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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PEÑA STATION



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**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR PEÑA STATION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PEÑA STATION is made as of October 20, 2015 by Rail Stop LLC, a Colorado limited liability company (the “**Declarant**”).

RECITALS

- A. Declarant owns the property which is legally described on **Exhibit A** (the “**Initial Property**”).
- B. Declarant desires to subject and place upon the Initial Property certain covenants, conditions, and restrictions, for the use, operation, maintenance, repair and enjoyment of the Initial Property to protect the desirability of, and property values within, the Initial Property.
- C. Declarant reserves the right to add Additional Property (defined below) to this Declaration by recording a Supplemental Declaration (defined below). The Initial Property together with any such Additional Property is collectively referred to as the “**Property.**”
- D. This Declaration does not obligate the owner of one parcel of real estate to pay for real estate taxes, insurance premiums, maintenance or improvement of other parcels of real estate. As such, this Declaration does not create a Common Interest Community (as defined by the Colorado Common Interest Ownership Act at C.R.S. §38-33.3-103(8)), and therefore, this Declaration is not governed by or subject to the Colorado Common Interest Ownership Act.
- E. The Property is within the service boundaries or the inclusion areas of one or more metropolitan districts, each a quasi-municipal corporation and political subdivision of the State of Colorado (each a “**District**” and collectively, the “**Districts**”) established pursuant to Title 32 of the Colorado Revised Statutes. Each District is listed on **Exhibit B**. This Declaration may be amended from time to time, in accordance with the requirements of Section 8.3(c) below, to include one or more additional metropolitan districts within the term “District” as used within this Declaration.
- F. Pursuant to the Colorado Constitution, Article XIV, §§ 18(2)(a) and (b), and C.R.S. § 29-1-203, metropolitan districts may cooperate or contract with each other to provide any function, service or facility lawfully authorized to each, and any such contract may provide for the sharing of costs, the imposition of taxes, and the incurring of debt.

- G. Each District's service plan authorizes the District to exercise its powers to provide covenant enforcement as defined in C.R.S. § 32-1-1004(8) within the service areas of such District using revenues derived from the areas in which the services are to be furnished.
- H. Each of the Districts has the authority and intent to adopt a resolution acknowledging the Districts' powers to enforce covenants pursuant to state statute and the intention of the Districts to provide for uniform enforcement of the covenants throughout the Property.
- I. The statements in these Recitals have the same binding effect as if set forth in the Declaration.

ARTICLE I DECLARATION

1.1 Declaration.

The Property shall be held, sold and conveyed subject to the covenants, conditions, restrictions, reservations, easements and other provisions of this Declaration.

1.2 Powers and Authority.

(a) Declarant authorizes the Districts to perform covenant enforcement as set forth in the Declaration Documents and the Districts agree to perform covenant enforcement as set forth in the Declaration Documents.

(b) Each District may exercise with regard to the property within that District's boundaries all powers and authority reasonably necessary to administer the rights and duties of the District under the Declaration Documents, including, without limitation: (a) the power to administer and enforce the Declaration Documents (defined below); (b) the power to contract with a third-party, including, the Operating District (defined below), for the administration and enforcement of the Declaration Documents; and (c) all other rights, powers and authority necessary to administer and enforce the Declaration Documents.

(c) Each District has the power to levy fees and charges in connection with the administration and enforcement of the Declaration Documents, including fines and penalties for violations of the Declaration Documents, as allowed by applicable law and as set forth in the Declaration Documents.

(d) Each District may delegate to the Operating District the power to exercise such rights and duties on its behalf pursuant to an Intergovernmental Agreement without the consent of Declarant.

(e) Declarant will adopt the Rules and Regulations.

1.3 Covenants Running With the Land.

All covenants, conditions, restrictions, reservations, easements and other provisions of this Declaration are covenants running with the land, or equitable servitudes, as the case may be. The obligations and burdens created by this Declaration shall bind the Property, the Owners (as such term is defined below), all other parties having any right, title or interest in the Property or any portion thereof and their respective successors, assigns, heirs, devisees, executors, administrators and personal representatives, and inure to the benefit of Declarant and the Districts. In addition, any property acquired by or conveyed to the City and County of Denver after the date hereof that is within the Property shall, as of the date of such acquisition or conveyance, no longer be subject to this Declaration, with no further action being required by the Declarant or any other party.

ARTICLE II DEFINITIONS

2.1 Basic Definitions.

As used in this Declaration, the following terms shall have the meanings given to them in this Section 2.1, unless the context expressly requires otherwise.

