion of its Owned/Leased PIF Property, in its leases or other occupancy agreements with such Retailers and Lodging Providers pursuant to which such Retailers and Lodging Providers occupy any portion of such Owner's or Occupant's Owned/Leased PIF Property, to acknowledge and agree to (in a manner that causes such Retailers and such Lodging Providers to be bound by) all provisions of this PIF Covenant that pertain to such Retailers and Lodging Providers.

11. Exclusion of Property. Subject to the terms of any Financing Documents, Declarant may, without the prior consent of any other party, exclude any property from the PIF Property by Recording a notice of such exclusion describing the property to be excluded from the PIF Property (an "Exclusion Notice"). 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 PIF Covenant, except with respect to obligations arising prior to the effectiveness of such exclusion.

12. Inclusion of Property. Declarant may, without the prior consent of any other party, include any additional property in the PIF Property by executing and Recording a notice of such inclusion describing the property to be included in the PIF Property (an "Inclusion Notice"); provided, however, if such property to be included in the PIF Property is owned by a Person other than Declarant, any such inclusion will require the written consent of the Person owning such property as evidenced by such Person's execution of the Inclusion Notice. Upon

the Recording of any Inclusion Notice (or upon the effective date specified in the Inclusion Notice if different from the date of Recording), the property described in the Inclusion Notice will be included in the PIF Property and will be subject to the terms, obligations, covenants and requirements of this PIF Covenant, except with respect to obligations arising prior to the effectiveness of such inclusion.

13. Notices to Occupants. Whenever a party is required pursuant to the provisions of this PIF Covenant to give notice to "all" Occupants, the notice given will be deemed sufficient if given to all 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 Occupants.

14. Covenants Run with the Land. The covenants, agreements, promises and duties as set forth in this PIF Covenant will be construed as covenants and not as conditions and, to the fullest extent legally possible, all such covenants will run with and be enforceable against both the covenantor and the land and will constitute equitable servitudes burdening both the respective covenantor and its PIF Property for the benefit of the respective covenantee. Each covenant to do or refrain from doing some act on or with respect to activities on any portion of the PIF Property under this PIF Covenant (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 PIF Property, and (iii) will be binding upon each Occupant and each successor thereto in the PIF Property and will inure to the benefit of Declarant, District No. 1 and each other Owner.

15. Amendment.

(a) Declarant Amendment. Subject to the terms of any Financing Documents and this Section 15(a), Declarant may, without the prior consent of any other Person, amend or otherwise modify the terms, obligations, covenants and requirements of this PIF Covenant by Recording such amendment or modification. Upon Recording (or upon the effective date specified in the Recorded instrument effecting such amendment or modification if different from the date of Recording), the amendment will be a covenant running with and enforceable against both the covenantor and the land and will constitute equitable servitudes burdening both the respective covenantor and its PIF Property for the benefit of the respective covenantee as set forth in Section 14 of this PIF Covenant. Notwithstanding the foregoing, Declarant may not Record an amendment to Sections 1(a) or 6 of this PIF Covenant without the prior written consent of District No. 1 and Owner(s) of the portion of the PIF Property affected by such amendment.

(b) General Acknowledgement. Prior to conducting any business from any part of the PIF Property, (i) Declarant hereby acknowledges, (ii) any other Owner, by acquiring fee title to any portion of the PIF Property subject to this PIF Covenant, will be deemed to have acknowledged, and (iii) any Occupant, by acquiring the right to possess or occupy any portion of the PIF Property subject to this PIF Covenant, will be deemed to have acknowledged THAT THE PROVISIONS OF THIS PIF COVENANT HAVE BEEN OR WILL BE AGREED TO, OR ACKNOWLEDGED BY, 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 FEE, THE PUBLIC IMPROVEMENTS AND THE



