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KUTAK ROCK LLP  
DRAFT 08/19/19

**INDENTURE OF TRUST**

by

**U.S. BANK NATIONAL ASSOCIATION**  
as Trustee

providing for the

Certificates of Participation, Series 2019  
evidencing undivided interests in  
the right to receive certain revenues payable by  
the City of Colorado Springs, Colorado  
under that certain  
Lease Purchase Agreement  
dated as of September 1, 2019

Dated as of September 1, 2019

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APPENDIX A FORM OF SERIES 2019 CERTIFICATE

APPENDIX B DESCRIPTION OF THE SITE LEASED PROPERTY

## INDENTURE OF TRUST

**THIS INDENTURE OF TRUST** (this “Indenture”) is dated as of September 1, 2019, and is entered into by **U.S. BANK NATIONAL ASSOCIATION**, a national banking association duly organized and validly existing under the laws of the United States, solely in its capacity as trustee (the “Trustee”) hereunder for the benefit of the Owners (defined herein) of the Certificates (defined herein).

### RECITALS

WHEREAS, the Trustee (a) is a national banking association that is duly organized, validly existing and in good standing under the laws of the United States of America; (b) is duly qualified to do business in the state of Colorado (the “State”); (c) solely in its capacity as trustee under this Indenture, is the site lessee of the Site Leased Property (defined herein) pursuant to the Site Lease (defined herein); and (d) is authorized, under its articles of association and applicable law, to lease the Site Leased Property (defined herein) from the City of Colorado Springs, Colorado (the “City”), to lease the Leased Property to the City, to hold in trust the Trust Estate (defined herein) and to execute, deliver and perform its obligations under this Indenture; and

WHEREAS, the City, as site lessor, and the Trustee, as site lessee, have entered into a Site Lease dated as of the date hereof (the “Site Lease”), pursuant to which the City has leased the Site Leased Property to the Trustee, as authorized under the home rule Charter of the City (the “Charter”); and

WHEREAS, as authorized under the Charter, the Trustee, as lessor, and the City, as lessee, have entered into a Lease Purchase Agreement dated as of the date hereof (the “Lease”), pursuant to which the Trustee has leased the Leased Property to the City and the City has agreed to pay Base Rentals and Additional Rentals (as defined in the Lease), subject, in each case, to the terms of the Lease; and

WHEREAS, in order to finance the Project (defined herein), the Series 2019 Certificates (defined herein) will be executed and delivered to the Owners thereof pursuant to this Indenture; and

WHEREAS, the Series 2019 Certificates shall evidence undivided interests in the right to receive Lease Revenues (defined herein), shall be payable solely from the Trust Estate (defined herein) and no provision of the Series 2019 Certificates, this Indenture, the Site Lease or the Lease shall be construed or interpreted (a) to directly or indirectly obligate the City to make any payment in any Fiscal Year in excess of amounts appropriated for such Fiscal Year; (b) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of Article XI, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; (c) as a delegation of governmental powers by the City; (d) as a loan or pledge of the credit or faith of the City or as creating any responsibility by the City for any debt or liability of any person, company or corporation within the meaning of Article XI, Section 1 of the Colorado Constitution; or (e) as a donation or grant by the City to, or in aid of, any person, company or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution.; and

WHEREAS, the execution and performance of this Indenture by the Trustee has been duly authorized by the Trustee and, upon the execution of this Indenture by the Trustee, this Indenture will be enforceable against the Trustee in accordance with its terms, limited only by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, by equitable principles, whether considered at law or in equity, by the exercise by the State and its governmental bodies of the police power inherent in the sovereignty of the State and by the exercise by the United States of America of the powers delegated to it by the Constitution of the United States of America; and

WHEREAS, the Trustee has entered into this Indenture for and on behalf of the Owners, and will, except as otherwise specifically provided herein, hold its rights hereunder, including its rights with respect to the Trust Estate, for the equal and proportionate benefit of the Owners, and will disburse moneys received by it in accordance with this Indenture.

NOW, THEREFORE, the Trustee declares for the benefit of the Owners of the Certificates as follows:

### **DESCRIPTION OF TRUST ESTATE**

That the Trustee shall hold in trust, upon the terms herein set forth for the equal and proportionate benefit, security and protection of all Owners with respect to each series of Certificates within the Series 2019 Certificates, without privilege, priority or distinction as to the lien or otherwise of any of the Certificates of each series of Certificates within the Series 2019 Certificates over any other of the Certificates of the same series, except as otherwise provided herein, all and singular the following described property, franchises and income, including any title therein acquired after these presents (the "Trust Estate"):

- a. the Leased Property (defined herein) and the tenements, hereditaments, appurtenances, rights, privileges and immunities thereto belonging or appertaining, subject to the terms of the Lease and the Site Lease, including, but not limited to, the terms of the Lease permitting the existence of Permitted Encumbrances (as defined in the Lease);
- b. all rights, title and interest of the Trustee in, to and under the Lease and the Site Lease (other than the Trustee's rights to payment of its fees and expenses under the Lease and the rights of third parties to Additional Rentals payable to them under the Lease);
- c. all Base Rentals (defined in the Lease);
- d. all Additional Rentals (defined in the Lease) that are payable to the Trustee for the benefit of the Owners;
- e. the Purchase Option Price (defined in the Lease), if paid; and
- f. all money and securities from time to time held by the Trustee under this Indenture in the Certificate Fund;

PROVIDED, HOWEVER, that if the principal of the Certificates and the premium, if any, and the interest due or to become due thereon, shall be paid at the times and in the manner

provided in Section 2.03 hereof in accordance with the terms and provisions hereof, then, upon such final payments, this Indenture and the rights hereby granted shall cease, determine and be void; otherwise this Indenture is to be and remain in full force and effect.

THIS INDENTURE FURTHER WITNESSETH and it is expressly declared, that all Certificates delivered and secured hereunder are to be executed and delivered and all said property, rights, interests, revenues and receipts hereby pledged, assigned and mortgaged are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Trustee has agreed and covenanted, and does hereby agree and covenant, for the benefit of the Owners, as follows:

## ARTICLE I

### DEFINITIONS

Capitalized terms used herein and not otherwise defined shall have the meanings provided in the Lease. The following capitalized terms shall have the following meanings in this Indenture:

“*Additional Certificates*” means any Certificates delivered after the initial delivery of the Series 2019 Certificates pursuant to Section 2.10 hereof.

“*Additional Rentals*” is defined in the Lease.

“*Base Rentals*” is defined in the Lease.

“*Bond Counsel*” means (a) as of the date of initial delivery of the Series 2019 Certificates, Kutak Rock LLP, and (b) as of any other date, Kutak Rock LLP or such other attorneys selected by the City with nationally recognized expertise in the issuance of municipal securities, the interest on which is excludable from gross income for federal income tax purposes.

“*Business Day*” means any day other than a Saturday, a Sunday or a day on which banks in New York, New York or Denver, Colorado are authorized by law to remain closed.

“*Certificate Fund*” means the special fund created by Section 3.01 hereof.

“*Certificates*” means, collectively, the Series 2019 Certificates and any Additional Certificates.

“*City*” means the City of Colorado Springs, Colorado.

“*City Representative*” is defined in the Lease.

“*Code*” means the Internal Revenue Code of 1986, as amended, and regulations thereunder.

“*Construction Fund*” means the special fund created by Section 3.03 hereof.

“*Costs of Issuance*” means administrative costs of issuance of any Certificates, including, but not limited to, any fees and expenses of any underwriter or financial advisor that provides services in connection with the delivery of any Certificates, legal fees and expenses, costs incurred in obtaining ratings from rating agencies, costs of immediately available funds, costs of publication, printing and engraving, accountants’ fees and recording and filing fees.

“*Costs of Issuance Fund*” means the fund created by and designated as such in Section 3.02 hereof.

“*Costs*” or “*Costs of the Project*” means, with respect to each Project, any and all costs and expenses incurred in the financing of the Project.

“*Council*” is defined in the Lease.

“*Defeasance Securities*” means Permitted Investments that, at the time they are deposited in trust pursuant to Section 9.01 hereof, are described in paragraph (a) or (b) of the definition of Permitted Investments in this Section.

“*Electronic Means*” means telecopy, facsimile transmissions, email transmission or other similar electronic means of communication providing evidence of transmission.

“*Equipment*” is defined in the Lease.

“*Event of Default*” means an event described in Section 12.01 of the Lease; provided, however, that in no event shall an Event of Nonappropriation be deemed an Event of Default.

“*Event of Nonappropriation*” means an event described in Section 6.04(b) of the Lease.

“*Fiscal Year*” means the fiscal or budget year of the City, which begins on January 1 of each calendar year and ends on December 31 of the same calendar year.

“*Force Majeure*” is defined in the Lease.

“*Improvements*” is defined in the Lease.

“*Indenture*” means this Indenture of Trust and any amendment or supplement hereto.

“*Independent Counsel*” means an attorney duly admitted to the practice of law before the highest court in the State and who is not an employee of the City or the Trustee.

“*Initial Purchaser*” means (a) with respect to the Series 2019 Certificates and (b) with respect to any Additional Certificates, the purchasers designated as such in any Supplemental Indenture.

“*Interest Payment Date*” means June 1 and December 1 of each year beginning on [December 1, 2019].



“*Lease*” means the Lease Purchase Agreement dated as of the date hereof, between the Trustee, as lessor, and the City, as lessee, and any amendment or supplement thereto.

“*Lease Revenues*” or “*Revenues*” means, with respect to each Lease and the related Certificates, (a) the Base Rentals; (b) the Purchase Option Price, if paid; (c) any Net Proceeds; (d) any portion of the proceeds of any Certificates deposited with or by the Trustee in the Certificate Fund to pay accrued or capitalized interest on the Certificates; (e) any earnings on moneys on deposit in the Certificate Fund; (f) all other revenues derived from such Lease, excluding Additional Rentals; and (g) any other moneys to which the Trustee may be entitled for the benefit of the Owners.

“*Leased Property*” means the City’s leasehold interest pursuant to the Lease in the Site Leased Property described in Appendix B hereto (which is the same property described in Exhibit A to the Lease) and the Improvements described in Exhibit B to the Lease.

“*Net Proceeds*” when used with respect to the Leased Property, has the meaning set forth in the Lease.

“*Operations Center*” means the operations center of the Trustee in Denver, Colorado, or at such other location as the Trustee may designate from time-to-time by written notice to the City, the Owners, and the Rating Agency; provided, however, that with respect to payments on the Certificates and any exchange, transfer or other surrender of the Certificates, the Trustee’s Operations Center shall mean the corporate trust operations office of the Trustee in St. Paul, Minnesota or such other office or location designated in writing by the Trustee.

“*Opinion of Counsel*” means a written opinion of legal counsel, who may be counsel to the Trustee.

“*Outstanding*” means all Certificates which have been executed and delivered, except:

(a) Certificates canceled or which shall have been surrendered to the Trustee for cancellation;

(b) Certificates in lieu of which other Certificates have been delivered under Section 2.07 or 2.08 hereof;

(c) Certificates which have been redeemed as provided in Article IV hereof (including Certificates redeemed on payment of an amount less than the outstanding principal thereof and accrued interest thereon to the redemption date as provided in Section 4.01 hereof);

(d) Certificates which are due and for which the Trustee holds funds for the benefit of the Owner thereof pursuant to Section 3.06 hereof;

(e) Certificates which are otherwise deemed discharged pursuant to Section 9.01 hereof; and

(f) Certificates held by the City.

“*Owner*” of a Certificate means the registered owner of any Certificate as shown in the registration records of the Trustee.

“*Permitted Encumbrances*,” is defined in the Lease.

“*Permitted Investments*” means any investment which is a lawful investment permitted for the investment of funds of the City by the laws of the State.

“*Person*” means any natural person, firm, corporation, partnership, limited liability company, state, political subdivision of any state, other public body or other organization or association.

“*Plans and Specifications*” means the plans and specifications held by the City and deposited with the Trustee upon request, pursuant to Section 3.03 hereof, as the same may be amended from time to time, according to which the Project is to be constructed.

“*Project*” means the construction of various capital improvements, including without limitation the construction and equipping of a new fire station and radio shop at the Lester L. Williams Fire Department Complex, the construction and equipping of various improvements at the Sertich Ice Center, and the construction and equipping of various improvements at a new Police firing range.

“*Purchase Option Price*” is defined in the Lease.

“*Rating Agency*” means each nationally recognized securities rating agency then maintaining a rating on the Series 2019 Certificates, [and initially means S&P].

“*Rebate Fund*” means the special fund created by Section 3.04 hereof.

“*Record Date*” means, with respect to each Interest Payment Date, the fifteenth day of the month (whether or not a Business Day) immediately preceding the month in which the Interest Payment Date occurs.

“*Redemption Date*” means the date fixed for the redemption prior to their respective maturities of any Series 2019 Certificates in any notice of prior redemption or otherwise fixed and designated by the City.

“*Redemption Price*” means, when used with respect to a Series 2019 Certificate, the principal amount thereof plus the applicable premium, if any, payable upon the redemption thereof prior to the stated maturity date of such security on a Redemption Date in the manner contemplated in accordance with the terms of such Series 2019 Certificate.

“*Requirement of Law*” means any federal, state or local statute, indenture, rule or regulation, any judicial or administrative order (whether or not on consent), request or judgment, any common law doctrine or theory, any provision or condition of any permit required to be obtained or maintained, or any other binding determination of any governmental authority relating to the ownership or operation of property, including but not limited to any of the foregoing relating to zoning, environmental, health or safety matters.

