

CITY OF WHEAT RIDGE, COLORADO
RESOLUTION NO. 55
Series of 2019

TITLE: A RESOLUTION APPROVING THE PIF COLLECTING AGENT AGREEMENT BETWEEN THE CITY OF WHEAT RIDGE, THE LONGS PEAK METROPOLITAN DISTRICT AND EVERGREEN-CLEAR CREEK CROSSING, L.L.C.

WHEREAS, pursuant to Charter Section 14.2 and C.R.S. § 29-1-203, the City of Wheat Ridge is authorized to enter into cooperative agreements with other governmental entities; and

WHEREAS, pursuant to C.R.S. § 31-15-101(1)(c), the City may enter into contracts with any person; and

WHEREAS, the City, the Longs Peak Metropolitan District (“District”), and Evergreen-Clear Creek Crossing, L.L.C. (“Evergreen”) have entered into a Public Finance Agreement to finance the construction of public improvements to serve a mixed-use development known as Clear Creek Crossing (the “Project”); and

WHEREAS, Evergreen has recorded against the Project’s property certain covenants imposing public improvement fees on retail, admissions, and lodging sales (the “PIFs”); and

WHEREAS, the City, District, and Evergreen have negotiated an agreement whereby District and Evergreen will engage the City as a Collecting Agent to collect revenue generated by the PIFs in a similar manner as the City collects taxes for retail, admissions, and lodging sales; and

WHEREAS, the City Council wishes to approve the PIF Collecting Agent Agreement, which will help facilitate the financing and development of the Project and otherwise promote the general health, safety, and welfare of the City’s taxpayers, residents, and inhabitants.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Wheat Ridge, Colorado, that:

The PIF Collecting Agent Agreement by and between the City, the Longs Peak Metropolitan District, and Evergreen-Clear Creek Crossing, L.L.C. attached to this Resolution is hereby approved, and the Mayor and City Clerk are authorized and directed to execute the same.

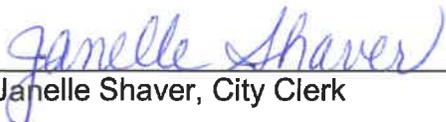
DONE AND RESOLVED this 23rd day of September, 2019, at Wheat Ridge, Colorado.

CITY COUNCIL OF THE CITY OF WHEAT RIDGE
JEFFERSON COUNTY, COLORADO



Bud Starker, Mayor

ATTEST:



Janelle Shaver, City Clerk



PIF COLLECTING AGENT AGREEMENT

This **PIF COLLECTING AGENT AGREEMENT** (the "**Agreement**") is effective September 23, 2019, among the **LONGS PEAK METROPOLITAN DISTRICT** (the "**District**"), a quasi-municipal corporation and political subdivision of the State of Colorado ("**State**"), **EVERGREEN- CLEAR CREEK CROSSING, L.L.C.**, an Arizona limited liability company (the "**Developer**"), and the **CITY OF WHEAT RIDGE** (the "**City**"), a home rule city and political subdivision of the State.

RECITALS

A. The District was formed to provide Public Improvements and services for development of property within and without its boundaries.

B. The District, Developer and the City entered into a Public Finance Agreement (the "**PFA**"), dated July 9, 2018, which provides for Public Improvement Fees (the "**PIFs**") to be imposed on property by means of a covenant that runs with the land and applicable to activity conducted within a project known as Clear Creek Crossing (the "**CCC Project**") to support District bonds for the construction of Public Improvements all as defined in the PFA (the "**District Bonds**").

C. The Public Infrastructure to be constructed by the District will touch and concern the land and will benefit the CCC Project and surrounding property.

D. The District will enter into one or more agreements with a trustee (the "**Trustee**") concerning receipt of funds generated under the PFA and to apply those funds to payments on District Bonds and for the benefit of the Public Improvements (the "**Bond Indenture**").

