

When Recorded Return To:

Brownstein Hyatt Farber Schreck, LLP
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Attn: Greg Vallin, Esq.

**DECLARATION OF COVENANTS IMPOSING AND IMPLEMENTING
PUBLIC IMPROVEMENT FEE**

THIS DECLARATION OF COVENANTS IMPOSING AND IMPLEMENTING PUBLIC IMPROVEMENT FEE ("**PIF Covenant**") is made as of February 12, 2015 (the "**Effective Date**") by GREEN GABLES DEVELOPMENT COMPANY, INC., a Delaware corporation ("**Declarant**").

RECITALS

A. Capitalized terms used in this PIF Covenant shall have the meanings set forth in Section 1 of this PIF Covenant, and references to Sections and Exhibits shall refer to Sections and Exhibits of this PIF Covenant unless expressly stated otherwise.

B. As of the date of this PIF Covenant, Declarant owns a fee interest in all of the real property more particularly described in **Exhibit A**, attached hereto and incorporated herein (the "**Property**"), which is located in unincorporated Jefferson County, Colorado, and intends to develop and construct or cause to be developed and constructed a project consisting of a commercial retail center, multi- and single family residential and related amenities on the Property (collectively, the "**Project**"), all of which will be benefited by the completion of the Eligible Improvements and Public Infrastructure (each as defined below).

C. The Property includes the real property more particularly described in **Exhibit B**, attached hereto and incorporated herein ("**Retail Property**").

D. The Property includes the real property more particularly described in **Exhibit B-1**, attached hereto and incorporated herein ("**Residential Property**").

E. The Districts (as defined herein) were organized pursuant to Colorado law in order to provide for the financing, construction, and completion of public improvements within or without their boundaries, including, without limitation, the construction and installation of water, sanitation, street, safety protection, and park and recreation improvements, facilities and

services along with all reasonable and necessary soft costs, fees and organizational expenses authorized pursuant to the Districts' Service Plans (collectively, the "**Public Infrastructure**").

F. In consideration of the benefits to be provided to the Property with respect to construction, installation, operation and maintenance of the Public Infrastructure and the Eligible Improvements on the Property, the Declarant has agreed to impose a public improvement fee in the amount of three and one-half percent (3.5%) on all PIF Sales that occur within the Property (the "**Public Improvement Fee**" or "**PIF**"), which amount shall be subject to Section 2(d). Subject to the terms of this PIF Covenant, the Public Improvement Fee will be collected by all Retailers (as defined below) who engage in any PIF Sales transactions with a purchaser or recipient of such goods or services and then will be paid over to the PIF Collection Agent (as defined below).

G. The PIF Collection Agent will receive and remit the Public Improvement Fee to the PIF Receiving Party (as defined below) and in accordance with the terms and conditions of this PIF Covenant.

H. To the extent a District elects to issue Bonds in order to finance, construct and complete the Public Infrastructure on the Property, all or a portion of the PIF Revenues shall be pledged to such District for repayment of the Bonds and such District shall be deemed a PIF Receiving Party hereunder.

I. The Declarant may form, organize and establish the PIC (as defined herein) to administer the provisions of this PIF Covenant. The PIC may itself act as the PIF Collection Agent or may retain a PIF Collection Agent to serve as the collection agent for purposes of receiving and remitting the Public Improvement Fee to the PIC.

J. Subject to and in accordance with the terms of this PIF Covenant, Declarant desires to impose the obligation to collect and remit, and to provide for the implementation of the collection and remission of, a PIF on all PIF Sales that occur from, within or upon the Property.

DECLARATION

NOW, THEREFORE, in consideration of the facts set forth in the Recitals, incorporated herein and made a part hereof by this reference, and for other good and valuable consideration, the receipt and sufficiency of which are hereby 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 Property as follows:

1. **Defined Terms.** Except as otherwise expressly provided herein or unless the context requires otherwise, the singular of any term includes the plural of such term. The following terms, when used in this PIF Covenant, shall have the following meanings:

(a) "**Auditor**" shall have the meaning set forth in Section 7.

(b) "**Board**" means the Board of County Commissioners of the County or any successor in function thereto.

(c) "**Bonds**" means the bonds or other financial obligations issued or incurred and documented by either of the Districts for the sole and exclusive purpose of financing, constructing and completing the Public Infrastructure.

(d) "**Commencement Date**" means the date on which this PIF Covenant is recorded in the real property records of the County.

(e) "**Confidential Information**" shall have the meaning set forth in Section 7.

(f) "**County**" means the County of Jefferson, State of Colorado.

(g) "**Declarant**" shall mean the Declarant named in the introductory paragraph of this PIF Covenant, or a Person who is designated as the successor Declarant in an instrument recorded in the real property records of the County, and executed by the immediately preceding Declarant, and who holds title to any portion of the Property.