“Additional Districts” means each metropolitan district that becomes a District, pursuant to the provisions of Section 8.3(c), after the date this Declaration is initially recorded in the Denver County Records.

“Additional Property” means any real property that Declarant later subjects to this Declaration.

“Affiliate” means any Person that, directly or indirectly, is in control of, is controlled by or is under common control with the party for whom an affiliate is being determined. For purposes hereof, control of a Person means the power, direct or indirect, to: (i) vote fifty percent (50%) or more of the securities having ordinary voting power for the election of directors (or comparable positions) of such Person; or (ii) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise and either alone or in conjunction with others.

“City” means the City and County of Denver, on behalf of the Department of Aviation.

“Declarant” has the meaning set forth in the Preamble and, to the extent not inconsistent with the provisions of this Declaration, its successors and assigns.

“Declarant Rights” means any rights reserved to Declarant under this Declaration, any Supplemental Declaration or any other Declaration Documents.

“Declaration” means this Declaration of Covenants, Conditions and Restrictions for the Property, as the same may be amended or supplemented from time to time.

“Declaration Documents” means this Declaration and the Rules and Regulations, as the same may be amended from time to time.

“Denver County Records” means the records of the Clerk and Recorder of the City and County of Denver, State of Colorado.

“Design Declaration” means the Design Declaration for Peña Station, dated October 20, 2015 and recorded on Oct. 22, 2015 in the Denver County Records at Reception No. 2015149246, as the same may be amended or supplemented from time to time.

“Development Agreement” means that certain Development Agreement by and between Declarant and the City recorded on June 12, 2015 in the Denver County Records at Reception No. 2015077742, as the same may be amended from time to time.

“District” has the meaning set forth in the Recitals.

“First Mortgage” means any mortgage, deed of trust or other document pledging any Site or any interest in a Site as security for payment of a debt or obligation that is not subordinate to any other lien or encumbrance, except liens for taxes or other liens which are given priority by statute.

“First Mortgagee” means any Person named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person under a First Mortgage.

“Guest” means any family member, employee, agent, independent contractor, lessee, customer or invitee of an Owner or of Owner’s tenants.

“Initial Property” has the meaning set forth in the Recitals.

“Intergovernmental Agreement” means shall mean any agreement by and among the Districts pursuant to which the Districts agree that the Operating District shall perform certain services called for by this Declaration on behalf of the Districts, which services will be paid for by the District(s) with revenues generated from the Property in which the services are furnished.

“Majority”, whether or not capitalized, means any percentage greater than fifty percent (50%).

“Operating District” means Aviation Station North Metropolitan District No. 1, a quasi-municipal corporation and political subdivision of the State of Colorado.

“Owner” means the record holder of legal title to the fee simple interest in any Site or portion thereof. If there is more than one (1) record holder of legal title to a Site, each record holder shall be an Owner. The term Owner includes Declarant to the extent that Declarant is the record holder of legal title to the fee simple interest in any Site.

“Person” means any natural person, corporation, partnership, limited liability company, association, trust, trustee, governmental or quasi-governmental entity or any other person or entity recognized as being capable of owning real property under the laws of the State of Colorado.

“Property” has the meaning set forth in the Recitals.

“Rules and Regulations” means any instrument adopted by Declarant for the administration or enforcement of this Declaration, as the same may be amended from time to time.

“Site” means any platted lot, airspace unit, or unplatted parcel of real property that can be separately transferred in compliance with the laws of the City and County of Denver and the State of Colorado.

“Supplemental Declaration” means an instrument recorded in the Denver County Records pursuant to which Declarant (i) subjects any Additional Property to this Declaration; (ii) removes any unimproved Site from the Property and this Declaration; or (iii) otherwise amends this Declaration in accordance with Section 8.3.

2.2 Gender and Number.

Whenever the context of this Declaration so requires:

- (a) words used in the masculine gender shall include the feminine and neuter genders;
- (b) words used in the neuter gender shall include the masculine and feminine genders;
- (c) words used in the singular shall include the plural; and
- (d) words used in the plural shall include the singular.

2.3 References to a District.

Each reference to a “District” in this Declaration shall mean the District in which an applicable Site or Owner is located and over which the District has jurisdiction.

2.4 Definitions that Reference Statutes.

If a capitalized term used in this Declaration is defined as having the meaning given to that term in a particular Colorado statute, the meaning given to that term in this Declaration shall be the meaning given to that term in the particular Colorado statute as of the date of this Declaration, regardless of any later amendments to that particular Colorado statute.