E. The Developer has recorded against the CCC Project property:

1. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Lodging Credit Public Improvement Fee at Reception No. 2018065896 in the real property records of the Clerk and Recorder of Jefferson County, Colorado; and,

2. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Retail Credit Public Improvement Fee at Reception No. 2018065894 in the real property records of the Clerk and Recorder of Jefferson County, Colorado;

3. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Admissions Credit Public Improvement Fee at Reception No. 2018065898 in the real property records of the Clerk and Recorder of Jefferson County, Colorado;

4. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Admissions Add-On Public Improvement Fee at Reception No. 2018065897 in the real property records of the Clerk and Recorder of Jefferson County, Colorado;

5. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Lodging Add-On Public Improvement Fee at Reception No. 2018065895 in the real property records of the Clerk and Recorder of Jefferson County, Colorado; and,

6. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Retail Add-On Public Improvement Fee at Reception No. 2018065893 in the real property records of the Clerk and Recorder of Jefferson County, Colorado

(the "**PIF Covenants**"), pursuant to which a PIF will be imposed, and funds collected and paid (the "**PIF Revenue**").

F. The City regularly collects taxes pursuant to the Wheat Ridge Code of Laws and all regulations promulgated thereunder (the "**Tax Ordinance**") and is willing to collect the PIF Revenue on behalf of the District and the Developer to facilitate the completion of the Public Improvements, which will be beneficial to the City and its citizens.

G. The parties acknowledge that (i) the PIFs are a charge imposed pursuant to the PIF Covenants for the benefit of the CCC Project and not through the exercise of any power by the City; (ii) the PIF Revenue is not tax revenue in any form; (iii) the PIF Revenue is to be pledged and used for the payment of the principal of and interest on the District Bonds or as otherwise provided in the PFA and Bond Indentures; and (iv) the authority of the City to collect the PIFs is derived through this Agreement and the City's authority is limited by and enforceable only in accordance with the terms of this Agreement.

H. The District Bonds do not constitute obligations, indebtedness or multiple fiscal year financial obligations of the City and do not constitute or give rise to a pecuniary liability of the City, or a charge against its general credit or taxing powers. The City has no obligations of any nature to pay the principal of or interest on the District Bonds.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual agreements, promises and covenants herein contained, the parties agree as follows:

ARTICLE I DEFINITIONS

Section 1.1. DEFINITIONS. Any capitalized term not defined in this Agreement but defined in the PIF Covenants shall have the meaning given to such term in the PIF Covenants. If

any term is defined in both the PIF Covenants and this Agreement, the definition set forth herein shall control for all purposes of this Agreement. The following capitalized terms shall have the following meanings unless the context requires otherwise.

"**Agreement**" means this PIF Collecting Agent Agreement as amended and supplemented from time to time.

"**City**" has the meaning set forth in the introductory paragraph.

"**Collecting Agent**" means the City acting as the agent of the District.

"**Collection Fee**" means a fee equal to two percent (2%) of the PIF Revenue.

"**Information**" means any written information or guidelines prepared by the District and the Collecting Agent regarding the calculation, payment and reporting of the PIFs, as amended and supplemented from time to time.

"**PIF Sales**" means the "Admissions Sales", "Lodging Sales" and "Retail Sales" defined in the PIF Covenants.

"**Public Improvements**" has the meaning set forth in the PFA.

"**Report Recipients**" are the City, Trustee and District.

"**Waiver of Confidentiality**" means a waiver of confidentiality agreement that is substantially similar in form and substance to the form of the Public Financing Addendum for tenant Retailers which is attached hereto as Exhibit A and incorporated herein by this reference for all purposes, as amended and supplemented from time to time.

ARTICLE II PUBLIC IMPROVEMENT FEES

Section 2.1. Payment of Public Improvement Fees. The PIFs shall be determined, calculated, adjusted and payable by Retailers in accordance with the terms and provisions of the PIF Covenants. The procedures for the collection, segregation, remittance, payment, delinquencies and reporting (but not for the calculation) of the PIFs shall be substantially similar to those procedures followed by the City for the collection of the related taxes or as otherwise supplemented or provided in the Information.

