

ORDINANCE NO. 19-100

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF COLORADO SPRINGS OF A SITE LEASE BETWEEN THE CITY, AS LESSOR, AND DNT ASSET TRUST, A WHOLLY OWNED SUBSIDIARY OF JPMORGAN CHASE BANK, N.A., AS LESSEE, AND, IN CONNECTION THEREWITH, A LEASE PURCHASE AGREEMENT BETWEEN THE CITY, AS LESSEE, AND DNT ASSET TRUST, A WHOLLY OWNED SUBSIDIARY OF JPMORGAN CHASE BANK, N.A., AS LESSOR, WITH RESPECT TO CERTAIN REAL PROPERTY FOR THE PURPOSE OF REFINANCING CURRENT OBLIGATIONS OF THE CITY; AUTHORIZING OFFICIALS OF THE CITY TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY, AND PROVIDING FOR RELATED MATTERS

WHEREAS, the City of Colorado Springs, in the County of El Paso and State of Colorado (the "City"), is a municipal corporation duly organized and existing as a home rule city pursuant to Article XX of the Constitution of the State of Colorado (the "Constitution") and the home rule charter of the City (the "Charter"); and

WHEREAS, pursuant to Article 1 of the Charter and Sections 1 and 6 of Article XX of the Constitution, the City is authorized to enter into one or more leases for land, buildings, equipment and other property for governmental or proprietary purposes; and

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

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

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

WHEREAS, upon the exercise of its purchase option under the 2013 Lease, the City will be the owner of the fee simple interest in the real property and improvements described in Exhibit A to the Site Lease (defined below) (the "Leased Property"); and

WHEREAS, following a recent request for proposals delivered by the City to a number of financial institutions, the City has accepted a proposal from JPMorgan Chase Bank, N.A. whereby the City shall demise to DNT Asset Trust, a wholly owned subsidiary of JPMorgan Chase Bank, N.A. (collectively, "Chase") pursuant to that certain Site Lease to be dated as of its date of execution and delivery (the "Site Lease") between the City, as lessor, and Chase, as lessee, a leasehold interest in the Leased Property for a lump-sum payment of not to exceed \$4,750,000 and sublease the Leased Property back from Chase pursuant to that certain Lease Purchase Agreement dated as of the date of the Site Lease (the "Lease") between Chase, as sublessor, and the City, as sublessee; and

WHEREAS, by entering into the Site Lease and the Lease with respect to the Leased Property, the City can have the use, on a current basis, of the Leased Property while paying installments of rent not exceeding the fair rental value of the Leased Property; and

WHEREAS, the Council has been presented with or had made available to it forms of the Site Lease and the Lease; and

WHEREAS, the Council is desirous of authorizing and approving the execution of the agreements and instruments described above and the transactions evidenced thereby; therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS, COLORADO:

**Section 1. Ratification of Actions.** All action heretofore taken, not inconsistent with the provisions of this ordinance (the "Ordinance"), by the Council or the officers of the City, directed toward the implementation of the Refunding Project, including without limitation the preparation of the forms of the Lease and the Site Lease and related documents, are hereby ratified, approved and confirmed.

**Section 2. Findings; Authorizations.** The Council hereby finds and determines, pursuant to the City's home rule powers and all applicable laws of the State of Colorado, that the Refunding Project is necessary, convenient, and in furtherance of the governmental purposes of the City and in the best interests of the City and its inhabitants; and the Council hereby authorizes the Refunding Project. The City hereby elects to apply all of the provisions of the Supplemental Public Securities Act, Part 2 of Article 57, Title 11, C.R.S. (the "Supplemental Securities Act"), to the extent applicable and not inconsistent herewith, to the Lease.

**Section 3. Approval and Execution of Documents; Authorized Officers; Variations in Documents.** The Site Lease and the Lease, in substantially the forms delivered to the office of the City Clerk prior to the final adoption of this Ordinance, are in all respects approved, authorized and confirmed, and the Mayor of the City or his designee or designees are hereby authorized and requested to execute and deliver, and the City Clerk of the City or any Deputy or Assistant City Clerk are hereby authorized and directed to affix the seal of the City to, and attest, the Site Lease and the Lease in substantially the forms so delivered to the City Clerk, with such changes as are not inconsistent with the intent of this Ordinance and are approved by bond counsel or the City Attorney. The Council hereby authorizes and requested the Mayor and the Chief Financial Officer (and any persons authorized by law to act on their behalf in their absence) to act as the "Authorized

Officer” under the Lease. Prior to the execution of the Site Lease, the Lease or any other instrument contemplated by this Ordinance, the final forms thereof and the final Base Rentals (as defined in the Lease) due under the Lease shall be approved by a certificate signed by the Chief Financial Officer (a “Final Terms Certificate”).

**Section 4. Additional Documents.** The City Clerk is hereby authorized and directed to attest all signatures and acts of any official of the City in connection with the matters authorized by this Ordinance. The Mayor, his designee(s) and the Authorized Officers are hereby authorized to execute and deliver for and on behalf of the City any and all related agreements, certificates, documents and other papers and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized by this Ordinance. The appropriate officers of the City are also authorized to execute on behalf of the City agreements concerning the deposit and investment of funds in connection with the transactions contemplated by this Ordinance.

**Section 5. Lease Terms.** The Lease shall provide for the payment of Base Rentals consisting of an interest component and a principal component, and the schedule of Base Rentals incorporated in the Lease shall be approved by Final Terms Certificate, subject to the following limitations:

(a) the aggregate amount of the principal component of Base Rentals shall be determined by Final Terms Certificate and shall not exceed \$4,750,000;

(b) the interest component of Base Rentals shall accrue at a net effective interest rate not to exceed 2.50%, or, in an event of taxability or an event of default, at a rate not to exceed 6.50%;

(c) the Lease, including all renewal terms thereof, shall terminate not later than December 31, 2027; the Site Lease, including all renewal terms thereof, shall terminate not later than December 31, 2037; and

(d) the City shall have the option to purchase Chase’s interest in the Leased Property and terminate the Site Lease in the manner provided in the Site Lease and the Lease.

**Section 6. No General Obligation or Other Indebtedness.** The obligation of the City to make rental payments under the Lease is subject to annual appropriation by the Council and constitutes an undertaking of the City to make current expenditures. No provision of this Ordinance, the Lease or the Site Lease shall be construed, individually or collectively with other provisions, as constituting or giving rise to a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any home rule, constitutional or statutory debt limitation nor a mandatory charge or requirement against the City in any ensuing fiscal year beyond the current fiscal year. The City shall have no obligation to make any payment except in connection with the payment of the Base Rentals and certain other payments under the Lease, which payments shall be subject to termination and nonrenewal by the City in accordance with the provisions of the Lease.

**Section 7. Expression of Need.** The City hereby declares its current need for the use and possession of the Leased Property. It is hereby declared to be the present intention and expectation of the Council that the Lease will be renewed annually until the Site Lease is terminated and all of Chase's interest in the Leased Property is acquired by the City pursuant to the Lease; but this declaration shall not be construed as contractually obligating or otherwise binding the City.

**Section 8. Reasonable Rentals.** The Council hereby determines and declares that the Base Rentals due under the Lease, so long as they are within the limits provided in this Ordinance, will represent the fair value of the use of the Leased Property, and that the Purchase Option Price (as defined in the Lease) will represent, as of any date upon which the City may exercise its option to purchase Chase's interest in such Leased Property, the fair purchase price thereof. The Council further hereby determines and declares that the Base Rentals due under the Lease and authorized hereby will not exceed a reasonable amount so as to place the City under an economic or practical compulsion to renew the Lease or to exercise its option to purchase Chase's interest in the Leased Property pursuant to the Lease. In making such determinations, the Council has given consideration to the cost of acquiring the Leased Property, the uses and purposes for which the Leased Property is employed by the City, the term of the Site Lease, the use of the Leased Property pursuant to the terms and provisions of the Site Lease and the Lease, the City's option to purchase Chase's leasehold interest in the Leased Property, the City's right to cause the termination of the Lease by declining to appropriate funds, and the expected eventual vesting, release or reversion in or to the City of both title to and possession of the Leased Property, free and clear of the Site Lease. The Council hereby determines and declares that the leasing of the Leased Property pursuant to the Lease will result in facilities of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition and installation of the Leased Property were performed by the City other than pursuant to the Lease. The Council hereby determines and declares that, after execution and delivery of the Lease, the maximum duration of the Lease, or the portion thereof allocable to any item of Leased Property separately identified in the Lease, will not exceed the weighted average useful life of such item or items of Leased Property.

**Section 9. Exercise of Purchase Option.** The Council hereby authorizes the exercise of the City's purchase option under the 2013 Lease. The Council hereby determines and declares that such action is in the best interests of the City and its inhabitants.

**Section 10. Severability.** If any section, paragraph, clause or provision of this Ordinance, the Lease or the Site Lease (other than provisions as to the payment of Base Rentals by the City during the term of the Lease, provisions for the quiet enjoyment of the Leased Property by the City during the term of the Lease, and provisions for the conveyance or release of Chase's interest in the Leased Property to the City under the conditions provided in the Site Lease and the Lease) shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.


**Section 11. Repealer of Measures.** All acts, orders, resolutions, ordinances or parts thereof, in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof heretofore repealed.

**Section 12. Public Inspection.** Council deems it appropriate that this Ordinance be published by title and summary prepared by the City Clerk and that this Ordinance be available for inspection and acquisition in the office of the City Clerk.

**Section 13. Effective Date.** This Ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Introduced, read, passed on first reading and ordered published this 5<sup>th</sup> day of December, 2019.

**FINALLY PASSED:** December 19<sup>th</sup>, 2019

  
\_\_\_\_\_  
Council President

**Mayor's Action:**

Approved on December 20, 2019.

Disapproved on \_\_\_\_\_, based on the following objections:

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

John W. Suthers  
Mayor


**Council Action After Disapproval:**

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of \_\_\_\_\_, on \_\_\_\_\_.
- Council action on \_\_\_\_\_ failed to override the Mayor's veto.

\_\_\_\_\_  
Council President

ATTEST:

Sarah B. Johnson  
Sarah B. Johnson, City Clerk

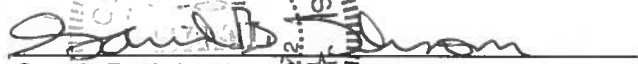


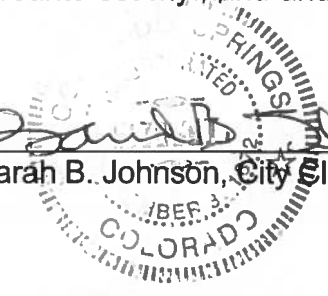
CAO: TJF  
COS: \_\_\_\_\_

I HEREBY CERTIFY, that the foregoing ordinance entitled “AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF COLORADO SPRINGS OF A SITE LEASE BETWEEN THE CITY, AS LESSOR, AND DNT ASSET TRUST, A WHOLLY OWNED SUBSIDIARY OF JPMORGAN CHASE BANK, N.A., AS LESSEE, AND, IN CONNECTION THEREWITH, A LEASE PURCHASE AGREEMENT BETWEEN THE CITY, AS LESSEE, AND DNT ASSET TRUST, A WHOLLY OWNED SUBSIDIARY OF JPMORGAN CHASE BANK, N.A., AS LESSOR, WITH RESPECT TO CERTAIN REAL PROPERTY FOR THE PURPOSE OF REFINANCING CURRENT OBLIGATIONS OF THE CITY; AUTHORIZING OFFICIALS OF THE CITY TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY, AND PROVIDING FOR RELATED MATTERS” was introduced and read at a

regular meeting of the City Council of the City of Colorado Springs, held on December 5<sup>th</sup>, 2019; that said ordinance was finally passed at a regular meeting of the City Council of said City, held on the 19<sup>th</sup> day of December, 2019, and that the same was published by title and summary, in accordance with Section 3-80 of Article III of the Charter, in the Gazette, a newspaper published and in general circulation in said City, at least ten days before its passage.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City, this 20<sup>th</sup> day of December, 2019.