ARTICLE III
MAINTENANCE OF SITES

3.1 Maintenance of Sites.

(a) Each Owner shall, at such Owner's sole cost and expense, maintain such Owner's Site and all improvements and landscaping located thereon, or constituting a part thereof, in good order and repair.

(b) If, in the reasonable judgment of a District, an Owner fails to maintain its Site or the improvements or landscaping located thereon in good order and repair, and such failure remains uncured for more than thirty (30) days after the District's delivery of written notice thereof to such Owner, the District may enter upon such Site and perform such maintenance or repair as the District reasonably deems necessary or appropriate and charge all costs and expenses incurred by the District in connection therewith to such Owner.

(c) The District may, without notice, make emergency repairs to and maintain any Site or improvement located thereon as may, in its judgment, be reasonably necessary for the safety of any Person or to prevent damage to any other property.

ARTICLE IV
COVENANTS, CONDITIONS AND RESTRICTIONS

4.1 Applicability of Covenants, Conditions and Restrictions.

Except as otherwise provided herein, the covenants, conditions and restrictions set forth in this Article IV shall apply to all of the Property and to all Owners.

4.2 Declaration Documents.

Except as otherwise provided herein, each Owner shall comply with all provisions of the Declaration Documents that apply to such Owner, or such Owner's Sites. Each Owner shall require that its Guests comply with all provisions of the Declaration Documents.

4.3 Temporary Structures.

Except as otherwise provided in the Declaration Documents, no Person shall construct or allow within the Property the existence of any temporary structures of any sort, including, without limitation, sheds, shacks, tents or trailers, and then only in accordance with the Declaration Documents.

4.4 Trash and Recycling.

(a) Declarant requires centralized trash removal and recycling services for the Property. Each District will perform or arrange for such trash removal and recycling services within its boundaries. Without limiting its authority, each District may levy and collect fees,

charges, and other amounts to be imposed upon the Sites for such trash removal and recycling services; provided, however that such fees, charges and other amounts must be derived from within the applicable District boundaries where the trash removal and recycling services are required or performed. The scope, frequency, and all other matters with respect to such trash removal and recycling services, shall be determined by the Districts. Without limiting the generality of the foregoing, the Districts may, for example, as a part of establishing Rules and Regulations related to the administration and enforcement of this covenant to provide centralized trash removal and recycling services, elect to provide for regularly scheduled trash pick-ups and recycling, and may require each Owner to be responsible for scheduling, and paying for, any extraordinary trash pick-ups and/or other recycling and may limit the items eligible for trash pick-up and/or recycling from time to time.

(b) If Declarant does not adopt Rules and Regulations with respect to centralized trash removal and recycling services for the Property, a District may adopt rules and regulations with respect to centralized trash removal and recycling services for the Property to the extent such rules and regulations do not conflict with the Declaration Documents.

4.5 Nuisances, Hazardous Activities and Unsightliness.

(a) No Person shall conduct any activity within the Property which creates a nuisance. Without limiting the generality of the foregoing:

(i) no lights shall be emitted which are unreasonably bright or cause unreasonable glare; provided, however, that lights and/or lighting of any form or fashion approved by the City shall not be deemed a nuisance under this subsection;

(ii) no sound or vibration shall be emitted which is unreasonably loud or annoying; and

(iii) no odor shall be emitted which is unreasonably offensive to others.

(b) No Person shall conduct any activity within the Property which is or might be hazardous to any Person or property. Without limiting the generality of the foregoing:

(i) no open fires shall be allowed to exist, unless contained in a customary barbecue grill or other structure approved pursuant to the Design Declaration;

(ii) no firearms or explosives shall be discharged; and

(iii) no hunting shall be conducted.

(c) No unsightliness shall be permitted within the Property. Without limiting the generality of the foregoing, prior to its collection pursuant to the Declaration Documents, all trash, garbage and other waste and recycling materials shall be kept in sanitary containers enclosed and screened from public view and protected from disturbance in such places and

manners as shall be approved pursuant to the Design Declaration. No burning of trash, garbage or waste materials shall be permitted within the Property.

(d) Normal construction activities shall not be considered to violate the terms and conditions of this Section 4.5.

(e) Notwithstanding anything to the contrary contained in this Declaration or in any other Declaration Documents, retail stores, restaurants, bars, nightclubs, theatres and other recreational and entertainment facilities may be open for business with the general public during the hours of 6:00 a.m. through 2:00 a.m., provided however, that the Declarant may permit any or all of such retail stores, restaurants, bars, nightclubs, theatres and other recreational and entertainment facilities to open before 6:00 a.m. and/or to remain open after 2:00 a.m.