“*Responsible Officer*” means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“*Series 2019 Certificates*” means the Certificates of Participation, Series 2019, evidencing undivided interests in the right to receive certain revenues payable by the City under the Lease, as authorized by Section 2.03 hereof.

“*S&P*” means S&P Global Ratings and its successors and assigns.

“*Site Lease*” means the Site Lease dated as of the date hereof, between the City, as site lessor, and the Trustee, as site lessee, and any amendment or supplement thereto.

“*Site Leased Property*” means the property described in Exhibit B hereto and Exhibit A to the Site Lease and any other property that may be defined as part of the Site Leased Property by any Supplemental Indenture.

“*Special Record Date*” means a special date fixed to determine the names and addresses of Owners of Certificates for purposes of paying defaulted interest in accordance with Section 2.02 hereof.

“*State*” means the State of Colorado.

“*Supplemental Indenture*” means any indenture supplementing or amending this Indenture that is adopted pursuant to Article VIII hereof.

“*Trust Bank*” means a commercial bank which is authorized to exercise and is exercising trust powers located within or without the State, and also means any branch of the Federal Reserve Bank.

“*Trust Estate*” means the property placed in trust by the Trustee pursuant to the Description of Trust Estate in the preambles to this Indenture. The Trust Estate does not include the Rebate Fund or any other accounts established pursuant to Section 9.01 hereof.

“*Trustee*” means U.S. Bank National Association, acting solely in its capacity as trustee hereunder, and not in its own corporate capacity, and any successor thereto appointed hereunder.

“*Trustee Default*” is defined in Section 7.03 hereof.

“*Trustee Representative*” is defined in the Lease.

## ARTICLE II

### AUTHORIZATION, TERMS, EXECUTION AND DELIVERY OF CERTIFICATES

**Section 2.01. Authorized Amount of Certificates.** No Certificates may be delivered hereunder except in accordance with this Article. The aggregate principal amount of Certificates that may be delivered hereunder shall not be limited in amount.

**Section 2.02. Delivery of Certificates.**

(a) The Certificates shall be delivered and sold hereunder for the purpose of paying the Costs of the Project and the Costs of Issuance.

(b) The Certificates shall be deliverable only as fully registered Certificates in the denominations of \$5,000 and any integral multiple thereof (provided that no Certificate may be in a denomination which exceeds the principal coming due on any maturity date and no individual Certificate may mature on more than one maturity date). The Certificates shall be numbered in such manner as shall be determined by the Trustee.

(c) The principal of and premium, if any, on any Certificate shall be payable to the Owner thereof as shown on the registration records of the Trustee upon maturity or prior redemption thereof and upon presentation and surrender at the Operations Center of the Trustee. Payment of interest on the Certificates shall be made by check or draft of the Trustee mailed not later than each Interest Payment Date to the Owner thereof at his address as it last appears on the registration records of the Trustee at the close of business on the Record Date. Any such interest not so timely paid shall cease to be payable to the person who is the Owner thereof at the close of business on the Record Date and shall be payable to the person who is the Owner thereof at the close of business on a Special Record Date for the payment of such defaulted interest. Such Special Record Date shall be fixed by the Trustee whenever moneys become available for payment of the defaulted interest, and notice of the Special Record Date shall be given by the Trustee to the Owners of the Certificates, not less than 10 days prior to the Special Record Date, by first-class mail to each such Owner as shown on the Trustee's registration records on a date selected by the Trustee, stating the date of the Special Record Date and the date fixed for the payment of such defaulted interest. Alternative means of payment of interest may be used if mutually agreed to in writing between the Owner of any Certificate and the Trustee.

**Section 2.03. Series 2019 Certificate Details.**

(a) The Series 2019 Certificates designated as the "Certificates of Participation, Series 2019, evidencing undivided interests in the right to receive certain revenues payable by the City of Colorado Springs, Colorado, under a Lease Purchase Agreement dated as of September 1, 2019" (the "Series 2019 Certificates") shall be delivered in the aggregate principal amount of \$ \_\_\_\_\_. The Series 2019 Certificates shall be dated September \_\_\_\_, 2019, shall mature on the dates and in the amounts set forth below and shall bear interest from their original dated date to maturity at the rates per

annum shown below, payable on each Interest Payment Date; except that Series 2019 Certificates which are reissued upon transfer, exchange or other replacement shall bear interest at the rates per annum shown below from the most recent Interest Payment Date to which interest has been paid or duly provided for, or if no interest has been paid, from the original dated date of the Series 2019 Certificates:

<b>Dates</b>	<b>Amounts</b>	<b>Interest Rate</b>
<b>Maturing (December 1)</b>	<b>Maturing</b>	<b>(Per Annum)</b>
2019		
2020		
2021		
2022		
2023		
2024		
2025		
2026		
2027		
2028		
2029		
2030		
2031		
2032		
2033		
2034		
2035		
2036		
2037		
2038		

(b) The Series 2019 Certificates shall be in substantially the form set forth in Appendix A hereto, with such changes thereto, not inconsistent herewith, as may be necessary or desirable and approved by the City. All covenants, statements, representations and agreements contained in the Series 2019 Certificates are hereby approved and adopted as the covenants, statements, representations and agreements of the Trustee. Although attached as an appendix for the convenience of the reader, Appendix A is an integral part of this Indenture and is incorporated herein as if set forth in full in the body of this Indenture.

(c) Notwithstanding any other provision hereof, the Series 2019 Certificates shall be delivered only in book-entry form registered in the name of Cede & Co., as nominee of The Depository Trust Company (“DTC”), New York, New York, acting as securities depository of the Series 2019 Certificates and principal of, premium, if any and interest on the Series 2019 Certificates shall be paid by wire transfer to DTC; provided, however, if at any time the City or the Trustee determines that DTC is no longer able to act as, or is no longer satisfactorily performing its duties as, securities depository for the

Series 2019 Certificates, the City may, at its discretion, either (i) designate a substitute securities depository for DTC, whereupon the Trustee shall reregister the Series 2019 Certificates as directed by such substitute securities depository or (ii) terminate the book-entry registration system, whereupon the Trustee shall reregister the Series 2019 Certificates in the names of the beneficial owners thereof provided to it by DTC. The Trustee shall have no liability to DTC, Cede & Co., any substitute securities depository, any Person in whose name the Series 2019 Certificates are reregistered at the direction of any substitute securities depository, any beneficial owner of the Series 2019 Certificates or any other Person for (A) any determination made by the City or the Trustee pursuant to the proviso at the end of the immediately preceding sentence or (B) any action taken to implement such determination and the procedures related thereto that is taken pursuant to any direction of or in reliance on any information provided by DTC, Cede & Co., any substitute securities depository or any Person in whose name the Series 2019 Certificates are reregistered.

**Section 2.04. Limited Obligations.** Each Certificate shall represent an undivided interest in the right to receive Lease Revenues and shall be payable solely from the Trust Estate in accordance with, and subject to, the terms of this Indenture. No provision of the Certificates, this Indenture, the Site Lease or the Lease shall be construed or interpreted (a) to directly or indirectly obligate the City to make any payment in any Fiscal Year in excess of amounts appropriated for such Fiscal Year; (b) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of Article XI, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; (c) as a delegation of governmental powers by the City; (d) as a loan or pledge of the credit or faith of the City or as creating any responsibility by the City for any debt or liability of any person, company or corporation within the meaning of Article XI, Section 1 of the Colorado Constitution; or (e) as a donation or grant by the City to, or in aid of, any person, company or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution.

**Section 2.05. Execution and Authentication of Certificates.** The manual signature of a duly authorized signatory of the Trustee shall appear on each Certificate. Any Certificate shall be deemed to have been executed by a duly authorized signatory of the Trustee if signed by the Trustee, but it shall not be necessary that the same signatory sign all of the Certificates delivered hereunder. If any signatory of the Trustee whose signature appears on a Certificate shall cease to be such official before delivery of the Certificates, such signature shall nevertheless be valid and sufficient for all purposes, the same as if he or she had remained a duly authorized signatory of the Trustee until delivery of the Certificate.

**Section 2.06. Delivery of Certificates.** Upon the execution and delivery of this Indenture, and, with respect to any Additional Certificates, the execution and delivery of any Supplemental Indenture relating to such Additional Certificates, the Trustee shall execute and deliver such Certificates to the Initial Purchasers thereof, as hereinafter in this Section provided:

- (a) Prior to the delivery by the Trustee of any of such Certificates, there shall have been filed with the Trustee (i) an originally executed counterpart of this Indenture and any Supplemental Indenture relating to such Certificates, (ii) certified copies of any

other instruments to be executed and delivered by the Trustee and the City in connection with such Certificates, which, in the case of the Series 2019 Certificates, shall include, but not be limited to, the Lease and the Site Lease, (iii) the certificate insurance policy, if any, insuring the principal of and interest on such Certificates and (iv) the title insurance policy or commitment required by Section 6.05 hereof.

(b) Thereupon, the Trustee shall deliver such Certificates to the Initial Purchaser thereof, upon payment to the Trustee of the agreed purchase price, which sum shall be applied as follows: (i) accrued interest and capitalized interest, if any, on the Certificates shall be deposited into the Interest Account of the Certificate Fund; (ii) the amount required to pay the Costs of Issuance shall be deposited into the Costs of Issuance Fund; and (iii) the remainder shall be deposited into the Construction Account for the payment of Costs of the Project.

**Section 2.07. Mutilated, Lost, Stolen or Destroyed Certificates.** In the event that any Certificate is mutilated, lost, stolen or destroyed, a new Certificate may be executed on behalf of the Trustee, of like date, maturity and denomination as that mutilated, lost, stolen or destroyed; provided that the Trustee shall have received such evidence, information or indemnity from the Owner of the Certificate the Trustee may reasonably require, and provided further, in case of any mutilated Certificate, that such mutilated Certificate shall first be surrendered to the Trustee. In the event that any such Certificate shall have matured, instead of delivering a duplicate Certificate, the Trustee may pay the same without surrender thereof. The Trustee may charge the Owner of the Certificate with its reasonable fees and expenses in this connection and require payment of such fees and expenses as a condition precedent to the delivery of a new Certificate.

**Section 2.08. Registration of Certificates; Persons Treated as Owners; Transfer and Exchange of Certificates.**

(a) Records for the registration and transfer of Certificates shall be kept by the Trustee which is hereby appointed the registrar for the Certificates. The principal of, interest on, and any prior redemption premium on any Certificate shall be payable only to or upon the order of the Owner or his legal representative (except as otherwise herein provided with respect to Record Dates and Special Record Dates for the payment of interest). Upon surrender for transfer of any Certificate at the Operations Center of the Trustee, duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or his attorney duly authorized in writing, the Trustee shall enter such transfer on the registration records and shall execute and deliver in the name of the transferee or transferees a new fully registered Certificate or Certificates of a like aggregate principal amount and of the same maturity, bearing a number or numbers not previously assigned.

(b) Fully registered Certificates may be exchanged at the Operations Center of the Trustee for an equal aggregate principal amount of fully registered Certificates of the same maturity of other authorized denominations. The Trustee shall execute and deliver Certificates which the Owner making the exchange is entitled to receive, bearing numbers not previously assigned.

(c) The Trustee may require the payment, by the Owner of any Certificate requesting exchange or transfer, of any reasonable charges as well as any taxes, transfer fees or other governmental charges required to be paid with respect to such exchange or transfer.

(d) The Trustee shall not be required to transfer or exchange (i) all or any portion of any Certificate during the period beginning at the opening of business 15 days before the day of the mailing by the Trustee of notice calling any Certificates for prior redemption and ending at the close of business on the day of such mailing, or (ii) all or any portion of a Certificate after the mailing of notice calling such Certificate or any portion thereof for prior redemption.

(e) Except as otherwise herein provided with respect to Record Dates and Special Record Dates for the payment of interest, the person in whose name any Certificate shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal or interest on any Certificate shall be made only to or upon the written order of the Owner thereof or his legal representative, but such registration may be changed as herein provided. All such payments shall be valid and effectual to satisfy and discharge such Certificate to the extent of the sum or sums paid.

**Section 2.09. Cancellation of Certificates.** Whenever any Outstanding Certificates shall be delivered to the Trustee for cancellation pursuant to this Indenture, upon payment thereof or for or after replacement pursuant to Section 2.07 or 2.08 hereof, such Certificates shall be promptly cancelled by the Trustee.

**Section 2.10. Delivery of Additional Certificates.**

(a) So long as the Lease Term shall remain in effect and no Event of Nonappropriation or Event of Default shall have occurred, one or more series of Additional Certificates secured in whole or part by the Trust Estate may be sold and delivered upon the terms and conditions provided in this Section. The maturity dates, Interest Payment Dates and the times and amounts of payments on such Additional Certificates shall be as provided in the Supplemental Indenture relating to such Additional Certificates. Additional Certificates may be sold and delivered to provide funds to pay any one or more of the following: (i) the costs of refunding all or any portion of the Outstanding Certificates; (ii) the costs of making at any time or from time to time such additions, modifications and improvements for or to the Leased Property as the City may deem necessary or desirable; and (iii) costs of acquiring or improving any additional property that will be leased by the Trustee to the City pursuant to a lease purchase agreement similar to the Lease.