(h) "**Default Rate**" means eighteen percent (18%) 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.

(i) "**Declarant Advances**" means Eligible Costs expended or advanced by the Declarant or Retail Owner or a Person designated in writing by the Declarant or Retail Owner for construction, administration, operation and maintenance of Eligible Improvements.

(j) "**District No. 1**" means the Green Gables Metropolitan District No. 1 formed pursuant to C.R.S. §§ 32-1-101, *et seq.*, and any permitted successors and assigns.

(k) "**District No. 2**" means the Green Gables Metropolitan District No. 2 formed pursuant to C.R.S. §§ 32-1-101, *et seq.*, and any permitted successors and assigns.

(l) "**Districts**" means District No. 1, District No. 2, and any other special district, formed in accordance with C.R.S. §32-1-101, *et seq.*, with boundaries encompassing all or a portion of the Property.

(m) "**Effective Date**" shall have the meaning set forth in the introductory paragraph of this PIF Covenant.

(n) "**Eligible Costs**" means (i) those costs incurred by Declarant or Retail Owner or a Person designated in writing by the Declarant or Retail Owner in connection with the construction, administration, operation and maintenance of the Eligible Improvements, including Declarant Advances, and any and all reasonable and necessary soft costs, fees and expenses associated therewith, and/or (ii) those costs incurred by the Districts in connection with the construction, administration, operation and maintenance of the Public Infrastructure, including any and all reasonably and necessary soft costs, fees and expenses associated therewith.

(o) "**Eligible Improvements**" means any and all improvements that benefit the Property constructed by or caused to be constructed by Declarant or Retail Owner, or any Person designated in writing to construct improvements by any of the foregoing parties. Eligible

Improvements shall include, without limitation, Regional Improvements, Property Improvements and Public Infrastructure.

(p) **"Initial Sale"** means the initial conveyance by Declarant to a third party of fee simple title, or a ground lease, to any portion of the Property.

(q) **"New Collection Agent"** shall have the meaning set forth in Section 2.

(r) **"Obligations"** means notes, interim certificates or receipts, Bonds, indebtedness, contracts, intergovernmental agreements, reimbursement agreements, certificates of indebtedness, debentures, advances, refunding obligations, public financing and other financial obligations issued or entered into in order to pay the Eligible Costs, which are being paid by or repaid from pledged revenues, including, without limitation, the PIF Revenues.

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

(t) **"Occupant"** means any Owner or other Person who has the legal right, pursuant to any agreement of any type or nature, to possess or occupy any portion of the Property, including without limitation, any space within or without any building constructed on any Property; provided, however, that a mortgagee, a trustee or a beneficiary of a deed of trust, or any other person who has such a right of possession primarily for the purpose of securing a debt or other obligation owed to such Person will not constitute an "Occupant," unless and until such Person becomes an Occupant or a mortgagee in possession or otherwise possesses or occupies a portion of the Property pursuant to such right by an intentional or voluntary act of its own, whereupon the subject mortgagee, trustee, beneficiary, or other Person will be an "Occupant" hereunder.

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

(v) **"Owner(s)"** means an individual or entity that owns a fee interest in any portion of the Property, during the period of such ownership.

(w) **"Person(s)"** means an individual, firm, corporation, partnership, company, association, joint stock company, joint venture, trust, government or agency or a political subdivision thereof, any other unincorporated organization (for profit or nonprofit) or any trustee, receiver, assignee, or other similar representative thereof.

(x) **"PIA"** means that certain Public Improvement Agreement dated as of even date herewith by and among District No. 1, Declarant and The Ryland Group, Inc., a Maryland corporation.

(y) **"PIC"** means the Green Gables Public Improvement Corporation, a non profit Colorado corporation which may be organized by the Declarant to collect and distribute the PIF Revenues in accordance with this PIF Covenant.

(z) **"PIC Operating Agreement"** shall mean and refer to any agreements by and among the PIC and one or both Districts or the Declarant whereby the PIC will collect and distribute or otherwise account for and document allocation of the PIF Revenues in accordance with this PIF Covenant.

(aa) **"PIF"** shall have the meaning set forth in Recital F.

(bb) **"PIF Collection Agent"** means any person or entity designated by the Declarant or the PIC for the purpose of collecting, depositing, and accounting for the PIF and delivering the PIF Revenues to the PIF Receiving Party.

(cc) **"PIF Covenant"** shall mean this Declaration of Covenants Imposing and Implementing Public Improvement Fee, as the same may be amended from time to time.