4.6 Compliance With Laws.

Nothing shall be done or kept within the Property in violation of any law, ordinance, rule or regulation of any governmental or quasi-governmental authority.

4.7 Restriction on Subdivision, Rezoning and Boundary Changes.

(a) For so long as Declarant or any of its Affiliates is an Owner, without the prior written consent of Declarant, which consent must be evidenced on the plat or other instrument creating the subdivision:

- (i) No portion of the Property shall be subdivided; and
- (ii) No boundary of any Site within the Property shall be adjusted.

(b) For so long as Declarant or any of its Affiliates is an Owner, without the prior written consent of Declarant, no application for rezoning of any portion of the Property, and no applications for variances or use permits on any portion of the Property, shall be filed with any governmental authority.

4.8 Wells, Water and Sewage. Water wells shall be permitted on Property upon the occurrence of both (a) written approval of the Operating District and the District within which the proposed water well is to be located, and (b) completions of requirements set for in the Design Declaration.

4.9 Vehicles and Equipment.

All automobiles, trucks, and other vehicles (motorized or not) parked, stored or operated within the Property shall be parked, stored, and operated in accordance with the Rules and Regulations.

4.10 Deliveries.

All deliveries made within the Property shall be made in accordance with the Rules and Regulations.

4.11 Trademarks.

The service marks and trademarks set forth on Exhibit C are owned by Declarant or its affiliates, and any use of any such service marks or trademarks, or any other term, logo or insignia that is used as a part of the Property, is wholly contingent upon Declarant's or such affiliate's agreement to enter and be bound by the terms and conditions set forth in a service mark license agreement.

4.12 Animals.

No animals of any kind shall be raised, bred or housed within the Property except in accordance with the Rules and Regulations.

ARTICLE V
EASEMENTS AND RESERVATIONS

5.1 Emergency Access Easement.

There is hereby granted a general easement to all police, sheriff, fire protection, ambulance and other similar emergency agencies or Persons to enter upon the Property in the proper performance of its duties.

5.2 Façade Easement

There is hereby reserved a general easement over, across, through and under all of the Property and all improvements thereon to install or project such lighting, signage (way finding, or otherwise), and seasonal or event decorations as the Districts shall deem necessary or advisable. Such easement is for the exclusive benefit of the Operating District and the District within which the proposed lighting, signage (way finding, or otherwise), and seasonal or event decorations are to be located.

5.3 District Easement.

There is hereby granted a general easement to the Districts over, across, through and under all of the Property as may be reasonably necessary to exercise their rights, perform their obligations, and administer services or facilities to the Property as set forth in the Declaration Documents.

5.4 Consent Required within Initial Property.

The exercise of any rights or easements created by this Article V upon, over or under any portion of the Property owned by Declarant shall require the prior written consent of Declarant.

ARTICLE VI
SPECIAL RIGHTS OF DECLARANT

6.1 Additional Property.

Declarant may add Additional Property to this Declaration by recording a Supplemental Declaration executed by Declarant and the Owner of such Additional Property in the Denver County Records.

6.2 Removal of Sites from the Property.

(a) Declarant may remove any Site from the Initial Property and this Declaration by recording a Supplemental Declaration executed by Declarant, the City and the Owner of such Site in the Denver County Records.

(b) Declarant may remove any Site from the Additional Property and this Declaration by recording a Supplemental Declaration executed by Declarant and the Owner of such Site in the Denver County Records.

6.3 Rules and Regulations.

The Declarant shall have the power and authority to adopt reasonable Rules and Regulations.

6.4 Exercise of District's Rights/Performance of District Obligations.

If the Districts fail to exercise any right or power granted by the Declaration Documents or fail to comply with any duty or obligation imposed by the Declaration Documents, and such failure to enforce remains uncured for more than thirty (30) days after Declarant's delivery of written notice thereof to the Districts, Declarant may exercise such right or power or perform such duty or obligation at its own expense.

6.5 Assignment or Delegation of District Rights, Remedies, or Obligations.

Declarant must provide written consent for the assignment or delegation of any right, remedy, or obligation of the Districts under this Declaration other than the assignment or delegation of any right, remedy, or obligation of the Districts under this Declaration to the Operating District pursuant to an Intergovernmental Agreement.

6.6 Interference with Special Rights of Declarant. Without Declarant's prior written consent, neither the Districts nor any Owner nor any other Person may take any action that interferes with or diminishes any Declarant Right under this Declaration.

6.7 Rights Transferable. Declarant may transfer any Declarant Right reserved to it under this Article VI or under any other provision of this Declaration to any Person to whom Declarant transfers all or substantially all of the Initial Property that Declarant then owns.