  
Sarah B. Johnson, City Clerk



1<sup>st</sup> Publication Date: December 7<sup>th</sup>, 2019  
2<sup>nd</sup> Publication Date: December 21<sup>st</sup>, 2019

Effective Date: December 26<sup>th</sup>, 2019

Initial: SBJ  
City Clerk

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**SITE LEASE**

between

**CITY OF COLORADO SPRINGS, COLORADO**  
as Lessor,

and

**DNT ASSET TRUST,**  
as Lessee

Dated as of December 30, 2019

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**THIS SITE LEASE** dated as of December 30, 2019 (this "Site Lease"), between the **CITY OF COLORADO SPRINGS, COLORADO**, as lessor (the "City"), a home rule city and Colorado municipal corporation organized and existing under Article XX of the Colorado Constitution (the "Constitution") and its Home Rule Charter (the "Charter"), and **DNT ASSET TRUST**, a Delaware business trust and wholly owned subsidiary of JPMorgan Chase Bank, N.A., as lessee (together with its successors and assigns, the "Lessee"), as represented hereunder by JPMorgan Chase Bank, N.A, a national banking association in its capacity as representative of the Lessee (together with its successors and assigns, the "Lessee Representative");

**WITNESSETH:**

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

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

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

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

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

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

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

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

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

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

**Section 3. Rent and Payment.** The City acknowledges receipt from the Lessee as rent and payment hereunder, in full, the lump sum of \$4,500,000 (the "Site Lease Rental Payment") and other good and valuable consideration. The City hereby covenants to apply or cause to be applied such funds solely to the costs of the Refunding Project or related costs of the transactions contemplated by this Site Lease and the Lease.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Signature Page of Site Lease Follows]

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

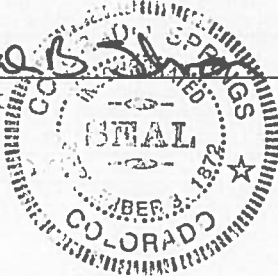
[SEAL]

CITY OF COLORADO SPRINGS,  
COLORADO,  
as Lessor

By John W. Suthers  
Mayor

Attest:

By Sarah B. [Signature]  
City Clerk



DNT ASSET TRUST,  
as Lessee

By: \_\_\_\_\_  
Authorized Officer

[Signature Page to Site Lease]

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

[SEAL]

CITY OF COLORADO SPRINGS,  
COLORADO,  
as Lessor

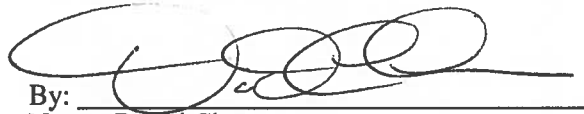
By \_\_\_\_\_  
Mayor

Attest:

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

DNT ASSET TRUST, a Delaware statutory trust,  
as Lessee

By JPMORGAN CHASE BANK, N.A., a  
national banking association, as Lessee  
Representative of the Lessee

By:   
Name: David Chan  
Its: Authorized Officer

[Signature Page to Site Lease]







**EXHIBIT A**

**DESCRIPTION OF THE LEASED PROPERTY**

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

City of Colorado Springs  
County of El Paso  
State of Colorado

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**LEASE PURCHASE AGREEMENT**

between

**DNT ASSET TRUST,**  
as Lessor,

and

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

Dated as of December 30, 2019

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TABLE OF CONTENTS

Page

ARTICLE I  
DEFINITIONS

Section 1.01. Terms Defined in Preamble and Recitals..... 2  
Section 1.02. Additional Definitions ..... 2

ARTICLE II  
REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.01. Representations, Covenants and Warranties of the City..... 6  
Section 2.02. Representations and Covenants of the Lessor ..... 8

ARTICLE III

LEASE OF LEASED PROPERTY ..... 9

ARTICLE IV  
LEASE TERM

Section 4.01. Duration of Lease Term; City’s Annual Right to Renew Lease..... 9  
Section 4.02. Termination of Lease Term ..... 10

ARTICLE V

ENJOYMENT OF LEASED PROPERTY..... 11

ARTICLE VI  
PAYMENTS BY THE CITY

Section 6.01. Payments to Be Paid From Currently Budgeted Expenditures of the  
City..... 11  
Section 6.02. Base Rentals and Additional Rentals..... 12  
Section 6.03. Interest Component..... 13  
Section 6.04. Manner of Payment..... 13  
Section 6.05. Expression of City’s Need for the Leased Property..... 13  
Section 6.06. Nonappropriation ..... 14

ARTICLE VII  
TITLE TO THE LEASED PROPERTY; LIMITATIONS ON ENCUMBRANCES

Section 7.01. Title to the Leased Property; Title Insurance..... 15  
Section 7.02. No Encumbrance, Mortgage or Pledge of Leased Property ..... 15

ARTICLE VIII  
MAINTENANCE; TAXES; INSURANCE AND OTHER CHARGES

Section 8.01. Maintenance of the Leased Property by the City..... 16

Section 8.02.	Modification of the Leased Property, Installation of Furnishings and Machinery of the City .....	16
Section 8.03.	Taxes, Other Governmental Charges and Utility Charges.....	16
Section 8.04.	Provisions Regarding Liability, Property and Worker’s Compensation Insurance .....	17
Section 8.05.	Advances.....	17
Section 8.06.	Granting of Easements.....	18

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

Section 9.01.	Damage, Destruction and Condemnation .....	18
Section 9.02.	Obligation of the City to Repair and Replace the Leased Property .....	18
Section 9.03.	Insufficiency of Net Proceeds.....	19
Section 9.04.	Cooperation of the City.....	19
Section 9.05.	Condemnation by the City .....	20

ARTICLE X

DISCLAIMER OF WARRANTIES; OTHER COVENANTS

Section 10.01.	Disclaimer of Warranties .....	20
Section 10.02.	Further Assurances and Corrective Instruments .....	20
Section 10.03.	Compliance with Requirements.....	20
Section 10.04.	Tax Covenant of City.....	20
Section 10.05.	Reserved.....	21
Section 10.06.	Immunity and Indemnification .....	21
Section 10.07.	Access To Leased Property.....	21
Section 10.08.	Audited Financial Statements .....	22
Section 10.09.	Environmental Covenant .....	22

ARTICLE XI

PURCHASE AND CONVEYANCE OF THE LEASED PROPERTY

Section 11.01.	Purchase Option .....	23
Section 11.02.	Conveyance of the Leased Property .....	23
Section 11.03.	Manner of Release .....	23

ARTICLE XII

ASSIGNMENT AND SUBLEASING BY CITY .....	23
-----------------------------------------	----

ARTICLE XIII

EVENTS OF DEFAULT AND REMEDIES

Section 13.01.	Events of Default Defined .....	24
Section 13.02.	Remedies on Default.....	25
Section 13.03.	Limitations on Remedies .....	26
Section 13.04.	No Remedy Exclusive.....	26
Section 13.05.	Waivers .....	26
Section 13.06.	Agreement to Pay Attorneys' Fees and Expenses .....	26

ARTICLE XIV

RESERVED .....	26
----------------	----

ARTICLE XV  
MISCELLANEOUS

Section 15.01.	Sovereign Powers of City .....	26
Section 15.02.	Notices .....	27
Section 15.03.	Binding Effect.....	27
Section 15.04.	Amendments, Changes and Modifications; Actions by JPMorgan Chase Bank .....	27
Section 15.05.	Assignment by Lessor.....	27
Section 15.06.	Net Lease .....	28
Section 15.07.	Payments Due on Holidays.....	28
Section 15.08.	No Advisory or Fiduciary Relationship.....	28
Section 15.09.	USA Patriot Act.....	29
Section 15.10.	Severability .....	29
Section 15.11.	No Merger.....	29
Section 15.12.	Execution in Counterparts.....	29
Section 15.13.	Applicable Law.....	29
Section 15.14.	Waiver of Jury Trial.....	29
Section 15.15.	Governing Law .....	29
Section 15.16.	Captions .....	29

EXHIBIT A	DESCRIPTION OF LEASED PROPERTY
EXHIBIT B	BASE RENTALS SCHEDULE
EXHIBIT C	PERMITTED ENCUMBRANCES

## LEASE PURCHASE AGREEMENT

**THIS LEASE PURCHASE AGREEMENT** dated as of December 30, 2019 (this "Lease"), between **DNT ASSET TRUST**, a Delaware business trust and wholly owned subsidiary of JPMorgan Chase Bank, N.A., together with its successors and assigns (the "Lessor"), as lessor, as represented hereunder by JPMorgan Chase Bank, N.A, a national banking association in its capacity as representative of the Lessor (together with its successors and assigns, the "Lessor Representative"); and the **CITY OF COLORADO SPRINGS, COLORADO** (the "City"), a home rule city and Colorado municipal corporation organized and existing under Article XX of the Colorado Constitution (the "Constitution") and its Home Rule Charter (the "Charter"), as lessee;

### WITNESSETH:

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

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

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

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

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

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



WHEREAS, the obligation of the City to pay Base Rentals and Additional Rentals (both as hereinafter defined) hereunder shall be from year to year only; shall constitute currently budgeted expenditures of the City; shall not constitute a mandatory charge or requirement in any ensuing fiscal year; and shall not constitute a general obligation or a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of any constitutional or statutory limitation or requirement concerning the creation of indebtedness, nor a mandatory payment obligation of the City in any ensuing fiscal year beyond any fiscal year during which this Lease shall be in effect; and

WHEREAS, the leasing of the Leased Property, and the execution, performance and delivery of this Lease, have been authorized, approved and directed by the Council by an ordinance finally passed and adopted by the Council;

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

**ARTICLE I**

**DEFINITIONS**

**Section 1.01. Terms Defined in Preamble and Recitals.** The following terms shall have the meanings set forth in the preamble and recitals hereto:

Charter	Lessor
City	Refunding Project
Constitution	Site Lease
Council	State
Lease	2013 Lease
Leased Property	2013 Leased Property

**Section 1.02. Additional Definitions.** The following additional terms shall have the meanings specified below:

*“Additional Rentals”* means the cost of all (a) reasonable expenses and fees required of the Lessor in relation to the performance of the provisions of this Lease related to the Leased Property, or otherwise incurred at the request of the City, (b) taxes, if any, insurance premiums, utility charges, maintenance, upkeep, repair, improvement and replacement in respect of the Leased Property, and (c) all other charges and costs which the City assumes or agrees to pay as Additional Rentals hereunder (together with all interest and penalties that may accrue thereon) in the event that the City shall fail to pay the same. Additional Rentals do not include Base Rentals.

