

RESOLUTION NO. _____ - 18

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS, COLORADO, APPROVING, SOLELY FOR THE PURPOSES OF SECTION 147(F) OF THE INTERNAL REVENUE CODE, THE ISSUANCE BY THE CAPITAL TRUST AGENCY OF ITS SENIOR LIVING REVENUE BONDS (AMERICAN EAGLE PORTFOLIO PROJECT), SERIES 2018, FOR THE PURPOSE OF FINANCING THE SENIOR LIVING FACILITIES HEREIN DESCRIBED, ONE OF WHICH IS LOCATED IN THE CITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council (the "Council") of the City of Colorado Springs, Colorado ("City"), has been informed that the Capital Trust Agency (the "Issuer") proposes to issue a principal amount not exceeding \$275,000,000 of its Senior Living Revenue Bonds (American Eagle Portfolio Project), Series 2018, in one or more tax-exempt or taxable series (the "Bonds"), the proceeds of which will be loaned to American Eagle Delaware Holding Company LLC, a Delaware limited liability company (the "Borrower"), and/or one or more related and/or affiliated entities (collectively, the "Obligated Group"), for the purpose of financing or refinancing, including through reimbursement, (i) the acquisition, construction, renovation, installation and equipping of the Senior Living Facilities (as hereinafter defined) to provide independent living, assisted living and memory care facilities for the elderly, (ii) the funding of an operating and maintenance fund to finance certain capital expenditures and start-up costs related to the Senior Living Facilities, (iii) the funding of one or more debt service reserve funds for the Bonds, and (iv) the payment of certain costs of issuing the Bonds (collectively, the "Project"); and

WHEREAS, the Senior Living Facilities consist of approximately seventeen independent living, assisted living and memory care facilities located in several states, including the State of Colorado (the "State"), one of which is located in Colorado Springs, Colorado (the "Colorado Springs Project"), and the remaining sixteen senior living facilities located in Alabama, Florida, Minnesota, Ohio, Tennessee, Texas and Wisconsin (collectively with the Colorado Springs Project, the "Senior Living Facilities"); and

WHEREAS, the Colorado Springs Project is a senior living community in Colorado Springs, Colorado known as Brookdale Palmer Park, located on approximately 9.91 acres at 2850 North Academy Boulevard, Colorado Springs, El Paso County, Colorado, including land, buildings and equipment, consisting of approximately 60 memory care units (including approximately 74 beds) to be acquired by American Eagle Palmer Park LLC, a Colorado limited liability company whose sole member is the Borrower, with proceeds of the Bonds not to exceed \$14,135,000; and

WHEREAS, the Borrower and the Issuer have requested the Council approve the issuance of the Bonds for purposes of Section 147(f) of the Code; and

WHEREAS, the Bonds, when issued by the Issuer, will be special, limited obligations of the Issuer payable solely from the proceeds to be derived from the repayment of the related loan to the Borrower or from the security pledged therefor by the Obligated Group, and the City will not be obligated to pay the Bonds or have any obligation or liability pecuniary or otherwise in any respect whatsoever with respect to the Bonds or the Colorado Springs Project; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Colorado Springs, El Paso County, Colorado:

SECTION 1. Public Hearing. Pursuant to the Notice published in the *Colorado Springs Gazette*, a newspaper of general circulation in the City, not less than fourteen (14) days prior to the date hereof, a public hearing was held before the Chief Financial Officer of the City on behalf of the City Council as required by Section 147(f) of the Code on the date hereof. A proof of publication of such Notice is attached hereto as Exhibit A and minutes of such public hearing will be kept on file with the City Clerk (the "Clerk"), and are hereby incorporated herein by reference.

SECTION 2. Approval for Purposes of Section 147(f) of the Code. Solely for the purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended, the Council hereby approves the issuance of the Bonds by the Issuer in an aggregate principal amount not exceeding \$275,000,000.

SECTION 3. Payment of Fees and Costs by Borrower. The fees and expenses of the City shall be paid by the Borrower at or prior to issuance of the Bonds.

SECTION 4. No Liability or Endorsement. The City shall have no obligation with respect to the Bonds, and the approval given herein by the Council shall not be deemed or construed to create any obligation or liability, pecuniary or otherwise, of the City, in connection with either the Bonds or the Project in any respect whatsoever and the Issuer shall so provide in the documents related to the issuance of the Bonds. The general credit or taxing power of the City and the State or any political subdivision or public agency thereof shall not be pledged to the payment of the Bonds. No statement, representation or recital made herein shall be deemed to constitute a legal conclusion or a determination by the City that any particular action or proposed action is required, authorized or permitted under the laws of the State or the United States.

No recourse under or upon any obligation, covenant or agreement of this Resolution or the Bonds or any agreement executed in connection with the Bonds, or for any claim based thereon or otherwise in respect thereof, shall be had against any member of the Council, the City Manager, the Mayor, the Clerk or the City Attorney or any other staff or professionals retained by the City in connection with the issuance of the Bonds, as such, past, present or future, either directly or through the City, it being expressly understood (a) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the members of the Council, the City Manager, the Mayor, the Clerk or the City Attorney or any other staff or professionals retained by the City in connection with the issuance of the Bonds, as such, under or by reason of the

obligations, covenants or agreements contained in this Resolution or implied therefrom, and (b) that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such member of the Council, City Manager, the Mayor, the Clerk or the City Attorney or any other staff or professionals retained by the City in connection with the issuance of the Bonds, as such, are waived and released as a condition of, and as a consideration for, the execution of this Resolution on the part of the City.