(dd) **"PIF Receiving Party"** shall mean (a) to the extent a District issues Bonds or other Obligations secured and payable in whole or in part from PIF Revenues in order to construct all or a portion of the Public Infrastructure, such District shall be a PIF Receiving Party, and all or a portion of the PIF Revenues sufficient to pay annual debt service for such Bonds or Obligations shall be pledged to such District for repayment of the Bonds or other Obligations, and (b) if neither of the Districts has issued Bonds or other Obligations secured and payable in whole or in part from PIF Revenues, or if one or both of the Districts issues Bonds or other Obligations secured and payable in whole or in part from PIF Revenues, but the PIF Revenues are in excess of what is required to pay annual debt service for such Bonds or Obligations, or other revenues adequate to pay annual debt service for such Bonds or Obligations are pledged to repayment of such Bonds or Obligations, then the Declarant shall be a PIF Receiving Party; provided, however, that at the time of issuance of any Bonds or other Obligations secured and payable in whole or in part from PIF Revenues, the issuing District shall retain the right to act as PIF Receiving Party with respect to the pledge of PIF Revenues.

(ee) **"PIF Revenues"** means the revenues derived from the imposition of the PIF in accordance with this PIF Covenant.

(ff) **"PIF Sale(s)"** means any exchange of goods or services by a Retailer for money or other media of exchange initiated, consummated, conducted, transacted or otherwise occurring from or within the Property upon which a Sales Tax would be payable pursuant to the Sales Tax Resolution other than transactions exempted by the Sales Tax Resolution. The sale by a Retailer of tangible personal property initiated, consummated, conducted, transacted or otherwise occurring from or within the Property will constitute a PIF Sale notwithstanding the fact that the subject tangible personal property may be delivered to the purchaser outside the Property.

(gg) **"Project"** shall have the meaning set forth in Recital B.

(hh) **"Property"** shall have the meaning set forth in Recital B. The Property includes the Retail Property and the Residential Property.

(ii) "**Property Improvements**" shall have the meaning set forth in the PIA.

(jj) "**Public Improvement Fee**" means the PIF, as described in Recital F.

(kk) "**Public Infrastructure**" shall have the meaning set forth in Recital E.

(ll) "**Purchaser**" means the purchaser or recipient of goods or services or both from a Retailer in a PIF Sale.

(mm) "**Regional Improvements**" shall have the meaning set forth in the PIA.

(nn) "**Reports**" shall have the meaning set forth in Section 6.

(oo) "**Residential Property**" shall have the meaning set forth in Recital D above.

(pp) "**Retail Owner**" shall mean the Person that owns fee simple title to the Retail Property. If and to the extent there is ever more than one Person that owns fee simple title to the Retail Property, the "**Retail Owner**" for purposes of this PIF Covenant shall be either the Person who owns the majority of the total Retail Property described in this PIF Covenant or, if there is no such Person owning the majority of the total Retail Property, then such Person as is designated in writing by all Persons owning fee simple title to the Retail Property.

(qq) "**Retail Property**" shall have the meaning set forth in Recital C above.

(rr) "**Retailer**" means any Person, including the Declarant and any Occupant, who:

(i) has the legal right, pursuant to a deed, lease, sublease, license, concession, easement or other Occupancy Agreement of any type or nature, to possess or occupy all or any portion of the Property, including, without limitation, any space within any building constructed on all or any portion of the Property; provided that a mortgagee, a trustee under or beneficiary of a deed of trust, or any other Person who has such right of possession primarily for the purpose of securing a debt or other obligation owed to such Person, will not constitute a "Retailer" unless and until such Person becomes an Owner or a mortgagee in possession or otherwise possesses or occupies all or any portion of the Property pursuant to such right by an intentional or voluntary act of its own, whereupon the subject mortgagee, trustee, beneficiary or other Person will be a "Retailer" hereunder; and

(ii) is a seller or provider of goods or services who engages in any PIF Sales initiated, consummated, conducted, transacted or otherwise occurring from or within the Property.

(ss) "**Sales Tax**" means the sales tax levied by the County on the sale by a Retailer of taxable goods and services, and imposed pursuant to the Sales Tax Resolution.

(tt) "**Sales Tax Resolution**" means the Resolution adopted by the Board on August 28, 1972, repealed and reenacted by the Board on September 26, 1972, and, as so repealed and reenacted, approved by the electors of the County at the election held on November 7, 1972, and subsequently amended by Resolution CC80-711, adopted by the Board

on September 29, 1980, and approved by the electors on November 4, 1980 and further amended by Resolution CC98-468, adopted by the Board on August 4, 1998, and approved by the electors on November 3, 1998, as it may be amended from time to time.

(uu) "**Service Plans**" means the respective Service Plans for the Districts approved by the County on September 11, 2012 as they may be amended or modified from time to time.

(vv) "**State**" means the state of Colorado.

(ww) "**Waiver of Confidentiality**" means a waiver of confidentiality agreement in a form substantially similar to Exhibit C, attached hereto and made a part hereof.

