

AFTER RECORDING PLEASE RETURN TO:

Kutak Rock LLP  
1801 California Street, Suite 3000  
Denver, CO 80202  
Attention: Mario Trimble, Esq.

**LEASE PURCHASE AGREEMENT**

by and between

**U.S. BANK NATIONAL ASSOCIATION,**  
solely in its capacity as Trustee under an Indenture of Trust dated as of the date hereof,  
as Lessor

and

**CITY OF COLORADO SPRINGS, COLORADO,**  
as Lessee

Dated as of October 1, 2019

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## LEASE PURCHASE AGREEMENT

**THIS LEASE PURCHASE AGREEMENT** (this “Lease”) is dated as of October 1, 2019 and is entered into by and between **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 under the Indenture (defined herein) (in such capacity, the “Trustee”), and **THE CITY OF COLORADO SPRINGS, COLORADO** (the “City”), a municipal corporation organized and operating as a home rule city under the laws of the State of Colorado (the “State”).

### WITNESSETH

WHEREAS, the City is a municipal corporation and Colorado home rule city duly organized and validly existing under the constitution and laws of the State; and

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; (b) is duly qualified to do business in the State; (c) is the lessee of the Site Leased Property (defined herein) pursuant to the Site Lease, dated as of the date hereof (the “Site Lease”) between the City as site lessor and, the Trustee, acting solely in its capacity as trustee under the Indenture, as site lessee; and (d) is authorized, under its articles of association and bylaws and applicable law, to act as trustee under the Indenture, to lease the Site Leased Property from the City, to lease the Leased Property (defined herein) to the City and to execute, deliver and perform its obligations under this Lease; and

WHEREAS, pursuant to the Site Lease, the City has leased the Site Leased Property to the Trustee, as authorized by its Charter (as defined herein); and

WHEREAS, the City is authorized by its Charter to lease the Leased Property from the Trustee and to execute, deliver and perform its obligations under this Lease; and

WHEREAS, the Trustee desires to lease the Leased Property to the City and the City Council of the City (the “Council”) desires to lease the Leased Property from the Trustee pursuant to this Lease; and

WHEREAS, the Council desires to finance the construction of the Project (as defined in the Indenture); and

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

WHEREAS, the Base Rentals and Additional Rentals (defined herein) payable by the City hereunder shall constitute currently appropriated expenditures of the City and shall not constitute a debt or multiple fiscal year direct or indirect obligation whatsoever of the City or a mandatory charge or requirement against the City in any Fiscal Year (defined herein) beyond the Fiscal Year for which such payments have been appropriated; and

WHEREAS, the Series 2019 Certificates shall evidence undivided interests in the right to receive Lease Revenues (defined in the Indenture), shall be payable solely from the Trust Estate (defined in the Indenture) and no provision of the Series 2019 Certificates, the Indenture, the Site Lease or this 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, delivery and performance of this Lease by the Trustee has been duly authorized by the Trustee and, upon the execution and delivery of this Lease by the Trustee and the City, this Lease 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 of Colorado and its governmental bodies of the police power inherent in the sovereignty of the State of Colorado 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 execution, delivery and performance of this Lease by the City has been duly authorized by the City and, upon the execution and delivery of this Lease by the City and the Trustee, this Lease will be enforceable against the City 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 of Colorado and its governmental bodies of the police power inherent in the sovereignty of the State of Colorado 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

NOW, THEREFORE, for and in consideration of the mutual covenants and the representations, covenants and warranties herein contained, the parties hereto agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

The following capitalized terms shall have the following meanings in this Lease:

*“Additional Rentals”* means the costs and expenses incurred by the City in performing its obligations under this Lease with respect to the Leased Property, the Project, this Lease, the Site Lease, the Indenture, the Series 2019 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 Sections 10.03 and 10.06 hereof; all amounts paid by the City to the Trustee to fund the Rebate Fund pursuant to Section 10.07 hereof, all amounts payable to the Rating Agency under

the Indenture and this 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.

“*Base Rentals*” means the payments by the City pursuant to Section 6.01 hereof, for and in consideration of the right to possession and use of the Leased Property during the Lease Term.

“*Base Rental Payment Date*” means one of the dates in the “Base Rental Payment Date” column in Exhibit C hereto, as from time to time amended or supplemented.

“*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*” is defined in the Indenture.

“*Certificates*” is defined in the Indenture.

“*Charter*” means the home rule Charter of the City, and any amendments or supplements thereto.

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

“*City Representative*” means the Chief Financial Officer of the City and any other person or persons designated in writing by the Chief Financial Officer to act on behalf of the City for the purposes of performing any act under this Lease, the Site Lease, and the Indenture by a written certificate furnished to the Trustee containing the specimen signature of such person and signed on behalf of the City by any member of the Council. The identity of the City Representative may be changed by the City from time to time by furnishing a new certificate to the Trustee.

“*Costs of the Project*” is defined in the Indenture.

“*Council*” means the City Council of the City.

“*Event of Default*” means an event described in Section 12.01 hereof; 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) hereof.

“*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*” means any event that is not within the control of the City or the Trustee, as applicable, including, without limitation, acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies or officials or any civil or military authority; insurrection; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; or breakage or accidents affecting machinery, transmission pipes or canals.

“*Improvements*” means the buildings, site improvements and other real property described in Exhibit B hereto, as such buildings, site improvements and other real property may be modified pursuant to Section 8.06 or 8.08 hereof.

“*Indenture*” means the Indenture of Trust dated as of the date hereof providing for the initial delivery of the Series 2019 Certificates to the Owners thereof, and any amendment or supplement thereto.

“*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 Term*” means the period commencing on the date the Series 2019 Certificates are initially delivered to the Owners thereof and ending on December 31, 2019.

“*Lease*” means this Lease Purchase Agreement and any amendment or supplement hereto.

“*Lease Term*” is defined in Section 4.01 hereof.

“*Leased Property*” means, collectively, the City’s leasehold interest pursuant to the Lease in, collectively, the Site Leased Property and the Improvements, if any.

“*Net Proceeds*” means (a) the gross proceeds received from any event referred to in Section 8.07(a) hereof or Section 8.08(a) hereof, *minus* (b) all expenses incurred in the collection of such gross proceeds or award.

“*Outstanding*” is defined in the Indenture.

“*Owners*” is defined in the Indenture.

“*Permitted Encumbrances*” means those items listed in Exhibit D hereto.

“*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.

“*Project*” is defined in the Indenture.

“*Purchase Option Price*” means the amount that the City must pay to purchase the Leased Property pursuant to Section 9.01 hereof.

[“*Rating Agency*” means S&P.]

“*Rebate Fund*” is defined in the Indenture.

“*Renewal Term*” means each Fiscal Year, for which the City renews the Lease Term.

