
SITE LEASE

between

CITY OF COLORADO SPRINGS, COLORADO
as Lessor,

and

DNT ASSET TRUST,
as Lessee

Dated as of December ____, 2019

THIS SITE LEASE dated as of December ____, 2019 (this “Site Lease”), between the **CITY OF COLORADO SPRINGS, COLORADO**, as lessor (the “City”), a home rule city and Colorado municipal corporation organized and existing under Article XX of the Colorado Constitution (the “Constitution”) and its Home Rule Charter (the “Charter”), and **DNT ASSET TRUST**, a Delaware business trust and wholly owned subsidiary of JPMorgan Chase Bank, N.A., as lessee (together with its successors and assigns, the “Lessee”);

WITNESSETH:

WHEREAS, pursuant to the Charter and Article XX of the Constitution, the City is authorized to enter into one or more leases for land, buildings, equipment and other property for governmental or proprietary purposes; and

WHEREAS, in order to provide for the capital asset needs of the City, the Colorado Springs City Council (the “Council”) has previously determined and hereby determines that it is necessary and in the best interests of the City and its citizens that the City undertake lease purchase financing of sites, buildings, equipment and other property owned by the City for governmental or proprietary purposes; and

WHEREAS, the City has previously entered into a Building Lease and Lease Purchase Agreement dated as of August 28, 2013 (the “2013 Lease”) between the City, as lessee, and U.S. Bank National Association, as lessor, for the purpose of providing funds for the exercise of the City’s purchase option under that certain Lease Purchase Agreement dated September 28, 2007 by and between the City and CitiCapital Municipal Finance (“CitiCapital”) and for the remodeling, refurbishment, renovation and general improvement of the City Administration Building and the grounds thereon (the “2013 Project”); and

WHEREAS, the leased property under the 2013 Lease is the City Administration Building and the grounds thereon (the “2013 Leased Property”); and

WHEREAS, the Council has determined that it is in the best interests of the City and its residents to undertake the refinancing of the 2013 Project by exercising its option to purchase the 2013 Leased Property under the 2013 Lease and to pay the costs of issuance in connection therewith (collectively, the “Refunding Project”); and

WHEREAS, in order to finance the costs of the Refunding Project, the Council has determined to grant a leasehold interest in the real property described in Exhibit A attached hereto and improvements thereon (whether existing now or hereafter) and made a part hereof (as more specifically described in Exhibit A hereto, the “Leased Property”) to the Lessee pursuant to this Site Lease for a lump-sum payment set forth in Section 3 hereof, and sublease the Leased Property back from the Lessee pursuant to that certain Lease Purchase Agreement dated as of the date of this Site Lease (the “Lease”) between the Lessee, as lessor thereunder, and the City, as lessee thereunder;

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

Section 1. Definitions. Unless the context otherwise requires, capitalized terms used herein shall have the meanings ascribed to them herein and in the Lease.

Section 2. Site Lease and Term. The City hereby leases to the Lessee and the Lessee hereby leases from the City, on the terms and conditions hereinafter set forth, the Leased Property, subject to Permitted Encumbrances as described in the Lease, and such lease to the Lessee is hereby deemed to be in the best interests of the City and its inhabitants.

The term of this Site Lease shall commence on the date hereof and shall end on December 31, 2037 (the "Site Lease Termination Date"), unless such term is sooner terminated as hereinafter provided. If prior to the Site Lease Termination Date, the interest of the Lessee in the Leased Property has been purchased by the City pursuant to the Lease as a result of the City's payment of (i) the related Purchase Option Price thereunder or (ii) all Base Rentals and Additional Rentals as provided in Section 6.02 of the Lease, then the term of this Site Lease shall end immediately upon such payment.

Section 3. Rent and Payment. The City acknowledges receipt from the Lessee as rent and payment hereunder, in full, the lump sum of \$_____ (the "Site Lease Rental Payment") and other good and valuable consideration. The City hereby covenants to apply or cause to be applied such funds solely to the costs of the Refunding Project or related costs of the transactions contemplated by this Site Lease and the Lease.