DISTRICT COSTS WITH THE EXPRESS CONDITION THAT THIS PIF COVENANT WILL NOT BE AMENDED, MODIFIED OR WAIVED WITHOUT THEIR PRIOR WRITTEN CONSENT. ACCORDINGLY, DECLARANT HEREBY DECLARES, AND ALL OTHER OWNERS AND 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 OWNER OR ANY OCCUPANT WITH RESPECT TO THIS PIF COVENANT, 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 OWNER AND OCCUPANT WILL CAUSE ANY RETAILER AND ANY LODGING PROVIDER WHOM SUCH OWNER OR 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 PIF COVENANT 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 PIF COVENANT IN TAKING CERTAIN ACTIONS WITH RESPECT TO THE PUBLIC IMPROVEMENTS FEE, THE PUBLIC IMPROVEMENTS AND THE DISTRICT COSTS WITH THE EXPRESS CONDITION THAT THIS PIF COVENANT WILL NOT BE AMENDED, MODIFIED OR WAIVED WITHOUT ITS PRIOR WRITTEN CONSENT; ACCORDINGLY, SUCH RETAILERS AND LODGING PROVIDERS WILL BE DEEMED TO HAVE AGREED THAT NO AMENDMENT OR MODIFICATION WILL BE MADE TO, NOR ANY WAIVER MADE OR ACCEPTED BY SUCH RETAILER OR LODGING PROVIDER WITH RESPECT TO THIS PIF COVENANT, 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.

16. Severability. Invalidation of any of the provisions contained in this PIF Covenant, or of the application thereof to any Person, by judgment or court order, will in no way affect any of the other provisions of this PIF Covenant or the application thereof to any other Person or circumstance and the remainder of this PIF Covenant will remain in effect; provided, however, that in the event such invalidation would render the remaining portions of this PIF Covenant ineffective to carry out the material intentions of Declarant as expressed or implied by this PIF Covenant, then the objectionable provision(s) hereof will be construed, and this PIF Covenant 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.


17. Governing Law. This PIF Covenant will be governed by, and enforced in accordance with, the laws of the State of Colorado.

**[Signature Page Follows This Page]**

IN WITNESS WHEREOF, Declarant has executed this PIF Covenant as of the date first set forth above.

**DECLARANT:**

INTERQUEST WESTSIDE LLC, a Delaware limited liability company

By:   
Name: ANDREW R. KLEIN  
Title: MANAGER

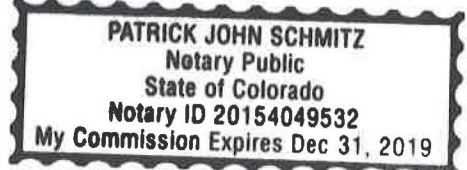
STATE OF Colorado )  
[CITY AND] COUNTY OF Arapahoe ) ss:

The foregoing instrument was acknowledged before me as of the 15<sup>th</sup> day of March, 2017, by Andrew R. Klein as Manager of INTERQUEST WESTSIDE LLC, a Delaware limited liability company.

WITNESS my hand and official seal.

  
Notary Public

My Commission Expires: 12/31/19



CONSENT OF LENDER

New Crossings Inc., a Colorado corporation ("Lender"), is the beneficiary of that certain Deed of Trust executed by Interquest Westside LLC, a Delaware limited liability company, as grantor, recorded October 3, 2016, at Reception No. 216113438 in the real property records of the clerk and recorder for El Paso County, Colorado (the "Deed of Trust"), as a lien on the property described therein. For and on behalf of itself and its successors and assigns, Lender hereby consents to and approves the foregoing Declaration of Covenants Imposing and Implementing the Victory Ridge Public Improvements Fee, and agrees that the lien of the Deed of Trust is subject and subordinate to such Declaration of Covenants Imposing and Implementing the Victory Ridge Public Improvements Fee.

Dated as of the 20<sup>th</sup> day of March, 2017.

LENDER:

New Crossings Inc., a Colorado corporation

By: [Signature]  
Name: PETER J. SPEISER  
Title: CO-PRESIDENT

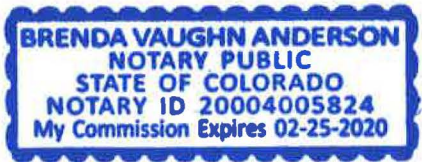
STATE OF Colorado )  
 ) ss:  
[CITY AND] COUNTY OF EL PASO )

The foregoing instrument was acknowledged before me as of the 20 day of March, 2017, by Peter Speiser as President of New Crossings Inc., a Colorado corporation.

WITNESS my hand and official seal.