(b) Additional Certificates may be delivered only in accordance with subsection (a) of this Section and only upon there being furnished to the Trustee:

(i) originally executed counterparts of a Supplemental Indenture expressly providing that, for all the purposes hereof, the Leased Property shall



include any property being financed by the Additional Certificates, and that the Certificates shall mean and include the Additional Certificates being delivered as well as any Certificates and Additional Certificates theretofore delivered, except that the series description of the Additional Certificates, the date or dates of the Additional Certificates, the maturity dates and Interest Payment Dates for the Additional Certificates, the rate or rates of interest on the Additional Certificates, and provisions for the redemption thereof, if any, all may be as provided in the Supplemental Indenture rather than as provided in this Indenture;

(ii) the addition to the Trust Estate of an assignment of the Lease Revenues from or with respect to the property financed with the proceeds of such Additional Certificates;

(iii) a written opinion of Bond Counsel to the effect that the delivery of the Additional Certificates and the execution thereof have been duly authorized, that all conditions precedent to the delivery thereof have been fulfilled, that the delivery of the Additional Certificates will not adversely affect the excludability from gross income for federal income tax purposes of interest on any Certificates, and that the delivery and sale of the Additional Certificates will not constitute an Event of Default or a Trustee Default nor cause any violation of the covenants set forth in this Indenture;

(iv) a commitment or other evidence that the amount of the title insurance policy required by Section 6.05 hereof will be increased, if necessary, to reflect the amount of the Additional Certificates and all other Outstanding Certificates (or such lesser amount as shall be the maximum insurable value of the real property included in the Leased Property);

(v) a certificate from the City Representative certifying that the Lease Revenues are expected to be sufficient to pay the principal of, premium, if any, and interest on the Additional Certificates and all other Outstanding Certificates when due; and

(vi) evidence that (A) the Additional Certificates will be rated by S&P, if S&P then rates any Certificates, at least as high as the highest rated Certificates then Outstanding (or, if the Outstanding Certificates are insured, at least as high as the highest rating on the Certificates then Outstanding without regard to such insurance) and (B) the delivery of the Additional Certificates will not result in a withdrawal or reduction of any rating on any other Outstanding Certificates.

(c) No Additional Certificates, notes, certificates, contracts or any other obligations shall be delivered hereunder if an Event of Default or Event of Nonappropriation shall have occurred and be continuing with respect to the Outstanding Certificates.

(d) Each of the Additional Certificates delivered pursuant to this Section shall (except as otherwise provided in Sections 3.01(d) and 3.02(d) hereof) be proportionately

and ratably secured with the Certificates originally delivered hereunder and all other series of Additional Certificates, if any, delivered pursuant to this Section, without preference, priority or distinction of any Certificates or Additional Certificates over any other.

**Section 2.11. Negotiability.** Subject to the registration provisions hereof, the Certificates shall be fully negotiable and shall have all the qualities of negotiable paper, and the Owners thereof shall possess all rights enjoyed by the holders or owners of negotiable instruments under the provisions of the Uniform Commercial Code-Investment Securities. The principal of and interest on the Certificates shall be paid, and the Certificates shall be transferable, free from and without regard to any equities, set-offs or cross-claims between the Trustee and the original or any intermediate owner of any Certificates.

### ARTICLE III

#### FUNDS AND ACCOUNTS

##### Section 3.01. Certificate Fund.

(a) ***Creation of the Certificate Fund.*** A special fund is hereby created and established with the Trustee to be designated the “Colorado Springs Certificates of Participation Certificate Fund” (the “Certificate Fund”), which shall be used to pay the principal of, premium, if any, and interest on the Certificates. Within the Certificate Fund there are hereby created and established an Interest Account and a Principal Account which shall be used as set forth in subsection (d) of this Section.

(b) ***Payments into the Interest Account of the Certificate Fund.*** There shall be deposited into the Interest Account of the Certificate Fund (i) all accrued interest and capitalized interest, if any, received at the time of the delivery of the Certificates; (ii) that portion of each payment of Base Rentals made by the City which is designated and paid as the interest component thereof under Exhibit C to the Lease; (iii) any moneys transferred to the Interest Account of the Certificate Fund from the Costs of Issuance Fund pursuant to Section 3.02 hereof; and (iv) all other moneys received by the Trustee under this Indenture accompanied by directions that such moneys are to be deposited into the Interest Account of the Certificate Fund.

(c) ***Payments into the Principal Account of the Certificate Fund.*** There shall be deposited into the Principal Account of the Certificate Fund (i) that portion of each payment of Base Rentals made by the City which is designated and paid as the principal component thereof under Exhibit C to the Lease, as it may be amended; and (ii) all other moneys received by the Trustee under this Indenture accompanied by directions that such moneys are to be deposited into the Principal Account of the Certificate Fund.

(d) ***Use of Moneys in the Certificate Fund.*** Moneys in the Interest Account of the Certificate Fund shall be used solely for the payment of interest on the Certificates and moneys in the Principal Account of the Certificate Fund shall be used solely for the payment of the principal of and premium, if any, due on the Certificates; provided that

(i) in the event that there are any remaining moneys upon payment of the interest due on the Certificates, such moneys may be used for the payment of principal of and premium, if any, due on the Certificates; (ii) moneys representing accrued interest and capitalized interest received at the time of the delivery of any series of Certificates shall be used solely to pay the first interest due on such Certificates; and (iii) the Purchase Option Price and any other moneys transferred to the Certificate Fund with specific instructions that such moneys be used to pay the redemption price of Certificates shall be used solely to pay the redemption price of Certificates, the proceeds of which were used to fund such account; provided, further, that all moneys in the Certificate Fund shall be available to pay the redemption price of Certificates in connection with a redemption of all the Certificates and to pay the principal of, premium, if any, and interest on any Certificates following an Event of Default or Event of Nonappropriation.

**Section 3.02. Costs of Issuance Fund.** A special fund is hereby created and established by the Trustee and designated the “Colorado Springs Certificates of Participation Costs of Issuance Fund” (the “Costs of Issuance Fund”) There shall be deposited into the Costs of Issuance Fund or transferred to the City the amount set forth in Section 2.06 above from proceeds of the Series 2019 Certificates. Such moneys deposited into the Costs of Issuance Fund shall be disbursed by the Trustee to pay the costs of execution and delivery of the Certificates as directed by the City or paid directly by the City. The Trustee may rely conclusively on any such direction and shall not be required to make any independent investigation in connection therewith. Upon the earlier of the date that is six months following the date of the Series 2019 Certificates or the receipt by the Trustee of a written notice of the City that the remaining moneys in the Costs of Issuance Fund are not needed to pay the costs of execution and delivery of the Series 2019 Certificates the Trustee shall transfer such remaining amounts to the Interest Account of the Certificate Fund and the Costs of Issuance Fund shall, without further direction, be closed.

**Section 3.03. Construction Fund.** A special fund is hereby created and established with the Trustee, to be designated the “City of Colorado Springs Series 2019 Certificates of Participation Construction Fund” (the “Construction Fund”). The Trustee is hereby authorized and directed to establish any accounts within the Construction Fund as are necessary and appropriate to carry out the provision of this Indenture. The net proceeds of the Series 2019 Certificates remaining after any required deposits to the Costs of Issuance Fund and the Interest Account of the Certificate Fund shall be deposited to the appropriate accounts within the Construction Fund, to be held, invested, reinvested if necessary and applied as provided herein.

On the date of execution and delivery of this Indenture, or as soon as practicable thereafter, the City shall deposit with the Trustee the Plans and Specifications. The City is authorized, on behalf of the Trustee, to enter into one or more construction contracts for the Project or portions thereof, which contracts shall be deposited with the Trustee, shall be consistent with the Plans and Specifications deposited with the Trustee as they may be amended from time to time by the City, and may be made payable from the appropriate account within the Construction Fund and any other sources of funds designated by the City.

The Construction Fund shall be used to account for the net proceeds of the Series 2019 Certificates expended on the Project, provided that the City may make available in its discretion,

by deposits to the appropriate account within the Construction Fund or otherwise, additional funds to pay the reasonable or necessary costs incidental to the acquisition, construction, improvement or equipping of the Project and all other necessary and incidental expenses in connection with the foregoing. The amounts in the Construction Fund shall be expended in accordance with the provisions of this Section 3.03. The Trustee shall issue its checks on or otherwise transfer funds from the Construction Fund for each payment pursuant to this Section 3.03.

Amounts in the Construction Fund may be invested in Permitted Investments or, upon the written direction of a City Representative, in repurchase agreements having terms exceeding 365 days and otherwise qualifying under the City's then effective investment policy.

The Trustee shall keep and maintain adequate records pertaining to the Construction Fund and all payments therefrom, which shall be open to inspection by the City, the Owners or their duly authorized agents during normal business hours of, and upon reasonable notice to, the Trustee. After the City certifies the completion date of the Project, the Trustee shall file a statement of income and disbursements with respect to the Construction Fund with the City. Any moneys then remaining in the Construction Fund shall be transferred by the Trustee to the Certificate Fund and applied to the principal of and interest on the Series 2019 Certificates, or to the Series 2019 Rebate Fund, as directed by a City Representative.

Upon the occurrence of an Event of Default hereunder and the exercise by the Trustee of the remedies specified in the Lease and this Indenture, unless the Trustee is directed by the Owners pursuant to Section 7.06 hereof to apply money in the Construction Fund to the Project, any moneys in the Construction Fund shall be transferred by the Trustee to the Interest Account of the Certificate Fund and, with respect to any moneys in excess of the amount required to pay interest on the Series 2019 Certificates, to the Principal Account of the Certificate Fund. In the event of an exercise of the Purchase Option with respect to the Leased Property allocable to the Series 2019 Certificates pursuant to the Lease, any moneys in the Construction Fund shall be transferred to the Principal Account of the Certificate Fund and applied to the payment of the principal of and premium, if any, on the Series 2019 Certificates.

The Construction Fund shall be held in the custody of the Trustee but in the name of and for the benefit of the City, and the City shall direct the Trustee, on the requisition of a City Representative, to withdraw sufficient funds from the Construction Fund to pay or reimburse the City for any payments made by it toward the Costs of the Project, and without such requisition to make required transfers to the Series 2019 Rebate Fund for arbitrage rebate payments in connection with the Series 2019 Certificates, which authorization and direction the Trustee hereby accepts. The Trustee is authorized to and directed to make payments from the Construction Fund to pay (or to reimburse the City for the payment of) the Costs of the Project, including costs related to the design, planning, acquisition, construction, improvement, equipment and operation of the Project. Each payment of Costs of the Project shall be made only upon receipt by the Trustee of a requisition, in substantially the form set forth in Appendix C hereto, signed by a City Representative, together with a detailed explanation showing the payment to be necessary and reasonable, stating:

- a) the requisition number;

- b) the name and address of the person, firm or corporation to whom payment is due or was made;
- c) the amount to be paid or for which reimbursement is sought;
- d) that none of the items for which the payment or reimbursement is proposed to be made has been the subject of any payment or reimbursement theretofore made from the Construction Fund;
- e) the nature of each item for which the payment or reimbursement is proposed to be made and that such item is or was reasonable and necessary in connection with the design, planning, acquisition, construction, improvement or equipping of Improvements to the Site Leased Property included in the Project, and in all cases is a proper charge against the Construction Fund.

No disbursement requested in any requisition shall be made by the Trustee for Costs of the Project unless the City Representative also certifies that the requirements with respect to lien waivers included in any applicable contract have been met. The Trustee may conclusively rely on any such requisition and shall not be required to make any examination or independent investigation in connection therewith.

The City acknowledges that the Trustee cannot process such disbursement request until the Trustee is in receipt of a valid Form W-9 or Form W-8, as applicable, from each payee, in accordance with Internal Revenue Service regulations and the Foreign Account Tax Compliance Act.

#### **Section 3.04. Rebate Fund.**

(a) ***Creation of the Rebate Fund.*** A special fund is hereby created and established with the Trustee to be designated the “Colorado Springs Certificates of Participation Rebate Fund” (the “Rebate Fund”).

(b) ***Deposits into the Rebate Fund.*** There shall be deposited into the Rebate Fund (i) all amounts paid by the City pursuant to subsection (e) of this Section; and (ii) all other moneys delivered to the Trustee that are accompanied by instructions to deposit the same into the Rebate Fund.

(c) ***Use of Moneys in the Rebate Fund.*** Not later than 60 days after December 1, 2023 and every five years thereafter, the Trustee shall, at the direction of the City, pay to the United States of America 90% of the amount required to be on deposit in the Rebate Fund as of such payment date. No later than 60 days after the final retirement of the Certificates, the Trustee shall, at the direction of the City, pay to the United States of America 100% of the amount required to be on deposit in the Rebate Fund which shall remain in effect for such period of time as is necessary for such final payment to be made. Each payment required to be paid to the United States of America pursuant to this Section shall be filed with the Internal Revenue Service Center, Ogden, Utah 84201. Each payment shall be accompanied by a copy of the Internal Revenue Form 8038-T executed by the City and a statement prepared by the City or its agent summarizing the

determination of the amount to be paid to the United States of America. The Trustee acknowledges that the City has reserved the right, in all events, to pursue such remedies and procedures as are available to it in order to assert any claim of overpayment of any rebated amounts.

(d) ***Administration of Rebate Fund.*** The City shall make or cause to be made all requisite rebate calculations so as to provide the information required to transfer moneys to the Rebate Fund pursuant to subsection (b) of this Section and to make the payments required by subsection (c) of this Section. The Trustee shall make deposits to and disbursements from the Rebate Fund in accordance with the written directions of the City given pursuant to the Investment Instructions (the “Investment Instructions”) and the Tax Compliance Certificate (the “Tax Compliance Certificate”) executed by the City in connection with the initial delivery of the Series 2019 Certificates or any similar certificate or instrument delivered by the City in connection with the initial delivery of any Additional Certificates. The Trustee shall, at the written direction of the City, invest the Rebate Fund pursuant to said Investment Instructions and shall deposit income from said investments immediately upon receipt thereof in the Rebate Fund, all as set forth in the Investment Instructions. The Investment Instructions may be superseded or amended by new Investment Instructions drafted by, and accompanied by an opinion of, Bond Counsel addressed to the Trustee to the effect that the use of said new Investment Instructions will not cause the interest on the Certificates to be includible in the gross income of the recipients thereof for purposes of federal income taxation. The City may employ, at its expense, a designated agent to calculate the amount of deposits to and disbursements from the Rebate Fund. If a withdrawal from the Rebate Fund is permitted as a result of the computation described in the Investment Instructions, the amount withdrawn shall be deposited in the Certificate Fund. Record of the determinations required by this Section and delivered to the Trustee and the Investment Instructions must be retained by the Trustee until six years after the final retirement of the Certificates. The Trustee has no duty or obligation to confirm that any written directions provided to it by the City are in compliance with either the Investment Instructions or the Tax Compliance Certificate.

