

PLEDGE AGREEMENT
(True North Commons Urban Renewal Area)

THIS PLEDGE AGREEMENT is made as of _____, 2019, by and between the USAFA VISITOR'S CENTER BUSINESS IMPROVEMENT DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado and the COLORADO SPRINGS URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado.

RECITALS

- A. All terms used in these Recitals have the same meaning as set forth in Section 1 hereof, unless otherwise defined in these Recitals.
- B. The District is a quasi-municipal corporation and political subdivision organized under the BID Act.
- C. The Authority is an urban renewal authority and a body corporate and politic organized under the Urban Renewal Law.
- D. Article XIV, Section 18, of the Colorado Constitution, C.R.S. §29-1-203, and C.R.S. §31-25-112 provide for and encourage urban renewal authorities and governmental entities within Colorado to make the most efficient and effective use of their powers and responsibilities by cooperating with each other to accomplish specific public purposes.
- E. The City Council of the City approved the Urban Renewal Plan on July 9, 2019 by Resolution No. 61-19, relating to the True North Commons Urban Renewal Area project, under which it is provided that within the Urban Renewal Area, property tax increment and municipal sales tax increment revenues have been allocated pursuant to C.R.S. §31-25-107(9)(a)(II) to further the purposes of the Urban Renewal Plan and provide financial support therefor from such tax increment revenues, as therein and herein further provided.
- F. Pursuant to the directive in the Urban Renewal Law, the Urban Renewal Plan affords maximum opportunity, consistent with the sound needs of the City as a whole, for the rehabilitation or redevelopment of the Plan Area.
- G. The District was organized for the purpose of providing for the financing, acquisition, construction, completion, installation, replacement and/or operation and maintenance of the services and public improvements necessary to support the development of a commercial mixed-use development located near the north entrance to the USAFA and within the boundaries of the District.
- H. The property within the boundaries of the District is owned by the USAFA and the Leased Premises portion of the parcel will be leased to the Developer pursuant to the Site Development Lease.

- I. To further the development of the Leased Premises, the Developer and the District have entered the BID Sublease related to the design, acquisition, construction, completion and installation of the Project.
- J. The District is authorized by the BID Act and its Operating Plan to borrow money and to issue bonds to evidence such borrowing.
- K. At the Election a majority of those qualified to vote and voting at the Election voted in favor of, inter alia, the issuance of District indebtedness and the imposition of taxes, for the purpose of financing the Project.
- L. Pursuant to the Regional Tourism Act, the Commission has established a Regional Tourism Zone in the City and approved the Project as part of a regional tourism project pursuant to the Regional Tourism Act and Resolution No. 3.
- M. Pursuant to Resolution No. 3, the Dedicated State Sales Tax Increment will be paid to the Authority to finance a portion of the costs of the Project.
- N. In order to finance the Project, the District desires to enter into this Pledge Agreement.
- O. The Authority, in consideration of its statutory public purpose and in order to carry out the Urban Renewal Plan, desires to enter into this Pledge Agreement.

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and in order to carry out the purposes as set forth above, the District and the Authority agree as follows:

Section 1. DEFINITIONS. Capitalized terms used herein and not otherwise defined shall have the meanings set forth below:

(a) "Authority" means the Colorado Springs Urban Renewal Authority, and its successors.

(b) "Authority Fee" means an amount equal to \$ _____ annually.

(c) "Authority Pledged Revenues" means the following amounts received by the Authority from time to time, net of any costs of collection and net of the Authority Fee, and payable to the District or Bond Trustee pursuant to this Pledge Agreement:

- (i) Pledged Property Tax Increment Revenues;
- (ii) Pledged Sales Tax Increment Revenues;
- (iii) Dedicated State Sales Tax Increment Revenues;
- (iv) County Sales Tax Increment Revenues; and
- (v) Use Tax Increment Revenues.

