

**LEASE AGREEMENT**  
Residential (Individuals)  
City-Owned Property

**THIS LEASE AGREEMENT** (“Agreement”) is entered into by and between the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation, by and through its Public Works Department (“CITY”) and Matthew A., and Anna L. Alimena, individuals (“TENANT”), and each may be referred to as a “Party” or collectively as the “Parties”.

**WHEREAS**, CITY is the fee owner of that certain real property and residence located in the City of Colorado Springs, and situated in El Paso County, Colorado, such real property is exempt from property tax, and has a street address of 7043 Stinson Drive, Colorado Springs, CO 80920, as known by Tax Schedule Number 6309010025 and legally described on Exhibit A, attached hereto and incorporated herein by reference, (the “Premises”); and

**WHEREAS**, CITY has recently purchased the Premises from TENANT in connection with the Pikes Peak Rural Transportation Authority Woodmen Phase II Project, and CITY desires to grant and TENANT desires to obtain a temporary and revocable permission to use the Property in accord with the terms and conditions contained in this Agreement; and

**WHEREAS**, CITY and TENANT desire to enter into this Lease Agreement for the purpose of providing TENANT the temporary use of the Premises.

**NOW THEREFORE**, in consideration of the premises, and the mutual covenants and conditions contained herein, CITY and TENANT hereby agree as follows:

1. **CITY CHARTER AND CITY CODE AUTHORITY**: This Agreement is granted in accord with the provisions of Chapter 3 of the City Code of the City of Colorado Springs and Chapter 10 of “The City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interests” (“City Real Estate Manual”). Pursuant to Section 10-100 of the Charter of the City of Colorado Springs, this Agreement is revocable by the CITY at any time.
2. **ADMINISTRATION AND ENFORCEMENT**: The provisions of this Agreement shall be administered and enforced for CITY by the Director of Public Works, or designee. The use of “CITY” throughout this Agreement shall include the Public Works Department and any other affected CITY department or enterprise. The Director of Public Works shall have the authority to issue or deny any approvals required by or resulting from this Agreement.
3. **LEASED PREMISES**: CITY hereby leases to TENANT and TENANT hereby takes from CITY the Premises, subject to the terms and conditions of this Agreement.
4. **PURPOSE**: TENANT shall be prohibited from conducting a business or any other commercial endeavor at the Premises. The TENANT shall use the Premises for residential

purposes for TENANT'S immediate family only, and TENANT shall not use or permit the use of the Premises for any other purpose.

It is further understood and agreed by the Parties that the use of the Premises is temporary in nature, and relates to the time period requested by TENANT in order to facilitate the construction of their replacement dwelling as a result of the CITY'S recent purchase of the Premises as part of a CITY project. The CITY'S grant of this Agreement to TENANT is additional consideration for TENANT'S sale of the Premises to CITY pursuant to that certain Purchase Agreement, dated \_\_\_\_\_, 2014.

TENANT shall not assign or otherwise transfer this Agreement or its underlying Lease without the prior written consent of the CITY.

5. **TERM:** The term of this Agreement shall be for a period of one hundred eighty (180) days commencing on \_\_\_\_\_, 2014, and terminating on \_\_\_\_\_, 2014, unless otherwise extended or terminated pursuant to the provisions hereof. This Agreement and the underlying Lease is revocable at any time and without restriction by the City Council.

6. **RENTAL:** CITY has identified that the Fair Market rental amount for the Premises is ONE THOUSAND SIX HUNDRED & 00/100 DOLLARS (\$1,600.00). TENANT shall not be required to pay rental for its use of the Premises. In accord with Section 10.2(d)(iii)(2) of the City Real Estate Manual, the City Council must find a public purpose in the TENANT'S use of the Premises at a rental rate below fair market value. Pursuant to Resolution No. \_\_\_\_\_, the City Council has determined that the TENANT'S use of the Premises for the purposes and under the terms and conditions provided in this Agreement serves a public purpose justifying a below fair market value rent.