(e) ***Payments by the City.*** The City has agreed in the Lease, subject to the terms of the Lease, that, if, for any reason, the amount on deposit in the Rebate Fund is less than the amount required to be paid to the United States of America on any date, the City will pay to the Trustee as Additional Rentals under the Lease the amount required to make such payment on such date.

**Section 3.05. Nonpresentment of Certificates.** In the event any Certificate shall not be presented for payment when due, if funds sufficient to pay such Certificate shall have been made available to the Trustee for the benefit of the Owner thereof, it shall be the duty of the Trustee to hold such funds without liability for interest thereon, for the benefit of the Owner of such Certificate, who shall be restricted exclusively to such funds for any claim of whatever nature on his or her part under this Indenture or on or with respect to such Certificate. Funds so held but unclaimed by an Owner shall be transferred to the Principal Account of the Certificate Fund and shall be applied to the payment of the principal of other Certificates after the expiration of three

years or, upon receipt by the Trustee of an opinion of Bond Counsel that such funds may be made available for such use on such earlier date, on any earlier date designated by the Trustee.

**Section 3.06. Moneys to be Held in Trust.** The Certificate Fund, the Costs of Issuance Fund, the Construction Fund and, except for the Rebate Fund and any accounts established pursuant to Section 9.01 hereof, any other fund or account created hereunder shall be held by the Trustee, for the benefit of the Owners as specified in the Indenture, subject to the terms of this Indenture, the Lease and the Site Lease. The Rebate Fund shall be held by the Trustee for the purpose of making payments to the United States of America pursuant to Section 3.04(c) hereof. Any escrow account established pursuant to Section 9.01 hereof shall be held for the benefit of the Owners of the Certificates to be paid therefrom as provided in the applicable escrow agreement.

**Section 3.07. Repayment to the City from the Trustee.** After payment in full of the principal of, premium, if any, and interest on the Certificates, all rebate payments due to the United States of America, the fees and expenses of the Trustee and all other amounts required to be paid hereunder, any remaining amounts held by the Trustee pursuant hereto shall be paid to the City.

## ARTICLE IV

### REDEMPTION OF SERIES 2019 CERTIFICATES

**Section 4.01. Redemption of Series 2019 Certificates in Whole Upon an Event of Nonappropriation or Event of Default.**

(a) The Series 2019 Certificates shall be called for redemption in whole at a redemption price determined pursuant to subsection (b) of this Section, on any date, in the event of the occurrence of an Event of Nonappropriation or the occurrence and continuation of an Event of Default.

(b) The redemption price for any redemption pursuant to this Section shall be the lesser of (i) the principal amount of the Series 2019 Certificates, plus accrued interest to the redemption date (without any premium); or (ii) the sum of (A) the amount, if any, received by the Trustee from the exercise of remedies under the Lease with respect to the Event of Nonappropriation or the occurrence and continuation of the Event of Default that gave rise to such redemption and (B) the other amounts available in the Trust Estate for payment of the redemption price of the Series 2019 Certificates, which amounts shall be allocated among the Series 2019 Certificates in proportion to the principal amount of each Series 2019 Certificate. Notwithstanding any other provision hereof, the payment of the redemption price of any Series 2019 Certificate pursuant to this Section shall be deemed to be the payment in full of such Series 2019 Certificate and no Owner of any Series 2019 Certificate redeemed pursuant to this Section shall have any right to any payment from the Trustee or the City in excess of such redemption price.

(c) In addition to any other notice required to be given under this Article or any other provision hereof, the Trustee shall, as soon as reasonably practicable upon the

occurrence of an Event of Nonappropriation or an Event of Default, notify the Owners (i) that such event has occurred and (ii) whether or not the funds then available to it for such purpose are sufficient to pay the redemption price set forth in clause (i) of subsection (b) of this Section. If the funds then available to the Trustee are sufficient to pay the redemption price set forth in clause (i) of subsection (b) of this Section, such redemption price shall be paid as soon as reasonably practicable. If the funds then available to the Trustee are not sufficient to pay the redemption price set forth in clause (i) of subsection (b) of this Section, the Trustee shall (A) as soon as reasonably practicable, pay the portion of the redemption price that can be paid from the funds available, net of any funds which, in the judgment of the Trustee, should be set aside to pursue remedies under the Lease and (B) subject to the provisions of Article VII hereof, as soon as reasonably practicable, begin to exercise and shall diligently pursue all remedies available to it under the Lease in connection of such Event of Nonappropriation or Event of Default. The remainder of the redemption price, if any, shall be paid to the Owners if and when funds become available to the Trustee from the exercise of such remedies.

**Section 4.02. Optional Redemption of Series 2019 Certificates in Whole or in Part Prior to Maturity.** The Series 2019 Certificates maturing on or prior to December 1, 20 are not subject to optional redemption prior to their respective maturity dates. The Series 2019 Certificates maturing on and after December 1, 20 are subject to redemption at the option of the City on December 1, 20 and any date thereafter at a redemption price equal to 100% of their principal amount plus accrued interest to the date of redemption..

**Section 4.03. Reserved.**

**Section 4.04. Reserved.**

**Section 4.05. Mandatory Sinking Fund Redemption.** The Series 2019 Certificates maturing on December 1, 20 are also subject to mandatory sinking fund redemption by lot on December 1 of each year set forth below, at a redemption price equal to the principal amount thereof (without redemption premium), plus accrued interest to the redemption date:

<b>Year (December 1)</b>	<b>Principal Amount</b>
20	
20	
20 <sup>1</sup>	

<sup>1</sup> Stated maturity; not a sinking fund redemption.

**Section 4.06. Notice of Redemption.**

(a) Notice of the call for any redemption, identifying the Certificates or portions thereof to be redeemed and specifying the terms of such redemption, shall be given by the Trustee by mailing a copy of the redemption notice by United States certified or registered first-class mail or by electronic means, at least 30 days prior to the date fixed for redemption, to the Owner of each Certificate to be redeemed at the address



shown on the registration books; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings of any Certificates as to which no such failure has occurred.

(b) Any notice mailed as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Owner receives the notice.

(c) If at the time of giving of notice of redemption there shall not have been deposited with the Trustee moneys sufficient to redeem all the Certificates called for redemption, which moneys are or will be available for redemption of Certificates, such notice will state that it is conditional upon the deposit of the redemption moneys with the Trustee not later than the opening of business on the redemption date, and such notice shall be of no effect unless such moneys are so deposited.

#### **Section 4.07. Redemption Payments.**

(a) On or prior to the date fixed for redemption, the Trustee shall apply funds to the payment of the Certificates called for redemption, together with accrued interest thereon to the redemption date, and any required premium. Upon the giving of notice and the deposit of such funds as may be available for redemption pursuant to this Indenture (which, in the case of redemption pursuant to Section 4.01 hereof, may be less than the full principal amount of the Outstanding Certificates and accrued interest thereon to the redemption date), interest on the Certificates or portions thereof thus called for redemption shall no longer accrue after the date fixed for redemption.

(b) The Trustee shall pay to the Owners of Certificates so redeemed, the amounts due on their respective Certificates, at the Operations Center of the Trustee upon presentation and surrender of the Certificates.

**Section 4.08. Cancellation.** All Certificates which have been redeemed shall not be redelivered but shall be cancelled by the Trustee in accordance with Section 2.09 hereof.

## **ARTICLE V**

### **INVESTMENTS**

**Section 5.01. Investment of Moneys.** All moneys held as part of any fund, account or subaccount created hereunder shall, subject to Sections 5.02 and 6.04 hereof, be deposited or invested and reinvested by the Trustee, at the written direction of the City, in Permitted Investments. The Trustee may conclusively rely upon the City's written instruction as to both the suitability and legality of the directed investments and such written direction shall be deemed to be a certification that such directed investments constitute Permitted Investments. If the City fails to provide written directions concerning investment of moneys held by the Trustee, the Trustee may invest in a money market fund, provided funds will be available for withdrawal from such money market fund prior to the date such funds will be needed. Any and all such deposits or investments shall be held by or under the control of the Trustee. The Trustee may make any and all such deposits or investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades,

including cash sweep account fees. Income from deposits or investments of moneys held in the Rebate Fund shall be deposited as provided in Section 3.04 hereof and income from deposits or investments of moneys held in any escrow account established pursuant to Section 9.01 hereof shall be deposited as provided in the escrow agreement governing such escrow account. Otherwise, except as otherwise provided by Article III hereof, deposits or investments shall at all times be a part of the fund, account or subaccount from which the moneys used to acquire such deposits or investments shall have come, and all income and profits on such deposits or investments shall be credited to, and losses thereon shall be charged against, such fund, account or subaccount. The Trustee shall sell and reduce to cash a sufficient amount of such deposits or investments in the respective funds whenever the cash balance in the Principal Account or Interest Account is insufficient to pay the principal of or interest on the Certificates when due, or whenever the cash balance in any fund or account created hereunder is insufficient to satisfy the purposes of such fund or account. Unless otherwise confirmed or directed in writing, an account statement delivered periodically by the Trustee to the City shall confirm that the investment transactions identified therein accurately reflect the investment directions of the City, unless the City notified the Trustee in writing to the contrary within thirty (30) days of the date of such statement. The Trustee is specifically authorized to purchase or invest in shares of any investment company that (i) is registered under the Investment Company Act of 1940, as amended (including both corporations and Massachusetts business trusts, and including companies for which the Trustee may provide advisory, administrative, custodial, or other services for compensation), (ii) invests substantially all of its assets in short-term high-quality money-market instruments, limited to obligations issued or guaranteed by the United States, and (iii) maintains a constant asset value per share. The Trustee is specifically authorized to implement its automated cash investments system to assure that cash on hand is invested and to charge reasonable cash management fees, which may be deducted from income earned on investments. In computing the amount in any fund or account created hereunder for any purpose hereunder, investments shall be valued at fair market value determined by the Trustee based on accepted industry standards and from accepted industry providers; provided that, that value of any investment that cannot be so valued shall be established by prior agreement between the City and the Trustee. The City acknowledges and agrees that the Trustee shall: (i) only be required to report the value of any assets on statements, books and records according to the price provided by pricing services and sources relied upon by the Trustee; and (ii) not have any duty to independently value any asset or an obligation to report a value other than the price provided by pricing services and sources relied upon by the Trustee.

**Section 5.02. Tax Certification.** The Trustee certifies and covenants to and for the benefit of the Owners that so long as any of the Certificates remain Outstanding, moneys in any fund or account held by the Trustee under this Indenture, whether or not such moneys were derived from the proceeds of the sale of the Certificates or from any other source, will not be knowingly deposited or invested in a manner which will be a violation of Section 6.04 hereof.

## ARTICLE VI

### CONCERNING THE TRUSTEE

**Section 6.01. Representations, Covenants and Warranties Regarding Execution, Delivery and Performance of Indenture.** The Trustee represents, covenants and warrants that:

(a) the Trustee (i) is a national banking association that is duly organized, validly existing and in good standing under the laws of the United States of America; (ii) is duly qualified to do business in the State; (iii) solely in its capacity as trustee hereunder, is the site lessee of the Site Leased Property pursuant to the Site Lease; and (iv) is authorized, under its articles of association and applicable law, to lease the Site Leased Property from the City, to lease the Leased Property to the City, to hold in trust the Trust Estate and to execute, deliver and perform its obligations under this Indenture;

(b) the Trustee, as lessor, and the City, as lessee, have entered into the Lease pursuant to which the Trustee has leased the Leased Property to the City and the City has agreed to pay Base Rentals and Additional Rentals, subject, in each case, to the terms of the Lease;

(c) the execution, delivery and performance of this Indenture by the Trustee has been duly authorized by the Trustee and, upon the execution of this Indenture by the Trustee, this Indenture will be enforceable against the Trustee in accordance with its terms, limited only by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, by equitable principles, whether considered at law or in equity, by the exercise by the State and its governmental bodies of the police power inherent in the sovereignty of the State and by the exercise by the United States of America of the powers delegated to it by the Constitution of the United States of America;

(d) the execution, delivery and performance of the terms of this Indenture by the Trustee does not and will not conflict with or result in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Trustee is now a party or by which the Trustee is bound, or constitute a default under any of the foregoing or, except as specifically provided in this Indenture or the Lease, result in the creation or imposition of a lien or encumbrance whatsoever upon the Trust Estate or any of the property or assets of the Trustee;

(e) the Trustee may in the future enter into other leases or agreements similar or dissimilar to the Lease under which the Trustee will be entitled to receive revenues;

(f) in order to finance the Project, the Certificates will be executed and delivered pursuant to this Indenture;

(g) the Certificates shall evidence undivided interests in the right to receive Lease Revenues, shall be payable solely from the Trust Estate and no provision of the Certificates, this Indenture, the Lease or the Site Lease shall be construed or interpreted (i) to directly or indirectly obligate the City to make any payment in any Fiscal Year in excess of amounts appropriated for such Fiscal Year; (ii) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of Article XI, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; (iii) as a delegation of governmental powers by the City; (iv) as a loan or pledge of the credit or faith of the City or as creating any responsibility by the City for any debt or liability of

any person, company or corporation within the meaning of Article XI, Section 1 of the Colorado Constitution; or (v) as a donation or grant by the City to, or in aid of, any person, company or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution;

(h) the Trustee has entered into this Indenture for and on behalf of the Owners and will, except as otherwise specifically provided herein, hold its rights hereunder, including its rights with respect to the Trust Estate, for the equal and proportionate benefit of the Owners, and will disburse moneys received by it in accordance with this Indenture;

(i) there is no litigation or proceeding pending or, to the best of its knowledge, threatened against the Trustee affecting the right of the Trustee to execute, deliver or perform its obligations under this Indenture;

(j) the Trustee acknowledges and recognizes that the Lease will be terminated upon the occurrence of an Event of Nonappropriation thereunder, and that a failure by the City to appropriate funds in a manner that results in an Event of Nonappropriation under the Lease is a legislative act that is solely within the discretion of the Council; and

(k) the Trustee: (i) did not select the Leased Property; (ii) has no responsibility for the value or condition thereof; (iii) has taken title to the Leased Property solely in its capacity as Trustee hereunder and not in its own corporate capacity; (iv) is not responsible for any failure of the Leased Property to be in conformance with any Requirement of Law; and (v) shall not be deemed to be an owner or operator of the Leased Property for purposes of any environmental law.