Section 2.2. Remittance of Public Improvement Fees. PIFs shall be paid to the City as the Collecting Agent substantially as set forth below:

a. No later than the monthly date that taxes are payable, each Retailer shall remit all PIF amounts payable pursuant to the PIF Covenants to the Collecting Agent on reporting forms provided by the Collecting Agent.

b. All adjustments, including refunds, additions or other modifications, to PIFs payable shall be processed in a manner substantially similar to the process followed by the City for an adjustment of the related City tax. If an adjustment increases the amount of the PIF or results in a refund of such PIF, the payer shall claim any credit or pay additional PIFs in the next monthly reporting period utilizing the City's standard reporting and remittance forms.

ARTICLE III COLLECTION OF PUBLIC IMPROVEMENT FEES

Section 3.1. Appointment of City as Collecting Agent.

a. The District and Developer appoint the City as Collecting Agent for purposes of receiving, collecting, administering, remitting and disbursing all PIF Revenue paid pursuant to the PIF Covenants during the term of this Agreement. City accepts the responsibility of receiving the PIF Revenue and, after deduction of the Collection Fee, depositing the PIF Revenue within five (5) business days after receipt and processing as directed by the District, and upon payment in full or defeasance of the District Bonds, as directed by the Developer.

b. PIF Revenue constitutes funds collected for another government within the meaning of *Article X, Section 20, of the Colorado Constitution*. The City is not the agent of any person other than the District and Developer and shall have only those responsibilities expressly stated and in written correspondence from the District or Developer, as applicable, directing payment or deposit of the PIF Revenue. The obligations of the City under this Agreement shall not constitute a multiple fiscal year direct or indirect debt or other financial obligations of the City, and the payment of any costs incurred or to be incurred by the City in performing its obligations hereunder shall be subject to annual appropriation by the City Council.

c. The PIF Revenue collected pursuant to this Agreement will be utilized as provided in the PFA and the Bond Indentures, and, after deduction of the Collection Fee, shall be distributed in accordance with the terms of this Agreement.

Section 3.2. Covenant of the Parties.

a. Each party hereby represents and warrants to and for the benefit of the other party:

(1) That it has full power and legal authority to enter into this Agreement;

(2) That it has taken or performed all acts or actions that may be required by its governing documents, statute or charter to confirm its authority to execute, deliver and perform each of its obligations under this Agreement; and

(3) That neither the execution and delivery of this Agreement, nor compliance with any of the terms, covenant or conditions of this Agreement will result in a violation of or default under any other agreement or contract to which it is a party or by which it is bound.

b. From time to time but not later than the last day of each calendar month commencing with the date of execution of this Agreement, each party will, to the extent that it has actual knowledge thereof, provide to the other party a current listing of the name and address of each person or entity required to pay PIFs (the “**PIF Obligors**”) and the date of opening of the retailer’s store or operation subject to the PIF Covenants.

c. The District will file, or cause to be filed, with the Collecting Agent a Waiver of Confidentiality executed by each PIF Obligor, authorizing the Collecting Agent to share information contained in the reports, returns and other documents delivered by the PIF Obligor. The Collecting Agent shall be responsible for providing reports to the Report Recipients only for PIF Obligors for whom the District has provided a Waiver of Confidentiality, and to the extent permitted by law, the District shall indemnify and hold the City harmless from any liability that may arise from the release of such reports to the Report Recipients.

d. The parties shall cooperate with each other and shall undertake any reasonably necessary action that is required to support or assist in the collection, remittance and reporting of all PIFs.

Section 3.3. Provision of PIF Information to PIF Obligors. Within ten days after receipt of written notice from the District of any new PIF Obligor, the Collecting Agent shall provide the PIF Obligor: (i) all Information or policies and procedures adopted by the District regarding the calculation, payment and reporting of PIFs, and (ii) all reporting forms, procedures and other instructions concerning the collection and remittance of PIFs to the Collecting Agent, and all information required under the PIF Covenants.

Section 3.4. Collection and Reporting of PIF Revenues.

a. The parties shall take the following specific actions in connection with the collection and reporting of PIF Revenues:

(1) The Collecting Agent shall receive PIF Revenue remitted by PIF Obligors and, after deduction of the Collection Fee, transfer, remit to and deposit it within five (5) business days after receipt and processing thereof as directed in writing by the District or Developer, as applicable.