*“Anti-Corruption Laws”* means all laws, rules, and regulations of any jurisdiction applicable to the City from time to time concerning or relating to bribery or corruption.

*“Authorized Officer”* means any person authorized by resolution or ordinance of the Council to perform any act or execute any document in connection herewith.

“*Base Rentals*” means the payments payable by the City during the Lease Term pursuant to Section 6.02 of this Lease and as set forth in Exhibit B which constitute the payments payable by the City for and in consideration of the right to use the Leased Property during the Lease Term.

“*Base Rental Payment Dates*” means annual payments due on May 15 of each Fiscal Year during the Lease Term.

“*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.

“*Counsel*” means an attorney at law or law firm (who may be counsel for the Lessor or the City) who is satisfactory to both the City and the Lessor.

“*County*” means El Paso County, Colorado.

“*Default Rate*” means the Interest Component Rate plus 4.0%.

“*Designated Jurisdiction*” means, at any time, a country or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Cuba, Iran, North Korea, Sudan and Syria).

“*Determination of Taxability*” means with respect to the Lease that the City has violated its tax covenants in the Lease or the Tax Compliance Certificate and, as a result thereof, there has been rendered a final judgment or order of a court of competent jurisdiction, or a final ruling or decision of the Internal Revenue Service, in any such case to the effect that the interest component of the Base Rentals is includable for Federal income tax purposes in the gross income of the recipients thereof. A judgment or order of a court of competent jurisdiction or a ruling or decision of the Internal Revenue Service shall be considered final only if no appeal or action for judicial review has been filed (and is pending) and the time for filing such appeal or action has expired.

“*Environmental Regulations*” is defined in Section 2.01(e).

“*Event of Default*” means one or more events of default as defined in Section 13.01 of this Lease.

“*Event of Nonappropriation*” means a termination of this Lease by the City, determined by the City’s failure for any reason, to duly enact by the last day of each Fiscal Year an appropriation ordinance, including the related Annual Budget and Resource Allocation document, for the ensuing Fiscal Year which includes (a) by specific line item reference amounts authorized and directed to be used to pay all Base Rentals and (b) sufficient amounts to pay such Additional Rentals as are estimated to become due, as provided in Section 6.06 of this Lease. The term also includes the giving of notice under Section 4.01 of this Lease of the City’s intention to terminate, the occurrence of an event described in Section 6.06 of this Lease relating to the failure by the City to appropriate amounts due as Additional Rentals at least equal to the amounts reasonably estimated to become due, and the failure by the City to timely budget and

appropriate funds pursuant to Section 9.03 of this Lease. An Event of Nonappropriation shall not constitute an Event of Default under this Lease.

*"Fiscal Year"* means the fiscal or budget year of the City.

*"Force Majeure"* means, without limitation, the following: 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; breakage or accidents to machinery, transmission pipes or canals; or any other cause or event not within the control of the City.

*"Hazardous Substances"* is defined in Section 2.01(e).

*"Insurance Consultant"* means an independent person or firm acceptable to the City experienced in providing the specific type of insurance in question and capable of making an evaluation of the actuarial risk of loss from the types of events customarily covered by such insurance policies.

*"Interest Component Rate"* means the per annum rate or rates of interest used to calculate the interest component of Base Rentals on the basis of twelve 30 day months and a 360 day year. The Interest Component Rate shall be 1.95%.

*"Interest Differential"* is defined in Section 6.02(a).

*"Lease Remedy"* or *"Lease Remedies"* means any or all remedial steps provided in Section 13.02 of this Lease whenever an Event of Nonappropriation has happened or an Event of Default hereunder has happened and is continuing.

*"Lease Term"* means the time during which the City is the lessee of the Leased Property under this Lease, including the Original Term and all Renewal Terms as provided in and subject to Article IV and Sections 6.01, 6.02 and 6.06 of this Lease; certain provisions of this Lease survive the termination of the Lease Term, as provided in Section 4.02 of this Lease.

*"Maximum Rate"* means 6.00%.

*"Net Proceeds"* when used with respect to any performance or payment bond proceeds, or proceeds of insurance, including self-insurance, required by this Lease, or proceeds from any condemnation award, or any proceeds resulting from default or breaches of warranty under any contract relating to the Leased Property or proceeds from any Lease Remedy, means the amount remaining after deducting from such proceeds (a) all expenses (including, without limitation, attorneys' fees and costs) incurred in the collection of such proceeds or award; and (b) all other fees, expenses and payments due to the Lessor.

*"Original Term"* means the portion of the Lease Term that terminates on December 31, 2019.

*"Opinion of Counsel"* means a written opinion of legal counsel.

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

*“Purchase Option Price”* means the amount payable, at the option of the City, for the purpose of terminating this Lease with respect to the Leased Property, purchasing the Leased Property pursuant to Articles IX and XI of this Lease and terminating the Site Lease. The Purchase Option Price shall consist of the Remaining Lease Balance shown in Exhibit B hereto as of the last Base Rental Payment Date preceding the termination of this Lease, plus the interest component of Base Rentals accrued through the date of such termination.

*“Remaining Lease Balance”* means, as of any particular date, the Remaining Lease Balance stated for such date in Exhibit B.

*“Renewal Term”* means any optional renewal of the Lease Term for the next Fiscal Year by the City, as provided in Article IV of this Lease.

*“Revenues”* means (a) all monies currently budgeted and appropriated by the City for the purpose of paying amounts pursuant to this Lease including, but not limited to, all Base Rentals, Purchase Option Prices and Net Proceeds, but not including Additional Rentals; and (b) all other revenues of the City payable pursuant to this Lease, excluding Additional Rentals.

*“Sanctions”* economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State.

*“Sanctioned Country”* means, at any time, a country or territory which is itself the subject or target of any Sanctions (at the time of this Lease, Cuba, Iran, North Korea, Sudan and Syria).

*“Sanctioned Person”* means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

*“Site Lease”* means the Site Lease dated of even date herewith, whereby the City demises to the Lessor a leasehold interest in real property upon which the Leased Property is located and the improvements located or to be located thereon.

*“Tax Compliance Certificate”* means the certificate delivered by the City as of the date of execution and delivery of this Lease, containing statements as to facts and expectations which are material for purposes of the excludability of the interest component of Base Rentals from gross income under the Internal Revenue Code.

“*Taxable Rate*” means a per annum interest rate equal to the product of the Interest Component Rate and the Taxable Rate Factor.

“*Taxable Rate Factor*” means the amount by which the Interest Component Rate must be multiplied to achieve the equivalent taxable rate given the highest marginal corporate tax rate, which is currently 21%. The Taxable Rate Factor is 1.26582 as of the Closing Date but is subject to change should the highest marginal corporate tax rate change.

## ARTICLE II

### REPRESENTATIONS, COVENANTS AND WARRANTIES

**Section 2.01. Representations, Covenants and Warranties of the City.** The City represents, covenants and warrants as follows:

(a) The City is a political subdivision of the State, duly organized and existing under the laws of the State and the Charter. The City is authorized to enter into the transactions contemplated by this Lease and to carry out its obligations under this Lease. The City has duly authorized and approved the execution and delivery of this Lease and the Site Lease.

(b) The lease of the Leased Property from the Lessor pursuant to this Lease serves a public purpose and is in the best interests of the City, its residents and taxpayers. The completion of the Refunding Project by the City is necessary, convenient, in furtherance of and will at all times be used in connection with the City’s governmental and/or proprietary purposes and functions and is in the best interests of the citizens of the City, and no portion of the Refunding Project will be used directly or indirectly in any trade or business carried on by any person other than a political subdivision or governmental unit of the State.

(c) Neither the execution and delivery of this Lease or the Site Lease, nor the fulfillment of or compliance with the terms and conditions of this Lease or the Site Lease, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results 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 or its property is bound, or violates any statute, regulation, rule, order of any court having jurisdiction, judgment or administrative order applicable to the City, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien or encumbrance whatsoever upon any of the property or assets of the City, except for Permitted Encumbrances.

(d) There is no litigation or proceeding pending or threatened against the City or any other person affecting the right of the City to execute this Lease or the Site Lease or the ability of the City to make the payments required hereunder or to otherwise comply with the obligations contained herein.

(e) To the best knowledge of the City, after due inquiry, (i) no dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, as

defined in or governed by the provisions of any federal, state or local law, statute, code, ordinance, regulation, requirement or rule relating thereto (collectively, "Environmental Regulations"), and also including urea-formaldehyde, polychlorinated biphenyls, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or any other waste, material, substance, pollutant or contaminant which would subject the owner of the Leased Property to any damages, penalties or liabilities under any applicable Environmental Regulation (collectively, "Hazardous Substances") are now or have been stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited or disposed of in, upon, under, over or from the Leased Property in violation of any Environmental Regulation; (ii) no threat exists of a discharge, release or emission of a Hazardous Substance upon or from the Leased Property into the environment; (iii) the Leased Property has not been used as or for a mine, landfill, a dump or other disposal facility, industrial or manufacturing facility, or a gasoline service station; (iv) no underground storage tank is located at the Leased Property or has previously been located therein but has been removed therefrom; (v) no violation of any Environmental Regulation now exists relating to the Leased Property, no notice of any such violation or any alleged violation thereof has been issued or given by any governmental entity or agency, and there is not now any investigation or report involving the Leased Property by any governmental entity or agency which in any way relates to Hazardous Substances; (vi) no person, party or private or governmental agency or entity has given any notice of or asserted any claim, cause of action, penalty, cost or demand for payment or compensation, whether or not involving any injury or threatened injury to human health, the environment or natural resources, resulting or allegedly resulting from any activity or event described in (i) above; (vii) there are not now any actions, suits, proceedings or damage settlements relating in any way to Hazardous Substances, in, upon, under, over or from the Leased Property; (viii) the Leased Property is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or any other list of Hazardous Substance sites maintained by any federal, state or local governmental agency; and (ix) the Leased Property is not subject to any lien or claim for lien or threat of a lien in favor of any governmental entity or agency as a result of any release or threatened release of any Hazardous Substance.

(f) Except as previously disclosed to the Lessor, the City has experienced no material adverse change in its financial condition since December 31, 2018.

(g) The City has never failed to appropriate or defaulted in any material respect under any of its payment or performance obligations or covenants under any municipal lease of the same general nature as this Lease.

(h) The City has implemented and maintains in effect policies and procedures designed to ensure compliance by the City and its officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the City and its officers and employees and, to the knowledge of the City, its agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the City or to the knowledge of the City, any of its officers or employees, or (b) to the knowledge of the City, any agent of the City that will act in any capacity in connection with or

benefit from the Site Lease or this Lease, is a Sanctioned Person. Neither the Site Lease, the Lease, any borrowing hereunder, the use of proceeds or other transaction contemplated by the Site Lease or this Lease will violate any Anti-Corruption Law or applicable Sanctions.

(i) The City will maintain in effect and enforce policies and procedures designed to ensure compliance by the City and its officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

(j) The City shall not use, and shall procure that its officers, employees and agents shall not use, the proceeds of the Site Lease, the Lease, the 2013 Project or the Leased Property (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (B) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (C) in any manner that would result in the violation of any Sanctions applicable to any party hereto. Notwithstanding any provisions to contrary contained herein, any violation of this provision shall constitute an immediate Event of Default hereunder.