[Signature]  
Notary Public

My Commission Expires: 2/25/2020






**CONSENT OF LENDER**

Atalaya Special Opportunities Fund VI LP, a Delaware limited partnership ("Lender"), is the beneficiary of those certain Deeds of Trust executed by Interquest Westside LLC, a Delaware limited liability company, as grantor, recorded October 3, 2016, at Reception Nos. 216113439 and 216113440 in the real property records of the clerk and recorder for El Paso County, Colorado (the "Deed of Trust"), as a lien on the property described therein. For and on behalf of itself and its successors and assigns, Lender hereby consents to and approves the foregoing Declaration of Covenants Imposing and Implementing the Victory Ridge Public Improvements Fee, and agrees that the liens of the Deeds of Trust are subject and subordinate to such Declaration of Covenants Imposing and Implementing the Victory Ridge Public Improvements Fee.

Dated as of the 22<sup>nd</sup> day of March, 2017.

**LENDER:**

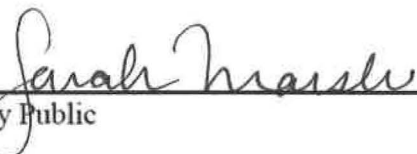
Atalaya Special Opportunities Fund VI LP, a Delaware limited partnership

By:   
Name: Robert M. Flowers  
Title: Authorized Signatory

STATE OF New York )  
 ) ss:  
[CITY AND] COUNTY OF New York )

The foregoing instrument was acknowledged before me as of the 15 day of March, 2017, by Robert Flowers as Authorized of Atalaya Special Opportunities Fund VI LP, a Delaware limited partnership. Signatory

WITNESS my hand and official seal.

  
Notary Public

My Commission Expires: 27 May 2018

**SARAH MARSH**  
Notary Public - State of New York  
No. 01MA6304136  
Qualified in New York County  
My Commission Expires May 27, 2018

**EXHIBIT A**  
**Defined Terms**

The following capitalized terms, when used in this PIF Covenant, have the following meanings:

“Affiliates” means any entity associated with or acting at the direction or on behalf of Declarant, but expressly excluding the Districts or any governmental or quasi-governmental entity.

“Assignee” has the meaning set forth in Section 7(a).

“Bonds” means any of the bonds, notes, loans, contracts, intergovernmental agreements, reimbursement agreements, acquisition agreements, advances or other obligations, including the refunding thereof, issued from time to time by District No. 1 or another District, the proceeds of which are used to Finance, re-Finance or reimburse any District Costs and which are payable in whole or in part from PIF Revenues.

“Bond Trustee” means the trustee or trustees for the holders of any Bonds appointed pursuant to the applicable Financing Documents and the lenders of any notes or loans constituting Bonds.

“City” means the City of Colorado Springs, State of Colorado.

“Commencement Date” means the date on which this PIF Covenant is Recorded.

“Confidential Information” has the meaning set forth in Section 6.

“Declarant” means Interquest Westside LLC, a Delaware limited liability company, together with any successor designated as the “Declarant” hereunder in a Recorded instrument.

“Default Rate” means the rate of 18% per annum; provided, however, 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.

“District(s)” means, individually or collectively as dictated by the context, District No. 1, Colorado Crossing Metropolitan District No. 2, a quasi-municipal corporation and political subdivision of the State of Colorado, and Colorado Crossing Metropolitan District No. 3, a quasi-municipal corporation and political subdivision of the State of Colorado, their respective successors and assigns, and/or any other metropolitan or special district formed pursuant to the Special District Act, C.R.S. § 32-1-101, et seq., that provide for and/or facilitate the financing, construction, completion, operation and/or maintenance of any aspect of the Public Improvements and/or the Project Services.

“District Costs” means those costs, including without limitation, Financing Costs, incurred by a District for or in connection with: (i) 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 (whether acquired by a District or dedicated by a Declarant or another Person), and all other costs and expenses incurred or advanced in connection with the Financing, acquisition, construction and completion of the Public Improvements, including, without limitation, on-going operations, maintenance, repair and replacement costs, labor and materials, machinery, furnishings, equipment, insurance provisions, bonds, administration, management and general related municipal and governmental charges, the costs of reimbursement of funds advanced to the District in anticipation of reimbursement from Bonds, costs, fees and expenses of engineers, architects, financial consultants, legal advisors and other agents or employees, surveys, appraisals, plans, designs, specifications, estimates, acquiring property rights, easements, licenses, agreements or amending any instruments, incurred for the Public Improvements; (ii) providing the Project Services; (iii) performing any other functions the Districts are authorized to perform under their Consolidated Service Plan, as amended; (iv) the Districts' organization and/or management; and (v) costs incurred in connection with the implementation and administration of the Public Improvements Fee.