**Section 6.02. Duties of the Trustee.** The Trustee hereby accepts the trusts imposed upon it by this Indenture and agrees to perform said trusts, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Indenture against the Trustee:

(a) The Trustee, prior to the occurrence of an Event of Default or Event of Nonappropriation and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically assigned to it in the Lease and this Indenture. In case an Event of Default or Event of Nonappropriation has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by the Lease and this Indenture, and shall use the same degree of care as a prudent person would exercise or use in the circumstance in the conduct of such person's own affairs.

(b) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees but shall be answerable for the conduct of the same in accordance with the standard specified above, and shall be entitled to act upon an Opinion of Counsel concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in

connection with the trusts hereof. The Trustee may act upon an Opinion or advice of Counsel and shall not be responsible for any loss or damage resulting from any action or nonaction taken by or omitted to be taken in good faith in reliance upon such Opinion or advice of Counsel.

(c) The Trustee shall not be responsible for any recital herein or in the Certificates (except in respect of the execution of the Certificates by the Trustee), for collecting any insurance moneys, for the sufficiency of the security for the Certificates delivered hereunder or intended to be secured hereby, or for the value of or title to the Leased Property.

(d) The Trustee shall not be accountable for the use of any Certificates delivered to the Initial Purchaser hereunder. The Trustee may become the Owner of Certificates with the same rights which it would have if not Trustee.

(e) The Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document reasonably believed by it to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Owner of any Certificate shall be conclusive and binding upon any Certificates delivered in place thereof.

(f) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and the Trustee shall not be answerable for other than its negligence or willful misconduct.

(g) The Trustee shall not be required to take notice or be deemed to have notice of any Event of Default or Event of Nonappropriation except failure by the City to cause to be made any of the payments to the Trustee required to be made thereunder, unless (i) a Responsible Officer of the Trustee has actual knowledge of such Event of Default or Event of Nonappropriation or (ii) the Trustee has been notified in writing of such Event of Default or Event of Nonappropriation by the City or by the Owners of at least 10% in aggregate principal amount of Certificates then Outstanding.

(h) All moneys received by the Trustee shall, until used or applied or invested as herein provided, be held in trust in the manner and for the purposes for which they were received but need not be segregated from other funds except to the extent required by this Indenture or law.

(i) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(j) Notwithstanding anything in this Indenture to the contrary, the Trustee shall have the right, but shall not be required, to demand in respect of the delivery of any Certificates, the withdrawal of any cash, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or

corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Trustee.

(k) The Trustee shall not be required to advance any of its own funds in the performance of its obligations hereunder unless it has received assurances or indemnification satisfactory to it that it will be repaid.

(l) In no event shall the Trustee be liable for any direct or indirect, incidental, special or consequential damage in connection with or arising out of the performance of its obligations under this Indenture.

(m) Notwithstanding any other provision hereof, in determining whether the rights of the Owners will be adversely affected by any action taken pursuant to the terms and provisions hereof, the Trustee may rely on an Opinion of Counsel.

(n) Notwithstanding anything in the Indenture or the Lease to the contrary, before taking any action under this Indenture other than the payments from moneys on deposit in the Certificate Fund, as provided herein, the Trustee may require that satisfactory indemnity be furnished to it for the reimbursement of all costs and expenses (including, without limitation, attorney's fees and expenses) to which it may be put and to protect it against all liability which it may incur in or by reason of such action, except liability which is adjudicated to have resulted from its negligence or willful misconduct by reason of any action so taken.

(o) Notwithstanding any other provision of this Indenture to the contrary, any provision relating to the conduct of, intended to provide authority to act, right to payment of fees and expenses, protection, immunity and indemnification to the Trustee, shall be interpreted to include any action of the Trustee, whether it is deemed to be in its capacity as Trustee, bond registrar or paying agent.

(p) The Trustee may inform the Certificate Owners of environmental hazards that the Trustee has reason to believe exist, and the Trustee has the right to take no further action and, in such event, no fiduciary duty exists which imposes any obligation for the Trustee to foreclose upon, manage, maintain or operate the Leased Property, if the Trustee in its individual capacity determines that any such action would materially and adversely subject the Trustee to environmental or other liability for which the Trustee has not been adequately indemnified.

### **Section 6.03. Maintenance of Existence; Performance of Obligations.**

(a) The Trustee shall at all times maintain its existence and will use its best efforts to maintain, preserve and renew all the rights and powers provided to it under its articles of association and bylaws, action of its board of directors and applicable law; provided, however, that this covenant shall not prevent the assumption, by operation of law or otherwise, by any Person of the rights and obligations of the Trustee hereunder, but only if and to the extent such assumption does not materially impair the rights of the Owners of any Outstanding Certificates or the City.

(b) The Trustee shall do and perform or cause to be done and performed all acts and things required to be done or performed in its capacity as Trustee under the provisions of this Indenture, the Lease and any other instrument or other arrangement to which it is a party.

**Section 6.04. Tax Covenant.** The Trustee shall not knowingly take any action or omit to take any action with respect to the Certificates, the proceeds of the Certificates, the Trust Estate or any other funds or property and it will not knowingly permit any other Person to take any action or omit to take any action with respect thereto if the City has informed the Trustee that such action or omission would cause interest on any of the Certificates to be included in gross income for federal income tax purposes or to be an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations (except, with respect to corporations, as such interest is required to be taken into account in determining “adjusted current earnings” for the purpose of computing the alternative minimum tax imposed on such corporations). In furtherance of this covenant, the Trustee agrees, at the written direction of the City, to comply with the procedures set forth in the Tax Compliance Certificate delivered by the City in connection with the initial delivery of the Series 2019 Certificates and the provisions of any similar certificate or instrument delivered by the City in connection with the initial delivery of any Additional Certificates. The covenants set forth in this Section shall remain in full force and effect notwithstanding the payment in full or defeasance of the Certificates until the date on which all obligations of the Trustee in fulfilling such covenants have been met. The covenants set forth in this Section shall not, however, apply to any series of Certificates if, at the time of the initial delivery thereof, the interest on such series of Certificates is intended to be subject to federal income tax.

**Section 6.05. Title Insurance.** The Trustee shall be provided with one or more standard lender’s title insurance policies insuring the Trustee’s interest in the real estate included in the Leased Property, and if all or any portion of the Trustee’s title to the real estate included in the Leased Property is a leasehold interest, then also insuring the title of the owner of such real estate, subject only to Permitted Encumbrances, in an amount not less than the lesser of either the Outstanding amount of Certificates or the insurable value of such real property. Such policy or policies, or binding commitments therefor, shall be in a form approved by the City and shall be provided to the Trustee concurrently with the initial delivery of any Certificates. The Trustee has no duty or obligation to review such policies or binding commitments to confirm that they meet the requirements set forth herein but shall be entitled to rely on the City’s review of such items.

**Section 6.06. Sale or Encumbrance of Leased Property.** As long as there are any Outstanding Certificates, and as except otherwise permitted by this Indenture and except as the Lease otherwise specifically requires, the Trustee shall not sell or otherwise dispose of any of the Trustee’s interest in the Leased Property unless it determines that such sale or other disposal will not materially adversely affect the rights of the Owners of the Certificates.

**Section 6.07. Rights of Trustee Under the Lease.** The Trustee hereby covenants for the benefit of the Owners that the Trustee will observe and comply with its obligations under the Lease, including but not limited to the provisions of Article IX of the Lease regarding the conveyance of the Leased Property and release of the Site Lease, and that the representations made by the Trustee in the Site Lease and in Section 2.01 of the Lease are true. Wherever in the

Lease or the Site Lease it is stated that the Trustee shall be notified or wherever the Lease or the Site Lease gives the Trustee some right or privilege, such part of the Lease or the Site Lease shall be as if it were set forth in full in this Indenture.

**Section 6.08. Defense of Trust Estate.** The Trustee shall at all times, to the extent permitted by law, upon receipt of assurances or indemnification satisfactory to it that it will be repaid for such action, defend, preserve and protect its interest in the Leased Property and the other property or property rights included in the Trust Estate and all the rights of the Owners under this Indenture against all claims and demands of all Persons whomsoever.

**Section 6.09. Compensation of Trustee.** During the Lease Term, the Trustee shall be entitled to compensation in accordance with Section 10.06 of the Lease. In no event shall the Trustee be obligated to advance its own funds in order to take any action in its capacity as Trustee hereunder. The rights of the Trustee to payments pursuant to this Section shall be superior to the rights of the Owners with respect to the Trust Estate.

**Section 6.10. Resignation or Replacement of Trustee.**

(a) The present or any future Trustee may resign by giving written notice to the Owners of a majority in principal amount of the Certificates and the City not less than 60 days before such resignation is to take effect. Such resignation shall take effect only upon the appointment of a successor qualified as provided in subsection (d) of this Section; provided, however, that if no successor is appointed within 90 days following the date designated in the notice for the Trustee's resignation to take effect, the resigning Trustee, at the expense of the City, may petition a court of competent jurisdiction for the appointment of a successor.

(b) The present or any future Trustee may be removed upon 30-days' notice at any time (i) by the City for any reason upon delivery to the Trustee of an instrument signed by the City Representative and accompanied by a resolution or ordinance of the Council seeking such removal, provided that the City shall not be entitled to remove the Trustee pursuant to this clause if an Event of Default has occurred and is continuing or if any Event of Nonappropriation has occurred; (ii) if an Event of Default has occurred and is continuing or if an Event of Nonappropriation has occurred, by the Owners of a majority in principal amount of the Certificates Outstanding upon delivery to the Trustee of an instrument or concurrent instruments signed by such Owners or their attorneys in fact duly appointed; or (iii) by any Owner, upon delivery to the Trustee of an instrument signed by such Owner or his or her attorney in fact duly appointed following a determination by a court of competent jurisdiction that the Trustee is not duly performing its obligations hereunder or that such removal is in the best interests of the Owners.

(c) In case the present or any future Trustee shall at any time resign or be removed or otherwise become incapable of acting, a successor may be appointed by the City. The City, upon making such appointment, shall forthwith give notice thereof to each Owner, which notice may be given concurrently with the notice of resignation given by any resigning Trustee. The Owners of a majority in principal amount of the Certificates Outstanding may thereupon act to appoint a successor trustee to such



successor appointed by the City, by an instrument or concurrent instruments signed by such Owners, or their attorneys in fact duly appointed. Any successor so appointed by the City shall immediately and without further act be superseded by a successor appointed in the manner above provided by the Owners of a majority in principal amount of the Certificates Outstanding.

(d) Every successor shall be a commercial bank with trust powers in good standing, located in or incorporated under the laws of the State, duly authorized to exercise trust powers and subject to examination by federal or state authority, qualified to act hereunder, having a capital and surplus of not less than \$75,000,000. Any successor trustee shall execute, acknowledge and deliver to the present or then trustee an instrument accepting appointment as successor trustee hereunder and as successor to the then current trustee in its capacity as site lessee under the Site Lease and lessor under the Lease, and thereupon such successor shall, without any further act, deed or conveyance, (i) become vested with all the previous rights, title and interest in and to, and shall become responsible for the previous obligations with respect to, the Leased Property and the Trust Estate and (ii) become vested with the previous rights, title and interest in, to and under, and shall become responsible for the trustee's obligations under this Indenture, the Site Lease and the Lease with like effect as if originally named as Trustee herein and therein. The previous trustee shall execute and deliver to the successor trustee (A) such transfer documents as are necessary to transfer the Trustee's interest in the Leased Property to the successor trustee, (B) an instrument in which the previous trustee resigns as trustee hereunder, as site lessee under the Site Lease, as lessor under the Lease, and (C) at the request of the successor trustee, one or more instruments conveying and transferring to such successor, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the previous trustee in the Leased Property, the Trust Estate, this Indenture, the Site Lease and the Lease in a manner sufficient, in the reasonable judgment of the successor trustee, to duly assign, transfer and deliver to the successor all properties and moneys held by the previous trustee in accordance with the laws of the State. Should any other instrument in writing from the previous trustee be required by any successor for more fully and certainly vesting in and confirming to it the rights, title and interest to be transferred pursuant to this Section, the previous trustee shall, at the reasonable discretion and at the request of the successor trustee, make, execute, acknowledge and deliver the same to or at the direction of the successor trustee.

