

**DECLARATION OF COVENANTS  
CONCERNING PAYMENT IN LIEU OF TAXES**

THIS DECLARATION OF COVENANTS CONCERNING PAYMENT IN LIEU OF TAXES (this “**Declaration**”) is made as of the “**Effective Date**” (as defined in Section 1.k.), by INTERQUEST WESTSIDE LLC, a Delaware limited liability company (“**Declarant**”), for the benefit of COLORADO CROSSING METROPOLITAN DISTRICT NO. 1 (together with its successors and assigns, “**District No. 1**”), a quasi-municipal corporation and political subdivision of the State of Colorado, and COLORADO CROSSING METROPOLITAN DISTRICT NO. 2, a quasi-municipal corporation and political subdivision of the State of Colorado (together with its successors and/or assigns, “**District No. 2**”). Collectively, District No. 1 and District No. 2 are referred to herein individually as a “**District**,” or collectively as the “**Districts**.”

**RECITALS**

A. Declarant is the owner of certain real property located in the City of Colorado Springs, County of El Paso (“**County**”), State of Colorado, as legally described in Exhibit A attached hereto and incorporated herein (the “**Property**”).

B. The Districts have been organized pursuant to Colorado law to finance, construct, complete, operate, maintain, repair, replace and provide public improvements and services within or without their boundaries, including, without limitation, sanitation, water, streets, safety and protection, park and recreation, transportation, television relay and translation and mosquito control improvements, facilities and services serving and benefiting the Property (collectively, the “**Public Improvements**”).

C. As of the Effective Date, the Property is within the Districts’ boundaries.

D. The Districts have the authority, under the laws of the State of Colorado, their service plan, and their electoral authorization, to issue Bonds or incur Payment Obligations (as defined in Section 1.r.) for the purpose of, among other things, financing (and refinancing) the costs and expenses of the Public Improvements.

E. The Districts were organized contemporaneously with Colorado Crossing Metropolitan District No. 3 (“**District No. 3**” and collectively with the Districts, the “**CCDistricts**”).

F. Pursuant to the Amended and Restated Intergovernmental Agreement dated as of July 11, 2017 (as amended or supplemented from time to time, the “**IGA**”) among the CCDistricts, the CCDistricts agreed to cooperate in the financing of the costs of construction, operation, maintenance, repair and replacement of the Public Improvements and to issue Bonds and/or enter into pledge agreements for purposes of, inter alia, pledging their ad valorem property taxes to a District which finances Public Improvements.

G. For purposes of financing a portion of the Public Improvements, pursuant to an Indenture of Trust dated July 1, 2017 between District No. 2 and UMB Bank, n.a., as trustee (the “**Indenture**”), District No. 2 has issued its Limited Property Tax Supported Revenue Bonds, Series 2017 in the aggregate principal amount of \$14,781,000 (the “**Series 2017 Bonds**”).

H. The Series 2017 Bonds are secured, in part, by the pledge of a Mill Levy (defined herein) of District No. 2.

I. In furtherance of the IGA and in order to provide security for the payment of the Series 2017 Bonds, the CCDistricts and UMB Bank, n.a., as trustee for the Series 2017 Bonds have entered into the Capital Pledge Agreement dated as of July 1, 2017 (as it may be amended or supplemented from time to time, the “**Pledge Agreement**”) pursuant to which District No. 1 has incurred a Payment Obligation (as defined in the Pledge Agreement) to also assist in repaying the Series 2017 Bonds and certain refunding bonds that may be issued by District No. 2 and has pledged, inter alia, to impose an ad valorem mill levy upon all taxable property within District No. 1 in an amount set forth in the Pledge Agreement for the purposes of paying its Payment Obligation.

J. In addition to imposing *ad valorem* property taxes to repay Payment Obligations, pursuant to the IGA, the Districts are required to impose *ad valorem* property taxes on property within the boundaries of the Districts in order to repay certain costs and expenses in connection with operation, maintenance, repair and replacement of the Public Improvements and/or other costs of the Districts.

K. Declarant acknowledges, and each Owner by acquiring an Interest in the Property, or any portion thereof, will be deemed to have acknowledged, that the Property and improvements thereon will benefit directly from the construction, installation, operation, maintenance, repair and replacement of the Public Improvements and other improvements and services provided by the Districts; however, the Property, or portions thereof, may in the future be exempt from property taxation, as may be disclosed by the County Assessor’s records, and not subject to the mill levy imposed by the District that provides the property taxes for the repayment of the Payment Obligations.

L. In furtherance of the Districts’ provision of the Public Improvements and maintenance and operations related thereto, Declarant desires that the Property contributes its proportionate share to pay the costs and expenses of the Public Improvements and other improvements and services provided by the Districts.