Section 4. Purpose. The Lessee shall use the Leased Property for the purpose of subletting the same to the City pursuant to the Lease; provided, that upon the occurrence of an Event of Nonappropriation or an Event of Default under the Lease, the City shall vacate the Leased Property as provided in the Lease, the Lessee may exercise the remedies provided in the Lease and the Lessee may use or sublet the Leased Property for the remaining term of this Site Lease for any lawful purposes.

Section 5. Owner in Fee. The City covenants that, as of the date hereof, it is the owner in fee of the Leased Property, subject only to Permitted Encumbrances as defined in the Lease.

Section 6. Assignments and Subleases. Unless an Event of Nonappropriation or an Event of Default under the Lease shall have occurred and except as may otherwise be provided in the Lease, the Lessee may not assign its rights under this Site Lease or sublet the Leased Property without the prior written consent of the City. Except as provided in this Site Lease or in the Lease, neither the City nor the Lessee shall sell, mortgage or encumber the Leased Property or any portion thereof during the term of this Site Lease.

In the event that (a) the Lease is terminated for any reason and (b) this Site Lease is not terminated, the Lessee may sublease the Leased Property or any portion thereof, or sell or assign its interest in this Site Lease, for the remaining term of this Site Lease. Any such purchaser from the Lessee or assignee of the Lessee shall be included in the term "Lessee" for the purposes of this Section 6 of this Site Lease. The Lessee may apply any revenues received by it from the exercise of its remedies hereunder and under the Lease first to the payment of any fees and expenses incurred by the Lessee in connection with this Site Lease and exercising its rights and remedies hereunder and under the Lease.

In the event that (x) the Lease has been terminated for any reason, (y) this Site Lease is not terminated and (z) the City has vacated and surrendered possession of the Leased Property to the Lessee as required under the provisions of Section 6.06 or Section 13.02 of the Lease, the City may acquire the Lessee's interest in the Leased Property, if and only if the City satisfies the following conditions:

(A) the City provides written notice to the Lessee of its intent to acquire such interest at least 30 days prior to the City's proposed acquisition date (the "Purchase Date");

(B) the City agrees to assume, as lessor or landlord, all then existing leases or tenancies with respect to the Leased Property on the Purchase Date;

(C) the City provides, at the City's expense, all documents necessary to accomplish such acquisition and the assignment and assumption of such leases and tenancies on the Purchase Date; and

(D) the City pays to the Lessee an acquisition price equal to the sum of:

(i) the Lease Balance outstanding as of the date of termination of the Lease, less any net amounts received by the Lessee from the exercise of its remedies hereunder, plus

(ii) an amount equal to the Lessee's expenses related to the Leased Property for the period of time commencing on the date of the termination of the Lease to and including the Purchase Date (which amount shall be conclusively determined by the Lessee), less any such expenses that have previously been reimbursed to the Lessee; plus

(iii) an amount equal to any legal, real estate and other professional costs associated with the Leased Property, including but not limited to amounts related to legal advice regarding the Event of Nonappropriation or the Event of Default under the Lease, amounts related to protecting the Lessee's rights under the Site Lease and amounts related to the sale and/or assignment of the Lessee's rights under this Site Lease to the City or to third parties; plus

(iv) an amount equal to the interest accruing on the Lease Balance from the date of occurrence of the related Event of Default, if any, or Lease termination, whichever occurs first, to and including the Purchase Date at a rate equal to the Interest Component Rate plus 4.0%; plus

(v) an amount equal to the accrued interest on amounts due under (ii) and (iii) accruing from the date of such expenditure to and including the Purchase Date at a rate equal to the Interest Component Rate plus 4.0%.