**Section 2.02. Representations and Covenants of the Lessor.** The Lessor represents, covenants and warrants as follows:

(a) The Lessor has all requisite power to acquire legal interests in the Leased Property and to execute, deliver, enter into and perform the transactions contemplated by this Lease and the Site Lease and to carry out its obligations under this Lease and the Site Lease, and has duly executed and delivered this Lease and all other documents related to this Lease to which it is a party.

(b) Except as expressly provided in this Lease, the Lessor will not pledge or assign its right, title and interest in and to any of its rights under this Lease or assign, pledge, mortgage, encumber or grant a security interest in its right, title and interest in, to or under this Lease or the Leased Property. The Lessor represents that neither the Lease nor any interest therein will be transferred or resold except in compliance with Section 15.05 hereof except as provided in Section 13.02 hereof.

(c) Neither the execution and delivery of this Lease or the Site Lease nor the fulfillment of or compliance with the terms and conditions hereof and thereof, nor the consummation of the transactions contemplated hereby and thereby, conflicts with or results in a breach of the terms, conditions and provisions of any restriction or any agreement or instrument to which the Lessor is now a party or by which the Lessor is bound, or constitutes a default under any of the foregoing.

(d) Except as specifically provided in this Lease and the Site Lease, the Lessor will not assign its duties or obligations under this Lease or the Site Lease to any other person, firm or lessor, so as to impair or violate the representations, covenants and warranties contained in this Section 2.02.

(e) There is no litigation or proceeding pending or threatened against the Lessor or any other person affecting the right of the Lessor to execute this Lease or the Site Lease and to perform its obligations hereunder and thereunder.

(f) The Lessor acknowledges that the obligations of the City under this Lease are payable solely from the Revenues under this Lease and shall not constitute or give rise to a general obligation or multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of any constitutional, charter or statutory provision or limitation nor a mandatory charge or requirement against the City in any ensuing Fiscal Year beyond any Fiscal Year during which this Lease shall be in effect. The Lessor further acknowledges that the City may elect not to renew this Lease by failure to budget and appropriate funds sufficient to meet its next Fiscal Year's Base Rentals and Additional Rentals, and that the acts of budgeting and appropriating funds are legislative acts and, as such, are solely within the discretion of the Council.

### ARTICLE III

#### LEASE OF LEASED PROPERTY

The Lessor demises and leases the Leased Property, including any interest of the Lessor in the Leased Property, to the City, and the City leases the Leased Property, including any interest in the Leased Property, from the Lessor, in accordance with the provisions of this Lease, subject only to Permitted Encumbrances, to have and to hold for the Lease Term.

### ARTICLE IV

#### LEASE TERM

**Section 4.01. Duration of Lease Term; City's Annual Right to Renew Lease.** The Lease Term shall commence as of the date hereof and continue through the last day of the current Fiscal Year of the City. Subject to the provisions of Section 4.02 hereof, the Lease Term may be renewed at the end of the Original Term and at the end of each renewal term thereafter for a term of twelve months coinciding with the next succeeding Fiscal Year of the City; provided however that the Lease Term may be continued, solely at the option of the City, for no more than eight (8) additional terms; provided, however, that the sum of the Original Term and all Renewal Terms shall not extend beyond December 31, 2027. The City shall have the right to annually renew the Lease Term unless (a) the City gives written notice to the Lessor not less than 30 days prior to the end of the Original Term or the then current Renewal Term of the City's intention not to renew this Lease at the end of the Original Term or the then current Renewal Term, or (b) an Event of Nonappropriation shall have occurred with respect to a Renewal Term occurring after the Original Term or any then current Renewal Term. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except for the amount of Base Rentals and Additional Rentals to be paid during such Renewal Term. The Lease Term, including the Original Term and all Renewal Terms, does not exceed the weighted average useful life of the Leased Property or the Refunding Project.



Except as otherwise provided in Section 4.02 hereof, the exercise of the City's annual option to renew this Lease shall be conclusively determined by whether or not the Council has, on or before the last day of each Fiscal Year, duly enacted an appropriation ordinance, including the related Annual Budget and Resource Allocation, for the ensuing Fiscal Year which includes (a) by specific line item reference sufficient amounts authorized and directed to be used to pay all the Base Rentals and (b) sufficient amounts to pay such Additional Rentals as are estimated to become due, all as further provided in Section 6.06 of this Lease. The Mayor of the City charged under the City Charter with the responsibility of formulating budget proposals is hereby requested to include in the annual budget proposals submitted to the Council, items for all payments required under this Lease for the ensuing Fiscal Year, until such time (if any) as the Council may determine to renew or not to renew this Lease; it being the intention of the Council that any decision to renew or not to renew this Lease shall be made solely by the Council and not by any other official of the City. The City shall in any event, promptly furnish the Lessor with copies of its annual budget in an electronic format (which may include, but is not limited to a PDF document posted on the City's official website at: <https://coloradosprings.gov/>.) within 60 days after the budget is adopted, but not later than the sixtieth day after the commencement of such ensuing Fiscal Year, provided that telephonic notice is provided by the City to the Lessor of the adoption of the budget not later than the end of the first Business Day of the next succeeding Fiscal Year. If such budget and appropriation are not adopted, the Lessor shall notify the City in writing as further provided in Section 6.06 hereof.

The City has duly enacted an appropriation ordinance for the Fiscal Year beginning January 1, 2020, and the Lease Term has been renewed for the Fiscal Year beginning January 1, 2020 through December 31, 2020.

**Section 4.02. Termination of Lease Term.** The Lease Term shall terminate upon the earliest of any of the following events:

- (a) the last day of any Fiscal Year during which there has occurred an Event of Nonappropriation pursuant to Section 4.01 and Article VI of this Lease (provided that the Lease Term will be deemed to have been renewed and, therefore, not terminated if the Event of Nonappropriation is cured as provided in Section 6.06 hereof); or
- (b) the conveyance of all of the Leased Property to the City upon payment of the Purchase Option Price or all Base Rentals and Additional Rentals as provided in Section 11.02(a) and (b) of this Lease; or
- (c) an Event of Default and termination of this Lease under Article XIII of this Lease.

An election not to renew the Lease Term shall terminate all unaccrued obligations of the City under this Lease, and shall terminate the City's rights of possession under this Lease at the end of the last day of the Fiscal Year for which this Lease shall be in effect (except to the extent of the holdover provisions of Section 13.02(c)(i) hereof), and except for any conveyance pursuant to Article XI of this Lease). All obligations of the City accrued prior to such termination shall be continuing until all such accrued obligations have been satisfied. Except for

an event described in subparagraph (b) above, upon termination of this Lease, the City agrees to peaceful delivery of the Leased Property to the Lessor or its assigns.

## ARTICLE V

### ENJOYMENT OF LEASED PROPERTY

The Lessor hereby covenants that the City shall during the Lease Term peaceably and quietly have, hold and enjoy the Leased Property without suit, trouble or hindrance from the Lessor, except as expressly required or permitted by this Lease. The Lessor shall, at the request of the City and at the cost of the City, join and cooperate fully in any legal action in which the City asserts its right to such possession and enjoyment, or which involves the imposition of any taxes or other governmental charges on or in connection with the Leased Property. In addition, the City may at its own expense join in any legal action affecting its possession and enjoyment of the Leased Property and shall be joined in any action affecting its liabilities hereunder.

The City also hereby consents to the inspection by the Lessor of all books, accounts and records maintained by the City with respect to the Leased Property and this Lease.

## ARTICLE VI

### PAYMENTS BY THE CITY

**Section 6.01. Payments to Be Paid From Currently Budgeted Expenditures of the City.** The City and the Lessor acknowledge and agree that the Base Rentals and Additional Rentals hereunder during the Original Term and all of the Renewal Terms, if any, shall be paid from then currently budgeted Revenues of the City, using any legally available funds of the City. The City's obligations to pay Base Rentals, Additional Rentals or any other payments provided for under this Lease during the Original Term and all of the Renewal Terms, if any, shall be subject to the City's annual right to renew this Lease (as further provided in Article IV and Sections 6.02 and 6.06 hereof), and shall not constitute a mandatory charge, requirement or liability in any ensuing Fiscal Year beyond the then current Fiscal Year. No provision of this Lease shall be construed or interpreted as a delegation of governmental powers or as creating indebtedness or a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of any constitutional or statutory debt limitation, including without limitation, the Charter as well as Article XI, Sections 1, 2 and 6, and Article X, Section 20, of the Constitution. This Lease shall not directly or indirectly obligate the City to make any payments of Base Rentals or Additional Rentals beyond the Revenues for the then current Fiscal Year. The City shall be under no obligation whatsoever to exercise its option to purchase the Leased Property. No provision of this Lease shall be construed to pledge or to create a lien on any class or source of City moneys, nor shall any provision of this Lease restrict the future issuance of any bonds or obligations of the City payable from any class or source of moneys of the City.

**Section 6.02. Base Rentals and Additional Rentals.**

(a) The City shall pay all Base Rentals directly to the Lessor during the Original Term and all Renewal Terms, on the Base Rental Payment Dates and in the "Total Base Rentals" amounts set forth in Exhibit B, attached hereto and made a part hereof, as it may be amended from time to time hereunder. Upon a Determination of Taxability, the Interest Component Rate shall be increased to the Taxable Rate. Upon a Determination of Taxability, the amounts of Base Rentals set forth in Exhibit B shall be recalculated and this Lease amended accordingly, with the interest component of Base Rentals accruing at the Taxable Rate from the effective date of taxability as expressed in the Determination of Taxability to and including the final date set forth in Exhibit B attached hereto. Upon the occurrence of an Event of Default, the Interest Component Rate shall be increased to the Default Rate. Upon the occurrence and continuation of an Event of Default hereunder, the amounts of Base Rentals set forth in Exhibit B shall be recalculated and this Lease amended accordingly, with the interest component of Base Rentals accruing at the Default Rate from the date of occurrence of such Event of Default through such time as such Event of Default is no longer occurring, at which time the amounts of Base Rentals set forth in Exhibit B shall be recalculated and this Lease amended accordingly, with the interest component of Base Rental accruing at the Interest Component Rate as it existed prior to the occurrence of an Event of Default from the date such Event of Default is no longer occurring.

If any recalculation of Base Rentals pursuant to this section causes the interest component of Base Rentals to accrue at a rate in excess of the maximum interest rate (the "Maximum Rate") authorized by the ordinance of the City authorizing this transaction (the "Authorizing Ordinance"), the difference between what would have accrued at such rate and that generated by the Maximum Rate (the "Interest Differential") shall remain an obligation of the City. Notwithstanding anything herein to the contrary, if at any time there is an Interest Differential owed to the Lessor, any reduction in interest rate that would result from the application of the Maximum Rate to the Default Rate shall not reduce the rate of interest below the Maximum Rate until the total amount due has been paid to the Lessor as if the applicable rate computed as provided above had at all times been utilized. It is acknowledged by the Lessor that the obligations of the City hereunder are limited by the provisions of the Authorizing Ordinance with respect to the maximum interest rate and term of the Lease, as well as the findings of the City with respect to the reasonableness of Base Rentals payments, and that the City is not authorized and is not obligating itself with respect to the foregoing in excess of that which is permitted under the terms of the Authorizing Ordinance.

