



**DECLARATION OF COVENANTS IMPOSING AND IMPLEMENTING
THE AVIATION STATION NORTH
PUBLIC IMPROVEMENT FEE**

THIS DECLARATION OF COVENANTS IMPOSING AND IMPLEMENTING THE AVIATION STATION NORTH PUBLIC IMPROVEMENT FEE (this "**PIF Covenant**") is made as of June 12, 2015 by RAIL STOP LLC, a Colorado limited liability company ("**Declarant**").

RECITALS

A. Declarant owns the real property more particularly described on Exhibit A, attached hereto and incorporated herein (as further defined below, the "**PIF Property**"), located in the City and County of Denver, Colorado ("**City**") and adjacent to a planned Regional Transportation District rail station known as Pena Station.

B. Declarant intends to develop the PIF Property so as to accommodate various commercial uses (the "**Project**"), and numerous infrastructure improvements will be required for the Project and development of the PIF Property.

C. Aviation Station North Metropolitan District No. 1 ("**District**"), a quasi-municipal corporation and political subdivision of the State of Colorado ("**State**"), was organized pursuant to State law in order to provide for, and to facilitate the financing, acquisition, construction, completion, operation and maintenance of the public infrastructure and services needed for, the development of the commercial areas within the PIF Property.

D. The public infrastructure that will be acquired, constructed, installed, completed, operated and maintained by the District for the benefit of the commercial areas within the PIF Property, the costs of which may lawfully be paid or reimbursed by the District, including reimbursements made by the District to the Declarant as provided in that certain Reimbursement Agreement dated as of the date hereof between the District and the Declarant (the "**Reimbursement Agreement**"), includes without limitation all streets, safety protection, water, sewer, storm drainage, transportation, mosquito control, and park and recreation facilities and other infrastructure, facilities, improvements, property and appurtenances located within and without the District (together, the "**District Improvements**"). The commercial areas within the PIF Property will benefit from completion of the District Improvements.

E. The Declarant intends to acquire, construct, install, complete, operate and maintain for the benefit of the commercial areas and the general public within the PIF Property certain improvements and services (the "**Declarant Improvements**" and, together with the District Improvements, the "**Public Improvements**"). The commercial areas within the PIF Property will benefit from completion of the Declarant Improvements.

F. The costs of planning, designing, engineering, acquiring, constructing, managing construction, and installing the Public Improvements, together with all land or interests in land

necessary for the completion of the Public Improvements (whether acquired by the District or the Declarant or dedicated by the Declarant or another Person), and all other costs and expenses incurred in connection with the financing, acquisition, construction, completion, operation and maintenance of the Public Improvements, as may be more specifically set forth in the Public Improvement Fee Agreement to be entered into by the Declarant and the District (as amended from time to time, the "**PIF Agreement**"), including without limitation expenses incurred for the District's organization and all Bond Requirements (as defined below; all of such costs together, the "**Public Improvements Costs**"), will be funded, paid and reimbursed, in part or in whole, from the public improvement fees imposed and collected pursuant to this PIF Covenant.

G. In consideration of the benefits to be provided to the PIF Property by the District's and the Declarant's undertaking of the Public Improvements, the Declarant has agreed to impose a public improvement fee in the amount of one percent (1%) on all PIF Sales (as defined below) that occur within the PIF Property for the period commencing on the PIF Commencement Date through and until the PIF Termination Date, except as otherwise expressly provided herein ("**Public Improvement Fee**" or "**PIF**"). Subject to the terms of this PIF Covenant and subject to such terms as may be set forth in the PIF Agreement, the Public Improvement Fee will be collected by all sellers or providers of goods or services who engage in any PIF Sales within the PIF Property from the purchaser or recipient of such goods or services and then will be paid over to a Collecting Agent (as defined below). The Collecting Agent will receive and remit the Public Improvement Fees to the District, or to a Bond Trustee (as defined below) or the Declarant, for payment or reimbursement of the Public Improvements Costs and for such other purposes as may be authorized and required in this PIF Covenant or as may be authorized or required in the PIF Agreement.

H. The Declarant has not but may in the future, upon notice to the District and the Bond Trustee, form a public improvement corporation ("**PIC**") to administer the provisions of the PIF Agreement and this PIF Covenant in accordance with Section 22.

I. Subject to and in accordance with the terms and provisions of this PIF Covenant, the Declarant now desires to impose the obligation to collect and pay, and to provide for the implementation of the collection and payment of, a Public Improvement Fee on all PIF Sales that occur from, within or upon 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 agrees and declares that this PIF Covenant shall be binding upon, and effective against all successors in interest, assigns and transferees of the PIF Property as follows:

Section 1. Definitions. Except as otherwise expressly provided herein or unless the context requires otherwise, the singular of any term includes the plural of such term, and any reference herein to a Section is to a Section of this PIF Covenant. Any capitalized term defined in the Recitals to this PIF Covenant shall have the meaning given to such term in the Recitals.

The following capitalized terms when used in this PIF Covenant shall have the meanings as follows:

"**Act**" means the Colorado Common Interest Ownership Act (C.R.S. §§ 38-33.3-101, et seq.)

"**Auditor**" has the meaning set forth in Section 6.