“*Requirement of Law*” means any federal, state or local statute, ordinance, 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 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 issues.

[“*S&P*” is defined in the Indenture.]

“*Scheduled Lease Term*” means the period from the commencement of the Initial Term through the date described in Section 4.01(b)(i) hereof.

“*Series 2019 Certificates*” is defined in the Indenture.

“*Site Lease*” means the Site Lease dated as of the date hereof between the City, as site lessor, and the Trustee, solely in its capacity as trustee under the Indenture, as site lessee, pursuant to which the Site Leased Property is being leased by the City to the Trustee, and any amendment or supplement thereto.

“*Site Leased Property*” means the property leased by the City to the Trustee pursuant to the Site Lease, which is the property described in Exhibit A hereto.

“*State*” means the State of Colorado.

“*Trust Estate*” is defined in the Indenture.

“*Trustee*” means U.S. Bank National Association, or any successor thereto, acting solely in its capacity as trustee under the Indenture, and not in its own corporate capacity, or any successor trustee under the Indenture. Pursuant to Section 13.01 hereof, any successor trustee under the Indenture will automatically succeed to the interest of the previous trustee in the Leased Property and the previous trustee’s rights, title, interest and obligations in, to and under this Lease.

“*Trustee Representative*” means any officer of the Trustee; and any other person or persons designated to act on behalf of the Trustee under this Lease and the Indenture by a written certificate furnished to the City and the Trustee containing the specimen signature of such person and signed on behalf of the Trustee by any officer of the Trustee. The identity of the Trustee Representative may be changed by the Trustee from time to time by furnishing a new certificate to the City.

## ARTICLE II

### REPRESENTATIONS, COVENANTS AND WARRANTIES

**Section 2.01. Representations, Covenants and Warranties by Trustee.** 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; (ii) is duly qualified to do business in the State; (iii) solely in its capacity as trustee under the

Indenture, is the site lessee of the Site Leased Property pursuant to the Site Lease; and (iv) is authorized, under its articles of association and bylaws and applicable law, to act as trustee under the Indenture, to lease the Site Leased Property from the City, to lease the Leased Property to the City and to execute, deliver and perform its obligations under this Lease.

(b) The execution, delivery and performance of this Lease by the Trustee has been duly authorized by the Trustee.

(c) This Lease is 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 Lease by the Trustee do 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 Lease, the Site Lease or the Indenture, result in the creation or imposition of a lien or encumbrance whatsoever upon any of the property or assets of the Trustee.

(e) There is no litigation or proceeding pending or to the best of its knowledge threatened against the Trustee or any other Person affecting the right of the Trustee to execute, deliver or perform its obligations under this Lease.

(f) The Trustee acknowledges and recognizes that this Lease will be terminated upon the occurrence of an Event of Nonappropriation, and that a failure by the City to appropriate funds in a manner that results in an Event of Nonappropriation is solely within the discretion of the Council.

**Section 2.02. Representations, Covenants and Warranties by the City.** The City represents, covenants and warrants that:

(a) The City is a home rule municipality duly organized and existing under Article XX of the constitution of the State and the Charter. The City is authorized to enter into the transactions contemplated by this Lease and to execute, deliver and perform its obligations hereunder.

(b) Pursuant to the Site Lease, the City has leased the Site Leased Property to the Trustee, as authorized by its Charter.

(c) The City is authorized by its Charter to lease the Leased Property from the Trustee and to execute, deliver and perform its obligations under this Lease.

(d) The execution, delivery and performance of this Lease by the City has been duly authorized by the Council.

(e) This Lease is enforceable against the City 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.

(f) The execution, delivery and performance of the terms of this Lease by the City do 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 City is now a party or by which the City is bound, or constitute a default under any of the foregoing or, except as specifically provided in this Lease, the Site Lease or the Indenture, result in the creation or imposition of a lien or encumbrance whatsoever upon any of the property or assets of the City.

(g) There is no litigation or proceeding pending or to the best of its knowledge threatened against the City or any other Person affecting the right of the City to execute, deliver or perform its obligations of the City under this Lease.

(h) The City will recognize economic and other benefits by the leasing of the Leased Property pursuant to this Lease; the Leased Property is, and any Leased Property substituted for the initial Leased Property will be, property that is necessary and essential to the City's purpose and operations; and the City expects that the Leased Property will adequately serve the needs for which it is being leased throughout the Scheduled Lease Term.

(i) The Base Rentals payable in each Fiscal Year during the Lease Term are not more than the fair value of the use of the Leased Property during such Fiscal Year. The Base Rentals and Additional Rentals payable in each Fiscal Year during the Lease Term do not exceed a reasonable amount so as to place the City under an economic compulsion (i) to continue this Lease beyond any Fiscal Year, (ii) not to exercise its right to terminate this Lease at any time through an Event of Nonappropriation or (iii) to exercise any of its options to purchase the Leased Property hereunder. The Purchase Option Price is the City's best estimate of the fair purchase price of the Leased Property at the time of exercise of the City's option to purchase the Leased Property by paying the Purchase Option Price. The Scheduled Lease Term and the final maturity of the Series 2019 Certificates do not exceed the weighted average useful life of the Improvements or any other real property improvements currently located on the Site Leased Property. In making the representations, covenants and warranties set forth above in this subsection, the City has given due consideration to the purposes for which the Leased Property will be used by the City, the benefits to the City from the use of the Leased Property, the City's options to purchase the Leased Property hereunder and the terms of this Lease governing the use of, and the City's options to purchase, the Leased Property.

(j) The City presently intends and expects to continue this Lease annually until the Leasehold interest in the Leased Property is acquired by the City pursuant to this Lease; but this representation does not obligate or otherwise bind the City.

(k) The City is not aware of any current violation of any Requirement of Law relating to the Leased Property.

(l) The City has appropriated sufficient legally available moneys to pay the Base Rentals payable in the current Fiscal Year and the Additional Rentals estimated to be payable in the current Fiscal Year.

### **ARTICLE III**

#### **DEMISING CLAUSE; ENJOYMENT OF LEASED PROPERTY**

**Section 3.01. Demising Clause.** The Trustee demises and leases the Leased Property to the City in accordance with the terms of this Lease, subject only to Permitted Encumbrances, to have and to hold for the Lease Term.

**Section 3.02. Enjoyment of Leased Property.** The Trustee covenants that, during the Lease Term and so long as no Event of Default shall have occurred, the City shall peaceably and quietly have, hold and enjoy the Leased Property without suit, trouble or hindrance from the Trustee, except as expressly required or permitted by this Lease.

### **ARTICLE IV**

#### **LEASE TERM; TERMINATION OF LEASE**

**Section 4.01. Lease Term.**

(a) The Lease Term shall be comprised of the Initial Term and successive one-year Renewal Terms, subject to subsection (b) of this Section.