2. **Assessment of Public Improvement Fee.** From and after the Commencement Date, the Public Improvement Fee shall be imposed on all PIF Sales within the Property as follows:

(a) Retailer shall collect from Purchaser in each PIF Sale by such Retailer, in its capacity as a Retailer, and remit to the PIF Collection Agent, that PIF due with respect to such transaction in accordance with Section 4. In the event this PIF Covenant is silent with respect to procedural matters relating to the collection of the PIF by Retailers, the provisions of the Sales Tax Resolution shall govern.

(b) Every Owner or Occupant who leases or subleases any portion of its Owned/Leased Property to a Retailer, or who permits a Retailer to occupy any portion of its Owned/Leased Property by license, concession, or otherwise, will expressly require, pursuant to an Occupancy Agreement by virtue of which such Retailer is given the right to possess or occupy such portion of Property, that such Retailer shall collect from the Purchaser in each PIF Sale by such Retailer, in its capacity as a Retailer, pursuant to such Occupancy Agreement, and remit to the PIF Collection Agent, the PIF due with respect to such transaction in accordance with the terms of Section 4.

(c) In the event the PIF Collection Agent no longer acts as the agent, then the Declarant or the PIC (as applicable) shall appoint a new collection agent (the "**New Collection Agent**"), in which case, the Declarant shall provide each Retailer with written notice containing the name and address of the New Collection Agent and each Retailer shall be entitled to rely upon such written notice of the designation of the New Collection Agent.

(d) If, for any reason, the rate of the Sales Tax is reduced or the Sales Tax is eliminated, then the PIF shall automatically be increased by an equivalent percentage as necessary to offset such reduction or elimination and such increased amount shall be pledged to the PIF Receiving Party in order to reimburse the applicable party for expended Eligible Costs or to pay debt service on Bonds or Obligations issued by a District.

3. **Imposition of Public Improvement Fee.** In connection with the PIF Sales, each Retailer shall collect and remit to the PIF Collection Agent the PIF for all PIF Sales that occur within the Property from and after the Commencement Date. Each Retailer shall have the right to make or apply adjustments, exemptions, credits and rebates to the Public Improvement Fee to the same extent adjustments, exemptions, credits and rebates may be made to the Sales Tax payable under the Sales Tax Resolution. If an adjustment results in a refund of such Public

Improvement Fee, such Retailer shall process the refund or credit for such adjusted Public Improvement Fee in a manner substantially similar to the process used and required by the County for an adjustment of the Sales Tax. Such Retailer may claim any credit or refund in the next monthly reporting period by use of the standard reporting and remittance forms. To determine the names and addresses of Retailers occupying any portion of the Property after the Initial Sale with respect to such portion of the Property, each Occupant who is a Retailer shall provide the Declarant, the PIF Collection Agent and the PIF Receiving Party with its name and address prior to conducting any business on the Property, and each Occupant will promptly provide the Declarant, the PIF Collection Agent and the PIF Receiving Party with the name and address of each Retailer upon the entering of any Occupancy Agreement by which the Retailer is granted the right to possess or occupy a portion of the Property.

4. **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 PIF Collection Agent shall establish and circulate to all Retailers uniform written information relating to the calculation, payment and reporting of Public Improvement Fees, 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) any alternate collection and reporting procedures which procedures shall take effect no earlier than fifteen (15) days after written notice has been provided to all Retailers. Each Retailer will be entitled to rely on the information provided by the PIF Collection Agent for purposes of compliance with this PIF Covenant. The PIF Collection Agent shall also promptly notify all Retailers of any procedures that the Retailers must follow with respect to informing PIF Sales customers of the Public Improvement Fee, as such procedures are established by the County in order to comply with any applicable laws, or reasonable business practices.

5. **Calculation, Payment and Reporting of Public Improvement Fee.** Whether or not collected from PIF Sales customers, each Retailer shall, on a monthly basis, pay all Public Improvement Fees imposed hereunder on all PIF Sales occurring during the immediately preceding month from or within any portion of the Owned/Leased Property occupied by such Retailer during such period. All Public Improvement Fees shall be due and payable by Retailers without notice on the date required for payment of the Sales Tax under the Sales Tax Resolution. Each Retailer shall pay all Public Improvement Fees directly to the PIF Collection 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 Resolution or as otherwise set forth in any supplemental information provided by the PIF Collection Agent or as otherwise determined by Declarant. Each Retailer shall report all PIF Sales and remit the Public Improvement Fees thereon to the PIF Collection Agent on a monthly basis at the same time that the Retailer reports and remits the Sales Tax to the County, employing reporting forms and following procedures provided by the PIF Collection Agent that are intended to be substantially similar to those used and required by the County for the remittance of the Sales Tax. The Public Improvement Fee shall be calculated and imposed by Retailers on each PIF Sales transaction and added to the sales price of such PIF Sale prior to the calculation and assessment of any County or State sales tax, including the Sales Tax, and before any sales taxes of any other taxing entity required to be imposed by law. The Sales Tax and all other sales taxes of the County, State and other taxing entities shall, to the extent that such sales taxes apply to the PIF Sales transaction, be calculated and assessed by