(2) The Collecting Agent shall receive from PIF Obligors all reports, returns and other documents delivered pursuant to the PIF Covenants. If a Waiver of Confidentiality has been provided, the Collecting Agent shall, subject to the terms of Section 3.2.c, make copies of all reports, returns and other documents available to the Report Recipients.

(3) Following the procedures and timelines applied by the City for the collection of taxes, the Collecting Agent shall send a first delinquency notice to any PIF Obligor (i) that fails to timely remit PIF Revenue during the preceding collection month or (ii) that the Collecting Agent has reasonably determined to have paid an incorrect amount for the preceding collection month. The Collecting Agent shall send copies of all first delinquency notices to the

District, together with a report of the amount of such delinquency, and the period for which such PIF Obligor is delinquent.

(4) Following the procedures and timelines applied by the City for the collection of taxes, the Collecting Agent shall send a second delinquency notice to any PIF Obligor that has not paid any delinquent PIF. The Collecting Agent shall send copies of all second delinquency notices to the District, together with a report listing the name of each PIF Obligor to whom the second delinquency notice was sent, the amount of such delinquency, and the period of delinquency.

(5) The Collecting Agent is not obligated to distribute additional delinquency notices after the second delinquency notice.

(6) In accordance with terms mutually acceptable to and subsequently approved in writing, the Collecting Agent, Developer or District may initiate, pursue and enforce, or cause to be pursued and enforced, civil actions or other judicial proceedings to collect any delinquent PIFs, interest or penalties due, or to enforce any other obligation under the PIF Covenants. Otherwise, the City shall have no obligation to undertake any enforcement action of any nature.

(7) Subject to subparagraph b. of this Section 3.4, the Collecting Agent shall prepare and deliver to the District and Developer, on or as soon as practicable after the 45th day following the end of each collection month, a report (i) describing the amount of the respective PIF Sales and the amount of PIF Revenue received by the Collecting Agent from each PIF Obligor during such collection month and for the calendar year to date, (ii) describing the amount of PIF Revenue received since the last report representing delinquent PIF Revenue, including interest and penalties, and the PIF Obligors to whom such delinquent fees are attributable, and (iii) identifying each PIF Obligor who is delinquent in submitting reports, returns and other documents.

(8) The Collecting Agent shall, within 90 days after the end of each calendar year, provide the District and Developer an annual unaudited report setting forth the PIF Revenue received by the Collecting Agent for the preceding calendar year. At reasonable times during regular business hours, the District, Developer, any Trustee or their designee are authorized to audit, or cause audits to be conducted of, the Collecting Agent's books and records. The Collecting Agent shall, within 60 days after notice, pay any deficiency as directed by the District or Developer, together with interest thereon (subject to appropriation by the City Council) at a rate equal to one percent (1%) of the prime rate published in the Wall Street Journal on the date of discovery of such deficiency and notice thereof to the Collecting Agent (not to exceed eighteen percent (18%)).

b. All reports, information or data concerning PIF Sales or PIF Revenue received by the Collecting Agent shall remain confidential, unless otherwise required to be made public by law. All information shall be used only for purposes of collecting PIFs or enforcing PIF Covenants, monitoring compliances, disseminating information to prospective purchasers or

owners of the District Bonds, or as may otherwise be authorized under the PIF Covenants and shall be subject to the terms of Section 3.2.c.

Section 3.5. Remittance of Public Improvement Fees. All PIF Revenue shall, after deduction of the Collection Fee, be transferred and remitted as directed by the District or Developer, as applicable. The Collecting Agent shall have no responsibility or liability for the application of PIF Revenue to District Bonds or other purposes.

Section 3.6. Bankruptcy of Retailer. In the event either party to this Agreement receives notice of any action in the bankruptcy of any PIF Obligor, such party shall, as soon as practicable, give notice or convey copies of such notice which it received to the other party.

Section 3.7. Collection Fee and Reimbursable Expenses. In consideration of its performance of collection services hereunder, the Collecting Agent shall retain the Collection Fee on PIF Revenue collected.