"**Bond**" or "**Bonds**" means any bonds issued under the Bond Documents by the District, in the principal amount not to exceed the maximum amount of debt for the District permitted in the District's service plan, for the purposes of financing or refinancing the District Improvements, and any refundings of the Bonds.

"**Bond Documents**" means any resolution, indenture, reimbursement agreement or contract under which the District incurs debt or other obligations in connection with financing or refinancing the District Improvements.

"**Bond Financing**" means the issuance of any Bonds or any other financing or agreement to fund, pay for or acquire the District Improvements, or to pay or reimburse the Public Improvements Costs related to the District Improvements, including any Bond Requirements.

"**Bond Requirements**" means all principal, redemption or purchase price premiums, if any, interest, reserves and other amounts required to be paid with respect to any Bonds outstanding from time to time.

"**Bond Trustee**" means any commercial bank or other institution serving as trustee of the Bonds appointed pursuant to the Bond Documents.

"**City**" has the meaning set forth in the Recitals.

"**Collecting Agent**" means the entity designated in accordance with the provisions of Section 9 to collect and receive the Public Improvement Fees and to remit the same to the District, a Bond Trustee or any other Person entitled thereto pursuant to the applicable Bond Documents, the PIF Agreement and this PIF Covenant.

"**Collecting Agent Agreement**" means the Collecting Agent Agreement between the District and the Collecting Agent, as amended and supplemented from time to time, containing terms consistent with the provisions of this PIF Covenant and the PIF Agreement.

"**Confidential Information**" has the meaning set forth in Section 6.

"**Declarant**" shall mean the Declarant named in this PIF Covenant, or a Person who is designated as Declarant in an instrument recorded in the real property records of the City and County of Denver, Colorado, and executed by the immediately preceding Declarant.

"**Declarant Improvements**" has the meaning set forth in the Recitals.

"Default Rate" means twelve (12%) per annum, but if such rate exceeds the maximum interest rate permitted by State law, such rate shall be reduced to the highest rate allowed by State law under the circumstances.

"District" has the meaning set forth in the Recitals and shall include any permitted successor or assign of the District as may be provided in the PIF Agreement.

"District Improvements" has the meaning set forth in the Recitals.

"Enforcing Party" has the meaning set forth in Section 7.

"Lodging Sales" means any exchange of lodging services for money or other media of exchange initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of the PIF Property that is subject to lodging taxation by the City pursuant to the Lodging Tax Ordinance, less any lodging services specified by the Declarant as exempt from the Public Improvement Fee from time to time. The PIF in connection with Lodging Sales shall not be considered revenue of the City for any reason. If the City stops levying a lodging tax generally, the term "Lodging Sales" shall mean any transaction by which a Person acquires for any consideration within the City any lodging service that would have been subject to the version of the Lodging Tax Ordinance last in effect.

"Lodging Tax Ordinance" means the City's lodging tax ordinance, presently codified in Chapter 53, Article IV of the City's Revised Municipal Code, and all regulations promulgated pursuant thereto, as it may be amended from time to time.

"Occupancy Agreement" means any lease, sublease, license, concession or other occupancy agreement between an Owner or an Occupant and an Operator under which the Operator is given the right to possess or occupy any portion of the Owned/Leased Property owned or occupied by the Owner or the Occupant.

"Occupant" means any Person who has the legal right pursuant to any Occupancy Agreement to possess or occupy any portion of the PIF Property, including without limitation any space within any building or improvement constructed on any PIF Property, and includes any Owner, if applicable; provided that a mortgagee, a trustee under or beneficiary of a deed of trust, or any other Person who has any right of possession primarily for the purpose of securing a debt or other obligation owed to such Occupant will not constitute an Occupant, unless and until such mortgagee, trustee, beneficiary or other Person becomes an Owner, 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, at which time such mortgagee, trustee, beneficiary or other Person will be considered an Occupant.

"Operator" means any Person, including the Declarant, an Owner or an Occupant, who is a seller or provider of goods or services and who engages in any PIF Sales.

"Ordinances" means, collectively, the Sales Tax Ordinance and the Lodging Tax Ordinance.

"Owned/Leased Property" means, with respect to any Owner, the portion of the PIF Property to which such Owner owns fee title, and with respect to any Occupant, the portion of the PIF Property which such Occupant has the right to possess or occupy pursuant to an Occupancy Agreement.

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

"Person" means any individual, partnership, corporation, limited liability company, association, trust, municipality, or any other type of governmental or non-governmental entity or organization.

"PIC" has the meaning set forth in the Recitals.

"PIF Agreement" has the meaning set forth in the Recitals.

"PIF Commencement Date" means the date upon which this PIF Covenant is recorded in the records of the Clerk and Recorder of City and County, Colorado.

"PIF Covenant" has the meaning set forth in the introductory paragraph of this PIF Covenant.

"PIF Property" means the real property within City and County of Denver, Colorado, that is owned by Declarant on the PIF Commencement Date as is specifically described in Exhibit A attached hereto and incorporated herein by this reference, and that will be subject to this PIF Covenant upon the recording hereof, provided that some or all of additional property may be made a part of the PIF Property pursuant to Section 21 and some of such real property may be excluded from the PIF Property pursuant to Section 20.