M. Subject to and in accordance with the provisions of this Declaration, Declarant desires to impose this Declaration in order that if the Property, or any portion thereof, is not subject to the requirement to pay the Mill Levy (as defined in Section (1.p.) because such Property, or applicable portion thereof, for any period of time, is not subject to, or is exempt from, the imposition of the Mill Levy, the Owner of the Property or applicable portion thereof, will be required to pay to the Districts certain amounts as set forth herein.

## **AGREEMENT**

NOW THEREFORE, 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 and agrees as follows:

1. Defined Terms. Except as otherwise expressly provided herein, defined terms used in this Declaration will have the following meanings:

- a. “**Act**” means the Colorado Common Interest Ownership Act, Sections §38-33.3-101, *et seq.*, C.R.S., as amended.
- b. “**Annual Fee**” means, with respect to any Exempt Property, an annual payment in lieu of taxes in the amount equal to the Mill Levy for the applicable calendar year that would be imposed on and apply to the Property, or applicable portion thereof, if it were not Exempt Property, multiplied by the County Assessor’s most recent certified final appraised valuation of such Exempt Property, and multiplied by 29% (or such other percentage as prescribed for taxable commercial property pursuant to Section 39-1-104(1), C.R.S., as amended). *[For illustrative purposes only, if the District’s Mill Levy for the applicable tax year is 50 mills and the County Assessor’s most recent certified appraised valuation of such Exempt Property is \$1,000,000, the Annual Fee would be \$14,500: \$1,000,000 appraised value X 0.29 X (50 mills X .001 mill levy multiplier) = \$14,500.]*
- c. “**Bond Documents**” means, collectively, the Indenture, the Pledge Agreement, the resolutions, indentures, reimbursement agreements, loan agreements and other contracts and instruments under which the Districts incur Payment Obligations or issues one or more series of Bonds for the purpose of financing or refinancing the Public Improvements.
- d. “**Bonds**” means, collectively, the Payment Obligation, one or more series of bonds, notes or other obligations incurred or issued under the Bond Documents by one or more of the Districts, for the purpose of financing or refinancing the Public Improvements.
- e. “**CCDistricts**” is defined in Recital E.
- f. “**County**” is defined in Recital A.
- f. “**Declarant**” is defined in the introductory paragraph.
- g. “**District**” is defined in the introductory paragraph.
- h. “**District No. 1**” is defined in the introductory paragraph.
- i. “**District No. 2**” is defined in the introductory paragraph.
- j. “**Districts**” is defined in the introductory paragraph.
- k. “**Effective Date**” means the date on which this Declaration is recorded in the Records.
- l. “**Exempt Property**” means any portion of the Property, excluding any portion of the Property owned by the City of Colorado Springs, Colorado, or a District, that would be subject to imposition and/or payment of the Mill Levy, but is exempt from *ad valorem* property taxation as disclosed by the County Assessor’s records, and therefore such property is not subject to, or is exempt from, the imposition and/or payment of the Mill Levy.
- m. “**Indenture**” is defined in Recital G.
- n. “**Interest**” means a fee simple ownership interest, subject to matters recorded in the Records.

- o. “**IGA**” is defined in Recital F.
  - p. “**Mill Levy**” means *ad valorem* property tax mill levies imposed by a District pursuant to the Bond Documents, the IGA or otherwise for purposes of financing, refinancing, operation, maintenance, repair and replacement of the Public Improvements and paying administrative and management costs of the Districts.
  - q. “**Owner(s)**” means a Person that owns an Interest in the Property, or any portion thereof, including without limitation, the Declarant, as applicable. If more than one Person owns an Interest in the applicable portion of the Property as joint tenants, tenants in common or otherwise, such Persons will be jointly and severally liable for the obligations imposed under this Declaration with respect to such portion of the Property, including without limitation, the obligation to pay the Annual Fee.
  - r. “**Payment Obligation(s)**” has the meaning assigned to it in the Pledge Agreement.
  - s. “**Person(s)**” means any individual, partnership, corporation, limited liability company, association, trust or other type of entity or organization.
  - t. “**Pledge Agreement**” is defined in Recital I.
  - u. “**Property**” is defined in Recital A.
  - v. “**Public Improvements**” is defined in Recital B.
  - w. “**Records**” means the real property records of the Clerk and Recorder of the County.
  - x. “**Series 2017 Bonds**” is defined in Recital G.
  - y. “**Termination Date**” is defined in Section 3.
2. Colorado Common Interest Ownership Act Not Applicable. Declarant does not intend to subject the Property to the Act by the imposition and recordation of this Declaration. Accordingly, the Property is hereby restricted to non-residential use, and, as such, is exempt from the provisions of the Act pursuant to Section –121 of the Act.
3. Annual Fee.