(b) The City shall pay Additional Rentals during the Original Term and all Renewal Terms, if any, as herein provided. All Additional Rentals shall be paid by the City on a timely basis directly to the person or entity to which such Additional Rentals are owed. If the City's estimates of Additional Rentals for any Fiscal Year are not itemized in the budget required to be furnished to the Lessor under Section 4.01 of this Lease, the City shall furnish an itemization of such estimated Additional Rentals to the Lessor on or before the last day of such Fiscal Year.

**Section 6.03. Interest Component.** A portion of each payment of Base Rentals is paid as, and represents payment of, interest, and Exhibit B hereto sets forth the interest component of each payment of Base Rentals.

**Section 6.04. Manner of Payment.** The Base Rentals and, if paid, the Purchase Option Price, shall be paid by the City by certified funds, electronic means or other method of payment acceptable to the Lessor in lawful money of the United States of America to the Lessor at the address listed in or otherwise designated pursuant to Section 15.02 hereof for deposit. The obligation of the City to pay the Base Rentals and Additional Rentals, during the Original Term and each Renewal Term, shall be absolute and unconditional, payable from all legally available sources, and payment of the Base Rentals and Additional Rentals shall not be abated through accident or unforeseen circumstances, or for any other reason, including without limitation, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Leased Property, commercial frustration of purpose, or failure of the Lessor to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Lease, it being the intention of the parties that the payments required by this Lease will be paid in full when due without any delay or diminution whatsoever, subject only to the special and limited nature of the City's obligation to make payments hereunder as set forth in Section 6.01 above, and further subject to the City's rights under Section 9.03 hereof. Notwithstanding any dispute between the City and Lessor, the City shall, during the Original Term and all Renewal Terms, make all payments of Base Rentals and Additional Rentals when due and shall not withhold any Base Rentals or Additional Rentals pending final resolution of such dispute (except to the extent permitted by Sections 7.02 and 8.03 hereof with respect to certain Additional Rentals), nor shall the City assert any right of set-off or counterclaim against its obligation to make such payments required hereunder. No action or inaction on the part of the Lessor shall affect the City's obligation to pay all Base Rentals and Additional Rentals (except to the extent provided by Sections 7.02 and 8.03 hereof with respect to certain Additional Rentals), during the Lease Term.

**Section 6.05. Expression of City's Need for the Leased Property.** As of the date of this Lease, the City declares its current need for the Leased Property, that the leasing of the Leased Property is beneficial to the City, and that the Leased Property is necessary and essential to the City's purpose and operations. It is hereby declared to be the present intention and expectation of the Council that this Lease will be renewed annually until the Lessor's interest in the Leased Property is acquired by the City pursuant to this Lease; but this declaration shall not be construed as contractually obligating or otherwise binding the City or any Council following the end of the Original Term. The City hereby determines that the Base Rentals due hereunder during the Lease Term represents the fair value of the use of the Leased Property. The City hereby determines that the Base Rentals do not exceed a reasonable amount so as to place the City under an economic compulsion to renew this Lease. In making such determinations, the City has given consideration to the cost of acquiring the Leased Property, the uses and purposes for which the Leased Property will be employed, the benefit to the citizens and inhabitants of the City by reason of the use and occupancy of the Leased Property pursuant to the terms and provisions of this Lease and the Site Lease.

**Section 6.06. Nonappropriation.** In the event that the Council shall not specifically budget and appropriate, on or before the last day of each Fiscal Year, moneys to pay all Base

Rentals and the reasonably estimated Additional Rentals coming due for the next ensuing Fiscal Year as provided in Section 4.01 hereof and this Article, an Event of Nonappropriation shall be deemed to have occurred, subject, however, to each of the following provisions:

(a) The Lessor shall declare an Event of Nonappropriation on any earlier date on which the Lessor receives specific written notice from the City that this Lease will be terminated.

(b) Absent such notice from the City, the Lessor shall give written notice to the City of any Event of Nonappropriation, on or before the fifth day of the next following Fiscal Year; but any failure of the Lessor to give such written notice shall not prevent the Lessor from declaring an Event of Nonappropriation or from taking any remedial action which would otherwise be available to the Lessor.

(c) The Lessor shall waive any Event of Nonappropriation which is cured by the City, within ten days of the giving of notice by the Lessor as provided in (b) above, by inclusion in a duly enacted appropriation resolution, (i) by specific line item, amounts authorized and directed to be used to pay all Base Rentals and (ii) sufficient amounts to pay reasonably estimated Additional Rentals coming due for such Fiscal Year.

In the event that during any Fiscal Year, any Additional Rentals shall become due which were not included in a duly enacted appropriation resolution then, in the event that moneys are not specifically budgeted and appropriated to pay such Additional Rentals within 45 days subsequent to the date upon which such Additional Rentals are due, an Event of Default under Section 13.01(c) shall be deemed to have occurred, upon notice by the Lessor to the City to such effect (subject to waiver by the Lessor as hereinbefore provided). An Event of Nonappropriation shall not constitute an Event of Default under this Lease.

Notwithstanding any provision to the contrary herein, if an Event of Nonappropriation occurs, the City's rights of possession of the Leased Property under this Lease shall terminate at the end of the last day of the Fiscal Year for which this Lease shall be in effect, and the City shall be obligated to make payments of Base Rentals and Additional Rentals during such Fiscal Year for which a corresponding appropriation has been made, but shall not be obligated to make payment of the Base Rentals, Additional Rentals or any other payments provided for herein which accrue after the end of the last day of the Fiscal Year for which this Lease shall be in effect; provided, however, that, subject to the limitations of Sections 6.01 and 13.03 hereof, the City shall continue to be liable for holdover rent equal to Base Rentals and Additional Rentals allocable to any period during which the City shall continue to occupy, use or retain possession of the Leased Property, beginning with the first day of the Fiscal Year in respect of which the Event of Nonappropriation occurs. The City shall in all events vacate or surrender possession of the Leased Property by the tenth Business Day of the Fiscal Year in respect of which the Event of Nonappropriation has occurred.

After the tenth Business Day of the Fiscal Year in respect of which an Event of Nonappropriation has occurred, the Lessor may proceed to exercise all or any Lease Remedies. All property, funds and rights acquired by the Lessor upon the termination of this Lease by

reason of an Event of Nonappropriation as provided herein, less any moneys due and owing to the Lessor, shall be held by the Lessor.

## ARTICLE VII

### TITLE TO THE LEASED PROPERTY; LIMITATIONS ON ENCUMBRANCES

**Section 7.01. Title to the Leased Property; Title Insurance.** Title to the Leased Property shall remain in the City subject to the Site Lease and this Lease. Except as expressly set forth in this Lease or the Site Lease, the Lessor shall have no right or interest in the Leased Property or any additions and modifications thereto or replacements thereof.

Concurrently with the execution and delivery of the Site Lease, the City shall provide a standard leasehold owner's title insurance policy issued to the Lessor and/or its designee, or commitment therefor acceptable to the Lessor, in an amount equal to no less than the original Lease Balance, insuring the Lessor's interest in the Leased Property subject to Permitted Encumbrances.

**Section 7.02. No Encumbrance, Mortgage or Pledge of Leased Property.** Except as may be permitted by this Lease, the City shall not permit any mechanic's or other lien to remain against the Leased Property; provided that, if the City shall first notify the Lessor of the intention of the City to do so, the City may in good faith contest any mechanic's or other lien filed or established against the Leased Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless the Lessor shall notify the City that, in the Opinion of Counsel, by nonpayment of any such items the Lessor's title to or interest in the Leased Property will be materially endangered, or the Leased Property or any part thereof will be subject to loss or forfeiture, in which event the City shall promptly pay and cause to be satisfied and discharged all such unpaid items (provided, however, that such payment shall not constitute a waiver of the right to continue to contest such items). The Lessor will cooperate fully with the City in any such contest, upon the request and at the expense of the City. Except as may be permitted by this Lease, the Lessor shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Property, except Permitted Encumbrances. The City and the Lessor shall promptly, at their own respective expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance or claim not excepted above which each shall respectively have created, incurred, or suffered to exist.

## ARTICLE VIII

### MAINTENANCE; TAXES; INSURANCE AND OTHER CHARGES

**Section 8.01. Maintenance of the Leased Property by the City.** The City agrees that at all times during the Lease Term the City will maintain, preserve and keep all portions of the Leased Property or cause the Leased Property to be maintained, preserved and kept, in good repair, working order and condition, and that the City will from time to time make or cause to

be made all necessary and proper repairs, except as otherwise provided in Sections 9.03 and 10.03 of this Lease. The Lessor shall not have any responsibility for such maintenance or repairs or for the making of any additions, modifications or replacements to the Leased Property.

**Section 8.02. Modification of the Leased Property, Installation of Furnishings and Machinery of the City.** The City shall have the privilege of making substitutions, additions, modifications and improvements to any portion of the Leased Property, at its own cost and expense; and the same shall become part of the Leased Property, subject to this Lease shall be included under the terms of this Lease and the Site Lease; provided, however, that such substitutions, additions, modifications and improvements shall not in any way damage the Leased Property or cause the Leased Property to be used for purposes other than lawful governmental or proprietary functions of the City (except to the extent of subleasing permitted under Article XII hereof); and provided that the Leased Property, as improved or altered, upon completion of such substitutions, additions, modifications and improvements, shall be of a value not less than the value of the Leased Property immediately prior to making such substitutions, additions, modifications and improvements.

The City may also, from time to time in its sole discretion and at its own expense, install machinery, equipment, and other tangible personal property in or on any Leased Property. All such machinery, equipment, and other tangible personal property shall remain the sole property of the City in which the Lessor shall have not any interest; provided, however, that title to any such machinery, equipment, other tangible personal property and any future substitutions which become permanently affixed to any of the Leased Property as identified in Exhibit A shall be included in the Leased Property under the Site Lease and this Lease, in the event the Lessor shall reasonably determine that such Leased Property would be materially damaged or impaired by the removal of such machinery, equipment, or other tangible personal property.

**Section 8.03. Taxes, Other Governmental Charges and Utility Charges.** In the event that the Leased Property or any portion thereof shall, for any reason, be deemed subject to taxation, assessments or charges lawfully made by any governmental body, the City shall pay the amount of all such taxes, assessments and governmental charges when due, as Additional Rentals. With respect to special assessments or other governmental charges which may be lawfully paid in installments over a period of years, the City shall be obligated to provide for Additional Rentals only for such installments as are required to be paid during the upcoming Fiscal Year. Except for Permitted Encumbrances, the City shall not allow any liens for taxes, assessments or governmental charges to exist with respect to the Leased Property or any portion thereof (including, without limitation, any taxes levied upon the Leased Property or any portion thereof which, if not paid, will become a charge on the rentals and receipts from the Leased Property or any portion thereof, or any interest therein, including the interest of the Lessor), or the rentals and revenues derived therefrom or hereunder. The City shall also pay as Additional Rentals, as the same respectively become due, all utility and other charges incurred in the maintenance and upkeep of the Leased Property.