Section 7. Right of Entry. The City reserves the right, so long as no Event of Nonappropriation or Event of Default shall have occurred under the Lease, for any of its duly authorized representatives to enter upon the Leased Property at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

Section 8. Termination. The Lessee agrees, upon the termination of this Site Lease, to quit and surrender the Leased Property and any improvements and structures built thereon, to the City free and clear of liens and encumbrances except Permitted Encumbrances as defined in the

Lease, and subject to any leases or tenancies granted by the Lessee following an Event of Nonappropriation or Event of Default, provided that upon termination of this Site Lease the City shall succeed to the rights of the Lessee with respect to any such leases or tenancies. The Lessee agrees that any fixtures, permanent improvements and structures existing upon the Leased Property, including any improvements and structures built on the Leased Property, at the time of the termination of this Site Lease shall remain thereon and all right, title and interest of the Lessee therein shall vest in the City. The Lessee and any sublessee or assignee shall execute and deliver, upon request by the City, any instrument of transfer, conveyance or release necessary or appropriate to confirm the vesting of such legal interests in the City.

Section 9. Default. Upon the payment of the Site Lease Rental Payment, the payment obligations of the Lessee to the City hereunder shall be deemed fully performed by the Lessee and the leasehold interest granted hereby shall be fully vested in the Lessee. In the event the Lessee shall be in default in the performance of any obligation on its part to be performed under the terms of this Site Lease, which default continues for 30 days following notice and demand for correction thereof to the Lessee, the City may exercise any and all remedies granted by law, except that such remedies shall not include termination of this Site Lease, and no merger of this Site Lease and the Lease shall be deemed to occur as a result thereof.

Section 10. Quiet Enjoyment and Acknowledgment of Leasehold. The Lessee at all times during the term of this Site Lease shall peaceably and quietly have, hold and enjoy the Leased Property and any improvements and structures built on the Leased Property, subject to the provisions of the Lease, and the City hereby acknowledges that the Lessee shall have a leasehold interest in the land comprising the Leased Property and in all fixtures, improvements and structures on the Leased Property listed in Exhibit A, subject to the Lease.

Upon the request of the Lessee and the consent of the City, which shall not be unreasonably withheld or delayed, the City shall promptly grant such easements in the Leased Property in such form and content as are reasonably necessary to exercise the Lessee's rights and remedies under the Lease and this Site Lease including but not limited to, its rights to exercise its remedies under the Lease and its rights to occupy and sublease the Leased Property in the event of termination of the Lease.

Section 11. Waiver of Personal Liability. All liabilities under this Site Lease on the part of the Lessee are solely liabilities of the Lessee, and the City hereby releases each and every director, member, officer, employee and agent of the Lessee of and from any personal or individual liability under this Site Lease. No employee or agent of the Lessee shall at any time or under any circumstances be individually or personally liable to the City under this Site Lease for anything done or omitted to be done by the Lessee hereunder.

Section 12. Taxes; Maintenance; Insurance. During the Lease Term of the Lease and in accordance with the provisions of the Lease, the City covenants and agrees to pay any and all assessments of any kind or character and all taxes, including possessory interest taxes, levied or assessed upon the Leased Property and any improvements thereon, and all maintenance costs and utility charges in connection with the Leased Property and any improvements thereon. In the event that the Lease is terminated for any reason and this Site Lease is not terminated, the Lessee or any

sublessee or assignee of the Leased Property shall pay or cause to be paid when due all taxes and assessments imposed thereon and maintain the Leased Property in good condition.

The provisions of the Lease shall govern with respect to the maintenance of insurance hereunder during the Lease Term of the Lease. The City agrees to maintain, at its expense, the same coverages following the termination of the Lease if this Site Lease is not terminated; provided that any obligation of the City to make payment therefor shall be subject to annual appropriation by the City Council of the City.