ARTICLE IV MISCELLANEOUS TERMS

Section 4.1. Perfection of Security Interests. The District and the City elect to have all provisions of Section 11-57-201, et seq., C.R.S., as amended, apply to the security interest of such parties in the PIFs; provided, however, that such election shall not operate to modify or limit the rights conferred on the District by any provision of State law.

Section 4.2. Beneficiaries of Public Improvement Fees. Notwithstanding the appointment of the City as the Collecting Agent, the District and Developer are the primary beneficiaries of the PIFs in accordance with the terms of the PIF Covenants, the PFA and Bond Indentures.

Section 4.3. Sovereign Powers and Immunities. Nothing in this Agreement shall be construed as diminishing, delegating or otherwise restricting any of the sovereign powers or immunities of the City or District.

Section 4.4. Resignation; Removal; Assignment. The City may resign as Collecting Agent by submitting a notice of resignation to the District no less than 60 days before the resignation is intended to take effect. The resignation shall be effective on the termination date set forth in such notice. The City may be removed as Collecting Agent by the District or Developer at any time to become effective not earlier than 60 days after notice to the City. If the City has breached a term or condition of this Agreement, the District or Developer may remove the City as Collecting Agent, effective immediately. This Agreement shall not be assigned by either party other than to a successor by operation of law or with the prior written consent of the other parties.

Section 4.5. Notice. All notices, certificates or other communications required to be given hereunder shall be in writing and shall be deemed given when delivered in person, or by

prepaid overnight express mail or a national courier service, or mailed by certified or registered mail, postage prepaid, addressed as follows:

To the City:

City Manager
City of Wheat Ridge
7500 West 29th Avenue
Wheat Ridge, CO 80033
Email: pgoff@ci.wheatridge.co.us

To the District:

Seter & Vander Wall, P.C.
7400 East Orchard Road, Suite 3300
Greenwood Village, CO 80111
Attn: Kim J. Seter, Esq.
Email: kseter@svwpc.com

To the Developer:

Evergreen-Clear Creek Crossing, L.L.C.
1873 S. Bellaire Street, Ste. 1200
Denver, CO 80222
Attn: Tyler Carlson
Email: tcarlson@evgre.com

with copy to:

2390 E. Camelback Road, Ste. 410
Phoenix, AZ 85016
Attn: Laura Ortiz
Email: lortiz@evgre.com

The parties may by written notice designate any additional or different address to which subsequent notices, certificates or other communications will be sent.

Section 4.6. No Third Party Beneficiaries. There are no intended beneficiaries of this Agreement except the City, Developer and the District. Nothing contained in this Agreement shall give or allow any claim or right of action by any person with respect to this Agreement.

Section 4.7. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the parties and their duly authorized successors and assigns.

Section 4.8. Amendment. This Agreement may only be amended, changed, modified or altered by an instrument in writing duly executed by each party.

Section 4.9. Computation of Time. In computing a period of days, the first day shall be excluded and the last day shall be included. If the last day of any period is not a business day, the period shall be extended to include the next succeeding business day. If a number of months is to be computed by counting the months from a particular day, the period shall end on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period shall end on the last day of that month.

Section 4.10. Payments Due on a Day Other Than a Business Day. If the date for making any payment or the last day for performance of any act or the exercising of any right as provided in this Agreement shall be a day other than a business day, such payment may be made, or such act performed, or such right may be exercised on the next succeeding business day with the same force and effect as if done on the nominal date provided in this Agreement or the PIF Covenants.

Section 4.11. Severability. In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof which shall be enforced to implement the manifest intent hereof.

Section 4.12. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 4.13. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

Section 4.14. No Indemnification by City. The City shall have no obligation to indemnify, hold harmless or defend the District, Developer, any District Bond Trustee or any other person for any purpose whatsoever. The only remedies of the parties are set forth in Section 4.15.