Declarant acknowledges and agrees, and each Owner by acquiring an Interest in the Property, or any portion thereof, will be deemed to have acknowledged and agreed, that the Districts may and will impose, and the Owners from time to time of Exempt Property will pay to the Districts, the Annual Fee in arrears as set forth below until the earliest to occur of the following (the “**Termination Date**”): (i) the date that all Bonds are fully repaid and there are no more debt payments or administrative, operations, maintenance, repair, replacement or other costs or expenses to be paid by the Districts or that the Districts could be required to pay in connection with the Public Improvements, (ii) the date of the last of the Districts to dissolve; or (iii) the date the Districts execute and record a termination of this Declaration in the Records.

On or about January 15 of any calendar year following a calendar year in which the Property, or any portion thereof, is Exempt Property, each District will deliver written notice to the Owner of such Exempt Property of the Annual Fee due to such District for the calendar year in which such Property, or the applicable portion thereof, is Exempt Property; provided that delinquencies or failures in providing such notice will not affect the validity or collectability of such Annual Fee. The amount of such Annual Fee will be pro-rated, based on that portion of the calendar year during which such Property, or the applicable portion thereof, is Exempt Property.

Each Annual Fee due for a calendar year will be due and payable in arrears on April 15 of the following calendar year.

Until paid, each Annual Fee due hereunder, together with interest accrued on such unpaid amounts as set forth in Section 3 and attorneys' fees, disbursements and costs and expenses incurred by the applicable District(s) to collect such unpaid amounts and/or to enforce such District's rights set forth in this Declaration, will, to the extent permitted by law, constitute a perpetual and prior lien of such District against the Exempt Property as set forth in Section 32-1-1001(1)(j), C.R.S. To the extent permitted by law, such District may, but is not obligated to, record a statement of lien in the Records against the applicable portion of the Property with respect to any Annual Fee that is not paid when due.

If an Owner fails to pay any amount due under this Declaration to a District on or prior to the date such amount becomes due, such Owner will pay to such District interest on such unpaid amount from the due date thereof until paid at the rate one percent per month simple interest.

4. Transfers of Interests.

ANY OWNER TRANSFERRING AN INTEREST IN THE PROPERTY, OR ANY PORTION THEREOF, WILL PROVIDE WRITTEN NOTICE TO THE DISTRICTS OF SUCH TRANSFER, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 5, NOT LATER THAN THE DATE SUCH TRANSFER OF INTEREST IS EFFECTIVE. SUCH NOTICE WILL IDENTIFY THE PROPERTY OR PORTION THEREOF SUBJECT TO THE INTEREST BEING TRANSFERRED, THE NAME OF SUCH TRANSFEROR AND THE NAME OF THE TRANSFEREE.

An Owner's failure to give any such notice of transfer will in no way affect or eliminate the obligation of a subsequent Owner to pay the Annual Fee, as applicable.

5. Notices.

Notices given with respect to this Declaration will be in writing and will be delivered by hand-delivery, or by certified mail, return receipt requested, or overnight delivery service by a nationally-recognized overnight courier service such as Federal Express or UPS. Notice will be deemed given (i) when received if hand-delivered, (ii) on the third business day after mailed if given by certified mail, postage pre-paid, or (iii) the next business day following delivery by overnight courier service. Notice will be sent to the following addresses:

To Owners:

To the Owners at their addresses at the Property as set forth in the Records

To District No. 1: Colorado Crossing Metropolitan District No. 1  
c/o CliftonLarsonAllen LLP  
8390 E. Crescent Parkway, Suite 500  
Greenwood Village, Colorado 80111  
Attn: Josh Miller

with a copy to: McGeady Becher P.C.  
450 E, 17<sup>th</sup> Avenue, Suite 400  
Denver, Colorado 80203  
Attn: Megan Becher

To District No. 2 Colorado Crossing Metropolitan District No. 2  
c/o CliftonLarsonAllen LLP  
8390 E. Crescent Parkway, Suite 500  
Greenwood Village, Colorado 80111  
Attn: Josh Miller

with a copy to: McGeady Becher P.C.  
450 E, 17<sup>th</sup> Avenue, Suite 400  
Denver, Colorado 80203  
Attn: Megan Becher

A District may change its address for purposes of this Section 5, at any time and from time to time, by delivering to the then-current Owners a notice of such change in accordance with the terms of this Section 5. An Owner may change its address for purposes of this Section 5, at any time and from time to time, by delivering to the Districts a notice of such change in accordance with the terms of this Section 5.

6. Remedies; Attorneys' Fees. Each District will have all rights and remedies available to it under this Declaration, at law and/or in equity, including without limitation, specific enforcement, to enforce this Declaration against any Person in breach of its obligations hereunder. In the event of litigation in connection with the enforcement or interpretation of the terms of this Declaration, the prevailing party in such litigation will be entitled to its costs and reasonable attorneys' fees.