**Section 8.04. Provisions Regarding Liability, Property and Worker's Compensation Insurance.** Upon the delivery and acceptance of the Leased Property as provided in this Lease, the City shall, at its own expense, cause casualty and property insurance

to be carried and maintained with respect to the Leased Property in an amount equal to the lesser of the next succeeding Purchase Option Price or the maximum insurable value of the Leased Property. Such insurance policy may have a deductible clause in an amount not to exceed \$100,000 or such greater amount as is approved in writing by the Lessor. The current wind/hail deductible is 1% of the building value. With the prior written consent of the Lessor, the City may, in its discretion, insure the Leased Property under blanket insurance policies which insure not only the Leased Property, but other property as well, as long as such blanket insurance policies otherwise comply with the requirements hereof. Any property damage insurance policy required by this Section 8.04 shall be so written or endorsed as to show the Lessor, as loss payee and/or additional insured, and to make losses exceeding \$100,000, if any, payable to the City and the Lessor, as their respective interests may appear.

Upon the execution and delivery of this Lease, the City shall, at its own expense, cause public liability insurance, including blanket contractual liability or specific contractual liability insurance for this Lease and public officials' errors and omissions coverage, to be carried and maintained with respect to the activities to be undertaken by the City and its officers, officials, agents and employees in connection with the use and possession of the Leased Property. All such policies (other than errors and omissions) shall show the City, all officers and employees thereof, and the Lessor as additional insureds. Such coverage may provide for self-insurance up to \$1,000,000 per occurrence. The public liability insurance required by this Section 8.04 may be by blanket insurance policy or policies.

If the City shall insure against similar risks by self-insurance, the City, at its election and in accordance with the standards of the State relating thereto, may in lieu of obtaining policies for casualty and property, and public liability insurance coverage as required by this Section 8.04 provide one or more such coverages by a self-insurance fund so long as the City provides an annual certification to the Lessor that the reserves therein are adequate as determined by, in the case of public liability and workers' compensation insurance, the City's risk manager or Insurance Consultant.

The City shall provide certified copies of all insurance policies required under this Section 8.04 or certificates of insurance with appropriate endorsements attached evidencing, that the Lessor has been named as loss payee and/or additional insured.

**Section 8.05. Advances.** If the City fails to pay any Additional Rentals during the Lease Term as such Additional Rentals become due, the Lessor may (but shall not be obligated to) pay such Additional Rentals and the City agrees to reimburse the Lessor to the extent permitted by law and subject to annual appropriation.

**Section 8.06. Granting of Easements.** As long as no Event of Nonappropriation or Event of Default shall have happened and be continuing, the City may at any time or times and at its own expense, but only after notice to the Lessor, grant easements, licenses, rights-of-way (including the dedication of public highways) and other rights or privileges in the nature of easements with respect to any property or rights included in this Lease, free from this Lease and any security interest or other encumbrance created hereunder or thereunder, and the Lessor shall release existing easements, licenses, rights-of-way, and other rights and privileges with respect to such property or rights, with or without consideration, and shall execute and deliver any



instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other grant or privilege upon receipt of: (a) a copy of the instrument of grant or release; and (b) a written application signed by an Authorized Officer of the City requesting such instrument and stating that such grant or release will not impair the economic value or effective use or interfere with the operation of the Leased Property.

## ARTICLE IX

### DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

**Section 9.01. Damage, Destruction and Condemnation.** If, during the Lease Term (a) the Leased Property or any portion thereof shall be destroyed (in whole or in part), or damaged by fire or other casualty; or (b) title to, or the temporary or permanent use of, the Leased Property or any portion thereof or the estate of the City or the Lessor in the Leased Property or any portion thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority; or (c) a breach of warranty or a material defect in the construction, manufacture or design of the Leased Property shall become apparent; or (d) title to or the use of all or any portion of the Leased Property shall be lost by reason of a defect in title thereto; then the City shall be obligated to continue to pay the amounts specified in Section 6.02 of this Lease (subject to Section 6.01 hereof).

**Section 9.02. Obligation of the City to Repair and Replace the Leased Property.** The City and, to the extent such Net Proceeds are within its control, the Lessor, shall cause the Net Proceeds of any insurance policies, performance bonds or condemnation awards to be deposited in a separate trust fund held by the Lessor. Unless the City shall certify in writing to the Lessor that all of the Net Proceeds are to be used for the prompt repair, restoration, modification, improvement or replacement of the Leased Property by the City, such Net Proceeds shall be applied to the prompt payment of all Base Rentals and Additional Rentals. Subject to the receipt of the certificate required by the preceding sentence, all Net Proceeds so deposited shall be applied to the prompt repair, restoration, modification, improvement or replacement of the Leased Property by the City upon receipt of requisitions acceptable to the Lessor signed by an Authorized Officer of the City stating with respect to each payment to be made; (a) the requisition number; (b) the name and address of the person, firm or corporation to whom payment is due; (c) the amount to be paid; and (d) that each obligation mentioned therein has been properly incurred, is a proper charge against the separate trust fund and has not been the basis of any previous withdrawal and specifying in reasonable detail the nature of the obligation, accompanied by a bill or a statement of account for such obligation.

**Section 9.03. Insufficiency of Net Proceeds.** If the Net Proceeds (plus any amounts withheld from such Net Proceeds by reason of any deductible clause) shall be insufficient to pay in full the cost of any repair, restoration, modification, improvement or replacement of the Leased Property required under Section 9.02 of this Lease, the City may elect to:

- (a) complete the work or replace such Leased Property (or portion thereof) with similar property acceptable to the Lessor of a value equal to or in excess of such

Leased Property or portion thereof and pay as Additional Rentals, to the extent amounts for Additional Rentals which have been specifically appropriated by the City are available for payment of such cost, any cost in excess of the amount of the Net Proceeds, and the City agrees that, if by reason of any such insufficiency of the Net Proceeds, the City shall make any payments pursuant to the provisions of this Section 9.03(a), the City shall not be entitled to any reimbursement therefor from the Lessor, nor shall the City be entitled to any diminution of the Base Rentals and Additional Rentals payable under Section 6.02 of this Lease; or

(b) apply the Net Proceeds to the payment of the Purchase Option Price in accordance with Article XI of this Lease. In the event of an insufficiency of the Net Proceeds for such purpose, the City shall, subject to the limitations of Section 6.01 hereof, pay such amounts as may be necessary to equal that portion of the Purchase Option Price which is attributed to the Leased Property for which the Net Proceeds have been received (as certified to the Lessor by the City); and in the event the Net Proceeds shall exceed such portion of the Purchase Option Price, such excess shall be retained by the City; or

(c) if the City does not timely budget and appropriate sufficient funds to proceed under either (a) or (b) above, an Event of Nonappropriation will be deemed to have occurred and, subject to the City's right to cure, the Lessor may pursue remedies available to it following an Event of Nonappropriation.

The above referenced election shall be made by the City within 90 days of the occurrence of an event specified in Section 9.01 of this Lease.

If the City elects to replace the Leased Property with similar property pursuant to subparagraph (a) above, the City shall obtain consent from the Lessor prior to such substitution, which consent shall not be unreasonably withheld.

**Section 9.04. Cooperation of the City.** At the expense of the City, the City shall cooperate fully with the Lessor in filing any proof of loss with respect to any insurance policy or performance bond covering the events described in Section 9.01 of this Lease and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Leased Property or any portion thereof and in the enforcement of all warranties relating to the Leased Property. In no event shall the Lessor 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 portion thereof without the written consent of the City.

**Section 9.05. 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 fair market value of the condemned portion of the Leased Property shall be not less than the Purchase Option Price.

## ARTICLE X

### DISCLAIMER OF WARRANTIES; OTHER COVENANTS

**Section 10.01. Disclaimer of Warranties.** THE LESSOR DOES NOT MAKE ANY 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. THE CITY HEREBY ACKNOWLEDGES AND DECLARES THAT THE CITY IS SOLELY RESPONSIBLE FOR THE USE, CONSTRUCTION, IMPROVEMENT, EQUIPPING, MAINTENANCE AND OPERATION OF THE LEASED PROPERTY, AND THAT THE LESSOR DOES NOT HAVE ANY RESPONSIBILITY THEREFOR. For the purpose of enabling the City to discharge such responsibility, the Lessor constitutes and appoints the City as its attorney in fact for the purpose of constructing, improving, equipping, maintaining and operating the Leased Property, and asserting and enforcing, at the sole cost and expense of the City, all constructor's or manufacturer's warranties and guaranties, express or implied, with respect to the Leased Property, as well as any claims or rights the Lessor may have in respect of the Leased Property against any manufacturer, supplier, contractor or other person. In no event shall the Lessor 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 10.02. Further Assurances and Corrective Instruments.** The Lessor and the City agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Leased Property hereby leased or intended so to be, or for otherwise carrying out the intention hereof.

**Section 10.03. Compliance with Requirements.** During the Lease Term, the City and the Lessor shall observe and comply promptly to the extent possible with all current and future orders of all courts having jurisdiction over the Leased Property or any portion thereof, provided that either the City or the Lessor, with notice to the other, may contest or appeal such orders so long as they are in compliance with such orders during the contest or appeal period, and all current and future requirements of all insurance companies writing policies covering the Leased Property or any portion thereof.

**Section 10.04. Tax Covenant of City.** The City shall not take or omit to take any action with respect to the Base Rentals or any other funds or property of the City, or use or permit others to use the Leased Property in any manner that would cause the interest component of Base Rentals 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. In furtherance of this covenant, the City agrees to comply with the procedures and requirements set forth in the Tax Compliance Certificate. The covenants in this Section shall survive the termination of this Lease and remain in full force and effect, notwithstanding termination of the Lease, until such covenants have been performed.

**Section 10.05. Reserved.**

**Section 10.06. Immunity and Indemnification.** In the exercise of the powers of the Lessor by its employees and agents under this Lease, including (without limiting the foregoing) the application of moneys and the investment of funds, the Lessor shall not be accountable to the City for any action taken or omitted with respect to this Lease by it or its employees and agents reasonably believed by it or them to be authorized or within the discretion or rights or powers conferred under this Lease. The Lessor and its employees and agents shall be protected in its or their actions taken in reliance upon any paper or documents believed by it or them to be genuine and consistent with their rights or powers under this Lease, and it or they may conclusively rely upon the advice of Counsel and may (but need not) require further evidence of any fact or matter before taking any action. No recourse shall be had by the City for any claims based on this Lease against any employee or agent of the Lessor alleging personal liability on the part of such person.

Subject to the limitations of Section 6.01 hereof and to the extent permitted by law, the City shall indemnify the Lessor and any of its employees or agents and save them harmless against any liability to the extent resulting from acts or omissions of the City in connection with any acts taken pursuant to this Lease as it relates to the City and the Leased Property. To the extent permitted by law, the City shall also indemnify the Lessor and its employees or agents against all claims arising from: (a) the conduct, management, operation or use of, or from any work or thing done on, the Leased Property during the Lease Term; (b) any condition of the Leased Property; and (c) any act of negligence of the City or of any of its agents, contractors or employees or any violation of law by the City or breach of any covenant or warranty by the City hereunder. To the extent permitted by law, the City shall indemnify and save the Lessor and its employees and agents harmless from any such claim arising as aforesaid or in connection with any action or proceeding brought thereon and, upon notice from the Lessor or any of its employees or agents, shall defend the Lessor and its employees and agents in any such action or proceeding.

**Section 10.07. Access To Leased Property.** The City agrees that the Lessor and its authorized representatives shall have the right at all reasonable times to examine and inspect the Leased Property and all of the City's books and records with respect thereto. The City further agrees that the Lessor and any such representative shall have such rights of access to the Leased Property as may be reasonably necessary to cause the proper maintenance of the Leased Property in the event of failure by the City to perform its obligations under this Lease.