SECTION 5. Limited Scope of Approval. The approval given herein shall not be construed as: (i) an endorsement of the creditworthiness of the Borrower or the financial viability of the Colorado Springs Project or the Project as a whole, (ii) a recommendation to any prospective purchaser to purchase the Bonds, (iii) an evaluation of the likelihood of the repayment of the debt service on the Bonds, or (iv) approval of any necessary rezoning applications or approval or acquiescence to the alteration of existing zoning or land use nor approval for any other regulatory permits relating to the Colorado Springs Project, and the Council shall not be construed by reason of its adoption of this Resolution to make any endorsement, finding or recommendation or to have waived any right of the Council to have estopped the Council from asserting any rights or responsibilities it may have in such regard.

SECTION 6. Indemnification. The receipt of the Indemnification Certificate and Agreement of the Borrower and the bond underwriter attached hereto as Exhibit B and Exhibit C, respectively, and incorporated hereby by reference, are a material inducement to the City in granting the approvals set forth herein.

[Remainder of Page Intentionally Left Blank]

SECTION 7. Effective Date. This Resolution shall take effect immediately upon its adoption.

Dated at Colorado Springs, Colorado this ____ day of August, 2018.

Council President

ATTEST:

Sarah B. Johnson, City Clerk

Exhibit A: Publisher's Affidavit Regarding Notice of Public Hearing
Exhibit B: Borrower's Certificate and Indemnification Agreement
Exhibit C: Underwriter's Certificate and Indemnification Agreement

EXHIBIT A

PROOF OF PUBLICATION

[Follows.]

EXHIBIT B

BORROWER'S CERTIFICATE AND INDEMNIFICATION AGREEMENT

[_____], 2018

The undersigned hereby certifies that he or she is authorized to execute and deliver this Indemnification Certificate of the Borrower and further represents, on behalf of American Eagle Delaware Holding Company LLC, a Delaware limited liability company (the "Borrower"), and/or one or more related and/or affiliated entities (collectively, the "Obligated Group"), the following (capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in Resolution No. 2018-__ adopted by the City Council (the "Council") of the City of Colorado Springs, Colorado (the "City") on August __, 2018 (the "City Resolution") approving the issuance of the hereinafter defined Bonds:

(1) At the request of the Borrower, the Capital Trust Agency (the "Issuer") proposes to issue a principal amount not exceeding \$275,000,000 of its Senior Living Revenue Bonds (American Eagle Portfolio Project), Series 2018 (the "Bonds"), the proceeds of which will be loaned to the Borrower for the purpose of financing or refinancing, including through reimbursement, (i) the acquisition, construction, renovation, installation and equipping of the Senior Living Facilities (as defined in the City Resolution) to provide independent living, assisted living and memory care facilities for the elderly, (ii) the funding of an operating and maintenance fund to finance certain capital expenditures and start-up costs related to the Senior Living Facilities, (iii) the funding of one or more debt service reserve funds for the Bonds, and (iv) the payment of certain costs of issuing the Bonds (collectively, the "Project");

(2) The Senior Living Facilities consist of seventeen independent living, assisted living and memory care facilities located in several states, including the State of Colorado (the "State"), one of which is located in Colorado Springs, Colorado (the "Colorado Springs Project"). The Colorado Springs Project is a senior living community in the City, known as Brookdale Palmer Park, located on approximately 9.91 acres at 2850 North Academy Boulevard, Colorado Springs, El Paso County, Colorado, including land, buildings and equipment, consisting of approximately 60 memory care units (including approximately 74 beds) to be acquired by American Eagle Palmer Park LLC to be financed or refinanced from the proceeds of the Bonds in an amount not exceeding \$14,135,000;

(3) The issuance of the Bonds to finance the Project: (i) is appropriate to the needs and circumstances of, and will make a significant contribution to, the

economic growth of the City, (ii) will provide or preserve gainful employment, (iii) will promote commerce within the State, (iv) will provide safe, decent and accessible housing for the elderly, and (iv) will serve a public purpose by advancing the economic prosperity, public health, and the general welfare of the State and its people by providing for an assisted living facility within the meaning of Chapter 159, Part II, Florida Statutes, as amended;

(4) The City will continue to be able to cope satisfactorily with the impact of the Colorado Springs Project and will be able to provide, or cause to be provided when needed, the public facilities, including utilities and public services, that will be necessary for the operation, repair, and maintenance of the Colorado Springs Project and on account of any increases in population or other circumstances resulting therefrom;

(5) In order to finance the costs of the Project from the proceeds of the Bonds on a tax-exempt basis, it is necessary to hold a public hearing and approve the issuance of the Bonds for the purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code");

(6) The Borrower has requested the Chief Financial Officer of the City, on behalf of the Council to hold such public hearing and the Council to approve the issuance of the Bonds for purposes of Section 147(f) of the Code; and

(7) The City desires indemnification from the Borrower as a material inducement to the Council holding such hearing and granting the foregoing approval.