- (d) “Bond Trustee” means BOKF N.A. dba Colorado State Bank and Trust, or its successor, as the trustee for the Bonds.
- (e) “Bonds” means bonds to be issued by the District pursuant to the Election and the BID Act to finance the Project and any bonds or other obligations issued to refund any such Bonds.
- (f) “BID Act” means Title 31, Article 25, Part 12, Colorado Revised Statutes.
- (g) “BID Sublease” means the Sublease dated, _____, 2019 between the Developer and the District relating to the construction of the Project, as amended from time to time.
- (h) “City” means the City of Colorado Springs, Colorado.
- (i) “County” means El Paso County, Colorado.
- (j) “City Cooperation Agreement” means the Cooperation Agreement, dated July 9, 2019, between the Authority and the City, as amended from time to time.
- (k) “Commission” means the Colorado Economic Development Commission.
- (l) “County Cooperation Agreement” means the Tax Increment Revenue Agreement, dated _____, 2019, between the Authority and the County, as amended from time to time.
- (m) “County Sales Tax Increment Revenues” means any County sales tax increment revenues from the Urban Renewal Area remitted to the Authority pursuant to the County Cooperation Agreement.
- (n) “C.R.S.” or “Colorado Revised Statutes” means the Colorado Revised Statutes, as amended and supplemented.
- (o) “Dedicated Revenue Special Fund” means the special fund designated as the “Colorado Springs Urban Renewal Authority City for Champions Fund” heretofore established and controlled by the Authority pursuant to Resolution No. 3 into which the State Sales Tax Increment Revenues received by the Authority are deposited.
- (p) “Dedicated State Sales Tax Increment Revenues” means the portion of the State Sales Tax Increment Revenues paid by the State to the Authority and dedicated to the financing of the USAFA Visitors Center in accordance with the terms and provisions of Resolution No. 3. The Dedicated State Sales Tax Increment Revenues shall be deposited by the Authority in the USAFA Visitor’s Center Sub-Account of the Dedicated Revenue Special Fund after any permitted transfers to the Authority Expense Sub-Account, in accordance with Resolution No. 3.
- (q) “Developer” means Blue & Silver Development Partners, LLC.
- (r) “District” means the USAFA Visitor’s Center Business Improvement District, and any successors thereto.

(s) “Leased Premises” means the property leased by to the Developer pursuant to the Site Development Lease which will be developed by the Developer.

(t) “Pledge Agreement” means this Pledge Agreement.

(u) “Pledged Property Tax Increment Revenues” means Property Tax Increment Revenues net of any offsets retained by the County Treasurer for return of overpayments or as reserve funds as permitted by C.R.S. § 31-25-107(9)(a)(III) and (b), and which are not required to be paid to any taxing bodies pursuant to the Tax Increment Agreements.

(v) “Pledged Sales Tax Increment Revenues” means 100% of the Sales Tax Increment Revenues received by the Authority from the City.

(w) “Project” means the design, acquisition, construction, completion and installation of the USAFA Visitors Center pursuant to the terms and provisions of the BID Sublease Agreement, the Redevelopment Agreement, and Resolution No. 3, and the design, construction and installation of improvements and infrastructure that are necessary to or convenient for the development of the Leased Premises, and which are permitted by the BID Act.

(x) “Property Tax Base Valuation” means \$0.00, as adjusted from time to time by the County Assessor in accordance with C.R.S. § 31-25-107(9) and the rules and regulations of the Property Tax Administrator of the State of Colorado.

(y) “Property Tax Increment Revenues” means the ad valorem property tax revenue received by the Authority from the County Treasurer in excess of the amount produced by the annual levy of all taxing bodies that levy property taxes in the Urban Renewal Area against the Property Tax Base Valuation, pursuant to C.R.S. §31-25-107(9)(a)(ii) and Section 7.0 of the Urban Renewal Plan.

(z) “Redevelopment Agreement” means the Redevelopment Agreement, dated _____, 2019, between the Authority and the Developer, as amended from time to time

(aa) “Regional Tourism Act” means the Colorado Regional Tourism Act, constituting Title 24, Article 46, Part 3, Colorado Revised Statutes.

(bb) “Regional Tourism Zone” means the geographic area within the City described and depicted in Exhibit A to Resolution No. 3.

(cc) “Resolution No. 3” means Resolution No. 3 duly adopted by the Commission effective as of December 16, 2013 approving the City’s application for a “Regional Tourism Project,” as defined in the Regional Tourism Act, generally referred to as the “City for Champions” project, as amended or modified from time to time.

(dd) “Sales Tax” means 87.5% of the general fund municipal sales tax of the City imposed at the rate of 2.0% (*i.e.*, 1.75%) on sales of goods and services that are subject to municipal sales taxes pursuant to the City of Colorado Springs Municipal Code, as allocated to the Authority by the City pursuant to the City Cooperation Agreement and the Urban Renewal Plan.

(ee) “Sales Tax Base Amount” means \$0.00, which is the total collection of general fund municipal sales taxes levied at the rate of 2.0% within the Urban Renewal Area in the twelve-month period ending on the last day of the month prior to the effective date of the approval of the Urban Renewal Plan, in accordance with C.R.S. §31-25-107(9)(a)(I).

(ff) “Sales Tax Increment” means Sales Tax Revenues collected by the City in excess of the Sales Tax Base Amount.

(gg) “Sales Tax Revenues” means the funds generated by imposition of the Sales Tax, not including any sales taxes for remote sales as specified in C.R.S. § 39-26-104(2).

(hh) “Site Development Lease” means the Site Development Lease, dated as of _____, 2019 between the United States of America, acting by and through the Secretary of the Air Force, and the Developer, as amended from time to time.