7. **CONDITION OF PREMISES:** TENANT stipulates, represents and warrants that TENANT has examined the Premises, and that the condition of Premises is in good order, repair, safe, clean, and habitable condition. Upon termination or expiration of this Agreement, TENANT will return the Premises to CITY, with the condition of the Premises in good order, reasonable wear and tear excepted.

8. **ALTERATIONS AND IMPROVEMENTS:** TENANT shall make no alterations to the Premises or construct any buildings or additions, or make any other improvements on the Premises.

9. **MAINTENANCE AND REPAIR:** CITY shall be responsible for any maintenance or repair to the Premises required by law. CITY shall provide only such additional maintenance and repair as is required by law or deemed necessary by CITY.

TENANT shall be responsible for all other maintenance and upkeep of the Premises. TENANT shall be responsible for any damage(s) to the Premises by TENANT'S family, guests, invitees, etc., or any person under TENANT'S care/supervision whether damage(s) was caused intentionally or by accident.

10. **UTILITIES:** TENANT shall be responsible for arranging for and paying all utilities services, including but not limited to: water, gas, sewer, trash removal, cable, and electric on the Premises through the term of the Agreement. Any and all utilities shall be ordered by and paid in full when due by TENANT.

11. **ENVIRONMENTAL PROTECTION:** TENANT shall comply with all applicable laws, regulations, rules, and orders regardless of when they become or became effective, including without limitation those relating to construction, grading, signage, health, safety, noise, environmental protection, waste disposal, water and air quality, and shall furnish satisfactory evidence of compliance upon request by CITY.

12. **TOXINS:** TENANT shall not manufacture or generate hazardous waste on the Premises. TENANT shall be fully responsible for any hazardous wastes, substances, or materials as defined under federal, state, or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported on the Premises during this Agreement and shall comply with and be bound by all applicable provisions of such federal, state, or local law, regulation, or ordinance dealing with such wastes, substances, or materials. TENANT shall notify CITY and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances or materials.

Since TENANT is the immediately prior owner/occupant of the Premises, and this Lease Agreement is being executed in conjunction with the TENANT'S transfer of the Premise to CITY, any radon and lead-based paint hazards that may or may not exist are known to TENANT and shall not require CITY to cleanup, remedial, remove, or restore such conditions because of the presence or suspected presence by TENANT. Without limiting the generality of any of the foregoing, the indemnification protections provided in Paragraph 17, shall also specifically cover costs incurred with such conditions.

13. **DAMAGE TO PREMISES:** In the event the Premises are destroyed or rendered uninhabitable by fire, flood, storm, earthquake, or other casualty the TENANT is released from this Agreement and agrees to vacate the Premises immediately. Upon such occurrence, CITY shall not be required to assist TENANT with any replacement or relocation housing other than any amounts that may already be committed to TENANT under a separate agreement.

14. **ENTRY BY CITY:** CITY may enter the Premises at all reasonable times to examine the condition thereof, provide maintenance, post notices, make such repairs as CITY may deem necessary to make, and to inspect for compliance with the rules and regulations applicable to the terms of this Agreement.

15. **QUIET ENJOYMENT:** CITY covenants that TENANT, on performing the provisions of this Agreement, shall have peaceable and quiet enjoyment of the Premises. CITY will not deliberately interfere or permit others acting subsequently through or under CITY to interfere with TENANT'S peaceful possession or use of the Premises.

16. **NOTICES:** Except where otherwise specifically provided, all notices under this Agreement and in connection herewith and all statements shall be addressed and delivered as follows:

TENANT: Matthew A. and Anna L. Alimena  
7043 Stinson Drive  
Colorado Springs, CO 80920-3558

CITY: City of Colorado Springs  
Public Works Department  
30 S. Nevada Ave, Suite (MC 410)  
Colorado Springs, CO 80903  
Attention: (Mike Chaves)

or at such other address as the respective party may designate in writing. Any notice may be given by use of the United States mail, postage prepaid Certified mail return receipt requested, or by personal delivery. The date of mailing, or in the event of personal delivery the date of delivery, shall constitute the date of service.