Section 13. Damage, Destruction or Condemnation. The provisions of the Lease shall govern with respect to any damage, destruction or condemnation of the Leased Property or any improvements and structures built on the Leased Property during the Lease Term of the Lease. In the event that (a) the Lease is terminated for any reason, (b) this Site Lease is not terminated and (c) any improvements and structures built on the Leased Property or any portion thereof are damaged or destroyed, in whole or in part, by fire or other casualty, the Lessee shall be entitled to the net proceeds of any insurance claim up to an amount equal to the Purchase Option Price in effect on the date of termination of the Lease and the City shall be entitled to the remaining net proceeds in excess of said amount. In the event that (a) the Lease is terminated for any reason, (b) this Site Lease is not terminated and (c) title to or use of the Leased Property, any improvements and structures built on the Leased Property or any part thereof shall be taken under the exercise of the power of eminent domain, the Lessee shall be entitled to the net proceeds from said condemnation in an amount equal to the Purchase Option Price in effect on the date of termination of the Lease plus the Lessee's reasonable expenses in connection with any such casualty or condemnation event (including those expenses pursuant to Section 12 hereof incurred from the date of such casualty or condemnation event or the date the Lease is terminated), and the City shall be entitled to the remaining net proceeds in excess of said amount.

Section 14. Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Site Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site Lease shall be affected thereby, and each provision of this Site Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 15. No Merger. The City and the Lessee intend that the legal doctrine of merger shall have no application to this Site Lease and that neither the execution and delivery of the Lease by the Lessee and the City nor the exercise of any remedies under this Site Lease or the Lease shall operate to terminate or extinguish this Site Lease or the Lease, except as specifically provided herein and therein.

Section 16. Notices. All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if mailed shall be made by United States registered mail, return receipt requested, postage prepaid, at the addresses indicated in the Lease, or to such other addresses as the respective parties may from time to time designate in writing.

Section 17. Amendments; Actions by JPMorgan Chase Bank. This Site Lease may not be amended, changed, modified or altered without the prior written consent of the City and the Lessee. Notwithstanding the foregoing, however, or any provision to the contrary contained in this Site Lease or the Lease, JPMorgan Chase Bank, N.A. shall have the right to consent, direct remedies and take all actions on behalf of the Lessee under this Site Lease and the Lease.

Section 18. Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Site Lease.

Section 19. Waiver of Jury Trial. ALL PARTIES TO THIS SITE LEASE HEREBY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY ON ANY MATTER WHATSOEVER ARISING OUT OF, IN CONNECTION WITH, OR IN ANY WAY RELATED TO THIS SITE LEASE OR THE LEASE.

Section 20. Governing Law. This Site Lease shall be governed by and construed in accordance with the law of the State of Colorado.

Section 21. Execution. This Site Lease may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same Site Lease.

[Signature Page of Site Lease Follows]

IN WITNESS WHEREOF, the City and the Lessee have caused this Site Lease to be executed by their respective officers thereunto duly authorized, and the City has affixed its corporate seal hereto all as of the day and year first above written.

[SEAL]

CITY OF COLORADO SPRINGS,
COLORADO,
as Lessor

By _____
Mayor

Attest:

By _____
City Clerk

DNT ASSET TRUST,
as Lessee

By: _____
Authorized Officer

[Signature Page to Site Lease]

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

This instrument was acknowledged before me this ____ day of _____, 2019, by John Suthers, as Mayor of the City of Colorado Springs, Colorado, and by Sarah B. Johnson, as Clerk of said City.

WITNESS my hand and official seal.

Notary Public

[SEAL]

My Commission Expires:

STATE OF COLORADO)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me this ____ day of _____, 2019, by _____, as _____ of DNT Asset Trust, a Delaware business trust and wholly owned subsidiary of JPMorgan Chase Bank, N.A.

WITNESS my hand and official seal.

Notary Public

[SEAL]

My Commission Expires:

EXHIBIT A

DESCRIPTION OF THE LEASED PROPERTY

Lot 1 in the City Administration Building Subdivision in the City of Colorado Springs, El Paso County, Colorado, according to the plat thereof recorded July 21, 2006 at Reception No. 206712376.

City of Colorado Springs
County of El Paso
State of Colorado