Retailers 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 Retailers by the PIF Collection Agent, and each Retailer will be entitled to rely thereon for purposes of compliance with this Section 5. Declarant hereby acknowledges, and any other Owner, by acquiring fee title to any portion of the Property subject to this PIF Covenant, and any Occupant, by acquiring the right to possess or occupy any portion of the Property, subject to this PIF Covenant will be deemed to have acknowledged, and each Owner and Occupant will cause any Retailer whom such Owner or Occupant permits to possess or occupy any portion of its Owned/Leased Property to acknowledge, prior to conducting any business as a Retailer on any Owned/Leased Property, that the Public Improvement Fee is not a tax in any form and that the authority of the PIF Collection Agent to receive the Public Improvement Fee is derived through this PIF Covenant. The PIF Collection Agent shall promptly notify in writing each Retailer of the name and address of the PIF Collection Agent and provide appropriate directions for payment and reporting of the Public Improvement Fees. For purposes of compliance with this Section 5, each Retailer will be entitled to rely upon such written notice of the designation of the PIF Collection Agent. No provision of this PIF Covenant shall be construed or applied to alter, modify, limit or affect the Sales Tax or any other sales taxes that may be imposed by the County or the State or any other applicable taxing authority.

6. **Additional Reporting Requirements.** Each Retailer shall, with respect to that portion of the Owned/Leased Property occupied by such Retailer, deliver to the PIF Collection Agent 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 County or the State by such Retailer in connection with all sales taxes for the corresponding sales tax period at the same time that such Reports are delivered to the County or the State. If any subsequent adjustments, additions or modifications are made by a Retailer to any sales taxes reported in such Reports, such Retailer shall provide the PIF Collection Agent with true and complete copies of all revised Reports and any other information issued or filed by such Retailer in regard thereto. If any such adjustments include the amount of the Public Improvement Fee which a Retailer is required to remit or pay or results in a refund of such Public Improvement Fee, such Retailer shall process and pay such adjusted Public Improvement Fee in a manner substantially similar to the process used and required by the County for an adjustment with respect to the Sales Tax. Such Retailer 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 a Retailer shall be maintained by such Retailer for at least three (3) years from the date of submission thereof to the PIF Collection Agent, the County and/or the State and, upon written request, will be made available to the PIF Collection Agent for inspection and audit. All Reports received by the PIF Collection Agent shall remain confidential and shall be used by the PIF Collection Agent and its employees, agents and consultants only for purposes of collecting the Public Improvement Fee, enforcing the obligations of any Retailer hereunder, and monitoring compliance with the provisions of this PIF Covenant, unless otherwise required to be made public by law.

7. **Audits and Release of Information by Collection Agent.** By acquiring a possessory interest in and to any portion of the Owned/Leased Property that is subject to the terms and conditions of this PIF Covenant, each Retailer hereby specifically authorizes the PIF Collection Agent, and any accountant or financial consultant designated by the Declarant (collectively, the

"**Auditor**") to audit its books and records with respect to that portion of the Owned/Leased Property occupied by such Retailer to determine compliance with the Public Improvement Fee collection and remittance obligations of such Retailer under this PIF Covenant and to release to the PIF Collection Agent (but not to any other Person, except as required by law) such audited information and any Reports, returns (including sales tax returns), and other documents delivered to the Auditor by the Retailer 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 a Retailer (or the contents of such Confidential Information) by the PIF Collection Agent (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 Retailers and without direct disclosure of the specific Public Improvement Fee collections or PIF Sales transactions of such Retailer. Each Retailer shall be protected by, and may rely on, the confidentiality provisions set forth in this PIF Covenant. Upon request by the Auditor, all books, invoices, accounts and other records shall be made available for inspection by the Auditor within the corporate limits of the County at any time during reasonable business hours. If the Retailer refuses to voluntarily furnish any of the foregoing information when requested, the PIF Collection Agent or Auditor may issue a subpoena enforceable by the Jefferson County District Court to require the Retailer or its representative to attend a hearing or produce any such books, invoices accounts and other records for examination.