"PIF Sales" means, collectively, Retail Sales and Lodging Sales.

"PIF Termination Date" means the latest date on which any outstanding Bonds have been paid in full and discharged in accordance with the terms of the Bond Documents, all reimbursement obligations to the Declarant under the Reimbursement Agreement have been paid in full, the Declarant has been reimbursed in full for the Public Improvement Costs of the Declarant Improvements, the District has been reimbursed in full for the Public Improvement Costs of the District Improvements and the District determines, in its sole discretion, that there is no further present or future need for the financing, refinancing or construction of District Improvements.

"Public Improvements" has the meaning set forth in the Recitals.

"Public Improvements Costs" has the meaning set forth in the Recitals.

"Public Improvement Fee" or **"PIF"** has the meaning set forth in the Recitals.

"Reimbursement Agreement" has the meaning set forth in the Recitals.

"Report Recipients" has the meaning set forth in Section 5.

"Reports" has the meaning set forth in Section 5.

"Residential Property" means all portions of the PIF Property that are platted exclusively for residential use, zoned exclusively for residential use or otherwise restricted by recorded instrument exclusively for residential use, as of or after the PIF Commencement Date.

"Retail Sales" means any 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 that is subject to sales taxation by the City pursuant to the Sales Tax Ordinance, less any sales transactions specified by the Declarant as exempt from the Public Improvement Fee from time to time. The PIF in connection with Retail Sales shall not be considered revenue of the City for any purpose. If the City stops levying sales tax generally, the term "Retail Sales" shall mean any transaction by which a Person acquires for any consideration within the PIF Property any tangible personal property or service that would have been subject to sales taxation under the version of the Sales Tax Ordinance last in effect.

"Sales Tax Ordinance" means the City's sales tax ordinance, presently codified in Chapter 53, Article II of the City's Revised Municipal Code, and all regulations promulgated pursuant thereto, as may be amended from time to time.

"State" has the meaning set forth in the Recitals.

Section 2. Imposition of Public Improvement Fee. For the period commencing on the PIF Commencement Date through and until the PIF Termination Date, the Public Improvement Fee shall be imposed on all PIF Sales within the PIF Property as follows:

a. Each Operator shall 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 any portion of the Owned/Leased Property that is possessed or occupied by such Operator, and/or shall pay to the Collecting Agent, the Public Improvement Fee with respect to such PIF Sales transaction; and

b. Each Owner or Occupant who permits an Operator to occupy any portion of its Owned/Leased Property under an Occupancy Agreement shall require, pursuant to such Occupancy Agreement, that such Operator 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 any portion of such PIF Property, and/or shall pay to the Collecting Agent, the Public Improvement Fee with respect to such PIF Sales transaction. Each such Occupancy Agreement shall contain enforceable provisions incorporating by reference the obligation for the imposition and collection of the Public Improvement Fee on all PIF Sales transactions created by, and shall be subject to all requirements of, this PIF Covenant.

c. No later than sixty (60) days prior to the PIF Termination Date, the District shall notify each Operator, Owner and Occupant and the Collecting Agent in writing that the PIF Termination Date will occur on the date specified in such notice and

that the Operator, Owner or Occupant shall not collect the Public Improvement Fee after such designated PIF Termination Date.

Section 3. PIF Sales Information. Public Improvement Fees shall be collected and/or paid on all PIF Sales transactions in accordance with the provisions of this PIF Covenant. The District and the Collecting Agent may, from time to time, provide supplemental information relating to the calculation, payment and reporting of Public Improvement Fees to all Operators, Owners and Occupants, including (i) uniform guidelines specifying the scope of the definition of PIF Sales for purposes of calculating the Public Improvement Fee due hereunder and (ii) alternate collection and reporting procedures to conform, to the extent practicable, the collection and reporting procedures specified herein to the collection and reporting procedures followed by the City in its administration of the Sales Tax Ordinance or the Lodging Tax Ordinance, as applicable, which procedures shall take effect no earlier than thirty (30) days after written notice has been provided to all respective Operators, Owners and Occupants. For purposes of providing such information and determining the names and addresses of all Operators, each Owner or Occupant shall, within ten (10) business days after authorizing any Operator to occupy any portion of its Owned/Leased Property or upon receipt of a written request therefor from the District or the Collecting Agent, provide the District and the Collecting Agent with the name and address of each Operator that then occupies any portion of the Owned/Leased Property. Each Operator will be entitled to rely on the information provided by the District or the Collecting Agent for purposes of compliance with this PIF Covenant. The District or the Collecting Agent shall also promptly notify all Operators, Owners and Occupants of any procedures that the Operators must follow with respect to informing PIF Sales customers of the Public Improvement Fee, as such procedures are established by the District or the Collecting Agent in order to comply with the Bond Documents, the Sales Tax Ordinance or the Lodging Tax Ordinance, as applicable, any applicable laws, or reasonable business practices. In connection therewith, any Operator may inform PIF Sales customers on the point of sale receipt that the total amount of sales tax or lodging tax, as applicable, includes both sales taxes or lodging taxes, as applicable, and the Public Improvement Fee; provided, however, that each point of sale receipt shall include a brief text disclosure of that fact, and further provided that the Operator shall post at each point of sale a brief written disclosure regarding the Public Improvement Fee, explaining that it is not a tax, how it is calculated, how sales tax or lodging tax, as applicable, is calculated with respect to it, and how it is reflected on the point of sale receipt.