(ii) “State Sales Tax Increment Revenues” means an amount equal to 13.08% of the State sales tax revenue collected by the State from taxable transactions within the Regional Tourism Zone in excess of the state sales tax revenue collected by the State from taxable transactions within the Regional Tourism Zone during the period beginning on December 1, 2012 and ending on November 30, 2013 but not including any sales taxes for remote sales as specified in C.R.S. § 39-26-104(2), or any amounts refunded to taxpayers within the Regional Tourism Zone pursuant to C.R.S. §39-26-703; provided that such amount shall not exceed \$120,500,000.

(jj) “Tax Increment Agreements” means, collectively, the agreement or agreements between the Authority and the taxing bodies that levy property taxes in the Urban Renewal Area relating to the allocation of the property tax increment revenues generated in the Urban Renewal Area in accordance with the Urban Renewal Law, including the County Cooperation Agreement, as such agreements are amended from time to time.

(kk) “Urban Renewal Area” means the area subject to the Urban Renewal Plan.

(ll) “Urban Renewal Law” means Part 1, Article 25, Title 31, Colorado Revised Statutes.

(mm) “Urban Renewal Plan” means the True North Commons Urban Renewal Plan approved by the City on July 9, 2019, as amended from time to time.

(nn) “USAFA” means the United States Air Force Academy.

(oo) “USAFA Visitor’s Center” means the USAFA Gateway Visitors Center referred to in Resolution No. 3 and constructed substantially in accordance with the terms and provisions of Resolution No. 3 and the BID Sublease.

(pp) “Use Tax Increment Revenues” means 50% of the 2% general fund municipal use tax paid solely on construction materials used within the Urban Renewal Area (i.e. 1.00%) to the extent appropriated by the City Council and remitted to the Authority pursuant to the City Cooperation Agreement.

Section 2. District Commitment to Finance and Construct the Project. The District agrees to cause to be constructed the Project in accordance with the BID Act, the Urban Renewal Plan, the BID Sublease and Resolution No. 3. The District agrees to issue Bonds to finance the costs of the Project.

Section 3. Authority Pledged Revenues. In order to further the development of the Project, the Authority hereby agrees to pay Authority Pledged Revenues to the District. The Authority hereby pledges such Authority Pledged Revenues to the District, subject to the terms and provisions hereof. Such revenues shall be paid to the District as soon as practicable after receipt thereof by the Authority, but in any event within thirty (30) days of receipt thereof, provided that the District may direct the Authority in writing to pay the Authority Pledged Revenues to the Bond Trustee or another entity or depository. To the extent that the Authority has received Authority Pledged Revenues prior to the date hereof, the Authority agrees to remit such revenues to the District upon the execution and delivery of this Pledge Agreement. The Authority hereby elects to apply C.R.S. §11-57-208(2) to this Pledge Agreement. In accordance with C.R.S. §11-57-208(2) the Authority Pledged Revenues pledged pursuant to this Pledge Agreement shall immediately be subject to the lien of such pledge without any physical delivery, filing or further act. The lien of such pledge and the obligation to perform the contractual provisions made herein shall have priority over any or all other obligations and liabilities, except as may otherwise be provided herein. The lien of such pledge shall be valid, binding and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the Authority irrespective of whether such persons have notice of such liens.

The Authority agrees that it shall not issue or incur bonds, notes or other obligations payable in whole or in part from, or constituting a lien upon the Authority Pledged Revenues.

Section 4. Collection of Revenues; Continuing Cooperation; Records. The Authority agrees to pursue all of the lawful procedures and remedies available to the Authority in order to collect the Authority Pledged Revenues and to cause such revenues to be applied in accordance with this Pledge Agreement. If any further cooperation or other agreements or amendments shall be necessary or appropriate in order to accomplish the collection of the Authority Pledged Revenues and the allocation to the Authority and the payment thereof to the Authority in accordance with this Pledge Agreement the Authority agrees to exercise its reasonable best efforts to secure the approval of such additional agreements.

The Authority shall keep proper and current records, books and accounts in which complete and accurate entries shall be made of the receipt of the Authority Pledged Revenues. All such records, books and accounts relating to the Authority Pledged Revenues shall at all reasonable times be open to inspection by the District or its agents, and the Bond Trustee (to the extent that the District has pledged and assigned its rights hereunder to secure the payment of the Bonds).

Section 5. Amendment of Agreements and Urban Renewal Plan. The Authority agrees that it will not take any action in such manner or to such extent as might materially prejudice the security for the payment of the Bonds according to the terms thereof, including the giving of consents to actions by others and material amendments to the City Cooperation Agreement, the Tax Increment Agreements, the Redevelopment Agreement or the Urban Renewal Plan.

Section 6. Authorized Representatives. To the extent that an action is required to be taken by any party to this Pledge Agreement, such action may be taken by the following representatives: for the District, the President, or such other person appointed by the foregoing in writing and furnished to the other parties to this Pledge Agreement; and for the Authority, the Executive Director, or such other person appointed by the foregoing in writing and furnished to the other parties to this Pledge Agreement.