8. **Compliance and Enforcement.** Each Retailer shall comply with all policies and requirements of the PIF Collection Agent regarding the collection and remittance of Public Improvement Fees and notification to PIF Sales purchasers of the imposition and collection of the Public Improvement Fee as such policies and requirements are communicated by the PIF Collection Agent to each Retailer in writing from time to time. The failure or refusal of any Retailer 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 Retailer under the terms of this PIF Covenant. The PIF Collection Agent, the PIF Receiving Party, any designated successors of the foregoing, and any other Person expressly designated in writing by the PIF Receiving Party, are expressly made third party beneficiaries of the Owner's, Occupant's and Retailer's obligations under this PIF Covenant, including but not limited to the assessment, collection and remittance by Retailers of the Public Improvement Fee. Declarant hereby acknowledges, and any other Owner, by acquiring fee title to any portion of the Property subject to this PIF Covenant, and any Occupant, by acquiring the right to possess or occupy any portion of the Property subject to this PIF Covenant, will be deemed to have acknowledged, and each Owner and Occupant will cause any Retailer whom such Owner or Occupant authorizes to possess or occupy any portion of its Owned/Leased Property to acknowledge, prior to conducting any business as a Retailer at any Owned/Leased Property, that the PIF Collection Agent, PIF Receiving Party and Declarant will have a direct cause of action and full right and authority to enforce each Retailer's obligations

under this PIF Covenant, and that no default by an Occupant under any provision of the Occupancy Agreement pursuant to which a Retailer occupies any portion of such Owned/Leased Property will entitle any Occupant or Retailer to any offset, deduction or other defense to payment of all Public Improvement Fees due hereunder. 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 discretion of the PIF Collection Agent, or PIF Receiving Party, from time to time in an amount not to exceed ten percent (10%) of the amount due. Any Retailer who fails to make timely remittance of any Public Improvement Fees shall pay, or reimburse the PIF Collection Agent for, all costs of enforcement and collection thereof, including reasonable attorney's fees. Notwithstanding anything to the contrary contained in this PIF Covenant, the Declarant, the PIF Receiving Party and the PIF Collection Agent, 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 Retailer 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 Retailer all reasonable costs and expenses incurred by such Enforcing Party in successfully enforcing the obligations of such Retailer under this PIF Covenant in any legal proceeding brought or defended by such Enforcing Party.

9. **Use of Public Improvement Fees.** The PIF Revenues generated pursuant to this PIF Covenant, after deduction of a collection fee required under a separate PIF collection agent agreement between the Declarant or the PIC (as applicable), on the one hand, and the PIF Collection Agent, on the other hand, shall be disbursed to the PIF Receiving Party which will use the PIF Revenues to pay Eligible Costs or repay any Obligations. Upon such disbursement, the PIF Receiving Parties, as applicable, shall (a) utilize the PIF Revenues to reimburse the Declarant or Retail Owner, or a Person designated in writing by the Declarant or Retail Owner, as applicable, for the design, finance, construction, operation and maintenance of Eligible Improvements, and/or (b) to the extent the Districts issue any Bonds or other Obligations in order to finance, construct, administer or operate any Public Infrastructure and such Bonds or other Obligations are secured by all or a portion of the PIF Revenues, all or such portion of the PIF Revenues shall be pledged to the District for repayment of the Bonds, as applicable. To the extent the PIF Revenues are distributed in accordance with subsection (a) of the prior sentence, the PIF Receiving Parties shall distribute the PIF Revenues in accordance with Section 4 of the PIA. If Declarant elects to form a PIC to disburse the PIF Revenues to the PIF Receiving Party, the terms and conditions of such disbursement shall be governed by a PIC Operating Agreement.