(b) This Lease Term shall expire upon the earliest of any of the following events:

(i) the last day of the month in which the final Base Rental payment is scheduled to be paid in accordance with Exhibit C hereto;

(ii) December 31 of the Initial Term or December 31 of any Renewal Term during which, in either case, an Event of Nonappropriation has occurred;

(iii) the purchase of the Leased Property by the City pursuant to Section 9.01 hereof; or

(iv) termination of this Lease following an Event of Default in accordance with Section 12.02(a) hereof.

**Section 4.02. Effect of Termination of Lease Term.** Upon termination of the Lease Term:

(a) All unaccrued obligations of the City hereunder shall terminate, but all obligations of the City that have accrued hereunder prior to such termination shall continue until they are discharged in full; and

(b) If the termination occurs because of the occurrence of an Event of Nonappropriation or an Event of Default, the City's right to possession of the Leased Property hereunder shall terminate and (i) the City shall, within 45 days, vacate the Site Leased Property and the Improvements; and (ii) if and to the extent the Council has appropriated funds for payment of Base Rentals and Additional Rentals payable during, or with respect to the City's use of the Leased Property during, the period between termination of the Lease Term and the date the Site Leased Property and Improvements are vacated, the City shall pay such Base Rentals and Additional Rentals to the Trustee or, in the case of Additional Rentals, the other Person entitled thereto.

**ARTICLE V**

**RESERVED**

**ARTICLE VI**

**BASE RENTALS AND ADDITIONAL RENTALS;  
EVENT OF NONAPPROPRIATION**

**Section 6.01. Payment of Base Rentals.**

(a) the City shall, subject only to the other Sections of this Article, pay Base Rentals directly to the Trustee during the Lease Term in immediately available funds in the amounts and on the Base Rental Payment Dates set forth in Exhibit C hereto, as it may be modified from time to time; provided, however, that there shall be credited against the amount of Base Rentals payable on any Base Rental Payment Date the amount on deposit in the Certificate Fund representing (i) accrued interest and capitalized interest, if any, from the sale of Certificates, (ii) earnings from the investment of moneys in the Certificate Fund, and (iii) moneys delivered to the Trustee by the City or any other Person that are accompanied by instructions to apply the same to the payment of Base Rentals or to deposit the same in the Certificate Fund. Thirty days prior to each Base Rental Payment Date, the Trustee shall notify the City as to the exact amounts that will be credited against the Base Rentals due on such date. If further amounts that are to be credited against Base Rentals accrue during such 30-day period, such amounts shall be carried over to be applied as a reduction of the Base Rentals payable on the next succeeding Base Rental Payment Date.

(b) A portion of each payment of Base Rentals is paid as, and represents payment of, interest, and Exhibit C hereto sets forth the interest component of each payment of Base Rentals. Upon receipt by the Trustee of each payment of Base Rentals,

the Trustee shall apply the amount of each Base Rentals payment in the following manner and order:

(i) FIRST, the amount of such payment of Base Rentals designated and paid as interest under Exhibit C, as from time to time amended or supplemented, plus the amount of any past due interest on the Series 2019 Certificates, shall be deposited in the Interest Account of the Certificate Fund; and

(ii) SECOND, the remaining portion of such payment of Base Rentals shall be deposited in the Principal Account of the Certificate Fund.

**Section 6.02. Payment of Additional Rentals.** The City shall, subject only to Sections 7.01(b) and 8.02(b) hereof and the other Sections of this Article, pay Additional Rentals directly to the Persons to which they are owed (which, in the case of payments required to be made to fund the Rebate Fund pursuant to the Indenture, is the Trustee) in immediately available funds in the amounts and on the dates on which they are due.

**Section 6.03. Unconditional Obligations.** The obligation of the City to pay Base Rentals during the Lease Term shall, subject only to the other Sections of this Article, and the obligation of the City to pay Additional Rentals during the Lease Term shall, subject to Sections 7.01(b) and 8.02(b) hereof and the other Sections of this Article, including, without limitation, Sections 6.04 and 6.05 hereof, be absolute and unconditional and shall not be abated or offset for any reason related to the Leased Property. Notwithstanding any dispute between the City and the Trustee or between the City or the Trustee and any other Person relating to the Leased Property, the City shall, during the Lease Term, make all payments of Base Rentals and Additional Rentals when due; the City shall not withhold any Base Rentals or Additional Rentals payable during the Lease Term pending final resolution of such dispute and shall not assert any right of set-off or counter-claim against its obligation to pay Base Rentals or Additional Rentals, provided, however, that the making of any Base Rental or Additional Rental payment shall not constitute a waiver by the City of any rights, claims or defenses which the City may assert; and no action or inaction on the part of the Trustee shall affect the City's obligation to pay Base Rentals or Additional Rentals during the Lease Term.

**Section 6.04. Event of Nonappropriation.**

(a) The officer or employee of the City who is responsible for formulating budget proposals with respect to payments of Base Rentals and Additional Rentals is hereby directed (i) to estimate the Additional Rentals payable in the next ensuing Fiscal Year prior to the submission of each annual budget proposal to the Council during the Lease Term and (ii) to include in each annual budget proposal submitted to the Council during the Lease Term the entire amount of Base Rentals scheduled to be paid and the Additional Rentals estimated to be payable during the next ensuing Fiscal Year; it being the intention of the City that the decision to appropriate funds for the Additional Rentals and Base Rentals under this Lease in each Fiscal Year after the Initial Term shall be made solely by the Council, in its sole discretion, and not by any other department, agency or official of the City.

- (b) An Event of Nonappropriation shall be deemed to have occurred:
- (i) On December 31 of any Fiscal Year if the City has, on such date, failed, for any reason, to appropriate sufficient amounts authorized and directed to be used to pay all Base Rentals scheduled to be paid and all Additional Rentals estimated to be payable in the next ensuing Fiscal Year; or
  - (ii) If:
    - (A) an event described in Section 8.08(a) hereof has occurred;
    - (B) the Net Proceeds received as a consequence of such event are not sufficient to repair, restore, modify, improve or replace the Leased Property in accordance with Section 8.08 hereof; and
    - (C) the City has not appropriated amounts sufficient to proceed under clause (i) of Section 8.08(c) hereof by December 31 of the Fiscal Year in which such event occurred or by December 31 of any subsequent Fiscal Year in which the insufficiency of Net Proceeds to repair, restore, modify, improve or replace the Leased Property becomes apparent, on December 31 of the Fiscal Year in which such event occurred or on December 31 of any subsequent Fiscal Year in which such insufficiency became apparent, as applicable.
- (c) Notwithstanding subsection (b) of this Section, the Trustee may waive any such failure to appropriate under subsection (b) of this Section which is cured by the City within a reasonable period of time.
- (d) In the event that the City shall determine to exercise its annual right to terminate this Lease effective on December 31 of any Fiscal Year, the City shall give written notice to such effect to the Trustee not later than April 15 of such Fiscal Year; provided, however, that a failure to give such notice shall not (i) constitute an Event of Default, (ii) prevent the City from terminating this Lease or (iii) result in any liability on the part of the City.
- (e) The City shall furnish the Trustee with copies of all appropriation measures relating to Base Rentals, Additional Rentals or the Purchase Option Price promptly upon the adoption thereof by the Council, but not later than 30 days following the adoption thereof by the Council; provided however, that a failure to furnish copies of such measures shall not (i) constitute an Event of Default, (ii) prevent the City from terminating this Lease or (iii) result in any liability on the part of the City.
- (f) Upon the occurrence of an Event of Nonappropriation, the City shall immediately give written notice of such occurrence to the Trustee.