7. Termination. This Declaration will terminate upon the Termination Date; provided, however, the obligations and liabilities of any Owners accruing prior to the Termination Date, and each District's enforcement rights in connection therewith, will survive the termination of this Declaration.

8. Binding Effect. Upon and after the Effective Date and through the Termination Date, this Declaration will run with the land, and will be binding upon all Owners and Persons having an Interest in the Property, or any portion thereof, and their respective successors and assigns; provided, however, if and to the extent that any of the restrictions or covenants herein would otherwise be unlawful or void for violation of the rule against perpetuities, such restrictions and covenants will continue and endure only until the expiration of a period of ninety (90) years after the Effective Date. The Owners, by taking title to the Property, or any portion thereof, thereby

acknowledge and agree that the covenants set forth herein are reasonable and necessary to facilitate the construction, financing, operation, maintenance, repair, replacement and provision of the Public Improvements benefitting the Property, the Owners and Persons having an Interest in the Property.

9. Severability. Invalidation of any of the provisions contained in this Declaration, 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 Declaration or the application thereof to any other Person or circumstance, and the remainder of this Declaration will remain in effect and full force; provided, however, that in the event such invalidation would render the remaining portions of this Declaration ineffective to carry out the intentions of the Declarant as expressed or implied by this Declaration, then the objectionable provision(s) hereof will be construed, and this Declaration will be presumed amended, as if such provision was replaced with an enforceable provision which effectuates, as nearly as possible, the intent of the Declarant as expressed or implied herein.

10. Third-party Beneficiaries; Assignment. District No. 1, District No. 2 and any Bond trustees under any Bond Documents are expressly hereby made third-party beneficiaries of the Owners' obligations under this Declaration, including without limitation, the payment of the Annual Fee. Declarant acknowledges, and each Owner, by acquiring an Interest in the Property or any portion thereof, will be deemed to have acknowledged, that the Districts will have a direct cause of action and full right and authority to enforce each Owner's obligation under this Declaration. Except as provided in this Section 10, nothing contained in this Declaration will be construed to give any right of action by any other Person with respect to this Declaration; provided, however, to the fullest extent permitted by law, any and all of the rights and powers of a District herein may be assigned (in whole or in part) by such District to any Person by a an instrument executed by both the assignor and the assignee and recorded in the Records; upon any such assignment, the assignee will be a third-party beneficiary hereunder, and to the extent of such assignment, have the same rights and powers of such District provided for in this Declaration.

11. Amendment. This Declaration may be amended with the written consent of (a) Declarant, to the extent Declarant is an Owner of any portion of the Property; (b) the Owners who hold a fee interest in more than 50% of the total acreage of the Property, including Declarant; (c) the Districts, and (d) such other consents as may be required pursuant to any Bond Documents. Any such amendment will be Recorded.

12. Merger. Notwithstanding the fact that Declarant owns all property subject to this Declaration, such ownership and any future ownership of all property subject to this Declaration by a single owner will not act to merge the covenants, burdens and benefits created by this Declaration with the underlying real property. Any amendment or termination of this Declaration or the covenants, burdens and benefits created herein may only be effected pursuant to Section 11.

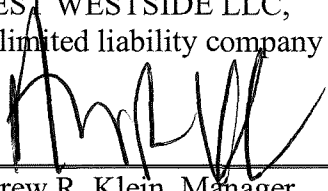
12. Governing Law. This Declaration will be governed by, and enforced in accordance with, the laws of the State of Colorado.

[ *signature pages follow this page* ]

IN WITNESS WHEREOF, this Declaration is hereby executed by Declarant as of the date set forth below to be effective as of the Effective Date.

**DECLARANT:**

INTERQUEST WESTSIDE LLC,  
a Colorado limited liability company

By:   
Andrew R. Klein, Manager

STATE OF COLORADO )

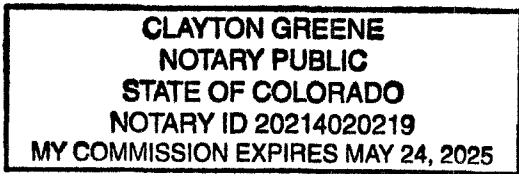
) ss:

COUNTY OF ARAPAHOE )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of August, 2022, by Andrew R. Klein as Manager of Interquest Westside LLC, a Colorado limited liability Company.

Witness my hand and official seal.

My commission expires: May 24, 2025



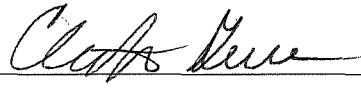
  
Notary Public



EXHIBIT A

Legal Description of the Property

LOT 2,  
VICTORY RIDGE FILING NO. 13,  
COUNTY OF EL PASO,  
STATE OF COLORADO