Section 7. Notice. Any notice required by this Pledge Agreement shall be in writing. All notices, demands, requests and other communications required or permitted hereunder shall be in writing, and shall be (a) personally delivered with a written receipt of delivery; (b) sent by a nationally-recognized overnight delivery service requiring a written acknowledgement of receipt or providing a certification of delivery or attempted delivery; (c) sent by certified or registered mail, return receipt requested; or (d) sent by confirmed electronic delivery with an original copy thereof transmitted to the recipient by one of the means described in subsections (a) through (c) no later than five (5) business days thereafter. All notices shall be deemed effective when actually delivered as documented in a delivery receipt; provided, however, that if the notice was sent by overnight courier or mail as aforesaid and is affirmatively refused or cannot be delivered during customary business hours by reason of the absence of a signatory to acknowledge receipt, or by reason of a change of address with respect to which the addressor did not have either knowledge or written notice delivered in accordance with this paragraph, then the first attempted delivery shall be deemed to constitute delivery. All notices shall be sent to the addressee at its address below:

If to the District: USAFA Visitor's Center Business Improvement District
_____, Colorado
Attn:
Telephone:
Email:

If to the Authority: Colorado Springs Urban Renewal Authority
30 S. Nevada Ave., Suite 603
Colorado Springs, Colorado 80903
Attn: Executive Director
Telephone: 719-385-5714
Email: jwalker@springsgov.com

Each party shall be entitled to change its address for notices from time to time by delivering to the other party notice thereof in the manner herein provided for the delivery of notices.

Section 8. Opinion. At the time of execution and delivery of this Pledge Agreement the Authority shall cause to be delivered to the District an opinion from counsel to the Authority that this Pledge Agreement constitutes a valid and binding agreement of the Authority, enforceable in accordance with its terms, subject to any applicable bankruptcy, reorganization,

insolvency, moratorium, or other law affecting the enforcement of creditors' rights generally and subject to the application of general principles of equity.

Section 9. Severability. Any provision of this Pledge Agreement that is prohibited, unenforceable, or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or lack of authorization without affecting the validity, enforceability, or legality of such provisions in any other jurisdiction. No party to this Pledge Agreement shall be liable to the other parties with respect to any such provision finally adjudicated in accordance with applicable law to be prohibited, unenforceable, or not authorized by law.

Section 10. Assignment; Third Party Beneficiary. This Pledge Agreement shall not be assigned, in whole or in part, by either party without the written consent of the other, except that the District may pledge and assign its rights hereunder to secure the payment of the Bonds. Neither the District nor the Authority shall be obligated or liable under the terms of this Pledge Agreement to any person or entity not a party hereto, provided, however, that the Bond Trustee is a third party beneficiary to the provisions hereof related to the collection and remittance to the District of the Authority Pledged Revenues.

Section 11. Entire Agreement. This Pledge Agreement shall represent the entire agreement between the parties with respect to the subject matter hereof and shall supersede all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter of this Pledge Agreement and shall be independent of and have no effect upon any other contracts.

Section 12. Modifications. No modification or change of any provision in this Pledge Agreement shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by both parties. This Pledge Agreement shall not be amended without the prior written consent of the Bond Trustee.

Section 13. Governing Law. This Pledge Agreement shall be governed by, and construed in accordance with, the laws of the State of Colorado.

Section 14. Headings. Section headings in this Pledge Agreement are for convenience of reference only and shall not constitute a part of this Pledge Agreement for any other purpose.

Section 15. Additional or Supplemental Agreements. The parties mutually covenant and agree that they will execute, deliver, and furnish such other instruments, documents, materials, and information as may be reasonably required to carry out this Pledge Agreement, the Project, and the Urban Renewal Plan or the Improvements, provided the same is not inconsistent with law or this Pledge Agreement.

Section 16. Incorporation of Recitals. The provisions of the Recitals are incorporated by reference into this Pledge Agreement as if fully set forth herein.

Section 17. Exclusive Jurisdiction and Venue. In the event of any litigation arising under this Pledge Agreement, the exclusive jurisdiction and venue for such litigation shall be in the District Court in and for the Fourth Judicial District, County of El Paso, State of Colorado.

Section 18. Termination. This Pledge Agreement shall terminate on the earlier of the date that all the Bonds issued by the District to finance or refinance the Project are no longer outstanding or _____, 2049.

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IN WITNESS WHEREOF, the parties hereto have caused this Pledge Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

(S E A L)

USAFA VISITOR'S CENTER BUSINESS
IMPROVEMENT DISTRICT

President

ATTESTED:

Secretary

COLORADO SPRINGS URBAN RENEWAL
AUTHORITY

By: _____
Chair

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