Section 4. Calculation, Payment and Reporting of Public Improvement Fee. Whether or not collected from PIF Sales customers, each Operator shall, on a monthly basis, pay all Public Improvement Fees imposed hereunder on all PIF Sales transactions initiated, consummated, conducted, transacted or otherwise occurring during the immediately preceding month from or within any portion of the Owned/Leased Property occupied by such Operator during such period. All Public Improvement Fees shall be due and payable without notice on the date required for payment of City sales tax under the Sales Tax Ordinance or payment of City lodging tax under the Lodging Tax Ordinance, as applicable. Unless the District otherwise directs, each Operator shall pay all Public Improvement Fees directly to the Collecting Agent. The procedures for the imposition, collection, segregation, payment and reporting (but not for the calculation) of the Public Improvement Fee shall be substantially similar in all material respects to those set forth in the Sales Tax Ordinance or the Lodging Tax Ordinance, as applicable, or as

otherwise set forth in any supplemental information provided by the Collecting Agent or District. Each Operator shall report all PIF Sales and remit the Public Improvement Fees thereon to the Collecting Agent on a monthly basis at the same time that the Operator reports and remits sales taxes or lodging taxes, as applicable, to the City under the Ordinances, employing reporting forms and following procedures provided by the Collecting Agent or the District that are intended to be substantially similar to those used and required by the City for the remittance of the City's sales taxes or lodging taxes, as applicable, under the Ordinances. The Public Improvement Fee shall be calculated and imposed on each PIF Sales transaction and added to the sales price of such PIF Sales transaction prior to the calculation and assessment of any City or State sales or lodging taxes, as applicable, and before any taxes of any other taxing entity required to be imposed by law on PIF Sales. All taxes of the City, the State and other taxing entities shall, to the extent that such taxes apply to the PIF Sales transaction, be calculated and assessed on the sum of the PIF Sales price plus the amount of the Public Improvement Fee. Specific instructions regarding reporting forms and payment procedures for the Public Improvement Fee will be provided to all Operators by the Collecting Agent or the District, and each Operator will be entitled to rely thereon for purposes of compliance with this Section 4. The Declarant hereby acknowledges, and any other Owner by acquiring fee title to any portion of the PIF Property subject to this PIF Covenant and 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 Operator whom such Owner or Occupant permits to possess or occupy any portion of its Owned/Leased Property to acknowledge, prior to conducting any business on any Owned/Leased Property, that the Public Improvement Fee is not a tax in any form and that the authority of the Collecting Agent to receive the Public Improvement Fee is derived through this PIF Covenant and the Collecting Agent Agreement. The District or the Collecting Agent shall promptly notify in writing each Operator of the name and address of the Collecting Agent and provide appropriate directions for payment and reporting of the Public Improvement Fees. For purposes of compliance with this Section 4, each Operator will be entitled to rely upon such written notice of the designation of the Collecting Agent. No provision of this PIF Covenant shall be construed or applied to alter, modify, limit or effect any sales or lodging taxes that may be imposed by the City or the State or any other applicable taxing authority.

Section 5. Additional Reporting Requirements. Each Operator shall, with respect to that portion of the Owned/Leased Property occupied by such Operator, deliver to the District and the Collecting Agent (collectively, the "**Report Recipients**") true and complete copies of all written reports, returns, statements, records and declarations, including any supplements or amendments thereto (collectively, the "**Reports**") made or provided to the City or the State by such Operator in connection with all sales and lodging taxes for the corresponding tax period at the same time that such Reports are delivered to the City or the State. If any subsequent adjustments, additions or modifications are made by an Operator to any sales or lodging taxes reported in such Reports, such Operator shall provide the Report Recipients with true and complete copies of all revised Reports and any other information issued or filed by such Operator in regard thereto. If any such adjustment increases the amount of the Public Improvement Fee which an Operator is required to remit or pay or results in a refund of such Public Improvement Fee, such Operator shall process and pay such adjusted Public Improvement Fee in a manner substantially similar to the process used and required by the City for an adjustment of the City's sales taxes or lodging taxes, as applicable, due under the Ordinances.

Such Operator shall claim any credit or refund or shall pay such additional Public Improvement Fee in the next monthly reporting period by use of the standard reporting and remittance forms. All Reports made or provided by an Operator shall be maintained by such Operator for at least three (3) years from the date of submission thereof to the Collecting Agent, the City and/or the State and, upon written request, will be made available to the Report Recipients for inspection and audit. All Reports received by the District or the Collecting Agent shall, and the District will cause all Reports to, remain confidential and be used by the Report Recipients, the Bond Trustee, the Declarant and their employees, agents and consultants only for purposes of collecting the Public Improvement Fee, enforcing the obligations of any Operator hereunder, monitoring compliance with the provisions of this PIF Covenant, or disseminating information to prospective purchasers or owners of the Bonds, unless otherwise required to be made public by law.