10. **Ownership of PIF Revenues; No Dominion or Control by County.** Declarant hereby acknowledges, and any other Owner by acquiring fee title to any portion of the Property subject to this PIF Covenant shall be deemed to have acknowledged that the provisions of this PIF Covenant have been or will be agreed to by the PIC (if any) and the Districts, and that the PIC (if any) and the Districts are or will be relying upon this PIF Covenant in taking certain actions with respect to the Public Improvement Fee, the Bonds and Obligations, the construction, installation, operation and maintenance of Eligible Improvements, and the incurrence of Eligible Costs with the express understanding and condition that this PIF Covenant shall not be amended except as provided in Section 14. Accordingly, Declarant hereby agrees, and all other Owners shall be deemed to have agreed, that subject to Section 14 below, no amendment or modification will be made to, nor any waiver made or accepted by Declarant or any Owner 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 Declarant, the PIC (if any), and, to the extent either of the Districts has issued Bonds or Obligations secured by the PIF Revenue, the issuing District (or Districts). The PIF Receiving Party shall have all right, title and interest in the Public Improvement Fees and PIF Revenue. To the extent the Districts issue any Bonds or other Obligations in order to finance, construct, administer, operate or maintain any Public Infrastructure and such Bonds or other Obligations are secured by all or a portion of the PIF Revenues, all or such portion of the PIF Revenues shall be pledged to the District for repayment of the Bonds or other Obligations. Notwithstanding anything contained in this PIF Covenant or in any document related to the Property to the contrary, 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 PIF Revenue collected pursuant to this PIF Covenant except to the extent the Declarant is a PIF Receiving Party hereunder, in which event the PIF Revenues collected shall be used solely for payment of Eligible Costs and completion of the Eligible Improvements. SUBJECT TO THE EXPRESS TERMS OF THIS SECTION 10, IT IS INTENDED AND HEREBY DECLARED THAT (I) THE PUBLIC IMPROVEMENT FEE IS A CHARGE IMPOSED ON ALL PIF SALES ON THE PROPERTY FOR THE PURPOSES STATED HEREIN; (II) THE NATURE OF THE PUBLIC IMPROVEMENT FEE IS THAT OF A FEE IMPOSED BY PRIVATE COVENANT FOR THE BENEFIT OF THE PROPERTY, THE PIC (IF ANY), AND THE DISTRICTS AND NOT THROUGH THE EXERCISE OF ANY POWER BY THE COUNTY OR ANY OTHER PUBLIC TAXING AUTHORITY; (III) PUBLIC IMPROVEMENT FEES ARE NOT TAX REVENUES IN ANY FORM AND THE PUBLIC IMPROVEMENT FEE IS NOT ENFORCEABLE BY THE COUNTY; AND (IV) ALL PIF REVENUE RECEIVED BY THE PIF RECEIVING PARTY WILL BE USED TO PAY AND DISCHARGE BONDS AND/OR OBLIGATIONS, OR TO OTHERWISE PAY AND REIMBURSE THE ELIGIBLE COSTS, OR AS MAY OTHERWISE BE PROVIDED IN THIS PIF COVENANT.

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

12. **Covenants Run with the Land.** The covenants, agreements, promises, and duties as set forth in this PIF Covenant will run with the Property and be enforceable against both the covenantors and the Property, and will constitute equitable servitudes burdening both the respective covenantor and its Property for the benefit of the respective covenantee. Each covenant to do or refrain from doing some act on or with respect to activities on any portion of the Property under this PIF Covenant (i) is a burden upon such portion of the Property and is for the benefit of the remainder of the Property, (ii) will be a covenant running with the land with respect to both the burdened and benefited portions of the Property, and (iii) will be binding upon each Owner, Occupant and Retailer and each successor to their respective interests in Property and will inure to the benefit of the Declarant and, as set forth herein, to the other parties authorized to enforce this PIF Covenant. If and to the extent that any of the covenants or other provisions herein would otherwise be unlawful or void for violation of (i) the rule against perpetuities, (ii) the rule restricting restraints on alienation, or (iii) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provisions concerned will continue and endure only until the expiration of a period of ninety (90) years after the Commencement Date.

13. **Severability.** Invalidation of any of the provisions contained in this PIF Covenant, or of the application thereof to any Person by judgment or court order, will in no way affect any of the other provisions of this PIF Covenant or the application thereof to any other Person or circumstance, and the remainder of this PIF Covenant will remain in effect; provided, however, that in the event such invalidation would render the remaining portions of this PIF Covenant ineffective to carry out the intentions of Declarant as expressed or implied by this PIF Covenant, then the objectionable provision(s) hereof will be construed, and this PIF Covenant will be presumed amended, as if such provision was replaced with an enforceable provision which effectuates, as nearly as possible, the intentions of Declarant.

14. **Amendments.** Declarant shall be entitled to make amendments to the provisions of this PIF Covenant without the consent of any Owner, Occupant or Retailer, provided that (a) any such amendment shall not impose any additional obligations on Owners of real property improved or to be improved with Residential Improvements, as defined in C.R.S. §39-1-102(14.3), which are designed as Single Family Residences (including attached duplexes), as defined in C.R.S. §9-5.5-103(19), and (b) Declarant shall be required to obtain the prior written consent of the then-current Owner(s) of the Residential Property to the extent any amendment imposes additional obligations on any Owner of Residential Property, other than the obligation of Retailers to collect and remit the Public Improvement Fee on all PIF Sales occurring within the Residential Property (as such terms are currently defined in this PIF Covenant and not as amended pursuant to this Section 14).

15. **No Operating Covenant.** This PIF Covenant is not intended to, and does not, create or impose any obligation on an Owner or Retailer to operate, continuously operate, or cause to be operated a business or any particular business at the Project or on the Property. If such an obligation exists in any other agreement, this PIF Covenant is not intended to and does not limit or enlarge such other obligation.