**Section 10.08. Audited Financial Statements.** The City shall provide its audited financial statements to the Lessor, annually, within 270 days after the close of the City's Fiscal Year in an electronic format which may include, but is not limited to a PDF document posted on the City's official website at: <https://www.coloradosprings.gov/>. Also, during the Lease Term, the City covenants and agrees to provide to the Lessor any additional information that the Lessor may reasonably request from time to time. The City shall provide within 60 days after commencement of a Fiscal Year, a copy of the City's final annual budget for such Fiscal Year in an electronic format which may include, but is not limited to a PDF document posted on the City's official website at: <https://www.coloradosprings.gov/>. In the event the City provides the

documents required by this Section by posting them on the City's official website, it shall notify the Lessor of such posting in accordance with the provisions of Section 15.02.

**Section 10.09. Environmental Covenant.** The City shall not store, locate, generate, produce, process, treat, transport, incorporate, discharge, emit, release, deposit or dispose of any Hazardous Substance in, upon, under, over or from the Leased Property in violation of any Environmental Regulation, shall not permit any Hazardous Substance to be stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited, disposed of or to escape therein, thereupon, thereunder, thereover or therefrom in violation of any Environmental Regulation, shall cause all Hazardous Substances to be properly removed therefrom and properly disposed of in accordance with all applicable Environmental Regulations, shall not install or permit to be installed any underground storage tank therein or thereunder in violation of any Environmental Regulation and shall comply with all other Environmental Regulations which are applicable to the Leased Property.

Subject to the limitations of Section 6.01 hereof and to the extent permitted by law, in the event any Hazardous Substance is found upon, under, over or from the Leased Property in violation of any Environmental Regulation or if any lien or claim for lien in favor of any governmental entity or agency as a result of any release of any Hazardous Substance is threatened, the City, at its sole cost and expense, shall, within ten days of such finding, deliver written notice thereof to the Lessor and shall promptly remove such Hazardous Substances and prevent the imposition of any liens against the Leased Property for the cleanup of any Hazardous Materials. Such removal shall be conducted and completed in compliance with all applicable federal, state and local laws, regulations, rules, ordinances and policies in accordance with the orders and directives of all federal, state and local governmental authorities.

Subject to the limitations of Section 6.01 hereof and to the extent permitted by law, the City further agrees to reimburse the Lessor for any and all claims, demands, judgments, penalties, liabilities, costs, damages and expenses, including court costs and attorneys' fees directly or indirectly incurred by the Lessor in any action against or involving the Lessor, resulting from any breach of the foregoing covenants or the representations and warranties in Section 2.01(e) hereof, or from the discovery of any Hazardous Substance, in, upon, under or over, or emanating from, the Leased Property.

The representations and warranties in Section 2.01(e) hereof and the covenants of this Section 10.09 shall be deemed to be for the benefit of the Lessor and any successors and assigns of the Lessor permitted hereunder.

## ARTICLE XI

### PURCHASE AND CONVEYANCE OF THE LEASED PROPERTY

**Section 11.01. Purchase Option.** The City shall have the option to purchase the interest of the Lessor in the Leased Property and terminate this Lease, but only in connection with the exercise of the option described in Section 9.03(b) hereof. The City may exercise its option on any Base Rental Payment Date by complying with one of the conditions set forth in Section 11.02. The City shall give the Lessor notice of its intention to exercise its option not

less than 30 days in advance of the date of exercise. If the City shall have given notice to the Lessor of its intention to purchase the Leased Property, but shall not have deposited the amounts with the Lessor on the date specified in such notice, the City shall continue to pay Base Rentals as if no such notice had been given.

**Section 11.02. Conveyance of the Leased Property.** The Lessor shall transfer and convey its interest in the Leased Property to the City in the manner provided for in Section 11.03 of this Lease; provided, however, that prior to such transfer and conveyance, either:

- (a) the City shall have paid the then applicable Purchase Option Price; or
- (b) no Event of Default shall have occurred and be continuing, and the City shall have paid all Base Rentals set forth in Exhibit B hereto and all then current Additional Rentals required to be paid hereunder, in which case the Lessor shall transfer and convey the Leased Property to the City.

**Section 11.03. Manner of Release.** At the closing of any purchase or other conveyance of the Lessor's interest in the Leased Property pursuant to Section 11.02 of this Lease, the Lessor shall execute and deliver to the City a Release of Site Lease and Lease, releasing all of the Lessor's leasehold interest in the Leased Property, as it then exists, to the City subject to the following: (a) Permitted Encumbrances; (b) all liens, encumbrances and restrictions created or suffered to exist by the Lessor as required or permitted by this Lease; and (c) any lien or encumbrance created by action of the City.

## ARTICLE XII

### ASSIGNMENT AND SUBLEASING BY CITY

This Lease may not be assigned by the City for any reason other than to a successor by operation of law. The Leased Property may be subleased to any other person or entity, as a whole or in part, by the City with the consent of the Lessor, and subject to each of the following conditions:

- (a) this Lease, and the obligations of the City hereunder, shall, at all times during the Lease Term remain obligations of the City subject to Section 6.01 of this Lease, and the City shall maintain its obligations to the Lessor, notwithstanding any sublease;
- (b) the City shall furnish or cause to be furnished to the Lessor a copy of any sublease agreement; and
- (c) no sublease by the City shall violate the Constitution or laws of the State; and
- (d) no sublease by the City shall result in a violation of the covenants provided in Section 10.04 hereof or the Tax Compliance Certificate.

Notwithstanding the preceding, the Lessor hereby acknowledges and approves (1) that certain Lease dated February 27, 2013, between the City and the Colorado Springs Urban Renewal Authority ("CSURA"), as amended, for the use of certain office space and common areas on a portion of the Leased Property; (2) that certain Municipal Services Contract dated July 7, 2010, between the City and Compass Group USA, Inc. by and through its Canteen Vending Services Division, as amended, granting a license for beverage and snack vending machine services on a portion of the Leased Property; (3) that certain Site Lease Agreement dated as of August 17, 1998, between the City and Sprint Spectrum Realty Company, LLC, as successor in interest to Sprint Spectrum L.P (collectively, "Sprint Spectrum") for the use of a portion of the Leased Property to house a cellular antenna and related equipment (collectively, the "Existing Subleases") and any amendment, modification, substitution or replacement of the same that does not materially expand the area of such Existing Subleases, damage the Leased Property or materially diminish the value of the Leased Property or its suitability for its intended use.

### ARTICLE XIII

#### EVENTS OF DEFAULT AND REMEDIES

**Section 13.01. Events of Default Defined.** Any one of the following shall be an "Event of Default" under this Lease:

(a) failure by the City to pay any Base Rentals or Additional Rentals during the Lease Term within three Business Days after the same become due;

(b) failure by the City to vacate or surrender possession of the Leased Property within 60 days after an Event of Nonappropriation has occurred;

(c) failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, under the Site Lease or under any certificates executed and delivered by the City in connection with the execution and delivery of this Lease, other than as referred to in (a) or (b), 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 Lessor, unless the Lessor 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 Lessor shall not withhold its consent to an extension of such time if corrective action is instituted by the City within the applicable period and diligently pursued until the default is corrected. Such consent by the Lessor shall not be unreasonably withheld;

(d) the City (i) files a petition or application seeking reorganization, arrangement under federal bankruptcy law, or other debtor relief under the laws of the State or (ii) is the subject of such a petition or application which is not contested by the City, or otherwise dismissed or discharged, within 30 days; or

(e) failure by the City to comply with the Site Lease.

The foregoing provisions of this Section 13.01 are subject to the following limitations:

(a) the City shall be obligated to pay the Base Rentals and Additional Rentals only during the

Original Term or current Renewal Term, except as otherwise expressly provided in this Lease; and (b) 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 the obligations on the part of the City contained in Article VI of this Lease, the City shall not be deemed in default during the continuance of such inability. The City agrees, however, to remedy, as promptly as legally and reasonably possible, the cause or causes preventing the City from carrying out its agreement; provided that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the City.

**Section 13.02. Remedies on Default.** Whenever any Event of Default referred to in Section 13.01 of this Lease shall have happened and be continuing, the Lessor shall, without any further demand or notice, take one or any combination of the following remedial steps:

(a) The Lessor may terminate the Lease Term and give notice to the City to vacate and surrender possession of the Leased Property within 60 days of such notice.

(b) The Lessor may lease or sublease the Leased Property or any portion thereof or sell any interest the Lessor has in the Leased Property.

(c) The Lessor may recover from the City:

(i) the portion of Base Rentals and Additional Rentals which would otherwise have been payable hereunder, during any period in which the City continues to occupy, use or possess the Leased Property; and

(ii) Base Rentals and Additional Rentals which would otherwise have been payable by the City hereunder during the remainder, after the City vacates and surrenders possession of the Leased Property, of the Fiscal Year in which such Event of Default occurs.

(d) The Lessor may proceed to foreclose through the courts on or otherwise sell, trade-in, repossess or liquidate the Lessor's interest in the Leased Property, or any part thereof in any lawful manner; provided, however, that the Lessor may not recover from the City any deficiency which may exist following the liquidation of the Lessor's interest in the Leased Property in excess of Base Rentals and Additional Rentals for the then current Fiscal Year and in excess of amounts payable under subparagraph (c) of this Section 13.02.

(e) The Lessor may 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.

**Section 13.03. 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 paragraph (c) of Section 13.02 of this Lease. A judgment requiring a payment of money may be entered against the City by reason of an Event of Nonappropriation only to the extent that the City fails to vacate and surrender possession of the Leased Property as required by Section 6.06 of this Lease, and only as to the liabilities described in paragraph (c)(i) of Section 13.02 of this Lease. The remedy described in paragraph (c)(ii) of Section 13.02 of this



Lease is not available for an Event of Default consisting of failure by the City to vacate and surrender possession of the Leased Property within 60 days following notice of an Event of Nonappropriation.

**Section 13.04. No Remedy Exclusive.** Subject to Section 13.03 hereof, no remedy herein conferred upon or reserved to the Lessor 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 impair any such right or power or 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 Lessor to exercise any remedy reserved in this Article XIII, it shall not be necessary to give any notice, other than such notice as may be required in this Article XIV.

**Section 13.05. Waivers.** The Lessor 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.

**Section 13.06. Agreement to Pay Attorneys' Fees and Expenses.** To the extent permitted by law and subject to the provisions of Section 6.01 hereof, in the event that either party hereto shall default under any of the provisions hereof and the nondefaulting party shall employ attorneys or incur other expenses for the collection of Base Rentals and Additional Rentals, or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it shall on demand therefor pay to the nondefaulting party the fees of such attorneys and such other expenses so incurred by the nondefaulting party, to the extent that such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction.

#### ARTICLE XIV

#### RESERVED

#### ARTICLE XV

#### MISCELLANEOUS

**Section 15.01. Sovereign Powers of City.** Nothing in this Lease shall be construed as diminishing, delegating, or otherwise restricting any of the sovereign powers of the City. Nothing in this Lease shall be construed to require the City to occupy and operate the Leased Property other than as lessee, or to require the City to exercise its right to purchase the Lessor's interest in the Leased Property as provided in Article XI hereof.