Section 6. Audits and Release of Information by Collecting Agent. By acquiring a possessory interest in and to any Owned/Leased Property that is subject to the terms and conditions of this PIF Covenant, each Operator hereby specifically authorizes the District, the Collecting Agent, the Bond Trustee, and any accountant or financial consultant designated by the District and the Collecting Agent (collectively, the "**Auditor**") to audit its books and records with respect to that portion of the Owned/Leased Property occupied by such Operator to determine compliance with the Public Improvement Fee collection and remittance obligations of such Operator under this PIF Covenant and to release to the District, the Collecting Agent, the Bond Trustee, and the Declarant (but not to any other Person, except as required by law) such audited information and any Reports, returns (including sales and lodging tax returns), and other documents delivered to the Auditor by the Operator and any relevant information gathered by the Auditor during an audit or in reviewing such Reports, returns or other documents (collectively, the "**Confidential Information**"); provided, however, that (i) no Auditor may be engaged on a contingency-based compensation system, and (ii) all Confidential Information, together with the contents thereof, shall be deemed proprietary, shall be kept strictly confidential, and shall not be disclosed or otherwise published by any Person to whom the Auditor so releases Confidential Information, except for such disclosures or publications as may be required by law. Without limiting the foregoing confidentiality and non-disclosure requirements, any publication or disclosure of Confidential Information submitted by or pertaining to an Operator (or the contents of such Confidential Information) by the District, the Collecting Agent or the Bond Trustee (or by anyone else to whom the Auditor is required by law to disclose Confidential Information) will, unless otherwise prohibited or restricted by law, be made only on an aggregated basis together with similar information submitted by other Operators and without direct disclosure of the specific Public Improvement Fee collections or PIF Sales transactions of such Operator. Each Operator shall be protected by, and may rely upon, the confidentiality provisions set forth in this PIF Covenant.

Section 7. Compliance and Enforcement.

a. Each Operator shall comply with all policies and requirements of the Collecting Agent or the District regarding the collection and remittance of Public Improvement Fees and notification to PIF Sales customers of the imposition and collection of the Public Improvement Fee as such policies and requirements are communicated by the Collecting Agent or the District to each Operator in writing from

time to time. The failure or refusal of any Operator to impose, collect or remit the Public Improvement Fee, or to comply with the requirements concerning notification to PIF Sales customers as required in this PIF Covenant, will constitute a default by such Operator under the terms of this PIF Covenant.

b. The District and the Bond Trustee are hereby expressly made third-party beneficiaries of each Operator's obligations under this PIF Covenant, including without limitation the imposition, collection and remittance of the Public Improvement Fee. The Declarant hereby acknowledges, and any other Owner by acquiring fee title to any portion of the PIF Property subject to this PIF Covenant and 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 Operator whom such Owner or Occupant authorizes to possess or occupy any portion of its Owned/Leased Property to acknowledge, prior to conducting any business at any Owned/Leased Property, that the District, the Collecting Agent and the Bond Trustee will have a direct cause of action and full right and authority to enforce each Operator's obligations under this PIF Covenant, and that no default by an Occupant under any provision of the Occupancy Agreement pursuant to which an Operator occupies any portion of such Owned/Leased Property will entitle any Occupant or Operator to any offset, deduction or other defense to payment of all Public Improvement Fees due hereunder.

c. All Public Improvement Fees that are not paid when due hereunder will bear interest at the Default Rate and will be subject to a late fee imposed in the sole discretion of the District from time to time in an amount not to exceed ten percent (10%) of the amount due. Any Operator who fails to make timely remittance of any Public Improvement Fees shall pay, or reimburse the Bond Trustee, the Collecting Agent or the District for, all interest from the date due at the Default Rate, such other fees imposed, and all enforcement and collection costs, including reasonable attorney's fees (collectively the "**Delinquency Costs**").

d. Notwithstanding anything to the contrary contained in this PIF Covenant, the District, the Collecting Agent and the Bond Trustee, or any Person designated by any of the foregoing parties (collectively, an "**Enforcing Party**") shall have the right to enforce all provisions of this PIF Covenant against any Operator that fails to comply with any term or condition of this PIF Covenant. An Enforcing Party shall also be awarded and recover from any defaulting Operator all reasonable costs and expenses incurred by such Enforcing Party in successfully enforcing the obligations of such Operator under this PIF Covenant in any legal proceeding brought or defended by such Enforcing Party.

Section 8. Use and Pledge of Public Improvement Fee Revenues. The revenues generated by the Public Improvement Fee imposed pursuant to this PIF Covenant may be used for acquiring, designing, constructing, installing, operating, and maintaining Public Improvements, the repayment of indebtedness and obligations incurred in connection with Public Improvements (including the reimbursement obligations incurred by the District under the Reimbursement Agreement), and payment of interest, reserve, administrative, issuance, and other costs relating to such indebtedness and obligations. Any right, title, and interest of the

Declarant in the Public Improvement Fee are hereby assigned by the Declarant to the District; provided, however, notwithstanding any such assignment, the Declarant will be entitled to receive revenues generated by the Public Improvement Fee for reimbursement of the Declarant Improvements in accordance with and as may otherwise be provided for in the PIF Agreement, and to enforce this PIF Covenant for the benefit of the District in accordance with the provisions contained herein against any Occupant or Operator. The District is hereby expressly authorized to pledge the revenues generated by the Public Improvement Fee for the payment of any Bonds in accordance with the terms of the Bond Documents, subject to such terms and provisions as may be provided for in the PIF Agreement. The Collecting Agent is hereby authorized to pay so much of the Public Improvement Fees received by it as may be pledged to the Bond Trustee, to the District, to the Declarant or to any other Person entitled thereto pursuant to the terms of the PIF Agreement and the Bond Documents.