(e) The instruments evidencing the resignation or removal of the Trustee and the appointment of a successor hereunder, together with all other instruments provided for in this Section shall be filed and/or recorded by the successor trustee in each recording office, if any, where this Indenture, the Site Lease and/or the Lease shall have been filed and/or recorded.

**Section 6.11. Conversion, Consolidation or Merger of Trustee.** Any commercial bank with trust powers into which the Trustee or its successor may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its municipal corporate trust business as a whole shall be the successor of the Trustee under this Indenture with the same rights, powers, duties and obligations and subject to the same restrictions, limitations and liabilities as its predecessor, all without the execution or filing of any papers or any further act on

the part of any of the parties hereto or thereto, anything herein or therein to the contrary notwithstanding. In case any of the Certificates to be delivered hereunder shall have been executed, but not delivered, any successor Trustee may adopt the signature of any predecessor Trustee, and deliver the same as executed; and, in case any of such Certificates shall not have been executed, any successor Trustee may execute such Certificates in the name of such successor Trustee.

**Section 6.12. Intervention by Trustee.** In any judicial proceeding to which the City is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of the Owners, the Trustee may intervene on behalf of Owners, and shall do so if requested in writing by the Owners of at least 50% in principal amount of Certificates Outstanding and upon receipt by it of assurances or indemnification satisfactory to it that it will be repaid for such action.

## ARTICLE VII

### DEFAULTS AND REMEDIES

**Section 7.01. Remedies of Trustee Upon the Occurrence of an Event of Default or Event of Nonappropriation.** Upon the occurrence of an Event of Default or Event of Nonappropriation:

(a) the Trustee shall be entitled to apply any moneys in any of the funds or accounts created hereunder (except the Rebate Fund and any escrow accounts established pursuant to Section 9.01 hereof) to the payment of the principal of, premium, if any, and interest on the Certificates when due;

(b) the Trustee may, and at the request of the Owners of a majority in principal amount of the Certificates then Outstanding and upon receipt of assurances or indemnification satisfactory to it that it will be repaid for such action, shall, without any further demand or notice, exercise any of the remedies available to it under the related Lease; and

(c) the Trustee may take any other action at law or in equity that may appear necessary or desirable to enforce the rights of such Owner.

**Section 7.02. Remedies of Trustee Upon Event of Default by the City Under the Site Lease.** Upon an event of default by the City under the Site Lease, the Trustee may, and at the request of the Owners of a majority in principal amount of the Certificates then Outstanding and upon receipt of assurances or indemnification satisfactory to it that it will be repaid for such action, shall, without further demand or notice, take any action at law or in equity that may appear necessary or desirable to enforce the rights of the Trustee and the Owners.

**Section 7.03. Trustee Default.** Any of the following shall constitute a Trustee Default:

(a) default in the payment of the principal of, premium, if any, and interest on any Certificate when due to the extent such failure is not directly caused by an Event of Default or an Event of Nonappropriation;

(b) subject to the provisions of this Indenture, the failure of the Trustee to enforce and diligently pursue any remedy available under Section 7.01 or 7.02 hereof after it shall have received assurances or indemnification satisfactory to it that it will be repaid for such action; and

(c) failure by the Trustee to comply with any other provision of this Indenture within 30 days after receiving notice of noncompliance.

**Section 7.04. Remedies of Owners Upon a Trustee Default.** Subject to the other provisions of this Article, upon the occurrence of any Trustee Default, the Owners of a majority in principal amount of the Certificates Outstanding may:

(a) commence proceedings in any court of competent jurisdiction to enforce the provisions of this Indenture against the Trustee;

(b) subject to Section 6.10 hereof, cause the Trustee to be removed and replaced by a successor trustee; and

(c) subject to Section 7.05 hereof, take any other action at law or in equity that may appear necessary or desirable to enforce the rights of such Owner.

**Section 7.05. Limitations Upon Rights and Remedies of Owners.** No Owner of any Certificate shall have any right to institute any suit, action, or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder, unless (a) a default has occurred of which the Trustee has been notified as provided in Section 6.02(g) hereof, or of which under that Section it is deemed to have notice, (b) such default shall have become an Event of Default, (c) the Owners of not less than twenty-five percent (25%) in aggregate principal amount of Certificates then Outstanding shall have made written request to the Trustee and shall have offered reasonable opportunity either to proceed to exercise the powers hereinabove granted or to institute such action, suit, or proceedings in their own name, and shall have also offered to the Trustee indemnity as provided in Section 7.02 hereof, and (d) the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit, or proceeding in its own name; such notification, request, and offer of indemnity are declared in every case at the option of the Trustee to be conditions precedent to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more Owners of Certificates shall have any right in any manner whatsoever to affect, disturb, or prejudice the lien of this Indenture by his, her, its, or their action, or to enforce any right hereunder except in the manner herein provided and that all proceedings at law or in equity shall be instituted, had, and maintained in the manner herein provided and for the equal benefit of the Owners of all Certificates then Outstanding.

**Section 7.06. Majority of Owners May Control Proceedings.** Anything in this Indenture to the contrary notwithstanding, the Owners of a majority in principal amount of the Certificates then Outstanding shall have the right, at any time, to the extent permitted by law, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the time,

method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of the Lease, the Site Lease or this Indenture, or for the appointment of a receiver, and any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions hereof.

**Section 7.07. Trustee to File Proofs of Claim in Receivership, Etc.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting the City or the Leased Property, the Trustee shall, to the extent permitted by law, be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have claims of the Trustee and of the Owners allowed in such proceedings for the entire amount due and payable on the Certificates under this Indenture, at the date of the institution of such proceedings and for any additional amounts which may become due and payable by it after such date, without prejudice, however, to the right of any Owner to file a claim in its own behalf.

**Section 7.08. Trustee May Enforce Remedies Without Certificates.** The Trustee may enforce its rights and remedies under the Lease, the Site Lease and this Indenture without the possession of any of the Certificates or the production thereof in any trial or proceedings relative thereto; and any suit or proceeding instituted by the Trustee shall be brought in its name as Trustee, without the necessity of joining as plaintiffs or defendants any Owners of the Certificates, and any recovery of judgment shall be for the ratable benefit of the Owners, subject to the provisions hereof.

**Section 7.09. No Remedy Exclusive.** No right or remedy available under this Article or otherwise is intended to be exclusive of any other right or remedy, but each and every such right or remedy shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

**Section 7.10. Waivers.** The Trustee may in its discretion waive any Event of Default, Event of Nonappropriation or event of default by the City under the Site Lease and its consequences, and, notwithstanding anything else to the contrary contained in this Indenture, shall do so upon the written request of the Owners of a majority in aggregate principal amount of all the Certificates then Outstanding; provided, however, that an Event of Nonappropriation shall not be waived without the consent of the Owners of 100% of the Certificates then Outstanding as to which the Event of Nonappropriation exists, unless prior to such waiver or rescission, all arrears of interest and all arrears of payments of principal and premium, if any, then due, as the case may be (including interest on all overdue installments at the highest rate due on the Certificates), and all expenses of the Trustee in connection with such Event of Nonappropriation shall have been paid or provided for. In case of any such waiver, or in case any proceedings taken by the Trustee on account of any such Event of Default, Event of Nonappropriation or event of default by the City under the Site Lease, shall have been discontinued or abandoned or determined adversely to the Trustee, then and in every such case the Trustee, the Owners and the City shall be restored to their former positions and rights hereunder respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, Event of Nonappropriation or event of default by the City under the Site Lease or impair any right consequent thereon.

**Section 7.11. Delay or Omission No Waiver.** No delay or omission of the Trustee or of any Owner to exercise any right or power accruing upon any Event of Default, Event of Nonappropriation or event of default by the City under the Site Lease or Trustee Default shall exhaust or impair any such right or power or shall be construed to be a waiver of any such Event of Default, Event of Nonappropriation or event of default by the City under the Site Lease or Trustee Default, or acquiescence therein; and every power and remedy given by this Indenture may be exercised from time to time and as often as may be deemed expedient.

**Section 7.12. No Waiver of Default or Breach to Affect Another.** No waiver of any Event of Default, Event of Nonappropriation or event of default by the City under the Site Lease or Trustee Default by the Trustee shall extend to or affect any subsequent or any other then existing Event of Default, Event of Nonappropriation or event of default by the City under the Site Lease or Trustee Default or shall impair any rights or remedies consequent thereon.

**Section 7.13. Position of Parties Restored Upon Discontinuance of Proceedings.** In case the Trustee or the Owners shall have proceeded to enforce any right under the Lease, the Site Lease or this Indenture and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Person or Persons enforcing the same, then and in every such case the City, the Trustee and the Owners shall be restored to their former positions and rights hereunder with respect to the Trust Estate, and all rights, remedies and powers of the Trustee and the Owners shall continue as if no such proceedings had been taken.

**Section 7.14. Purchase of Leased Property by Owner; Application of Certificates Toward Purchase Price.** Upon the occurrence of an Event of Default or Event of Nonappropriation and the transfer or lease of the Trustee's interest in the Leased Property by the Trustee pursuant to the Lease, any Owner may bid for and purchase or lease the Trustee's interest in such Leased Property; and, upon compliance with the terms of transfer or lease, may hold, retain and possess and dispose of such property in his, her, its or their own absolute right without further accountability; and any transferee or lessee at any such transfer may, if permitted by law, after allowing for payment of the costs and expenses of such transfer or lease, compensation and other charges, in paying purchase or rent money, turn in Certificates then Outstanding in lieu of cash. Upon the happening of any such transfer or lease, the Trustee may take any further lawful action with respect to such Leased Property which it shall deem to be in the best interest of the Owners, including but not limited to the enforcement of all rights and remedies set forth in the Lease, the Site Lease and this Indenture and the taking of all other courses of action permitted herein or therein.

**Section 7.15. Force Majeure.** Notwithstanding any other provision of this Indenture, the Trustee shall not be obligated to perform any obligation hereunder, and shall not incur any liability for the nonperformance of any obligation hereunder, to the extent that the performance of such obligation is delayed or prevented by Force Majeure.

## ARTICLE VIII

### SUPPLEMENTAL INDENTURES

**Section 8.01. Supplemental Indentures Not Requiring Consent of Owners.** The Trustee may, without the consent of, or notice to, the Owners, execute and deliver a Supplemental Indenture for any one or more or all of the following purposes:

(a) to add to the covenants and agreements of the Trustee contained in this Indenture other covenants and agreements to be thereafter observed by the Trustee;

(b) to cure any ambiguity, or to cure, correct or supplement any defect or omission or inconsistent provision contained in this Indenture, or to make any provisions with respect to matters arising under this Indenture or for any other purpose if such provisions are necessary or desirable and do not adversely affect the interests of the Owners;

(c) to subject to this Indenture additional revenues, properties or collateral (including release and substitution of property permitted under the Lease);

(d) to set forth the terms and conditions and other matters in connection with the initial delivery of Additional Certificates, pursuant to Section 2.10 hereof, including Additional Certificates bearing interest at a variable, adjustable, convertible or other similar rate which is not fixed in percentage for the entire term thereof and Additional Certificates which by their terms appreciate in value to a stated face amount at maturity;

(e) to effect any change in connection with the preservation of the excludability from gross income for federal income tax purposes interest on the Certificates; or

(f) to effect any other changes in this Indenture which, in the opinion of Bond Counsel, do not materially adversely affect the rights of the Owners.

**Section 8.02. Supplemental Indentures Requiring Consent of Owners.**

(a) Exclusive of Supplemental Indentures under Section 8.01 hereof, the written consent of the Owners of not less than a majority in aggregate principal amount of the Certificates Outstanding shall be required for the execution and delivery by the Trustee of any Supplemental Indenture; provided, however, that without the consent of the Owners of all the Certificates Outstanding nothing herein contained shall permit, or be construed as permitting:

(i) a change in the terms of redemption or maturity of the principal amount of or the interest on any Outstanding Certificate, or a reduction in the principal amount of or premium payable upon any redemption of any Outstanding Certificate or the rate of interest thereon, without the consent of the Owner of such Certificate;

(ii) the deprivation as to the Owner of any Certificate Outstanding of the lien created by this Indenture (other than as originally permitted hereby);

(iii) a privilege or priority of any Certificate or Certificates over any other Certificate or Certificates, except as permitted herein; or

(iv) a reduction in the percentage of the aggregate principal amount of the Certificates required for consent to any Supplemental Indenture.

(b) If at any time the Trustee shall propose to execute and deliver any Supplemental Indenture for any of the purposes of this Section, the Trustee shall cause notice of the proposed execution and delivery of such Supplemental Indenture to be mailed to the Owners of the Certificates at the addresses last shown on the registration records of the Trustee. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the Operations Center of the Trustee for inspection by all Owners. If, within 60 days or such longer period as shall be prescribed by the Trustee following the mailing of such notice, the Owners of not less than a majority, or, with respect to the matters specified in paragraphs (i) through (iv) of subsection (a) of this Section, 100%, in aggregate principal amount of the Certificates Outstanding at the time of the execution of any such Supplemental Indenture shall have consented to and approved the execution thereof as herein provided, no Owner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or to enjoin or restrain the Trustee from executing the same or from taking any action pursuant to the provisions thereof.