**Section 15.02. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when given electronically if promptly confirmed by delivery or mail in the manner provided herein, or when delivered or mailed by certified or registered mail, postage prepaid, addressed as follows: if to the City of Colorado

Springs, Colorado, 30 S. Nevada Ave., Ste. 202, Colorado Springs, Colorado 80903, Attention: Chief Financial Officer, with a copy to the City Attorney; if to the Lessor, DNT Asset Trust, 1125 17th St., 3rd Floor, Denver, Colorado 80202, Attention: Authorized Officer. The City and the Lessor may, by written notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**Section 15.03. Binding Effect.** This Lease shall inure to the benefit of and shall be binding upon the Lessor and the City and their respective successors and assigns, subject, however, to the limitations contained in Article XII and Section 14.05 of this Lease.

**Section 15.04. Amendments, Changes and Modifications; Actions by JPMorgan Chase Bank.** Except as otherwise provided in this Lease, this Lease may not be effectively amended, changed, modified or altered without the written consent of the parties hereto. Notwithstanding the foregoing, however, or any provision to the contrary contained in the Site Lease or this Lease, JPMorgan Chase Bank, N.A. shall have the right to consent, direct remedies and take all actions on behalf of the Lessor under the Site Lease and this Lease.

**Section 15.05. Assignment by Lessor.** The City shall serve as registrar for this Lease and the rights to payments hereunder. The Lessor shall be the initial registered owner of rights to receive payments hereunder. If the Lessor transfers its rights to receive payments as permitted under this Section, the registrar shall note on this Lease and in the records of the City the name and address of the transferee. This Lease is transferable only by notation on the registration books maintained by the registrar, and is freely transferable provided that the Lessor and each assignee or transferee agrees that it shall not assign or transfer this Lease or any interest herein, except to a successor by merger or an affiliate (which term shall include, with respect to the Lessor, JPMorgan Chase Bank & Co. or any direct or indirect subsidiaries), except where:

- (a) the transferring holder thereof shall first have complied with all applicable state and federal securities laws and regulations; and
- (b) the Lease is transferred to
  - (i) a transferee who executes and delivers to the City a letter of the transferee substantially to the same effect as that delivered to the City by the Lessor upon the original execution and delivery of this Lease; or
  - (ii) a transferee who qualifies as a qualified institutional investor; or
  - (iii) a transferee who qualifies as an "accredited investor" within the meaning of Section 2(15) of the 1933 Act; or
  - (iv) a securitization Special Purpose Vehicle ("SPV") the interests in which SPV are sold to institutional investors only; and
- (c) the transferring holder will not prepare or furnish, or cause to be prepared or furnished, any disclosure regarding the City's finances without the prior review and written consent of the City, in the City's sole discretion.

In connection with any transfer or sale the City may require a letter from the transferee to the effect that the transferee is one of the types of entities mentioned in paragraphs (b)(i) through (iv) of this Section 15.05, purchasing for its own account with no present view to resale or other distribution of any interest in this Lease. The City shall not be required to recognize the interest of, take any action on behalf or for the benefit of or make any payment to any person acquiring an interest in this Lease by any means other than a transfer effectuated in compliance with this Section.

**Section 15.06. Net Lease.** This Lease shall be deemed and construed to be a “triple net lease,” and the City shall, subject to Section 6.01 hereof, pay absolutely net during the Lease Term, the Base Rentals, Additional Rentals and all other payments required hereunder, free of any deductions, and without abatement, deduction or setoff (other than credits against Base Rentals expressly provided for in this Lease).

**Section 15.07. Payments Due on Holidays.** If the date for making any payment or the last day for performance of any act or the exercising of any right, as provided in this Lease, shall be a day other than a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in this Lease.

**Section 15.08. No Advisory or Fiduciary Relationship.** In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other related document), the City acknowledges and agrees that: (a) (i) the services regarding this Lease provided by the Lessor are arm’s-length commercial transactions between the City, on the one hand, and the Lessor on the other hand, (ii) the City has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the City is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Site Lease; (b) (i) the Lessor is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the City, or any other Person and (ii) the Lessor has no obligation to the City with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the Site Lease; and (c) the Lessor may be engaged in a broad range of transactions that involve interests that differ from those of the City, and the Lessor has no obligation to disclose any of such interests to the City. To the fullest extent permitted by law, the City, hereby waives and releases any claims that it may have against the Lessor with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

**Section 15.09. USA Patriot Act.** The Lessor hereby notifies the City that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies the City, which information includes the name and address of the City and other information that will allow the Lessor to identify the City in accordance with the Act. The City agrees to, promptly following a request by the Lessor, provide all such other documentation and information that the Lessor requests in order to comply with its ongoing obligations under

applicable “know your customer” and anti-money laundering rules and regulations, including the Act.

**Section 15.10. Severability.** In the event that any provision of this Lease, other than the requirement of the City to pay Base Rentals in accordance with Section 6.01 and the requirement of the Lessor to provide quiet enjoyment of the Leased Property and to convey the Leased Property to the City under the conditions set forth in Article XI of this Lease, and the requirement that the obligation of the City to pay Base Rentals, Additional Rentals and other amounts under this Lease are subject to the limitations of Section 6.01 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 15.11. No Merger.** The Lessor and the City intend that the legal doctrine of merger shall have no application to this Lease and that neither the execution and delivery of the Site Lease by the City and the Lessor nor the exercise of any remedies under the Site Lease or this Lease shall operate to terminate or extinguish the Site Lease or this Lease, except as specifically provided therein and herein.

**Section 15.12. 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.

**Section 15.13. Applicable Law.** This Lease shall be governed by and construed in accordance with the laws of the State, without regard to conflict of laws principles.

**Section 15.14. Waiver of Jury Trial.** ALL PARTIES TO THIS LEASE HEREBY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY ON ANY MATTER WHATSOEVER ARISING OUT OF, IN CONNECTION WITH, OR IN ANY WAY RELATED TO THIS LEASE OR THE SITE LEASE.

**Section 15.15. Governing Law.** This Lease shall be governed by and construed in accordance with the law of the State of Colorado.

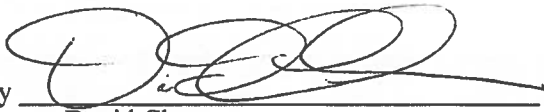
**Section 15.16. Captions.** The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

[Signature Page to Lease Purchase Agreement follows]

WITNESS the due execution hereof as of the day and the year first mentioned above.

DNT ASSET TRUST, a Delaware statutory trust, as Lessor

By JPMORGAN CHASE BANK, N.A., a national banking association, as Representative of the Lessor

By   
Name: David Chan  
Its: Authorized Officer

[SEAL]

CITY OF COLORADO SPRINGS,  
COLORADO,  
as Lessee

Attest:

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

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

[Signature Page to Lease Purchase Agreement]

WITNESS the due execution hereof as of the day and the year first mentioned above.

DNT ASSET TRUST, as Lessor

By \_\_\_\_\_  
Authorized Officer

[SEAL]



CITY OF COLORADO SPRINGS,  
COLORADO,  
as Lessee

Attest:

By Samuel B. Johnson  
City Clerk

By John W. Suthers  
Mayor

[Signature Page to Lease Purchase Agreement]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

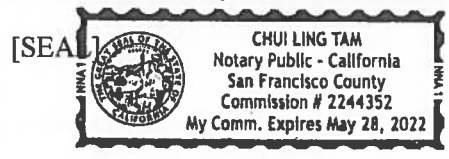
\*\*\*\*\*

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN FRANCISCO )

On December 23rd, 2019, before me, Chui Ling Tam, a Notary Public, personally appeared David Chan, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify upon PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.



Chui Ling Tam  
Notary Public

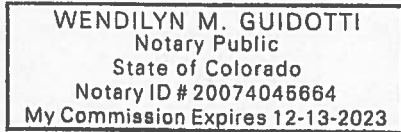
My Commission Expires:  
May 28th, 2022

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

This instrument was acknowledged before me this 20<sup>th</sup> day of December, 2019, by John W. Suthers, as Mayor of the City of Colorado Springs, Colorado, and by Sarah B. Johnson, as Clerk of said City.

Witness my hand and official seal.

[SEAL]



*Wendilyn M. Guidotti*  
Notary Public for the State of Colorado

My Commission Expires:

12-13-2023



**EXHIBIT A**

**DESCRIPTION OF LEASED PROPERTY**

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

City of Colorado Springs  
County of El Paso  
State of Colorado

**EXHIBIT B**

**BASE RENTALS SCHEDULE**

<b>Date</b>	<b>Principal Component</b>	<b>Interest Component <sup>1</sup></b>	<b>Total Base Rentals</b>	<b>Remaining Lease Balance</b>
May 15, 2020	\$585,000.00	\$32,906.25	\$617,906.25	\$3,915,000.00
May 15, 2021	525,000.00	76,342.50	601,342.50	3,390,000.00
May 15, 2022	540,000.00	66,105.00	606,105.00	2,850,000.00
May 15, 2023	550,000.00	55,575.00	605,575.00	2,300,000.00
May 15, 2024	560,000.00	44,850.00	604,850.00	1,740,000.00
May 15, 2025	570,000.00	33,930.00	603,930.00	1,170,000.00
May 15, 2026	580,000.00	22,815.00	602,815.00	590,000.00
May 15, 2027	590,000.00	11,505.00	601,505.00	--

<sup>1</sup> Interest Component Rate = 1.95%.

## EXHIBIT C

### PERMITTED ENCUMBRANCES

1. Any facts, rights, interests, or claims thereof, not shown by public records but that could be ascertained by an inspection of the Leased Property or that may be asserted by persons in possession of the Leased Property.
2. Easements, liens or encumbrances, or claims thereof, not shown by public records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting title to the Leased Property that would be disclosed by an accurate and complete land survey of the Leased Property and not shown by public records.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by public records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in public records or attaching subsequent to the date of the title commitment ordered in connection to the execution and delivery of this Lease (the "Title Commitment") but prior to the date the Lessor Representative acquires of record for value the leasehold interest thereon covered by the Title Commitment.
6. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by public records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by public records.
7. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in acts authorizing the issuance thereof; (c) water rights, claims or title to water.
8. Existing leases and tenancies, if any.
9. The effect of any failure to comply with the terms, covenants and conditions of the Site Lease.
10. Liquor restrictions of record, which contain a forfeiture or reverter clause, which provide that intoxicating liquors shall never be manufactured, sold, or otherwise disposed of as a beverage in any place of public resort in or upon the premises or any part thereof.
11. Easements, conditions, covenants, restrictions, reservations and notes on the Plat of City Administration Building Subdivision recorded July 21, 2006 under Reception No. 712376.
12. (THIS ITEM WAS INTENTIONALLY DELETED)
13. Unrecorded lease dated February 27, 2013 by and between Colorado Springs Urban Renewal Authority, as lessee, and the City of Colorado Springs, a home rule city and Colorado municipal corporation, as lessor.
14. Terms, conditions, provisions, burdens and obligations as set forth in Site Lease Agreement dated December 19, 2017 by and between the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation, acting on behalf of Colorado Springs Utilities, an enterprise of the city, and Sprint Spectrum L.P., a Delaware limited liability company, as memorialized by Memorandum of Site Agreement recorded March 28, 2018 under Reception No. 218034562.