Section 9. Collecting Agent. The District intends to function as the initial Collecting Agent. Subject to any Bond Documents, the District may in the future, from time to time, designate an entity or entities to serve as the Collecting Agent. The District or Bond Trustee may terminate any Collecting Agent and redesignate a successor Collecting Agent upon not less than forty-five (45) days' written notice to each Operator in accordance with Section 4.

Section 10. General Acknowledgement. The Declarant hereby acknowledges, and any other Owner by acquiring fee title to any portion of the PIF Property subject to this PIF Covenant and 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, prior to conducting any business at any Owned/Leased Property, that the provisions of this PIF Covenant have been or will be agreed to by the District and the Bond Trustee, and that the District and the Bond Trustee are or will be relying upon this PIF Covenant in taking certain actions with respect to the Public Improvement Fee, the Bond Financing, the undertaking of the acquisition, construction and completion of the District Improvements, and the incurrence of the Public Improvements Costs with the express understanding and condition that this PIF Covenant will not be amended, modified or waived without the prior written consent of the Declarant, the District and, if required by the Bond Documents, the Bond Trustee. Accordingly, the Declarant hereby agrees, and all other Owners and Occupants shall be deemed to have agreed, that no amendment or modification will be made to, nor any waiver made or accepted by any Owner or any Occupant with respect to, this PIF Covenant and that any such purported amendment, modification or waiver shall be void and of no force and effect without the prior written consent of the Declarant, the District and, if required by the Bond Documents, the Bond Trustee. Further, and without in any way affecting the enforceability of the foregoing acknowledgement attributed to each Owner and Occupant, including all Operators, each Owner and Occupant will cause any Operator whom such Owner or Occupant permits to possess or occupy any portion of its Owned/Leased Property to acknowledge prior to conducting any business at any Owned/Leased Property that the provisions of this PIF Covenant pertaining to Operators have been or will be agreed to by the Declarant, the District and the Bond Trustee, and that the Declarant, the District and, if required by the Bond Documents, the Bond Trustee are or will be relying upon this PIF Covenant in taking certain actions with respect to the Public Improvement Fee, the Bond Financing, the undertaking of the acquisition, construction and completion of the Public Improvements, and the incurrence of the Public Improvements Costs with the express understanding and condition that the provisions of this PIF Covenant pertaining to Operators will not be amended, modified or

waived without the prior written consent of the Declarant, the District and, if required by the Bond Documents, the Bond Trustee. Accordingly, each Operator shall be deemed to have agreed that no amendment or modification will be made to, nor any waiver made or accepted by such Operator with respect to, the provisions of this PIF Covenant that pertain to Operators, and that any such purported amendment, modification or waiver will be void and of no force and effect, unless made with the prior written consent of the Declarant, the District and, if required by the Bond Documents, the Bond Trustee.

Section 11. Owner/Occupant Obligations. Each Owner and Occupant will cause each Operator to whom such Owner or Occupant leases, or whom such Owner or Occupant otherwise authorizes to occupy any portion of its Owned/Leased Property under an Occupancy Agreement with such Operator, to acknowledge and agree to all provisions of this PIF Covenant that pertain to such Operator. The Occupancy Agreement shall expressly provide that in addition to the default provisions under this PIF Covenant, failure by the Operator to pay the full amount of all Public Improvement Fees due and owing hereunder shall constitute a default of the Occupancy Agreement.

Section 12. No Dominion or Control by the Declarant. Except as otherwise provided in this Section and except as may be provided for in the PIF Agreement, the District shall have all right, title and interest in the Public Improvement Fees for use in connection with the Public Improvements, all in accordance with the provisions of this PIF Covenant and the PIF Agreement. Notwithstanding anything contained in this PIF Covenant or in any document related to the PIF Property to the contrary (except as otherwise provided in this Section and except as may be provided for in the PIF Agreement), the Declarant does not have, and will not be entitled, authorized or empowered to exercise any dominion or control or ownership interest over the Public Improvement Fees imposed or collected pursuant to this PIF Covenant. Except as otherwise provided in this Section and except as may be provided for in the PIF Agreement, if and to the extent that the Declarant is deemed to have any right, title or interest in the Public Improvement Fees, which is not intended, all right, title and interest of Declarant in the Public Improvement Fees and the obligations of the Operators hereunder shall irrevocably, absolutely and unconditionally be transferred, sold, assigned and conveyed by the Declarant to the District or the Bond Trustee for completion of the Public Improvements. Except as otherwise provided in this Section and except as may be provided for in the PIF Agreement, to the extent that any Public Improvement Fees are collected by the Declarant during the term of this PIF Covenant, the Declarant will be deemed to be acting as an agent on behalf of the District in implementing this PIF Covenant and providing for the collection and payment of the Public Improvement Fees. Subject to the express terms of this Section 12, it is intended and hereby declared that (i) the Public Improvement Fee is a charge imposed on Operators to pay the Public Improvements Costs as provided herein; (ii) the nature of the Public Improvement Fee is that of a contractual charge imposed for the benefit of the PIF Property, the Declarant, the District and other Persons as may be specified under the PIF Agreement and not through the exercise of any power by the City or any other public taxing authority; (iii) Public Improvement Fees are not tax revenues in any form, and the Public Improvement Fee will not be enforceable by the City, except to the extent authorized when acting as a Collecting Agent; (iv) all Public Improvement Fees received by the District will be used to pay and discharge the Bond Requirements, to acquire and pay for the Public Improvements, to pay and reimburse the Public Improvements Costs (including the reimbursement of Public Improvement Costs pursuant to the Reimbursement Agreement), or as