**Section 6.05. Limitations on Obligations of the City.**

(a) Payment of Base Rentals and Additional Rentals by the City shall constitute currently appropriated expenditures of the City and may be paid from any legally available funds of the City.

(b) The City's obligations under the Lease shall be subject to the City's annual right to terminate this Lease upon the occurrence of an Event of Nonappropriation.

(c) No provision of the Series 2019 Certificates, the Indenture, the Site Lease or this 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.

(d) The City shall be under no obligation whatsoever to exercise its option to purchase the Leased Property.

(e) No provision of this Lease shall be construed to pledge or to create a lien on any class or source of moneys of the City, nor shall any provision of this Lease restrict the future issuance of any obligations of the City, payable from any class or source of moneys of the City; provided, however, that the restrictions set forth in the Indenture shall apply to the delivery of any Additional Certificates.

**ARTICLE VII**

**OPERATION AND MAINTENANCE OF LEASED PROPERTY**

**Section 7.01. Taxes, Utilities and Insurance.**

(a) The City shall pay, as Additional Rentals, all of the following expenses with respect to the Leased Property:

(i) all taxes, assessments and other charges lawfully made by any governmental body, provided that any such taxes, assessments or other charges that may lawfully be paid in installments may be paid in installments as such installments are due;

(ii) all gas, water, steam, electricity, heat, power and other utility charges incurred in connection with the Leased Property;

(iii) casualty and property damage insurance with respect to the Leased Property in an amount equal to the greater of: (A) the principal amount of all Series 2019 Certificates Outstanding, or (B) the full replacement value of the Improvements; and

(iv) public liability insurance with respect to the activities to be undertaken by the City in connection with the Leased Property, and this Lease in an amount equal to the maximum amount for which recovery could be claimed under Section 24-10-114, Colorado Revised Statutes, as amended, or any successor statute.

(b) Except for Permitted Encumbrances, the City shall not allow any liens for taxes, assessments, other governmental charges or utility charges to exist with respect to any portion of the Leased Property. If the City shall first notify the Trustee of the intention of the City to do so, the City may, however, in good faith contest any such tax, assessment, other governmental charge or utility charge and, in the event of any such contest, may permit the tax, assessment, other governmental charge or utility charge so contested to remain unpaid during the period of such contest and any appeal therefrom, provided the City provides the Trustee with an opinion of Independent Counsel to the effect that by nonpayment of any such item the interest of the Trustee in the Leased Property will not be materially interfered with or endangered or the Leased Property or any portion thereof will not be subject to loss or forfeiture. If the City is unable to provide the Trustee with such opinion of Independent Counsel, such tax, assessment, other governmental charge or utility charge shall be paid forthwith by the City; provided, however, that such payment shall not constitute a waiver of the right to continue to contest such tax, assessment, other governmental charge or utility charge. At the request of the City, the Trustee will cooperate fully with the City in any such contest.

(c) The insurance policies provided pursuant to subsection (a) of this Section shall meet the following conditions: (i) any insurance policy may have a deductible clause in an amount deemed reasonable by the City; (ii) each insurance policy shall be provided by an insurer rated "A" by Best or in the two highest rating categories of S&P and Moody's; (iii) each insurance policy shall be so written or endorsed as to make losses, if any, payable to the City and the Trustee, as their respective interests may appear and have the Trustee named as an additional insured; (iv) full payment of insurance proceeds under any insurance policy up to the dollar limit required by this Section in connection with damage to the Leased Property shall not, under any circumstance, be contingent on the degree of damage sustained at other property owned or leased by the City; (v) each insurance policy shall explicitly waive any co-insurance penalty; and (vi) coverage under each insurance policy shall apply exclusively to the Leased Property (except as provided in subsection (d) of this Section) and must be available to repair or rebuild the Leased Property under all circumstances after the occurrence of an insured peril. Upon request, the City shall provide the Trustee with copies of each insurance policy or each certificate of insurance.

(d) The City may provide any of the insurance required by subsection (a) of this Section under blanket insurance policies which insure not only the risks required to be insured hereunder but also other similar risks.

(e) The City may, in its discretion, provide all or any portion of the insurance required by subsection (a) of this Section by self-insurance, provided that the following conditions are met: (i) the self-insurance program is approved by an independent insurance consultant referred to in subsection (f) of this Section; (ii) the self-insurance program is maintained on an actuarially sound basis; and (iii) in the event the self-insurance program is discontinued, the actuarial soundness of the claim reserve fund is maintained.

(f) The City shall cause an insurance consultant, selected by the City, which may be the person providing the insurance, to annually review the coverage of the policies of insurance or self-insurance maintained pursuant to this Section and to make recommendations thereon, and the City shall comply with such recommendations. The City shall cause such insurance consultant to annually certify to the Trustee on or before December 31 of each Fiscal Year that the City is in compliance with the insurance provisions of this Lease. The Trustee has no duty or obligation to monitor the City's compliance with any recommendations of the insurance consultant.

**Section 7.02. Maintenance and Operation of Leased Property.** The City shall maintain, preserve and keep the Leased Property, or cause the Leased Property to be maintained, preserved and kept, in good repair, working order and condition, subject to normal wear and tear, shall operate the Leased Property, or cause the Leased Property to be operated, in an efficient manner and at a reasonable cost, and shall make or cause to be made all necessary and proper repairs, except as otherwise provided in Sections 8.06, 8.07 and 8.08 hereof.