Section 4.15. Default and Remedies. If any party fails to perform any of its responsibilities, obligations or agreements to be performed in accordance with the terms and provisions of this Agreement, and if such failure of performance continues for a period of 30 days following notice of default from another party (or such additional period of time as may be reasonably necessary to cure such default as long as the curative action is commenced within such 30 day period and is diligently and continuously pursued to completion), then any non-defaulting party may initiate a court action (i) to enjoin such failure of performance, (ii) to recover damages, and (iii) to seek any other remedy available at law or in equity, including an action for specific performance. The prevailing party in any court action shall be entitled to an award of costs and reasonable attorney fees. No remedy provided under this Agreement shall be required to be exercised as a prerequisite to seeking any other relief to which such party may then be entitled. All rights and remedies under this Agreement are cumulative, and the exercise of any one or more of such rights and remedies shall not preclude the exercise of any other right or remedy for any default at the same or a different time. Any delay in asserting any right or

remedy under this Agreement shall not operate as a waiver of any such right or limit such right in any manner.

Section 4.16. Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Agreement.

This PIF Collecting Agent Agreement is entered into and executed by the parties as of the date set forth above.

LONGS PEAK METROPOLITAN DISTRICT

By: [Signature]
President of the Board

ATTEST:
By: [Signature]
District Attorney

CITY OF WHEAT RIDGE

By: [Signature]
Bud Starker, Mayor

ATTEST:
By: [Signature]
Office of the City Clerk

APPROVED AS TO FORM:
[Signature]
Gerald E. Dahl, City Attorney



DEVELOPER

**EVERGREEN-CLEAR CREEK
CROSSING, L.L.C.,**
an Arizona limited liability company

By: Evergreen Development Company-2016, L.L.C.,
an Arizona limited liability company,
its Manager

By: Evergreen Devco, Inc.,
a California corporation,
its Manager

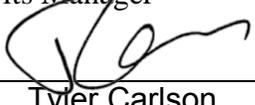
By: 
Name: Tyler Carlson
Its: Executive Vice President

EXHIBIT A

PUBLIC FINANCING ADDENDUM

THIS PUBLIC FINANCING ADDENDUM (this "**Addendum**") is executed this ____ day of _____, 20__, by _____, ("**Landlord**" or "**Owner**"), _____ ("**Tenant**") and _____ ("**Guarantor**") with respect to and forming a part of that certain LEASE AGREEMENT (the "**Lease**") dated _____, 20__, for the premises commonly known as _____ (the "**Premises**") in the retail center commonly known as _____ located in the City of Wheat Ridge (the "**Center**").

Recitals

This Addendum is made with respect to the following facts:

A. Longs Peak Metropolitan District (the "**District**") is a quasi-municipal corporation and political subdivision of the State of Colorado (the "**State**") and has been organized under State law to facilitate the financing, acquisition and construction of public improvements needed for the development of the Center and other real property within the boundaries of the District (the "**Public Improvements**").

B. In connection with the financing for the Public Improvements, the Premises are subject to:

1. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Lodging Credit Public Improvement Fee at Reception No. 2018065896 in the real property records of the Clerk and Recorder of Jefferson County, Colorado; and,
2. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Retail Credit Public Improvement Fee at Reception No. 2018065894 in the real property records of the Clerk and Recorder of Jefferson County, Colorado;
3. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Admissions Credit Public Improvement Fee at Reception No. 2018065898 in the real property records of the Clerk and Recorder of Jefferson County, Colorado;
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6. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Retail Add-On Public Improvement Fee at Reception No. 2018065893 in the real property records of the Clerk and Recorder of Jefferson County, Colorado

(Collectively, the "**PIF Covenants**").

The PIF Covenants impose on each "Retailer" within the Center the requirement to collect and remit a "Public Improvement Fee" on all "Admissions Sales", "Lodging Sales" and "Retail Sales" (collectively, the "**PIF Sales**") for the use and benefit of the Owner and District for the purposes described in the PIF Covenants.

Addendum

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Defined Terms. Each initially capitalized term used in this Addendum, unless otherwise defined in this Addendum, shall have the meaning set forth for the term in the PIF Covenants.