may otherwise be provided in this PIF Covenant, the PIF Agreement, or the Bond Documents; and (v) the authority of the District, the Collecting Agent and the Bond Trustee to receive the Public Improvement Fees is derived through this PIF Covenant, as may be supplemented by the PIF Agreement, the Collecting Agent Agreement and the Bond Documents. Notwithstanding anything contained in this Section to the contrary, the Declarant shall be entitled to receive revenues generated by the Public Improvement Fee for the reimbursement of Declarant Improvements.

Section 13. Notice to Operators. Whenever notice to any Operator is required pursuant to the provisions of this PIF Covenant, the notice provided shall be deemed sufficient if given in writing to such Operator at the addresses previously provided to the party giving such notice or at another address which became known to the party giving such notice after a reasonably diligent effort to ascertain the address of such Operator, including without limitation the address of such Operator listed in the City's sales tax and lodging tax records.

Section 14. Governing Law. This PIF Covenant will be governed by, and enforced in accordance with, the laws of the State.

Section 15. Covenants Burdening the Land. The covenants, agreements, promises and duties as set forth in this PIF Covenant shall be construed as covenants and not as conditions affecting the PIF Property. To the fullest extent legally possible, each such covenant shall run with the PIF Property and each portion of it, including without limitation any Owned/Leased Property; shall be enforceable against the Owner, Occupant or Operator, as the respective covenantor may be in each case, of each portion of the PIF Property; and shall constitute an equitable servitude burdening each portion of the PIF Property and the respective covenantor for each portion of the PIF Property for the benefit of the Declarant, the District, the Collecting Agent and the Bond Trustee, as and to the extent set forth in this PIF Covenant. Each covenant hereunder to do or refrain from doing some act or with respect to any activity on any portion of the PIF Property, including without limitation any Owned/Leased Property, (i) is a burden upon such portion of the PIF Property and is for the benefit of each portion of the PIF Property and for the benefit of the Declarant, the District, the Collecting Agent and the Bond Trustee as and to the extent set forth in this PIF Covenant; (ii) shall be a covenant running with the land with respect to both the burdened and benefited portions of the PIF Property; (iii) shall be binding upon the Owner, Occupant and Operator, as the respective covenantor may be in each case, of, and each successor and assign of their respective interests in, such portion of the PIF Property; and (iv) shall inure to the benefit of the Declarant, the District, the Collecting Agent and, if applicable, the Bond Trustee. All covenants and agreements under this PIF Covenant shall terminate and expire without further notice or action by any Person on the PIF Termination Date, except with respect to any obligation arising hereunder that has not been paid, discharged or satisfied in full by any Owner, Occupant or Operator of any portion of the PIF Property. If and to the extent that any of the covenants or other provisions herein would otherwise be unlawful or void for violation of the rule against perpetuities, the rule restricting restraints on alienation, or any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants affecting the PIF Property may be valid, then such covenants and provisions will continue and endure only until the expiration of a period of fifty (50) years after the PIF Commencement Date.

Section 16. Amendment by the Declarant. Subject to the provisions hereof regarding obtaining the prior written consent of the District and, if required by the Bond Documents, the Bond Trustee, the Declarant shall be entitled to make substantive amendments to the provisions of this PIF Covenant with the consent of the Owners (including the Declarant) who hold fee title to not less than twenty-five percent (25%) of the total acreage of the PIF Property; provided, however, that the Declarant shall not be obligated to make any such substantive amendments even if so directed by the Owners who hold fee title to one hundred percent (100%) of the total acreage of the PIF Property.

Section 17. Severability. The invalidation of any provision in this PIF Covenant or of the application thereof to any Person or entity by judgment or court order will in no way affect any other provision of this PIF Covenant or the application thereof to any other Person or entity or circumstance, and the remainder of this PIF Covenant will remain in full force and 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 the Declarant as expressed or implied by this PIF Covenant, then such invalidated provision shall be construed, and this PIF Covenant will be deemed amended, so that such invalidated provision is replaced with an enforceable provision that effectuates as nearly as possible the intentions of the Declarant as stated herein.