**Section 8.03. Execution of Supplemental Indenture.** Any Supplemental Indenture executed and delivered in accordance with the provisions of this Article shall thereafter form a part of this Indenture; and all the terms and conditions contained in any such Supplemental Indenture shall be deemed to be part of this Indenture for any and all purposes. In case of the execution and delivery of any Supplemental Indenture, express reference may be made thereto in the text of the Certificates delivered thereafter, if any, if deemed necessary or desirable by the Trustee. As a condition to executing any Supplemental Indenture, the Trustee shall be entitled to receive and rely upon a written opinion of Bond Counsel to the effect that the execution thereof is authorized or permitted under this Indenture and will not adversely affect the excludability from gross income for federal income tax purposes of interest on any Certificates.

**Section 8.04. Amendments of the Lease or the Site Lease Not Requiring Consent of Owners.** The Trustee may, without the consent of or notice to the Owners, amend, change or modify the Site Lease or the Lease as may be required:

(a) by the provisions of the Lease, the Site Lease or this Indenture;

(b) for the purpose of curing any ambiguity or formal defect or omission in the Lease or the Site Lease;

(c) in order more precisely to identify the Site Leased Property or the Leased Property or to add additional or substituted improvements or properties acquired in accordance with the Lease;

(d) in order to provide for the acquisition, construction or installation of additional property under the Lease;

(e) in connection with the initial delivery of Additional Certificates, including Additional Certificates bearing interest at a variable, adjustable, convertible or other similar rate which is not fixed in percentage for the entire term thereof and Additional Certificates which by their terms appreciate in value to a stated face amount at maturity;

(f) in connection with any Supplemental Indenture permitted by this Article;

(g) to effect any change in connection with the preservation of the excludability from gross income for federal income tax purposes of interest on the Certificates;

(h) to effect any change that (i) does not reduce the revenues available to the Trustee from the Lease below the amount required to make all the payments and transfers required by Article III hereof, (ii) does not reduce the value of the Leased Property and (iii) does not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Certificates;

(i) to effect any change to any project permitted by, and in accordance with the terms of, the Lease, any similar lease or agreement relating to any other project; or

(j) to effect any other change in the Lease, the Site Lease or any related document which, in the opinion of Bond Counsel, does not materially adversely affect the rights of the Owners.

**Section 8.05. Amendments of the Lease or the Site Lease Requiring Consent of Owners.** Except for the amendments, changes or modifications permitted by Section 8.04 hereof, the Trustee shall not consent to any other amendment, change or modification of the Site Lease or the Lease without notice to and the written approval or consent of the Owners of not less than a majority in aggregate principal amount of the Certificates Outstanding given and procured as provided in Section 8.02 hereof. If at any time the City shall request the consent of the Trustee to any such proposed amendment, change or modification of the Site Lease or the Lease, the Trustee shall, upon receipt of amounts necessary to pay expenses, cause notice of such proposed amendment, change or modification to be given in the same manner as provided in Section 8.02 hereof. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the office of the Trustee designated therein for inspection by all Owners.

**Section 8.06. Execution of Amendments of the Lease or the Site Lease.** As a condition to executing any amendment to the Site Lease or the Lease, the Trustee shall be entitled to receive and rely upon a written opinion of Bond Counsel to the effect that the execution thereof is authorized or permitted under this Indenture and the Lease or the Site Lease, as applicable, and will not adversely affect the excludability from gross income for federal income tax purposes of interest on any Certificates.



## ARTICLE IX

### MISCELLANEOUS

#### **Section 9.01. Discharge of Indenture.**

(a) If, when the Certificates secured hereby shall become due and payable in accordance with their terms or otherwise as provided in this Indenture, the whole amount of the principal of, premium, if any, and interest due and payable upon all of the Certificates shall be paid, or provision shall have been made for the payment of the same, together with all rebate payments due to the United States of America, the fees and expenses of the Trustee and all other amounts payable under the terms of the Lease, this Indenture or any other related document have been paid in full, then the right, title and interest of the Trustee in and to the Trust Estate and all covenants, agreements and other obligations of the Trustee to the Owners shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, the Trustee shall transfer and convey to (or to the order of) the City all property then held in trust by the Trustee pursuant to this Indenture, and the Trustee shall execute such documents as may be reasonably required by the City and shall turn over to (or to the order of) the City any surplus in any fund, account or subaccount created under this Indenture, except any escrow accounts theretofore established pursuant to this Section.

(b) All or any portion of the Outstanding Certificates shall prior to the maturity or redemption date thereof be deemed to have been paid (“defeased”) within the meaning and with the effect expressed in subsection (a) of this Section if (i) in case such Certificates are to be redeemed on any date prior to their maturity, the Trustee shall have given notice of redemption of such Certificates on said redemption date, such notice to be given on a date and otherwise in accordance with the provisions of Section 4.06 hereof, (ii) there shall have been deposited in trust either moneys in an amount which shall be sufficient, or Defeasance Securities which shall not contain provisions permitting the redemption thereof at the option of the issuer, the principal of and the interest on which when due, and without any reinvestment thereof, will provide moneys which, together with the moneys, if any, deposited with or held in trust at the same time, shall be sufficient to pay when due the principal of, premium, if any, and interest due and to become due on said Certificates on and prior to the redemption date or maturity date thereof, as the case may be; (iii) the Trustee shall have received (A) a report of an independent firm of nationally recognized certified public accountants (“Accountant”) verifying the sufficiency of the escrow established to pay the Series 2019 Certificates in full on the maturity or redemption date (“Verification”), (B) a defeasance escrow agreement (the “Escrow Agreement”), (C) an opinion of Bond Counsel to the effect that the Certificates are no longer “Outstanding” under this Indenture and that such discharge or defeasance will not constitute a violation by the Trustee of its tax covenant in Section 6.04 hereof, and (D) certificate of discharge of the Trustee with respect to the Series 2019 Certificates; each Verification and defeasance opinion shall be acceptable in form and substance, and addressed, to the City and the Trustee. Neither the Defeasance Securities nor moneys deposited in trust pursuant to this Section or principal or interest payments on any such Defeasance Securities shall be withdrawn or used for any purpose other than,

and shall be held in trust for, the payment of the principal of, premium, if any, and interest on said Certificates; provided any cash received from such principal or interest payments on such Defeasance Securities deposited in trust, if not then needed for such purpose, shall, to the extent practicable, be reinvested in Defeasance Securities of the type described in clause (ii) of this subsection maturing at the times and in amounts sufficient to pay when due the principal of, premium, if any, and interest to become due on said Certificates on or prior to such redemption date or maturity date thereof, as the case may be. At such time as any Certificates shall be deemed paid as aforesaid, such Certificates shall no longer be secured by or entitled to the benefits of this Indenture, except for the purpose of exchange and transfer and any payment from such moneys or Defeasance Securities deposited in trust.

(c) Prior to any discharge of this Indenture pursuant to this Section or the defeasance of any Certificates pursuant to this Section becoming effective, there shall have been delivered to the Trustee an opinion of Bond Counsel, addressed to the Trustee to the effect that all requirements of the Indenture for such defeasance have been complied with and that such discharge or defeasance will not constitute a violation by the Trustee of its tax covenant in Section 6.04 hereof.

(d) In the event that there is a defeasance of only part of the Certificates of any maturity, the Trustee may institute a system to preserve the identity of the individual Certificates or portions thereof so defeased, regardless of changes in Certificate numbers attributable to transfers and exchanges of Certificates.

**Section 9.02. Reserved.**

**Section 9.03. Reserved.**

**Section 9.04. Reserved.**

**Section 9.05. Further Assurances and Corrective Instruments.** So long as this Indenture is in full force and effect, the Trustee shall have full power to carry out the acts and agreements provided herein and will from time to time, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered such supplements hereto and such further instruments as may reasonably be requested by the City for correcting any inadequate or incorrect description of the Trust Estate, or for otherwise carrying out the intention of or facilitating the performance of this Indenture.

**Section 9.06. Financial Obligations of Trustee Limited to Trust Estate.** NOTWITHSTANDING ANY OTHER PROVISION HEREOF, ALL FINANCIAL OBLIGATIONS OF THE TRUSTEE UNDER THIS INDENTURE, EXCEPT THOSE RESULTING FROM ITS NEGLIGENCE OR WILLFUL MISCONDUCT, ARE LIMITED SOLELY TO THE TRUST ESTATE, AND THERE ARE NO ASSETS AVAILABLE TO PAY THE CERTIFICATES OR ANY OTHER OBLIGATION HEREUNDER OTHER THAN THE TRUST ESTATE.

**Section 9.07. Evidence of Signature of Owners and Ownership of Certificates.**

(a) Any request, consent or other instrument which this Indenture may require or permit to be signed and executed by the Owners may be in one or more instruments of similar tenor, and shall be signed or executed by such Owners in person or by their attorneys appointed in writing, proof of the execution of any such instrument or of an instrument appointing any such attorney, or the ownership of Certificates shall be sufficient (except as otherwise herein expressly provided) if made in the following manner, but the Trustee may, nevertheless, in its discretion require further or other proof in cases where it deems the same desirable:

(i) the fact and date of the execution by any Owner or his attorney of such instrument may be proved by the certificate of any officer authorized to take acknowledgments in the jurisdiction in which he purports to act that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before a notary public; and

(ii) the fact of the ownership by any person of Certificates and the amounts and numbers of such Certificates, and the date of the ownership of the same, may be proved by the registration records of the Trustee.

(b) Any request or consent of the Owner of any Certificate shall bind all transferees of such Certificate in respect of anything done or suffered to be done by the Trustee in accordance therewith.

**Section 9.08. Parties Interested Herein.** Nothing in this Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person other than the Trustee, the Owners of the Certificates and the City, any right, remedy or claim under or by reason of this Indenture or any covenant, condition or stipulation hereof; and all the covenants, stipulations, promises and agreements in this Indenture contained by and on behalf of the Trustee shall be for the sole and exclusive benefit of the Owners, the City and the Trustee and their respective successors and assigns.

**Section 9.09. Trustee Representative.** Whenever under the provisions hereof the approval of the Trustee is required or the Trustee is required to take some action at the request of the City or the Owners, unless otherwise provided, such approval or such request shall be given for the Trustee by the Trustee Representative, and the City and the Owners shall be authorized to act on any such approval or request.

**Section 9.10. Titles, Headings, Etc.** The titles and headings of the articles, sections and subdivisions of this Indenture have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms or provisions hereof

**Section 9.11. Manner of Giving Notices.** All notices, certificates or other communications hereunder shall be in writing and shall be deemed sufficiently given when given in the manner provided in the Lease.

**Section 9.12. No Individual Liability.** All covenants, stipulations, promises, agreements and obligations of the Trustee, as the case may be, contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Trustee and not of U.S. Bank National Association in its corporate capacity, or of any member, director, officer, employee, servant or other agent of the Trustee in his or her individual capacity, and no recourse shall be had on account of any such covenant, stipulation, promise, agreement or obligation, or for any claim based thereon or hereunder, against U.S. Bank National Association in its corporate capacity, or any member, director, officer, employee, servant or other agent of the Trustee or any natural person executing this Indenture or any related document or instrument.

**Section 9.13. Events Occurring on Days That Are Not Business Days.** If the date for making any payment or the last day for performance of any act or the exercising of any right under this Indenture is a day that is not a Business Day, such payment may be made, such act may be 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 Indenture.

**Section 9.14. Severability.** In the event that any provision of this Indenture, other than the placing of the Trust Estate in trust, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 9.15. Applicable Law.** The laws of the State shall be applied in the interpretation, execution and enforcement of this Indenture.

**Section 9.16. Electronic Storage.** The parties hereto agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the Trustee has executed this Indenture as of the date first above written.

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

By \_\_\_\_\_  
Authorized Signatory

[Signature Page to Indenture of Trust]

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of September, 2019, by Jennifer Petruno, as an authorized signatory of U.S. Bank National Association.

WITNESS MY HAND AND OFFICIAL SEAL, the day and year above written.

[NOTORIAL SEAL]

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

**APPENDIX A**

**FORM OF SERIES 2019 CERTIFICATE**

**Certificate of Participation, Series 2019  
evidencing an undivided interest in  
the right to receive certain revenues payable by  
the City of Colorado Springs, Colorado  
under a Lease Purchase Agreement  
dated as of September 1, 2019**

**Between the City and U.S. Bank National Association as Trustee**

No. R-\_\_ \$ \_\_\_\_\_

<b>Interest Rate</b>	<b>Maturity Date</b>	<b>Original Dated Date</b>	<b>CUSIP</b>
_____%	December 1, 20__	September , 2019	

REGISTERED OWNER: **\*\*CEDE & CO.\*\***  
TAX IDENTIFICATION NUMBER: 13-2555119

PRINCIPAL AMOUNT: **\*\*\_\_\_\_\_ DOLLARS AND NO CENTS\*\***

THIS CERTIFIES THAT the registered owner specified above, or registered assigns, has an undivided interest in right to receive certain revenues payable by the City of Colorado Springs, Colorado (the "City") under a Lease Purchase Agreement dated as of September 1, 2019 (as amended or supplemented from time to time, the "Lease") between U.S. Bank National Association, as trustee under the Indenture (defined below) (which bank, together with any successors thereto appointed under the Indenture is referred to in such capacity as the "Trustee"), as lessor, and the City, as lessee. The proportionate interest of the registered owner of this certificate is secured as provided in the Indenture of Trust dated as of September 1, 2019 (as amended or supplemented from time to time, the "Indenture") by the Trustee, pursuant to which certain rights of the Trustee as lessor under the Lease and certain rights of the Trustee in the property leased to the City pursuant to the Lease (as described in the Lease, the "Leased Property") have been placed in trust for the benefit of the registered owners (the "Owners") of the Certificates of Participation, Series 2019, evidencing undivided interests in the right to receive revenues payable by the City of Colorado Springs, Colorado under a Lease Purchase Agreement dated as of September 1, 2019 (the "Series 2019 Certificates"), in the original aggregate principal amount of \$ \_\_\_\_\_ and any Additional Certificates (as defined in the Indenture) hereafter issued under the Indenture. The Series 2019 Certificates and any Additional Certificates hereafter issued under the Indenture are referred to collectively as the "Certificates". Capitalized terms used but not defined herein have the meaning assigned to them in the Lease and the Indenture.