2. Tenant's Obligations under PIF Covenants.

2.1 Tenant acknowledges that it has received and read the PIF Covenants. Tenant is a Retailer for the purposes of the PIF Covenants and is subject to all terms, conditions, obligations and restrictions imposed on and applicable to Retailers under the PIF Covenants with respect to the Premises and PIF Sales transactions initiated, consummated, conducted or transacted or otherwise occurring from or within any portion of the Premises. Without limiting the generality of the immediately preceding sentence, Tenant shall impose and collect the Public Improvement Fee on all PIF Sales transactions and shall pay all Public Improvement Fee revenues to the Collection Agent, unless otherwise directed by the District, in accordance with the requirements of the PIF Covenants.

2.2 Tenant further acknowledges that if Tenant authorizes any other Retailer to possess or occupy any portion of the Premises, subject in any case to the terms and conditions of the Lease, Tenant will then be an Occupant for the purposes of the PIF Covenants, and will be subject to all terms, conditions, obligations and restrictions imposed on and applicable to Occupants under the PIF Covenants, with respect to such portion of the Premises.

2.3 No default by Landlord shall entitle Tenant to any offset, deduction or other defense to Tenant's payment of all Public Improvement Fees due under the PIF Covenants.

3. Waiver of Confidentiality.

3.1 Tenant specifically authorizes the Collection Agent, Owner, District, any Bond Trustee and any Person designated by the District and the Collection Agent to:

(a) audit Tenant's books and records with respect to the Premises to determine compliance with Tenant's obligations to collect and remit Public Improvement Fees in accordance with the PIF Covenants; and

(b) release Tenant's Confidential Information to Landlord, the Collection Agent, the District, any Bond Trustee and owners and prospective purchasers of the Bonds for the purposes described in the PIF Covenants. Tenant acknowledges that Landlord shall maintain the confidentiality of Tenant's Confidential Information delivered to Landlord, to the extent permitted or required by law, and the District shall cause Tenant's Confidential Information delivered to the District, the Collection Agent, and any Bond Trustee or prospective purchasers of the Bonds to be maintained as confidential in accordance with the PIF Covenants and to the extent permitted or required by law.

3.2 All Reports made or provided by Tenant shall be maintained by Tenant for at least three years from the date of submission thereof to the Collection Agent, the City, the County and/or the State.

3.3 Tenant's authorization of the Collection Agent, the Owner, the District and any Bond Trustee under Section 3.1 shall be in effect for any period of time during which a lease is in effect between the Tenant and Landlord, regardless of whether an initial term, a separate term or extension thereof, and such authorization shall terminate on the third anniversary of the earlier to occur of the date of termination of any such lease or the PIF Termination Date.

4. Remedies.

4.1 Tenant acknowledges that Landlord, the District, the Collection Agent and any Bond Trustee, or any Person designated by any of them, shall have a direct right of action and full right and authority to enforce Tenant's obligations under the PIF Covenants, including the right to all remedies provided under the PIF Covenants, for any default by Tenant under the terms and conditions of the PIF Covenants.

4.2 Tenant's default under the terms and conditions of the PIF Covenants shall be an event of default under the Lease, and, in addition to the remedies provided in the PIF Covenants, Landlord shall have all remedies available under the Lease for any default by Tenant under the PIF Covenants.

5. General Acknowledgements.

5.1 Tenant acknowledges that the provisions of the PIF Covenants pertaining to Retailers have been or will be agreed to by Declarant, the District and any Bond Trustee, and that Declarant, the District and, if required by the Bond Indentures, any Bond Trustee are or will be relying upon the PIF Covenants 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 the PIF Covenants pertaining to Retailers will not be amended, modified or waived without the prior written consent of Declarant, the District and any Bond Trustee. Accordingly, Tenant agrees that no amendment or modification will be made to, nor any waiver made or accepted by Tenant with respect to, the provisions of the PIF Covenants that pertain to Retailers, 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 Declarant, the District and any Bond Trustee.

5.2 Tenant acknowledges that the Public Improvement Fee is not a tax in any form and that the authority of the Collection Agent and others to receive the Public Improvement Fee is derived through the PIF Covenants and the Bond Indentures.

Landlord and Tenant have executed this Addendum as of the date set forth in the introductory paragraph of this Addendum.

LANDLORD:

_____, a _____

By: _____

Name: _____

Title: _____

TENANT:

By: _____

Name: _____

Title: _____