ARTICLE VII ENFORCEMENT AND REMEDIES

7.1 Enforcement.

(a) Each provision of this Declaration with respect to an Owner, or a Site shall be enforceable by the Operating District or the respective District (as determined in accordance with Section 2.2) by:

- (i) a proceeding for injunctive relief or specific performance;
- (ii) a suit or action to recover damages; and
- (iii) any other rights and remedies available under the Declaration

Documents, at law or in equity.

(b) In addition to the rights and remedies described in Section 7.1(a) above, if an Owner fails to perform or observe any covenant or condition on such Owner's part to be performed or observed under this Declaration or any other Declaration Documents, and such violation remains uncured for more than five (5) days after delivery of written notice thereof to such Owner, or such longer period as such District deems reasonably necessary to cure such violation if the Owner delivers written notice to such District that it will cure such violation within such five (5) days and thereafter promptly commences such cure and diligently pursues the cure to completion, the District shall have the following rights and remedies:

(i) The District may, but is not obligated to, cure such failure to comply at the Owner's sole cost and expense. If the District cures any such failure to comply, the Owner shall pay to the District the amount of all costs incurred by the District in connection therewith within thirty (30) days after the Owner receives written notice thereof from the District.

(ii) The District may fine the Owner an amount to be determined by the District for each violation after notice and a hearing. The Owner shall pay any such fine to the District within thirty (30) days after the Owner receives written notice thereof from the District. Rules and Regulation will be established for notices and hearings.

(c) Declarant may enforce Declarant Rights and all other provisions of the Declaration, and shall have all rights and remedies available under this Declaration, at law or in equity to do so, including actions for damages, specific performance and injunctive relief. If Declarant enforces any provision of the Declaration other than Declarant Rights, or funds enforcement for a District, such District shall reimburse Declarant for all costs incurred or funds advanced within thirty (30) days after Declarant's delivery of written request therefor to the District, accompanied by reasonable evidence thereof, subject to appropriation.

(d) No Owner, other than Declarant and the Districts, may enforce any provision of this Declaration, except that any Owner may enforce the requirement for obtaining the proper consents required to amend this Declaration in accordance with Section 8.3(a) by, and only by, seeking and obtaining injunctive relief.

(e) The City is a third party beneficiary of this Declaration with respect to its rights under Sections 6.2 and 8.3 and may enforce its rights under Sections 6.2 and 8.3 by any means available at law or in equity, including actions for damages, specific performance or injunctive relief.

(f) All rights and remedies under this Declaration shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

(g) The District shall have the power to grant variances from the terms and conditions of the Declaration Documents from time to time as they deems necessary or appropriate.

7.2 Liens.

(a) Each Declarant, the Operating District and the District shall have a lien on each Site for any for any fines, charges, penalties, interest, attorneys' fees, disbursements, costs and expenses of collection, and costs and expenses curing violations in accordance with Section 7.1 imposed on or due from any Owner with respect to such Owner's Site (each, a "Lien"). The Lien shall secure all of the foregoing obligations with respect to such Site from the time such obligations become due.

(b) A Lien is prior to all other liens and encumbrances on a Site, except:

(i) liens and encumbrances recorded prior to the recordation of this Declaration; or

(ii) liens for real estate taxes and other governmental assessments or charges against the Site.

(c) The recording of this Declaration constitutes record notice and perfection of a Lien on each Site. No further recordation of any claim of any Lien is required.

(d) In any action under Section 7.1 or this Section 7.2 to collect amounts due or to foreclose a Lien for such unpaid amounts, the court may appoint a receiver to collect such unpaid amounts prior to or during the pendency of the action. A court may order the receiver to pay any sums held by the receiver to the appropriate party during the pendency of the action.

(e) A Lien may be foreclosed in like manner as a mortgage on real estate.

7.3 Attorneys' Fees.

In the event of any dispute under or with respect to this Declaration or any other Declaration Documents, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses in connection therewith, including, without limitation, the fees and disbursements of any attorneys, accountants, engineers, appraisers or other professionals engaged by the prevailing party.

7.4 Interest.

If an Owner fails to pay to the District any amount due to the District as and when the same becomes due, the Owner shall pay to the District interest on such unpaid amount from the due date of such unpaid amount until the date paid at a rate per annum to be stated in the Rules and Regulations.

ARTICLE VIII TERM AND AMENDMENTS

8.1 Term.

The covenants, conditions, restrictions, reservations, easements and other provisions set forth in this Declaration shall run with and bind the Property until this Declaration is terminated.