## **Payment of Principal and Interest**

The Owner of this certificate is entitled to receive, solely out of and to the extent available from the sources hereinafter identified, the Principal Amount specified above on the Maturity Date specified above (or earlier as hereinafter provided) and interest thereon at the Interest Rate specified above, payable on June 1 and December 1 in each year, commencing on December 1, 2019. Principal of this certificate is payable to the Owner hereof in lawful money of the United States of America upon maturity or prior redemption hereof and upon presentation and surrender hereof at the Operations Center of the Trustee in Denver, Colorado. Interest on this certificate is payable by check or draft of the Trustee to be mailed on or before each interest payment date (or, if such payment date is not a Business Day, on or before the next succeeding Business Day) to the person in whose name this certificate is registered in the registration records of the Trustee, and at the address appearing thereon, at the close of business on the fifteenth day (whether or not a Business Day) of the month immediately preceding the month in which payment date occurs (the "Record Date"), except that so long as Cede & Co. is the Owner of this certificate, the principal of and interest on this certificate shall be paid by wire transfer to Cede & Co. Any such interest not so timely paid shall cease to be payable to the person who is the Owner hereof at the close of business on the Record Date and shall be payable to the person who is the Owner hereof at the close of business on a Special Record Date, as provided in the Indenture, for the payment of such defaulted interest. Such Special Record Date shall be fixed by the Trustee whenever moneys become available for payment of the defaulted interest, and notice of the Special Record Date shall be given to the Owners of the Certificates not less than 10 days prior to such Special Record Date. Alternative means of payment of interest may be used if mutually agreed to in writing between the Owner of any Certificate and the Trustee, as provided in the Indenture.

*No provision of the Certificates, the Indenture, the Lease or the Site Lease dated as of September 1, 2019 between the City, as lessor, and the Trustee, as lessee shall be construed or interpreted (a) to directly or indirectly obligate the City to make any payment in any Fiscal Year in excess of amounts appropriated for such Fiscal Year; (b) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of Article XI, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; (c) as a delegation of governmental powers by the City; (d) as a loan or pledge of the credit or faith of the City or as creating any responsibility by the City for any debt or liability of any person, company or corporation within the meaning of Article XI, Section 1 of the Colorado Constitution; or (e) as a donation or grant by the City to, or in aid of, any person, company or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution.*

## **Base Rentals and Additional Rentals; Termination of Lease**

Under the Lease, the Leased Property has been leased by the Trustee to the City, and the City has agreed, subject to the terms of the Lease, to pay directly to the Trustee rental payments (the "Base Rentals") in consideration for its right to use the Leased Property, which Base Rentals are required by the Indenture to be used by the Trustee to pay the Certificates and interest thereon. In addition to the Base Rentals, the City has agreed, subject to the terms of the Lease, to



make certain other payments (the “Additional Rentals”), including the costs and expenses incurred by the City in performing its obligations under the Lease with respect to the Leased Property, the Project, the Lease, the Site Lease, the Indenture, the Certificates and any matter related thereto; the costs and expenses incurred by the City in paying the reasonable fees and expenses of the Trustee pursuant to the Lease; all amounts paid by the City to the Trustee to fund the Rebate Fund pursuant to the Lease; and all other costs and expenses incurred by the City in connection with the foregoing; provided, however, that Additional Rentals do not include the Base Rentals or the Purchase Option Price.

The Lease is subject to annual termination at the option of the City as provided in the Lease. The obligation of the City to pay Base Rentals and Additional Rentals under the Lease will terminate in the event that the City fails, for any reason, to appropriate by December 31 of each Fiscal Year sufficient amounts authorized and directed to be used to pay all Base Rentals scheduled to be paid in the next ensuing Fiscal Year and all Additional Rentals estimated to be payable in the next ensuing Fiscal Year (as provided in the Lease) (any such event is referred to herein as an “Event of Nonappropriation”), and will also terminate upon the occurrence of certain other events as described in the Lease (any such event is referred to herein as an “Event of Default”). If the Lease is terminated by the City by reason of an Event of Nonappropriation or is terminated by reason of an Event of Default, the principal amount of this Certificate and interest hereon will be payable from such moneys, if any, as may be available for such purpose, including any moneys received by the Trustee from the transfer or lease of the Trustee’s interest in the Leased Property. The Trustee may waive an Event of Nonappropriation or an Event of Default under certain circumstances as provided in the Lease and the Indenture.

Under certain circumstances, this certificate and the interest hereon may also be payable from the Net Proceeds of any insurance, performance bonds or condemnation awards, or from Net Proceeds received as a consequence of defaults or breaches of warranty under certain contracts relating to the Leased Property.

The Lease may also be terminated in the event that the City shall exercise its option to purchase the Leased Property by making payment of the Purchase Option Price. In the event that the City shall pay the Purchase Option Price, the proceeds thereof are required to be used to pay the Certificates and interest thereon.

### **Redemption of Series 2019 Certificates**

***Redemption of Series 2019 Certificates in Whole Upon an Event of Nonappropriation or Event of Default.*** The Series 2019 Certificates shall be called for redemption in whole, at a redemption price determined pursuant to the immediately succeeding paragraph on any date, in the event of the occurrence of an Event of Nonappropriation or the occurrence and continuation of an Event of Default.

The redemption price for any redemption pursuant to the immediately preceding paragraph shall be the lesser of (a) the principal amount of the Series 2019 Certificates, plus accrued interest to the redemption date (without any premium); or (b) the sum of (i) the amount, if any, received by the Trustee from the exercise of remedies under the Lease with respect to the Event of Nonappropriation or the occurrence and continuation of the Event of Default that gave

rise to such redemption and (ii) the other amounts available in the Trust Estate for payment of the redemption price of the Series 2019 Certificates, which amounts shall be allocated among the Series 2019 Certificates in proportion to the principal amount of each Series 2019 Certificate. Notwithstanding any other provision hereof, the payment of the redemption price of any Series 2019 Certificate pursuant to this paragraph shall be deemed to be the payment in full of such Series 2019 Certificate and no Owner of any Series 2019 Certificate redeemed pursuant to this Section shall have any right to any payment from the Trustee or the City in excess of such redemption price.

In addition to any other notice required to be given under the Indenture, the Trustee shall, as soon as reasonably practicable upon the occurrence of an Event of Nonappropriation or an Event of Default, notify the Owners (a) that such event has occurred and (b) whether or not the funds then available to it for such purpose are sufficient to pay the redemption price set forth in clause (a) of the immediately preceding paragraph. If the funds then available to the Trustee are sufficient to pay the redemption price set forth in clause (a) of the immediately preceding paragraph, such redemption price shall be paid as soon as reasonably practicable. If the funds then available to the Trustee are not sufficient to pay the redemption price set forth in clause (a) of the immediately preceding paragraph, the Trustee shall (i) as soon as reasonably practicable pay the portion of the redemption price that can be paid from the funds available, net of any funds which, in the judgment of the Trustee, should be set aside to pursue remedies under the Lease and (ii) subject to the provisions of Article VII of the Indenture, as soon as reasonably practicable begin to exercise and shall diligently pursue all remedies available to them under the Lease in connection of such Event of Nonappropriation or Event of Default. The remainder of the redemption price, if any, shall be paid to the Owners if and when funds become available to the Trustee from the exercise of such remedies.

**Notice of Redemption.** Notice of the call for any redemption, identifying the Certificates or portions thereof to be redeemed and specifying the terms of such redemption, shall be given by the Trustee by mailing a copy of the redemption notice by United States certified or registered first class mail, or by electronic means, at least 30 days prior to the date fixed for redemption, and to the Owner of each Certificate to be redeemed at the address shown on the registration books; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings of any Certificates as to which no such failure has occurred.

Any notice given as provided in the immediately preceding paragraph shall be conclusively presumed to have been duly given, whether or not the Owner receives the notice.

If at the time of giving of notice of redemption there shall not have been deposited with the Trustee moneys sufficient to redeem all the Certificates called for redemption, which moneys are or will be available for redemption of Certificates, such notice will state that it is conditional upon the deposit of the redemption moneys with the Trustee not later than the opening of business on the redemption date, and such notice shall be of no effect unless such moneys are so deposited.

**Redemption Payments.** On or prior to the date fixed for redemption, the Trustee shall apply funds to the payment of the Certificates called for redemption, together with accrued

interest thereon to the redemption date, and any required premium. Upon the giving of notice and the deposit of such funds as may be available for redemption pursuant to the Indenture (which, in the case of redemption pursuant to the first paragraph under the caption “Redemption of Series 2019 Certificates in Whole Upon an Event of Nonappropriation or Event of Default,” may be less than the full principal amount of the Outstanding Certificates and accrued interest thereon to the redemption date), interest on the Certificates or portions thereof thus called for redemption shall no longer accrue after the date fixed for redemption.

The Trustee shall pay to the Owners of Certificates so redeemed, the amounts due on their respective Certificates, at the Operations Center of the Trustee upon presentation and surrender of the Certificates.

### **Transfer and Exchange of Certificates**

The Certificates are issuable only as fully registered Certificates in denominations of \$5,000 and any integral multiple thereof. Certificates may be exchanged for an equal aggregate principal amount of fully registered Certificates of the same maturity of other authorized denominations, but only in the manner, subject to the limitations and conditions, and upon payment of the charges provided in the Indenture.

This Certificate is transferable by the Owner hereof in person or by his attorney duly authorized in writing on the registration records kept at the Operations Center of the Trustee upon surrender of this Certificate. Upon such transfer, a new fully registered Certificate or Certificates of the same maturity, of authorized denomination or denominations, for the same aggregate principal amount, will be issued to the transferee in exchange herefor, all upon payment of any reasonable charges and any taxes, transfer fees or other governmental charges required to be paid with respect to such exchange or transfer, and subject to the terms and conditions set forth in the Indenture. The Trustee may deem and treat the person in whose name this Certificate is registered as the absolute owner hereof, for the purpose of receiving payment and for all other purposes.

The Trustee will not be required to transfer or exchange (a) all or any portion of any Certificate during the period beginning at the opening of business 15 days before the day of the mailing by the Trustee of notice calling any Certificates for prior redemption and ending at the close of business on the day of such mailing, or (b) all or any portion of a Certificate after the mailing of notice calling such Certificate or any portion thereof for prior redemption.

### **Amendments to Indenture, Site Lease and Lease**

The Indenture permits amendments thereto and to the Site Lease and the Lease, upon the agreement of the City and the Trustee and with the approval of the Owners of not less than a majority or, in certain instances, 100% in aggregate principal amount of the Certificates at the time Outstanding, as defined in the Indenture. The Indenture also contains provisions permitting the City and the Trustee to enter into amendments to the Indenture, the Site Lease and the Lease without the consent of the Owners of the Certificates for certain purposes, including, without limitation, the issuance of Additional Certificates. The Indenture requires the written consent of

the Trustee to any amendment of the Indenture, the Site Lease or the Lease which modifies the rights, duties or immunities of the Trustee.

**Additional Certificates; Other Terms of the Indenture**

The Indenture permits the issuance of Additional Certificates from time to time under certain terms and conditions, and if issued, such Additional Certificates will be proportionately and ratably secured under and entitled to the protection given by the Indenture with the Series 2019 Certificates. Reference is hereby made to the Indenture for a description of the rights, duties and obligations of the City, the Trustee and the Owners, the terms upon which Additional Certificates may be issued, the terms upon which the Certificates and any Additional Certificates are secured, the terms and conditions upon which the Certificates will be deemed to be paid at or prior to maturity or redemption of the Certificates upon the making of provision for the full or partial payment thereof, and the rights of the Owners upon the occurrence of an Event of Default or an Event of Nonappropriation.

THE INDENTURE CONSTITUTES THE CONTRACT BETWEEN THE REGISTERED OWNER OF THIS CERTIFICATE AND THE TRUSTEE. THIS CERTIFICATE IS ONLY EVIDENCE OF SUCH CONTRACT AND, AS SUCH, IS SUBJECT IN ALL RESPECTS TO THE TERMS OF THE INDENTURE, WHICH SUPERSEDES ANY INCONSISTENT STATEMENT IN THIS CERTIFICATE.

This Certificate is issued with the intent that the laws of the State of Colorado shall govern its legality, validity, enforceability and construction.

This Certificate shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Lease or the Indenture, unless it shall have been manually signed on behalf of the Trustee.

IN WITNESS WHEREOF, this Certificate has been executed with the manual signature of an authorized signatory of the Trustee as of the date specified above.

U.S. Bank National Association, as Trustee

By \_\_\_\_\_  
Authorized Signatory

**FORM OF ASSIGNMENT**

(The Trustee may require the payment, by the Owner of any Certificate requesting transfer, of any reasonable charges, as well as any taxes, transfer fees or other governmental charges required to be paid with respect to such transfer.)

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within Certificate and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Certificate on the records kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_

Signature Guaranteed by a Member  
of a Medallion Signature Program:

\_\_\_\_\_

Address of transferee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Social Security or other tax  
identification number of transferee:

\_\_\_\_\_

NOTE: The signature to this Assignment must correspond with the name as written on the face of the within Certificate in every particular, without alteration or enlargement or any change whatsoever.

**APPENDIX B**

**DESCRIPTION OF THE SITE LEASED PROPERTY**

[To be inserted]