“District No. 1” means Colorado Crossing Metropolitan District No. 1, a quasi-municipal corporation and political subdivision of the State of Colorado, its successors and assigns.

“Enforcing Party” has the meaning set forth in Section 7(b).

“Financing,” “Finance” or “Financed” means any transaction, including without limitation, the issuance and sale of Bonds, with respect to which all or a portion of the PIF Revenues are pledged and pursuant to which a District secures funds to finance, refinance or reimburse any of the District Costs incurred in connection with performance of obligations with respect to the Public Improvements and/or the Project Services, as applicable.

“Financing Costs” means the debt service on, and related costs in connection with, a Financing, including, without limitation, payments with respect to principal, interest, prepayment premium, reserve funds, surplus funds, sinking funds, costs of issuance, payments related to any credit enhancement, liquidity support or interest rate protection for the Bonds, fees and expenses of any Bond Trustee, any financial institution providing Financing, paying agent, bond registrar, authenticating agent, rebate analyst or consultant, PIF Collecting Agent, calculation agent, remarketing agent, or credit enhancement, liquidity support or interest rate protection provider, and other costs, fees and expenses related to the foregoing and any other amounts, contingencies or reserves required to be paid by any Financing Documents.

“Financing Documents” means any documents executed or delivered in connection with the closing or arrangement of any Financing.

“Inclusion Notice” has the meaning set forth in Section 12.

“Lodging Activities” means any of the following exchange of lodging accommodations services for money or other media of exchange initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of the PIF Property: (i) transactions upon which the Lodging Tax is payable pursuant to the Lodging Tax Ordinance;



and (ii) lodging accommodations services furnished to any Person who is a resident or occupant of, or has agreed to occupy, such lodging accommodation for a period of 30 consecutive days or more, which may not be subject to the Lodging Tax; provided, however, such lodging accommodation for any period of more than 180 consecutive days will not constitute “Lodging Activities” under this PIF Covenant.

“Lodging Activities Guidelines” has the meaning set forth in Section 3.

“Lodging Provider” means any Occupant who is a seller or provider of lodging accommodations services who engages in any Lodging Activities initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of the PIF Property.

“Lodging Tax” means that lodging tax levied by the City pursuant to the Lodging Tax Ordinance.

“Lodging Tax Ordinance” means Chapter 2, Article 9, of the City Municipal Code, as amended from time to time, and any regulations promulgated pursuant thereto.

“Occupant” means any Person, including without limitation each Owner, who has the legal right, pursuant to a deed, lease, sublease, license, concession, easement, management or other occupancy agreement of any type or nature, to possess or occupy any portion of the PIF Property, including, without limitation, any space within any building constructed on any PIF Property; provided that a mortgagee, a trustee under or beneficiary of a deed of trust, or any other Person who has such a right of possession primarily for the purpose of securing a debt or other obligation owed to such Person, will not constitute an “Occupant” unless and until such Person becomes an 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 an “Occupant” hereunder.

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

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

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

“PIF Collecting Agent” means District No. 1 or such other entity as may be designated by District No. 1 pursuant to the provisions of Section 9 as the collecting agent for collection, receipt, disbursement and accounting of all or a portion of the PIF Revenues pursuant to a PIF Collection Services Agreement as in effect from time to time.

“PIF Collection Services Agreement” means an agreement pursuant to which the PIF Collecting Agent will collect, disburse and account for all or a portion of the PIF Revenues in accordance with the terms and conditions of this PIF Covenant.

“PIF Covenant” has the meaning set forth in the first paragraph of this PIF Covenant.

“PIF Obligor(s)” means any Retailer, any Lodging Provider or any other Person who engages in PIF Sales and/or Lodging Activities, and is therefore obligated to pay a Public Improvements Fee with regard to such PIF Sales and/or Lodging Activities pursuant to the terms of this PIF Covenant.