## ARTICLE VIII

### **OWNERSHIP, ENCUMBRANCES, MODIFICATIONS OR ADDITIONS TO LEASED PROPERTY; DAMAGE OR CONDEMNATION OF LEASED PROPERTY**

**Section 8.01. Rights in the Leased Property.** The City is the fee simple owner of the Leased Property. A leasehold interest in the Leased Property shall be held in the name of the Trustee, subject to this Lease, until the Leased Property is transferred or otherwise disposed of as provided herein, and the City shall have no right, title or interest in the Leased Property except as expressly set forth herein. The City and the Trustee hereby acknowledge that the Trustee: (a) did not select the Leased Property; (b) has no responsibility for the value or condition thereof; (c) holds its leasehold interest in the Leased Property solely in its capacity as Trustee under the Indenture and not in its own corporate capacity; (d) is not responsible for any failure of the Leased Property to be in conformance with any Requirement of Law; and (e) shall not be deemed to be an owner or operator of the Leased Property for purposes of any environmental law.

**Section 8.02. Limitations on Disposition of and Encumbrances on Leased Property.**

(a) Except as otherwise permitted in this Article or Article IX or XII hereof and except for Permitted Encumbrances, (i) neither the Trustee nor the City shall sell, assign, transfer or convey any portion of or any interest in the Leased Property or directly or indirectly create, incur or assume any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Property, and (ii) the City shall promptly take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance or claim.

(b) Notwithstanding subsection (a) of this Section, if the City shall first notify the Trustee of the intention of the City to do so, the City may in good faith contest any such mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Property, and in the event of any such contest, may permit the item so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, provided the City provides the Trustee with an opinion of Independent Counsel to the effect that by failing to discharge or satisfy such item the interest of the Trustee in the Leased Property will not be materially interfered with or endangered, or the Leased Property or any part thereof will not be subject to loss or forfeiture. If the City is unable to provide the Trustee with such opinion of Independent Counsel, such item shall be satisfied and discharged forthwith by the City; provided, however, that such satisfaction and discharge shall not constitute a waiver by the City of the right to continue to contest such item. At the request of the City, the Trustee will cooperate fully with the City in any such contest.

**Section 8.03. Granting of Easements.**

(a) As long as no Event of Nonappropriation or Event of Default shall have happened and be continuing, the Trustee shall, at the request of the City:

(i) consent to the grant of easements, licenses, rights-of-way (including the dedication of public highways) and other rights or privileges in the nature of easements with respect to the real property included in the Leased Property, free from this Lease and any security interest or other encumbrance created hereunder, or under the Indenture or the Site Lease;

(ii) consent to the release of existing easements, licenses, rights-of-way and other rights and privileges with respect to the Site Leased Property and the Improvements, free from this Lease, the Site Lease and the Indenture and any security interest or other encumbrance created hereunder or thereunder, with or without consideration; and

(iii) execute and deliver any instrument necessary or appropriate to confirm and grant or release any easement, license, right-of-way or other grant or privilege under subsection (a) or (b) of this Section, upon receipt of: (i) a copy of the instrument of grant or release; and (ii) a written application signed by the City Representative requesting such instrument and stating that such grant or release

will not materially adversely affect the value, or interfere with the effective use or operation, of the Leased Property.

(b) Nothing in this Section is intended to require that any proceeds from the grant of any easement, license, right-of-way and other right and privilege be paid to the Trustee, and any such proceeds shall not thereby become a part of the Trust Estate.

**Section 8.04. Subleasing by the City.** The City may, subject to Section 10.04 hereof, sublease or grant the right to use or otherwise permit other Persons to use all or any portion of the Leased Property for other purposes, provided that the following conditions are satisfied for any sublease, grant or use:

(a) this Lease, and the obligations of the City hereunder, shall remain obligations of the City, and the City shall maintain its direct relationship with the Trustee, notwithstanding any such sublease, grant or use; and

(b) if the sublease, grant or use is either (i) with respect to all the Leased Property or (ii) makes it impossible or impractical for the City to use any substantial portion of the Leased Property for any substantial period of time, the Trustee consents to such sublease, grant or use, which consent shall not be unreasonably withheld and may be based upon the advice or opinion of counsel.

**Section 8.05. Reserved.**

**Section 8.06. Modification and Substitution of Leased Property.** The City, at its own expense, may remodel, or make substitutions, additions, modifications or improvements to, the Leased Property, provided that: (a) such remodeling, substitutions, additions, modifications and additions (i) shall not in any way damage the Leased Property as it existed prior thereto and (ii) shall become part of the Leased Property; (b) the value of the Leased Property after such remodeling, substitutions, additions, modifications and additions shall be at least as great as the value of the Leased Property prior thereto; (c) the Leased Property, after such remodeling, substitutions, additions, modifications and additions, shall continue to be used as provided in, and shall otherwise be subject to the terms of, this Lease; and (d) with respect to substitutions, the City shall have provided the following to the Trustee: (i) a certificate of the City Representative confirming that the useful life of the substituted property meets or exceeds the remaining term of the Series 2019 Certificates; (ii) a certification of the City Representative confirming that the essentiality of the substituted property is comparable to that of the released property; (iii) an opinion from Bond Counsel to the effect that such substitution will not cause the City to violate its covenant set forth in Section 10.04 hereof; (iv) a certification from the City Representative that there are no prior liens on the substituted property other than liens that would constitute Permitted Encumbrances thereon; and (v) a title insurance policy covering the substituted property (which the Trustee shall have no independent obligation to review or evaluate) and a certification from the City that the release of the released property and substitution of the substituted property will not affect the existing title insurance on the Leased Property.

**Section 8.07. Reserved.**

**Section 8.08. Damage to, Condemnation of, Material Defect in or Loss of Title to Leased Property.**

(a) If (i) the Leased Property (or any portion thereof) is destroyed or damaged by fire or other casualty, (ii) title to, or the temporary or permanent use of, the Leased Property (or any portion thereof) or the estate of the City or the Trustee in the Leased Property (or any portion thereof), is taken under the exercise of the power of eminent domain by any governmental body or by any Person acting under governmental authority, (iii) a breach of warranty or any material defect with respect to the Leased Property (or any portion thereof) becomes apparent or (iv) title to or the use of the Leased Property (or any portion thereof) is lost by reason of a defect in the title thereto, then, the Net Proceeds of any insurance, performance bond or condemnation award or the Net Proceeds received as a consequence of any default or breach of warranty under any contract relating to the Leased Property or the Project shall be deposited into a special trust fund held by the Trustee.

(b) If the costs of the repair, restoration, modification, improvement or replacement of the Leased Property following an event described in subsection (a) of this Section are equal to or less than the Net Proceeds available, such Net Proceeds shall be distributed by the Trustee in accordance with the written distribution request signed by the City Representative to repair, restore, modify, improve or replace the Leased Property (or portion thereof). Upon completion of the repair, restoration, modification or replacement of the Leased Property, the City shall notify the Trustee in writing and any excess shall be delivered to the City.