8.2 Termination.

Unless sooner terminated as set forth below, this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable as set forth herein for a term of forty (40) years from the date this Declaration is recorded. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years unless sooner terminated as set forth below. Declarant may terminate this Declaration at any time for any reason by executing and recording a termination and release of this Declaration in the Denver County Records.

8.3 Amendments.

(a) Amendments to this Declaration shall require: (i) the affirmative written consent of Declarant, (ii) the affirmative written consent of the City; (iii) the affirmative written consent of Owners of at least twenty five (25%) the Sites that are not condominium units; and (iv) of at least twenty five (25%) of the First Mortgagees holding First Mortgages on Sites that are not condominium units and that have provided to the Declarant, prior to such amendment becoming effective, written request of notice of any proposed amendment; provided, however, that the City's right to consent shall terminate upon the City's receipt of all reimbursements and other sums to which it is entitled under Section VI of the Development Agreement.

(i) For purposes of Section 8.3(a), if there are multiple Owners of a Site and any Owner of such Site provides its affirmative written consent with respect to such Site, it will thereafter be presumed for all purposes that the Owner was acting with the authority and consent of all other Owners of such Site, unless another Owner of such Site delivers to Declarant written objection thereto within five (5) days after the date Declarant received such affirmative written consent, in which case such Site shall not be included in determining the number of Sites necessary for majority consent and such Owners' consent or withholding of consent shall not be considered.

(ii) An Owner of a Site may appoint an agent or proxy to provide its affirmative written consent to any amendment a duly executed designation of agency or proxy, in such form as Declarant may reasonably require, that is delivered to Declarant.

(b) Notwithstanding the terms and conditions of Section 8.3(a) above, Declarant may unilaterally, and without the consent of the City, the Districts, the Owners or the First Mortgagees, amend this Declaration (i) as expressly provided elsewhere in this Declaration; (ii) to comply with changes in applicable law; (iii) to correct errors in this Declaration; (iv) to add service marks or trademarks owned by Declarant or its affiliates to Exhibit C; and (v) to meet the requirements of lenders.

(c) Notwithstanding any other provision herein, the Declarant may unilaterally amend this Declaration to add one or more Additional Districts, from time to time, and without the consent of the City, the then-current Districts, the Owners or the First Mortgagee, by recording a Supplemental Declaration executed by the Declarant and such Additional District(s) that provides an update to the list of Districts in Exhibit B with Additional Districts being included in the list of Districts and contains the type of contact information for such Additional District as is provided for the then-current Districts on Schedule A.

(d) With respect to any amendment to this Declaration, if the necessary consents are obtained, Declarant shall cause such amendment (in the form of a Supplemental Declaration) to be recorded in the Denver County Records.

ARTICLE IX
MISCELLANEOUS

9.1 Interpretation of the Declaration.

(a) Except for judicial construction, Declarant, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, Declarant's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the covenants and the provisions hereof.

(b) All Exhibits attached to this Declaration and Recitals set forth above are hereby incorporated by this reference and made a part hereof.

9.2 Severability.

Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity and enforceability of any other provisions hereof.

9.3 Disclaimer of Representations.

Notwithstanding anything to the contrary contained in this Declaration, Declarant makes no warranties or representations whatsoever that the plan presently envisioned for the complete development of the Property can or will be carried out or that any land now owned or hereafter acquired by Declarant is or will be subjected to this Declaration, or that any such land, whether or not it has been subjected to this Declaration, is or will be committed to or developed for a particular use, or that, if such land is once used for a particular use, such use will continue in effect.

9.4 Reference to Declaration and Deeds.

Deeds to and instruments affecting any Site or any other part of the Property may contain the provisions set forth herein by reference to this Declaration, but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants, conditions, restrictions, reservations, easements set forth herein shall be binding upon the grantee Owner or other Person claiming through any deed or other instrument and his or her heirs, executors, administrators, successors and assigns.

9.5 Successors and Assigns of Declarant.

Subject to Section 6.7 above, any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder, on the condition that Declarant's rights and powers may only be assigned by a written recorded instrument expressly assigning such rights and powers.

9.6 Captions and Titles.

All captions and titles of headings of Articles and Sections in this Declaration are for the purpose of reference and convenience and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

9.7 Notices.

All Owners of each Site shall have one and the same registered mailing address to be used by Declarant and the Districts for notices, demands, and all other communications regarding Declarant and the District matters. The Owner or the representative of the Owners of a Site shall furnish such registered address to Declarant and the District within ten (10) days after transfer of title to the Site to such Owner or Owners. Such registration shall be in written form and signed by all of the Owners of the Site or by such persons as are authorized to represent the interests of all Owners of the Site. If no address is registered or if all of the Owners cannot agree, then the address of the Site shall be deemed the registered address of the Owner(s), and any notice shall be deemed duly given if delivered to the Site. All notices and demands intended to be served upon Declarant or a District shall be sent to addresses on Schedule A or such other address as Declarant or the Districts may designate from time to time by notice to the Owner(s).