17. **INDEMNIFICATION:** TENANT shall defend, indemnify and save harmless the CITY, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission on the part of the TENANT or their agents or employees or other independent contractors directly responsible to them; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting solely from the negligence or willful misconduct of the CITY.

TENANT shall notify CITY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

18. **INSURANCE:** TENANT shall procure at its sole cost and expense and provide CITY with a Certificate of Insurance with the required insurance coverages as described in Exhibit B attached hereto and incorporated herein by reference.

19. **POSSESSORY INTEREST TAXES:** TENANT acknowledges and agrees that this Agreement may create a possessory interest subject to property taxation and that TENANT is required to pay any property taxes levied on such interest. TENANT covenants and agrees to pay all taxes, including possessory interest tax and assessments, which may be levied upon the Premises.

20. **COMPLIANCE WITH THE LAW:** TENANT shall comply with all applicable federal, state, county, and CITY laws, statutes, rules, regulations, and ordinances regulating the use of the Premises during the term.

21. **DEFAULT**: Except as otherwise specified herein, should TENANT at any time be in default hereunder with respect to any material covenant contained herein, CITY shall give written notice to TENANT specifying the particulars of the default and TENANT shall promptly commence remedial action to cure the default. Should such default continue uncured for a period of thirty (30) calendar days from such written notice, then this Agreement shall terminate at the option of CITY unless the cure of such default shall reasonably take more than thirty (30) calendar days in which case TENANT shall proceed with all due speed to cure the default and shall have a reasonable time to effectuate its cure.

22. **NON-WAIVER**: It is further understood and agreed that no indulgence, waiver, election or non-election by CITY under this Agreement shall affect TENANT'S duties and liabilities hereunder. The Parties hereto understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, et seq., as from time to time amended, or otherwise available to the CITY, its subsidiary, associated and/or affiliated entities, successors, or assigns; or its elected officials, employees, agents, and volunteers.

23. **TERMINATION**: This Agreement shall terminate and all rights of TENANT shall cease and TENANT shall quietly and peacefully deliver to CITY, possession and interest in the Premises and upon such delivery, shall be relieved of all future liability:

- A. At the expiration of the term provided in Section 5, TERM of this Agreement; or
- B. After expiration of thirty (30) days written notice, which notice may be given by either party without cause; or
- C. Upon the failure of TENANT to satisfy, observe, or perform any of the covenants, conditions, or reservations set forth in this Agreement and the expiration of the cure period as provided in Section 21, DEFAULT; or
- D. Upon the destruction of the Premises, as provided in Section 13, DAMAGE TO PREMISES.

24. **ABANDONMENT**: TENANT shall not vacate or abandon the Premises at any time during the term of this Agreement and if TENANT shall abandon, vacate, or surrender said Premises, any personal property belonging to TENANT and left in the Premises more than thirty (30) days after termination of this Agreement shall be deemed abandoned at the option of the CITY.

25. **SURRENDER OF PREMISES**: Upon expiration or termination of this Agreement, TENANT shall surrender the Premises in as good a state and condition as they were at the commencement of this Agreement, reasonable use and wear and tear thereof and damages by the elements excepted.

26. **WASTE AND NUISANCE**: TENANT shall not commit, nor suffer to be committed, any waste upon the Premises, nor permit any nuisance to exist thereon.

27. **GOVERNING LAW**: This Agreement is subject to and shall be interpreted under the law of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City

of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation. Court jurisdiction shall exclusively be in the El Paso District Court for Colorado's Fourth Judicial District.

28. **SEVERABILITY**: If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

29. **CERTIFICATION OF SIGNATORY**: The signatories of this Agreement and each of them represent and warrant that they are authorized to execute this Agreement and that no additional signatures are required to bind TENANT and CITY to its terms and conditions or to carry out duties contemplated herein.