(c) If the costs of the repair, restoration, modification, improvement or replacement of the Leased Property following an event described in subsection (a) of this Section are more than the amount of Net Proceeds available, then:

(i) The City may elect either:

(A) to use the Net Proceeds promptly to repair, restore, modify or improve or replace the Leased Property (or portion thereof) with property of a value equal to or in excess of the value of the Leased Property (or applicable portion thereof), and pay (subject to Article V hereof) as Additional Rentals the costs thereof in excess of the amount of the Net Proceeds; or

(B) to pay (subject to Article VI hereof) the Purchase Option Price, in which case the Net Proceeds shall be delivered to the City.

(ii) If, by December 31 of the Fiscal Year in which the event described in subsection (a) of this Section occurred (or December 31 of any subsequent Fiscal Year in which the insufficiency of Net Proceeds to repair, restore, modify, improve or replace the Leased Property becomes apparent), the City has not appropriated amounts sufficient to proceed under either clause (i)(A)

or (B) of this subsection, an Event of Nonappropriation shall be deemed to have occurred.

(d) The City shall not voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim, performance or payment bond claim, prospective or pending condemnation proceeding, or any action relating to default or breach of warranty under any contract relating to the Leased Property without the written consent of the Trustee, which consent shall not be unreasonably withheld and may be based upon the written direction of the Owners of a majority in principal amount of the Certificates then Outstanding.

(e) No event described in subsection (a) of this Section shall affect the obligation of the City to pay Base Rentals or Additional Rentals hereunder, regardless of whether the Leased Property is repaired, modified, improved or replaced in full or in part, subject, however, to Article VI hereof.

**Section 8.09. Condemnation by the City.** The City agrees that, to the extent permitted by law, in the event it brings an eminent domain or condemnation proceeding with respect to all or any portion of the Leased Property, the value of the condemned portion of the Leased Property shall be not less than the greater of (a) if the Series 2019 Certificates are then subject to redemption under the Indenture, the redemption price of the Series 2019 Certificates that are attributable to the condemned property or (b) if the Series 2019 Certificates are not then subject to redemption, the amount necessary to defease the Series 2019 Certificates attributable to the condemned property to the first date on which the Series 2019 Certificates are subject to redemption under the Indenture.

**Section 8.10. Personal Property of the City.** The City, at its own expense, may install equipment and other personal property in or on the Leased Property, which equipment or other personal property shall not become part of the Leased Property unless it is permanently affixed to the Leased Property or removal of it would materially damage the Leased Property, in which case it will become part of the Leased Property.

## ARTICLE IX

### THE CITY'S PURCHASE OPTION

**Section 9.01. The City's Purchase Option.** The City is hereby granted the option to purchase the Trustee's interest in the Leased Property by paying to the Trustee an amount (the "Purchase Option Price") which, together with other amounts then on deposit in the Certificate Fund that are available for such purpose, is sufficient (a) to pay all the Outstanding Certificates at maturity, to redeem all the Outstanding Certificates in accordance with the redemption provisions of the Indenture or to defease all the Outstanding Certificates in accordance with the defeasance provisions of the Indenture and (b) to pay all Additional Rentals payable through the date of conveyance of the Leased Property to the City or its designee pursuant to this Article, including, but not limited to, all fees and expenses of the Trustee relating to the conveyance of the Leased Property and the payment, redemption or defeasance of the Series 2019 Certificates.

**Section 9.02. Exercise of the City’s Purchase Option.**

(a) The City may exercise its option to purchase the Trustee’s interest in the Leased Property pursuant to Section 9.01 hereof by (i) giving written notice to the Trustee prior to the end of the Scheduled Lease Term (A) stating that the City intends to purchase the Leased Property pursuant to Section 9.01 hereof, (B) identifying the source of funds it will use to pay the Purchase Option Price and (C) specifying a closing date for such purpose which is at least 40 and no more than 90 days after the delivery of such notice and (ii) paying the Purchase Option Price to the Trustee in immediately available funds on the closing date.

(b) At the closing of any purchase of the Trustee’s interest in the Leased Property pursuant to this Section, the Trustee shall execute and deliver to the City or its designee all necessary documents assigning, transferring and conveying to the City or its designee the same ownership in the Leased Property that was conveyed to the Trustee, subject only to the following: (i) Permitted Encumbrances, other than this Lease, the Site Lease and the Indenture; (ii) all liens, encumbrances and restrictions created or suffered to exist by the Trustee as required or permitted by this Lease or the Site Lease or arising as a result of any action taken or omitted to be taken by the Trustee as required or permitted by this Lease or the Site Lease; (iii) any lien or encumbrance created or suffered to exist by action of the City; and (iv) those liens and encumbrances (if any) to which the Leased Property was subject when acquired by the Trustee.

**Section 9.03. Transfer of Leased Property to the City at End of Scheduled Lease Term.** If all Base Rentals scheduled to be paid through the end of the Scheduled Lease Term and all Additional Rentals payable through the date of transfer of the Trustee’s interest in the Leased Property to the City pursuant to this Section shall have been paid, the Leased Property shall be assigned and transferred to the City at the end of the Scheduled Lease Term in the manner described in Section 9.02(b) hereof without any additional payment by the City.

**ARTICLE X**

**GENERAL COVENANTS**

**Section 10.01. Further Assurances and Corrective Instruments.** So long as this Lease is in full force and effect and no Event of Nonappropriation or Event of Default shall have occurred, the Trustee and the City shall have full power to carry out the acts and agreements provided herein and the City and the Trustee, at the written request of the City, shall 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 required for correcting any inadequate or incorrect description of the Leased Property leased or intended to be leased hereunder, or for otherwise carrying out the intention of or facilitating the performance of this Lease.

**Section 10.02. Compliance with Requirements of Law.** On and after the date hereof, neither the City nor the Trustee shall knowingly take any action that violates the terms hereof or is contrary to the provisions of any Requirement of Law in performing their respective

obligations with respect to the Leased Property hereunder. Without limiting the generality of the preceding sentence, the City shall use the Leased Property in a manner such that (a) the Leased Property at all times is operated in compliance with all Requirements of Law; (b) all permits required by Requirements of Law in respect of the City's use of the Leased Property are obtained, maintained in full force and effect and complied with; (c) there shall be no hazardous substance, pollutant or contaminant (as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9601, et seq., any applicable state law or regulations promulgated under either), solid or hazardous waste (as defined in the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq., any applicable state law or regulations promulgated under either), special waste, petroleum or petroleum derived substance, radioactive material or waste, polychlorinated biphenyls, asbestos or any constituent of any of the foregoing located on, in or under the Leased Property in such manner as would constitute a violation of any Requirements of Law; (d) there shall be no disposal of any of the items referred to in clause (c) on, from, into or out of the Leased Property in violation of any Requirements of Law; and (e) there shall be no spillage, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, disposing, depositing or dispersing of any of the items referred to in clause (c) into the indoor or outdoor environment from, into or out of the Leased Property including but not limited to the movement of any such items through or in the air, soil, surface water, ground water from, into or out of the Leased Property or the abandonment or discard of barrels, containers or other open or closed receptacles containing any such items from, into or out of the Leased Property in violation of any Requirements of Law.