Section 18. No Other Third-Party Beneficiary. It is expressly understood and agreed that enforcement of the terms and conditions of this PIF Covenant, and all rights of action relating to such enforcement, shall be strictly reserved to the Declarant, the District, the Bond Trustee, the Collecting Agent, and any other Person as expressly designated herein, and their duly authorized successors and assigns, and nothing contained in this PIF Covenant shall give or allow any such claim or right of action by any other Person with respect to this PIF Covenant; provided, however, that each Operator shall be a beneficiary of, and be entitled to enforce, the confidentiality provisions set forth in this PIF Covenant.

Section 19. Right of Access. Prior to the PIF Termination Date, each of the District and the Collecting Agent shall have an irrevocable license to enter upon any property to inspect it for the purpose of ensuring compliance with this PIF Covenant; provided, however, that with respect to any portion of any Owned/Leased Property occupied or possessed by an Operator, the license shall extend to only those portions of the Owned/Leased Property in which PIF Sales transactions are conducted with the public, and the license may be exercised only in periods during which the Operator's Owned/Leased Property is open for the conduct of PIF Sales transactions.

Section 20. No Common Interest Community; Withdrawal of Residential Property. This PIF Covenant does not create a "common interest community," as defined in the Act. Therefore, the Act does not apply to this PIF Covenant or the Declarant, and the terms of this PIF Covenant and other PIF documents shall be read, construed and interpreted accordingly. Accordingly, any lots created within the PIF Property are not "units," the Declarant is not a "declarant" and this PIF Covenant is not a "declaration," as such terms are defined in Act. Consequently, neither the District nor the Declarant is, nor does either operate as, an "association" or a "master association" (as those terms are defined in the Act). The District and

the Declarant do not own, and shall not establish, own, lease, license or operate, any "common elements" (as defined in the Act).

Notwithstanding any other provision of this PIF Covenant, Declarant shall have the right and ability, from time to time and upon 30 days prior written notice to the District, but otherwise without the consent of any other Person, to withdraw from the application of this PIF Covenant and the definition of "PIF Property" hereunder any Residential Property. Such Residential Property will be deemed withdrawn from the application of this PIF Covenant and the definition of "PIF Property" hereunder upon recording of a supplement to this PIF Covenant by Declarant in the real property records of the City and County of Denver, State of Colorado, setting forth the legal description of the Residential Property and stating that the Residential Property is withdrawn from the application of this PIF Covenant and will not constitute "PIF Property" for purposes of this PIF Covenant. Such supplement shall be in the form attached hereto as Exhibit B.

Section 21. Additional PIF Property. The Declarant may record a supplement to this PIF Covenant in the real property records of the City which will set forth the legal description of such additional property and state that, from and after the date of such recording, such additional property will constitute PIF Property for all purposes under this PIF Covenant. From and after the date any such supplement is properly signed, acknowledged and recorded, any such additional property described therein will constitute, and become a part of, the PIF Property for all purposes under this PIF Covenant.

Section 22. Public Improvement Corporation. If the Declarant elects to form a PIC, the PIC shall be deemed to have succeeded to the District's role in administering this PIF Covenant and the PIF Agreement and will assume all rights and obligations of the District in such role as set forth in this PIF Covenant and as may be set forth in the PIF Agreement.

[Signature Page Follows]

EXHIBIT A**LEGAL DESCRIPTION OF PIF 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

**FORM OF SUPPLEMENT WITHDRAWING
RESIDENTIAL PROPERTY FROM PIF COVENANT**

THIS SUPPLEMENT WITHDRAWING RESIDENTIAL PROPERTY FROM PIF COVENANT ("**Supplement**") is made as of _____, 20__ (the "**Effective Date**") by RAIL STOP LLC, a Colorado limited liability company ("**Declarant**").

1. Declarant recorded the Declaration of Covenants Imposing and Implementing the Aviation Station North Public Improvement Fee on _____, 2015, at Reception No. _____ in the real property records of the City and County of Denver, State of Colorado [(the "**Records**")], and recorded a Supplement thereto on _____, 20__, at Reception No. _____ in the Records] ([collectively,] the "**PIF Covenant**"). The PIF Covenant encumbers the real property described in Exhibit A attached to the PIF Covenant[, as such description has been amended by the recorded supplements] (the "**PIF Property**").

2. Section 20 of the PIF Covenant provides that Declarant shall have the right and ability, from time to time and upon 30 days prior written notice to the District (as defined in the PIF Covenant), but otherwise without the consent of any other person, to withdraw from the application of the PIF Covenant and from the definition of PIF Property under the PIF Covenant any Residential Property (as defined below) by recording a supplement to the PIF Covenant.

3. The PIF Covenant defines "**Residential Property**" as all portions of the PIF Property that are platted exclusively for residential use, zoned exclusively for residential use or otherwise restricted by recorded instrument exclusively for residential use, as of or after the PIF Commencement Date (as defined in the PIF Covenant).

4. The real property described in Schedule I attached hereto, and made a part hereof, is Residential Property (the "**Subject Property**").

5. With respect to the foregoing, Declarant has given 30 days' notice to the District regarding the matters herein and hereby withdraws the Subject Property from the application of the PIF Covenant and from the definition of PIF Property under the PIF Covenant.

RAIL STOP LLC, a Colorado limited liability
company [or successor Declarant]

By: _____
Title _____

Schedule 1

SUBJECT PROPERTY