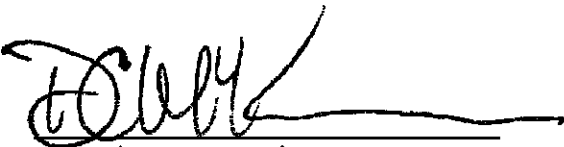
16. **Assignment; Successor Declarant.** Declarant may assign its right, title and interest in and to this PIF Covenant to any Person, including, without limitation, the Retail Owner ("Assignment") and such Assignment shall be effective immediately upon recording a document in the real property records for the County evidencing such Assignment; provided, however, if any such Assignment would have a material adverse affect on the rights or obligations of a District hereunder, Declarant shall obtain such District's prior written consent prior to effecting any such Assignment.

17. **Recitals.** The Recitals shall be deemed incorporated into the terms and conditions of this PIF Covenant as if fully set forth herein.

[Signatures on Following Page]

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

**GREEN GABLES DEVELOPMENT
COMPANY, INC.,**
a Delaware corporation


By: 
Douglas C. McKinnon
Vice President

STATE OF COLORADO

CITY AND COUNTY OF DENVER

The foregoing was acknowledged before me this 10 day of February, 2015, by Douglas C. McKinnon, as Vice President of Green Gables Development Company, Inc.

WITNESS my hand and official seal.


Notary Public for the State of Colorado
My Commission Expires: 6/18/17

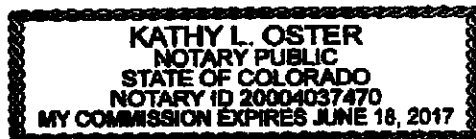


EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Lots 1 and 2, Green Gables Filing 1, according to the plat thereof recorded on February 6, 2015, under Reception No. 2015011475, County of Jefferson, State of Colorado.

Together with:

Lots 3, 4, 5, 6 and 7, Green Gables Filing 1, according to the plat thereof recorded on February 6, 2015, under Reception No. 2015011475, County of Jefferson, State of Colorado.

Together with:

Tracts A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T and U, Green Gables Filing 1, according to the plat thereof recorded on February 6, 2015, under Reception No. 2015011475, County of Jefferson, State of Colorado.

EXHIBIT B

LEGAL DESCRIPTION OF THE RETAIL PROPERTY

Lots 1 and 2, Green Gables Filing 1, according to the plat thereof recorded on February 6, 2015, under Reception No. 2015011475, County of Jefferson, State of Colorado.

EXHIBIT B-1

LEGAL DESCRIPTION OF THE RESIDENTIAL PROPERTY

Lots 3, 4, 5, 6 and 7, Green Gables Filing 1, according to the plat thereof recorded on February 6, 2015, under Reception No. 2015011475, County of Jefferson, State of Colorado.

EXHIBIT C

FORM OF WAIVER OF CONFIDENTIALITY

PARTIES TO LEASE:

LANDLORD:

TENANT:

DATE OF LEASE:

LEASE TERM:

PROPERTY/STORE

DESCRIPTION OR NAME:

ADDRESS OF TENANT:

TRUSTEE:

Tenant hereby acknowledges that it is a party to the above referenced Lease which contains provisions regarding the duty to impose and collect a Public Improvement Fee ("**PIF**") as specifically addressed in Article ____ of said Lease. The undersigned is fully authorized to act on behalf of the Tenant in the matters covered by this Waiver of Confidentiality and, in such capacity, does hereby agree to the terms of Article ____ of the Lease and specifically authorizes any person or entity designated by the Declarant (as defined in that certain Declaration of Covenants Imposing and Implementing Public Improvement Fee, recorded in the real property records of Jefferson County, Colorado at Reception No. 2015011475), for the purpose of collecting, depositing and accounting for the PIF (the "**PIF Collection Agent**," as applicable) to:

- (i) audit the books and records of the Tenant in determining compliance with the PIF collection and remittance obligations of Tenant under the Lease; and
- (ii) release to the Landlord such audited information and any reports, returns and other documents as are delivered to the PIF Collection Agent or any successor entity designated to receive PIF Revenues by the Tenant and any relevant information gathered by the PIF Collection Agent during an audit or in reviewing such reports, returns or other documents relating to the PIF and the sales tax imposed by the County. Tenant hereby acknowledges that any such information will remain confidential, to the extent permitted or required by law, and be used only for purposes of collecting PIF Revenues due, enforcing Tenant's obligations under the Lease and otherwise monitoring compliance with the provisions thereof.

In addition, all audited information, reports, returns and other documents provided to the PIF Collection Agent by Tenant shall be maintained by the Tenant in accordance with Article _____ of the Lease for at least three (3) years from the date of submission thereof to the PIF Collection Agent and, upon written request, shall be made available to the Landlord for inspection and audit at the Tenant's place of business.

This waiver 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, plus a period of three years beyond the termination of any such lease.

TENANT: _____ (Name)

By: _____
Its: _____