### **Section 10.03. Participation in Legal Actions.**

(a) At the written request of and at the cost of the City (payable as an Additional Rental hereunder), the Trustee shall join and cooperate fully in any legal action in which the City asserts its right to the enjoyment of the Leased Property; that involves the imposition of any charges, costs or other obligations or liabilities on or with respect to the Leased Property or the City's enjoyment of the Leased Property for which the City is responsible hereunder; or that involves the imposition of any charges, costs or other obligations with respect to the City's execution, delivery and performance of its obligations hereunder.

(b) At the written request of the Trustee and upon a determination by the City that such action is in the best interests of the City, the City shall, at the cost of the City (payable as an Additional Rental hereunder), join and cooperate fully in any legal action in which the Trustee asserts its ownership of or interest in the Leased Property; that involves the imposition of any charges, costs or other obligations on or with respect to the Leased Property for which the Trustee is responsible hereunder; or that involves the imposition of any charges, costs or other obligations with respect to the execution and delivery of this Lease by the Trustee or the performance of its obligations hereunder.

**Section 10.04. Tax Covenant of the City.** The City will not use or permit others to use the Leased Property in a manner that would cause interest on the Series 2019 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).

**Section 10.05. Reserved.**

**Section 10.06. Payment of Fees and Expenses of the Trustee.** The City shall pay as Additional Rentals the reasonable fees and expenses of the Trustee for its ordinary services, including the reasonable legal fees and expenses of the Trustee (subject to any agreement with the Trustee limiting the amount of such fees and expenses), in connection with the Leased Property, the Project, this Lease, the Site Lease, the Indenture, the Series 2019 Certificates or any matter related thereto, including, but not limited to, costs of defending any claim or action brought against the Trustee or its directors or officers relating to the foregoing, excepting, however, any liability for any action constituting willful or wanton misconduct of the Trustee or its directors or officers. In the event that it should become necessary for the Trustee to perform extraordinary services, the City shall also pay as Additional Rentals reasonable additional compensation therefor and reimbursement for reasonable and necessary extraordinary expenses in connection therewith; provided that if such extraordinary services or extraordinary expenses are occasioned by the negligence or willful misconduct of the Trustee it shall not be entitled to compensation or reimbursement therefore.

**Section 10.07. Payments to Rebate Fund.** The City shall pay to the Trustee as Additional Rentals all amounts required to be deposited into the Rebate Fund, as and when required by the Indenture.

**Section 10.08. Investment of Funds.**

(a) By authorizing the execution and delivery of this Lease, the Council specifically authorizes the investment of moneys held by the Trustee in Permitted Investments (as defined in the Indenture) where the period from the date of purchase thereof to the maturity date is in excess of five years.

(b) The City shall not direct the Trustee pursuant to the Indenture to make any deposit or investment of any moneys in any fund or account created thereunder which shall interfere with or prevent withdrawals for payment of Costs of the Project or for payment of the Series 2019 Certificates.

**ARTICLE XI**

**LIMITS ON OBLIGATIONS OF TRUSTEE**

**Section 11.01. Disclaimer of Warranties.** THE TRUSTEE MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR USE OF THE LeaseD PROPERTY OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LeaseD PROPERTY OR ANY PORTION THEREOF. 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 THIS LEASE OR THE EXISTENCE, FURNISHING, FUNCTIONING OR USE BY THE CITY OF ANY ITEM, PRODUCT OR SERVICE PROVIDED FOR HEREIN.

**Section 11.02. Financial Obligations of Trustee Limited to Available Funds.** NOTWITHSTANDING ANY OTHER PROVISION HEREOF, ALL FINANCIAL OBLIGATIONS OF THE TRUSTEE UNDER THIS LEASE, EXCEPT THOSE RESULTING FROM ITS NEGLIGENCE OR WILLFUL MISCONDUCT, ARE LIMITED TO THE TRUST ESTATE.

## ARTICLE XII

### EVENTS OF DEFAULT AND REMEDIES

#### Section 12.01. Events of Default Defined.

(a) Any of the following shall constitute an “Event of Default” under this Lease:

(i) failure by the City to pay any specifically appropriated Base Rentals to the Trustee on or before the applicable Base Rental Payment Date; provided, however, that a failure by the City to pay Base Rentals on the applicable Base Rental Payment Date shall not constitute an Event of Default if such payment is received by the Trustee within five days following such Base Rental Payment Date;

(ii) failure by the City to pay any Additional Rental for which funds have been specifically appropriated when due, or if such Additional Rental is payable to a Person other than the Trustee, when nonpayment thereof has, or may have, a material adverse effect upon the Series 2019 Certificates, the Leased Property or the interest of the Trustee in the Leased Property;

(iii) failure by the City to vacate the Site Leased Property and the Improvements within 45 days following an Event of Nonappropriation in accordance with Section 4.02(b) hereof;

(iv) any sublease, assignment, encumbrance, conveyance or other transfer of the interest of the City in all or any portion of the Lease or the Leased Property in violation of Section 13.02(a) hereof or any succession to all or any portion of the interest of the City in the Leased Property in violation of Section 13.02(b) hereof;

(v) failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in clause (i), (ii), (iii) or (iv) above, for a period of 30 days after written notice, specifying such failure and requesting that it be remedied shall be given to the City by the Trustee, unless the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in

the notice cannot be corrected within the applicable period, the Trustee shall not withhold its consent to an extension of such time if corrective action shall be instituted within the applicable period and diligently pursued until the default is corrected and the City provides the Trustee with a certification to that effect; or

(vi) an order or decree by a court of competent jurisdiction declaring the City bankrupt under federal bankruptcy law or appointing a receiver of all or any material portion of the City's assets or revenues is entered with the consent or acquiescence of the City or is entered without the consent or acquiescence of the City but is not vacated, discharged or stayed within 30 days after it is entered.

(b) The provisions of subsection (a) of this Section are subject to the following limitations:

(i) the City shall be obligated to pay Base Rentals and Additional Rentals only during the Lease Term, except as otherwise expressly provided in Section 4.02(b)(ii) hereof; and

(ii) if, by reason of Force Majeure, the City shall be unable in whole or in part to carry out any agreement on its part herein contained, other than its obligation to pay Base Rentals or Additional Rentals hereunder, the City shall not be deemed in default during the continuance of such inability; provided, however, that the City shall, as promptly as legally and reasonably possible, remedy the cause or causes preventing the City from carrying out such agreement.