30. **EXECUTION IN COUNTERPARTS**: This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Parties shall preserve undestroyed, shall together constitute one and the same instrument.

31. **CONSTRUCTION**: The Parties agree that each party and its respective counsel have reviewed and approved this Agreement to the extent that each Party in its sole discretion has desired, and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement. The terms and provisions of this Agreement embody the Parties' mutual intent, and this Agreement shall not be construed more liberally in favor of, nor more strictly against, any Party hereto.

32. **FISCAL OBLIGATIONS**: This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by the City. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget and the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Agreement.

33. **THIRD PARTY BENEFICIARY**: It is specifically agreed between the Parties that this Agreement is not intended by any of its terms, provision, or conditions to create in the public or any

individual member of the public a third party beneficiary relationship, or to authorize any person not a Party to this Agreement to maintain suit for personal injuries or property damage pursuant to the terms, conditions or provision of this Agreement. In requiring insurance under this Agreement, the CITY specifically does not waive or intend to waive any protection, immunity, or other provision of the Colorado Governmental Immunity Act, Sections 24-10-101 to 120, C.R.S., as now written or amended in the future.

34. **DANGEROUS CONDITIONS:** TENANT and CITY agree to inform each other immediately of any dangerous or potential dangerous condition existing on the Premises.

35. **CAPTIONS:** The descriptive headings used herein are for convenience of reference only and they are not intended to have any affect whatsoever in determining the rights or obligations of the CITY or TENANT.

36. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the Parties hereto and no obligation other than those set forth herein will be recognized.

37. **AMENDMENTS:** This Agreement represents the entire agreement between the Parties with respect to the matters covered herein. No alteration, modification, amendment, or waiver of this Agreement shall be valid unless it is in writing and signed by all Parties hereto.

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Project: Woodmen Phase II  
TSN: 6309010025  
File: (TBD)  
Agent: BR

**IN WITNESS WHEREOF**, CITY and TENANT have executed this Agreement to be effective on the date executed by CITY.

CITY  
Executed by the City of Colorado Springs

TENANT  
Matthew A. Alimena and  
Anna L. Alimena

By: \_\_\_\_\_  
Ronn Carlentine  
Real Estate Manager

By: \_\_\_\_\_  
Matthew A. Alimena

By: \_\_\_\_\_  
Mike Chaves  
Senior Civil Engineer  
Public Works Department

By: \_\_\_\_\_  
Anna L. Alimena

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Senior Attorney  
Office of the City Attorney



**EXHIBIT A**  
(Legal Description)

## **EXHIBIT B**

### **TENANT INSURANCE REQUIREMENTS**

#### **Insurance Requirements:**

TENANT shall procure and maintain for the duration of the Agreement, insurance against claims for injury to persons or damage to property which may arise from or in connection with this Agreement.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The CITY in no way warrants that the minimum limits contained herein are sufficient to protect the TENANT from liabilities that might arise out of this Agreement. TENANT is free to purchase such additional insurance as TENANT determines necessary.

- A. **Minimum Scope and Limits of Insurance:** TENANT shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a “following form” basis.
1. **Renter’s Insurance – Contents Broad Form**  
Policy shall include bodily injury, property damage and liability assumed under an Insured Contract including defense costs.
    - a. The policy shall be endorsed to include the following additional insure language: "City, its subsidiary, parent, associated and/or affiliated entities, successors, or assigns, its elected officials, trustees, employees, agents, and volunteers shall be named as additional insureds with respect to liability arising out of the activities performed by, or on behalf of the Lessee".
    - b. A Waiver of Subrogation shall apply in favor of the City, its subsidiary, parent, associated and/or affiliated entities, successors, or assigns, its elected officials, trustees, employees, agents, and volunteers.

#### **Minimum Limits:**

Coverage C - Personal Property	\$	10,000
Coverage D – Loss of Use		30% of Coverage C
Liability – Minimum of	\$	100,000
Medical Payments – Minimum of	\$	1,000