All written notices required to be sent to or served upon Declarant or the Districts under this Declaration shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid or by a national overnight delivery service which maintains delivery records. All such notices shall be effective upon delivery (or refusal to accept delivery).

9.8 Counterparts.

This Declaration may be executed in two (2) or more counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument.

9.9 Actions by City Under this Agreement. Where consent, waiver, approval, extension, notice or any other action by the City is contemplated hereunder, such may be provided by the CEO of the Department of Aviation or its designee.

A SIGNATURE PAGE TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PEÑA STATION

AVIATION STATION NORTH METROPOLITAN DISTRICT NO. 2, a quasi-municipal corporation and political subdivision of the State of Colorado

By: *Marcia Lujan*
Marcia Lujan, Treasurer

STATE OF COLORADO)
) ss.
CITY & COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this October 21, 2015, by Marcia Lujan, as Treasurer of Aviation Station North Metropolitan District No. 2, a quasi-municipal corporation and political subdivision of the State of Colorado

Witness my hand and official seal.

[Signature]
Notary Public

My commission expires: 5-11-17

**KATHERINE C. TALCOTT
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19974007236
MY COMMISSION EXPIRES 05/11/2017**

SCHEDULE A**Addresses**

Rail Stop LLC
 Attn: Ferdinand L. Belz III
 1125 Seventeenth Street, Suite 2500
 Denver CO 80202
 e-mail: Ferd@Fulenwider.com
 Phone: (303) 295-3071
 Fax: (303) 295-1735

With a copy to:

Husch Blackwell LLP
 Attn: Robert P. Detrick
 1700 Lincoln Street, Suite 4700
 Denver, CO 80203-4547
 e-mail: Robert.Detrick@HuschBlackwell.com
 Phone: (303) 892-4448
 Fax: (303)749-7272

Aviation Station North Metropolitan District No. 1
 Attn: Lisa Johnson, Manager
 C/O Special District Management Services, Inc.
 141 Union Blvd. Suite 150
 Lakewood, CO 80228
 e-mail: ljohnson@sdmsi.com
 Phone: (303) 987-0835
 Fax: (303) 987-2032

With a copy to:

McGeady Sisneros, P.C.
 Attn: MaryAnn M. McGeady
 450 East 17th Ave. Suite 400
 Denver, CO 80203
 e-mail: mmcgeady@mcgeadysisneros.com
 Phone: (303) 592-4380
 Fax: (303) 592-4385

Aviation Station North Metropolitan District No. 2
 Attn: Lisa Johnson, Manager
 C/O Special District Management Services, Inc.
 141 Union Blvd. Suite 150
 Lakewood, CO 80228
 e-mail: ljohnson@sdmsi.com
 Phone: (303) 987-0835
 Fax: (303) 987-2032

With a copy to:

McGeady Sisneros, P.C.
 Attn: MaryAnn M. McGeady
 450 East 17th Ave. Suite 400
 Denver, CO 80203
 e-mail: mmcgeady@mcgeadysisneros.com
 Phone: (303) 592-4380
 Fax: (303) 592-4385

EXHIBIT A**Initial Property**

THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 3 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, EXCEPT THAT PORTION DESCRIBED IN THE DOCUMENT RECORDED UNDER RECEPTION NO. 9600152541 IN THE OFFICES OF THE DENVER COUNTY CLERK AND RECORDER AND EXCEPT THE NORTH 30.00 FEET FOR EAST 64TH AVENUE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE WEST LINE OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 3 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN MONUMENTED BY 3 1/4" ALUMINUM CAPS STAMPED LS 20699 AT BOTH ENDS OF SAID LINE, CONSIDERED TO BEAR N00°21'23"W A DISTANCE OF 2649.71 FEET.