NOW THEREFORE, THE UNDERSIGNED, ON BEHALF OF THE BORROWER, DOES HEREBY: Agree to defend the City and its officials, employees, attorneys and agents and the members of the Council, and hold the City and its officials, employees, attorneys and agents and the members of the Council, harmless against any and all claims, losses, liabilities or damages to property or any injury or death of any person or persons occurring in connection with the issuance of the Bonds or the acquisition or operation of the Colorado Springs Project by or on behalf of the Borrower, including in the case of any and all negligence of such indemnitee, or in any way growing out of or resulting from the Colorado Springs Project or from the issuance, sale or delivery of the Bonds, including, but not limited to, liabilities or costs arising under the Code, the Securities Act of 1933, the Securities Exchange Act of 1934 or any applicable securities law of the State, including, without limitation, all costs and expenses of the City, including reasonable attorneys' fees, incurred in connection therewith.

IN WITNESS WHEREOF, the Borrower has executed this Indemnification Certificate of the Borrower this _____ day of August, 2018.

AMERICAN EAGLE DELAWARE HOLDING
COMPANY LLC, a Delaware limited liability
company

By: _____
Name:
Title:

[Signature Page | Borrower's Certificate and Indemnification Agreement – Colorado Springs]

EXHIBIT C

UNDERWRITER'S INDEMNITY AGREEMENT

[_____], 2018

The undersigned on behalf of Piper Jaffray & Co. (the "Underwriter"), hereby proposes to enter into the following agreement, in consideration for the approval pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended, of the Capital Trust Agency Senior Living Revenue Bonds (American Eagle Portfolio Project), Series 2018 (the "Bonds") by the City of Colorado Springs, Colorado (the "City"), as follows:

The Underwriter represents to the City that (i) the Bonds will be offered and sold by the Underwriter in accordance with applicable state and federal laws and (ii) the Underwriter will provide access to an Official Statement to purchasers of the Bonds in accordance with applicable laws.

The Underwriter agrees to indemnify and hold harmless the City and its respective members, directors, officers, agents and employees (all of such indemnified parties being herein referred to as "Indemnified Parties") against any and all losses, claims, damages and liabilities (including without limitation the reasonable costs of investigating and defending any such claim or liability and the reasonable counsel fees incurred in connection therewith) (i) arising out of a violation by the Underwriter of its representations made in this Agreement; (ii) arising out of any statement or information contained in the offering document relating to the Bonds (the "Offering Memorandum") which was provided in writing by the Underwriter, or describing therein the Underwriter or its activities with respect to the Bonds, that is untrue in any material respect, or the omission therefrom of any information regarding the Underwriter or its activities with respect to the Bonds which should be contained therein which is necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading in any material respect; or (iii) caused by the failure of the Underwriter to comply with any registration or qualification requirements applicable to the Underwriter of the Bonds under any securities or "Blue Sky" law of any jurisdiction in which such registration or qualification is required; or (iv) caused by the failure of the Underwriter to comply with any applicable rule of the Municipal Securities Rulemaking Board; and to the extent of the aggregate amount, paid in settlement of any litigation commenced or threatened arising from a claim based upon any such violation or failure to comply, if such settlement is effected with the written consent of the Underwriter.

In case any claim shall be made or action brought against the Indemnified Parties, based upon the Offering Memorandum or this Agreement, in respect of which indemnity may be sought against the Underwriter, the Indemnified Parties shall promptly notify the Underwriter in writing setting forth the particulars or such claim or action and the Underwriter shall assume the defense thereof, including the retaining of counsel and the payment of all expenses. The Indemnified Parties shall have the right to retain separate counsel in any such action and to participate in the

defense thereof, but the fees and expenses of such counsel shall be at the expense of the Indemnified Parties unless the retaining of such counsel has been specifically approved by the Underwriter. If the Underwriter shall not have retained counsel for the defense of any such action or if the Indemnified Parties shall be advised and reasonably conclude that there may be defenses available to the City which are different from or additional to those available to the Underwriter, the Underwriter shall not have the right to direct the defense of action on behalf of any of the Indemnified Parties and the Indemnified Parties shall have the right to retain separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such counsel shall be assumed by the Indemnified Parties.

This Agreement is made solely for the benefit of the Indemnified Parties, and no other person, partnership, association or corporation shall acquire or have any rights hereunder or by virtue hereof. All representation and agreements by the undersigned in this Agreement shall survive the delivery of and payment for the Bonds, provided that said representations shall speak only as of the date hereof.

This Agreement may be executed in several counterparts, each of which, when so executed, shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

This Agreement shall be governed by the laws of the State of Colorado.

[The remainder of this page is intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute and delivery this Indemnity Agreement as of the date first written above.

PIPER JAFFRAY & CO.

By: _____

Name: _____

Title: _____

[Signature Page | Underwriter's Indemnity Agreement – AE Colorado Springs]