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

“PIF Returns” has the meaning set forth in Section 5 of this PIF Covenant.

“PIF Revenues” means revenues derived from imposition of the Public Improvements Fee, which revenues are to be received and utilized pursuant to the terms and conditions of this PIF Covenant, the PIF Collection Services Agreement, the Districts’ Consolidated Service Plan, as amended, and any applicable Financing Documents.

“PIF Sales” means any of the following exchange of goods or services for money or other media of exchange initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of the PIF Property: (i) transactions upon which the Sales Tax is payable pursuant to the Sales Tax Ordinance; (ii) transactions upon which the Theater Tax is payable pursuant to the Theater Tax Ordinance; and (iii) any transactions, pursuant to the terms of the PIF Sales Guidelines, excluded from or included in the definition of PIF Sales contained herein, notwithstanding that such transactions may not be included within or excluded from (as applicable) the Sales Tax imposed by the City pursuant to the Sales Tax Ordinance as it may be amended from time to time (which additionally included transactions may include, but are not limited to, (A) retail sales occurring within the PIF Property for food, including food for home consumption and food not for home consumption; and (B) retail sales for items that are to be delivered to a location outside the City and which, for that reason, may not be subject to the Sales Tax).

“PIF Sales Guidelines” has the meaning set forth in Section 2.

“Project” has the meaning set forth in Recital B.

“Project Services” means installation, construction, operation and ongoing maintenance, replacement, repair and related services that a District (pursuant to any limitations set forth in the Districts’ Consolidated Service Plan, as amended) or Declarant may (but is not required to by this PIF Covenant) undertake for the benefit of the PIF Property, including without limitation, installation, construction and maintenance of general common area improvements, including landscaping, lighting and signage; provision of parking services; provision of design and architectural review and control functions; and similar activities and functions that will benefit the PIF Property, and the Owners, Occupants, Retailers and Lodging Providers within the PIF Property.

“Public Improvements” has the meaning set forth in Recital B.

“Public Improvements Fee” or “PIF” means a public improvements fee assessed pursuant to this PIF Covenant against all PIF Sales and all Lodging Activities initiated, consummated, conducted, transacted or otherwise occurring from or within the PIF Property.

“Record(s)”, “Recorded” or “Recording” means the filing of an instrument in the real property records of the office of the Clerk and Recorder for the county in which the PIF Property is located.

“Relying Parties” has the meaning set forth in Section 7(a).

“Report Recipients” has the meaning set forth in Section 6.

“Reports” has the meaning set forth in Section 5.

“Retailer” means any Occupant who is a seller or provider of goods or services who engages in any PIF Sales initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of the PIF Property.

“Sales Tax” means that sales tax levied by the City pursuant to the Sales Tax Ordinance.

“Sales Tax Ordinance” means Chapter 2, Article 7, of the City Municipal Code, as amended from time to time, and any regulations promulgated pursuant thereto.

“Termination Date” means the date on which notice of termination of this PIF Covenant executed by Declarant is Recorded.

“Theater Tax” means that sales tax levied by the City pursuant to the Theater Tax Ordinance.

“Theater Tax Ordinance” means Chapter 2, Article 10, of the City Municipal Code, as amended from time to time, and any regulations promulgated pursuant thereto.

**EXHIBIT B**  
**Legal Description of the PIF Property**

**PARCEL A:**

Lot 1, Fairlane Technology Park Filing No. 1, in the City of Colorado Springs, County of El Paso, State of Colorado;  
Except those parcels platted as Colorado Crossing Filing No. 1 and Colorado Crossing Filing No. 2.

**PARCEL B:**

Tract A and Lots 1, 2, 3, 4 and 5, Colorado Crossing Filing No. 2, in the City of Colorado Springs, County of El Paso, State of Colorado;  
Except any portion thereof contained in Colorado Crossing Filing No. 1.

**PARCEL C:**

Tract A, Colorado Crossing Filing No. 1, in the City of Colorado Springs, County of El Paso, State of Colorado.

**PARCEL D:**

Lots 1 through 7, inclusive, and Tracts A through D, inclusive, Colorado Crossing Filing No. 1A, in the City of Colorado Springs, County of El Paso, State of Colorado.