BEGINNING AT THE CENTER ONE-QUARTER CORNER OF SAID SECTION 9;

THENCE N00°21'23"W A DISTANCE OF 2619.71 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF 64TH AVENUE;

THENCE ON SAID SOUTH RIGHT-OF-WAY LINE THE FOLLOWING FOUR (4) COURSES:

- 1) **ON A LINE BEING 30.00 FEET SOUTHERLY OF AND PARALLEL WITH THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 9, S89°51'30"E A DISTANCE OF 2048.17 FEET;**
- 2) **S00°08'30"W A DISTANCE OF 35.00 FEET;**
- 3) **S89°51'30"E A DISTANCE OF 505.27 FEET;**
- 4) **S45°01'27"E A DISTANCE OF 35.26 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF TOWER ROAD;**

THENCE ON SAID WEST RIGHT-OF-WAY LINE S00°11'13"E A DISTANCE OF 2559.07 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 9;

THENCE ON SAID SOUTH LINE N89°52'28"W A DISTANCE OF 2570.35 FEET TO THE POINT OF BEGINNING,

CONTAINING A CALCULATED AREA OF 6,723,677 SQUARE FEET OR 154.354 ACRES.

EXHIBIT B

List of Districts

**Aviation Station North Metropolitan District No. 1, and
Aviation Station North Metropolitan District No. 2.**

EXHIBIT C
Trademarks

None

LENDER CONSENT AND SUBORDINATION

The undersigned holder of that certain Mortgage and Assignment of Rents, granted by Pena Station Development Corporation, Colorado corporation, to DIBC Residential, LLC, a Colorado limited liability company, recorded on May 22, 2015 in the real estate records of the City and County of Denver, Colorado, at Reception Number 2015066248 (as heretofore or hereafter amended, restated or modified, the "Mortgage"), which encumbers a portion of the Property (as defined in the foregoing Declaration of Covenants, Conditions and Restrictions for Peña Station), hereby consents to, and hereby subordinates the lien of its Mortgage to, this Declaration of Covenants, Conditions and Restrictions for Peña Station. Except as otherwise provided by the foregoing sentence, the lien of the Mortgage shall remain in full force and effect in accordance with its terms, and shall not be deemed to have been subordinated to any other lien or encumbrance to which the Declaration of Covenants, Conditions and Restrictions for Peña Station may itself be subordinate.

DIBC RESIDENTIAL, LLC,
a Colorado limited liability company

By: L.C. Fulenwider, Inc.,
a Colorado corporation, Manager

By: Marcia a Lujan

Marcia Lujan, Vice President

STATE OF COLORADO)

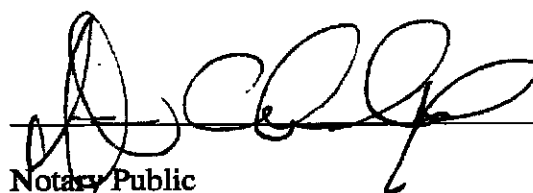
) ss.

COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 21 day of October 2015, by Marcia Lujan as the Vice President of L.C. Fulenwider, Inc., a Colorado corporation, which is a Manager of DIBC Residential, LLC, a Colorado limited liability company.

Witness my hand and official seal.

**KATHERINE C. TALCOTT
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19974007236
MY COMMISSION EXPIRES 05/11/2017**


Notary Public

My commission expires: 5.11.17

LENDER CONSENT AND SUBORDINATION

The undersigned holder of that certain Mortgage and Assignment of Rents, granted by Pena Station Development Corporation, Colorado corporation, to DIBC Retail, LLC, a Colorado limited liability company, recorded on May 22, 2015 in the real estate records of the City and County of Denver, Colorado, at Reception Number 2015066247 (as heretofore or hereafter amended, restated or modified, the "Mortgage"), which encumbers a portion of the Property (as defined in the foregoing Declaration of Covenants, Conditions and Restrictions for Peña Station), hereby consents to, and hereby subordinates the lien of its Mortgage to, this Declaration of Covenants, Conditions and Restrictions for Peña Station. Except as otherwise provided by the foregoing sentence, the lien of the Mortgage shall remain in full force and effect in accordance with its terms, and shall not be deemed to have been subordinated to any other lien or encumbrance to which the Declaration of Covenants, Conditions and Restrictions for Peña Station may itself be subordinate.

DIBC RETAIL, LLC,
a Colorado limited liability company

By: L.C. Fulenwider, Inc.,
a Colorado corporation, Manager

By: 
Marcia Lujan, Vice President

STATE OF COLORADO)

) ss.

COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 21 day of October 2015, by Marcia Lujan as the Vice President of L.C. Fulenwider, Inc., a Colorado corporation, which is a Manager of DIBC Retail, LLC, a Colorado limited liability company.

Witness my hand and official seal.

**KATHERINE C. TALCOTT
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19974007236
MY COMMISSION EXPIRES 08/11/2017**


Notary Public

My commission expires: 5.11.17