**Section 12.02. Remedies on Default.** Whenever any Event of Default shall have happened and be continuing, the Trustee may take one or any combination of the following remedial steps:

(a) terminate the Lease Term and give notice to the City to vacate the Site Leased Property and the Improvements, in the manner provided in Section 4.02(b) hereof;

(b) sell or lease all or any portion of the Trustee's interest in the Leased Property;

(c) recover from the City:

(i) the portion of Base Rentals and Additional Rentals payable pursuant to Section 4.02(b)(ii) hereof;

(ii) the portion of Base Rentals for the then current Fiscal Year that has been specifically appropriated by the Council, regardless of when the City vacates the Site Leased Property and Improvements, if any; and

(iii) the portion of the Additional Rentals for the then current Fiscal Year that has been specifically appropriated by the Council, but only to the extent

such Additional Rentals are payable prior to the date, or are attributable to the use of the Leased Property prior to the date, the City vacates the Site Leased Property and Improvements, if any;

(d) enforce any provision of this Lease by equitable remedy, including, but not limited to, enforcement of the restrictions on assignment, encumbrance, conveyance, transfer or succession under Article XIII hereof by specific performance, writ of mandamus or other injunctive relief; and

(e) take whatever action at law or in equity may appear necessary or desirable to enforce its rights in and to the Leased Property under this Lease, subject, however, to the limitations on the obligations of the City set forth in Sections 6.05 and 12.03 hereof and the limitations on the obligations of the Trustee set forth in Article X hereof.

**Section 12.03. Limitations on Remedies.** A judgment requiring a payment of money may be entered against the City by reason of an Event of Default only as to the City's liabilities described in Section 12.02(d) hereof. A judgment requiring a payment of money may be entered against the City by reason of an Event of Nonappropriation, or a failure to vacate the Site Leased Property and the Improvements following an Event of Nonappropriation, only to the extent provided in Section 12.02(d)(i) hereof.

**Section 12.04. No Remedy Exclusive.** Subject to Section 12.03 hereof, no remedy herein conferred upon or reserved to the Trustee is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Trustee to exercise any remedy reserved in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article.

**Section 12.05. Waivers.**

(a) The Trustee may waive any Event of Default under this Lease and its consequences. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

(b) In the event the Trustee waives any Event of Default described in Section 12.01(a)(i) hereof, any subsequent payment by the City of Base Rentals then due and owing shall be paid to the Trustee to be applied in accordance with the terms of the Indenture.

## ARTICLE XIII

### TRANSFERS OF INTERESTS IN LEASE OR LEASED PROPERTY

**Section 13.01. Trustee's Rights, Title and Interest in Trust for Benefit of Owners; Successor Trustee; Assignment by Trustee.** The Trustee shall hold its interest in the Leased Property and its rights, title and interest in, to and under this Lease (other than the Trustee's rights to payment of its fees and expenses and the rights of third parties to Additional Rentals payable to them) in trust for the benefit of the Owners pursuant to the Indenture. Any successor trustee under the Indenture shall automatically succeed to the previous trustee's interest in the Leased Property and the previous trustee's rights, title, interest and obligations in, to and under this Lease. The Trustee shall not, except as provided in this Section or as otherwise provided elsewhere in this Lease or in the Indenture, assign, convey or otherwise transfer to any Person any of the Trustee's interest in the Leased Property or the Trustee's rights, title or interest in, to or under this Lease.

**Section 13.02. Transfer of the City's Interest in Lease and Leased Property Prohibited.**

(a) Except as otherwise permitted by Section 8.04 hereof with respect to subleases, grants or uses of the Leased Property or subsection (b) of this Section with respect to transfers of the Leased Property following termination of this Lease or as otherwise required by law, the City shall not sublease, assign, encumber, convey or otherwise transfer all or any portion of its interest in this Lease or the Leased Property to any Person, whether now in existence or organized hereafter.

(b) Notwithstanding subsection (a) of this Section, the City may transfer its interest in the Leased Property after, and only after, this Lease has terminated and the Leased Property has been conveyed to the City pursuant to Article IX hereof following the payment of the Purchase Option Price or all Base Rentals scheduled to be paid through the end of the Scheduled Lease Term, together with all other amounts required to be paid as a condition of such conveyance pursuant to Article IX hereof, and the payment or defeasance of all the Series 2019 Certificates in accordance with the Indenture.

## ARTICLE XIV

### MISCELLANEOUS

**Section 14.01. Binding Effect.** This Lease shall inure to the benefit of and shall be binding upon the Trustee and the City and their respective successors and assigns, subject, however, to the limitations set forth in Article XIII hereof. This Lease and the covenants set forth herein are expressly intended to be covenants, conditions and restrictions running with the Leased Property and the leasehold estate in the Leased Property under this Lease.

**Section 14.02. Acknowledgement of Indenture.** The City has received a copy of, and acknowledges the terms of, the Indenture.

**Section 14.03. Reserved.**



**Section 14.10. 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.

**Section 14.11. Severability.** In the event that any provision of this Lease, other than the obligation of the City to pay Base Rentals or Additional Rentals and the Purchase Option Price hereunder and the obligation of the Trustee to provide quiet enjoyment of the Leased Property and to convey the Leased Property to the City pursuant to Article IX hereof, 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 14.12. Captions.** The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

**Section 14.13. Applicable Law.** The laws of the State shall be applied in the interpretation, execution and enforcement of this Lease.

**Section 14.14. Execution in Counterparts.** This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the Trustee and the City have executed this Lease as of the date first above written.

U.S. BANK NATIONAL ASSOCIATION,  
solely in its capacity as trustee under the  
Indenture

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

CITY OF COLORADO SPRINGS,  
COLORADO

By \_\_\_\_\_  
Mayor

Attest:

By \_\_\_\_\_  
City Clerk

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

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

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

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary

My commission expires:

\_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of September, 2019, by John W. Suthers, as Mayor, and Sarah Johnson, as City Clerk, of the City of Colorado Springs, Colorado.

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

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary

My commission expires:

\_\_\_\_\_

**EXHIBIT A**  
**DESCRIPTION OF THE SITE LEASED PROPERTY**

[To be inserted]

**EXHIBIT B**  
**DESCRIPTION OF THE IMPROVEMENTS**

[To be inserted]

**EXHIBIT C**

**BASE RENTAL PAYMENT SCHEDULE**

<b>Base Rental Payment Date</b>	<b>Principal</b>	<b>Interest</b>	<b>Total Base Rentals</b>
11/15/2019	\$	\$	\$
05/15/2020	--		
11/15/2020			
05/15/2021	--		
11/15/2021			
05/15/2022	--		
11/15/2022			
05/15/2023	--		
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11/15/2038			
05/15/2039	--		
11/15/2039			

**EXHIBIT D**  
**PERMITTED ENCUMBRANCES**

[To be inserted]