

AFTER RECORDING PLEASE RETURN TO:

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

**SITE LEASE**

by and between

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

and

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

Dated as of October 1, 2019

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### EXHIBIT A DESCRIPTION OF THE SITE LEASED PROPERTY

## SITE LEASE

**THIS SITE LEASE** dated as of October 1, 2019 (this “Site Lease”), by and between **THE CITY OF COLORADO SPRINGS, COLORADO**, as site lessor (the “City”), and **U.S. BANK NATIONAL ASSOCIATION**, solely in its capacity as trustee under an Indenture of Trust dated as of the date hereof, and its successors and assigns, as site lessee (in its capacity as trustee, the “Trustee”).

### W I T N E S S E T H:

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

WHEREAS, the City is the owner of the Site Leased Property (described in Exhibit A hereto); and

WHEREAS, the City is authorized by its home rule Charter (the “Charter”) to purchase and hold real and personal property and to lease the same, either as lessee or lessor; and

WHEREAS, the Trustee (a) is a national banking association duly organized and existing under the laws of the United States of America, (b) is duly qualified to do business in the State, (c) is executing and delivering and will perform its obligations under this Site Lease as trustee under the Indenture of Trust dated as of the date hereof by the Trustee (the “Indenture”) pursuant to which there are being executed and delivered the “Certificates of Participation, Series 2019, evidencing undivided interests in the right to receive certain revenues payable by the City of Colorado Springs, Colorado under a Lease Purchase Agreement dated as of October 1, 2019” (the “Series 2019 Certificates”) and (d) in its capacity as Trustee, (i) will lease the Site Leased Property hereunder and (ii) is authorized, under its articles of association, action of its board of directors and applicable law, to lease the Site Leased Property and to execute, deliver and perform its obligations under this Site Lease; and

WHEREAS, the net proceeds of the Series 2019 Certificates are to be applied to the completion of the Project (as defined in the Indenture); and

WHEREAS, the City has determined that the lease of the Site Leased Property to the Trustee pursuant to this Site Lease is in the best interests of the City and its residents; and

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 Purchase Agreement dated as of the date hereof (the “Lease”) between the Trustee, as lessor and the City, as lessee.

**Section 2. Representations, Covenants and Warranties by Trustee.** The Trustee represents, covenants and warrants that:

(a) The Trustee (i) is a national banking association duly organized and existing under the laws of the United States of America, (ii) is duly qualified to do business in the State and (iii) is authorized, under its articles of incorporation and bylaws, action of its board of directors and applicable law, to lease the Site Leased Property from the City and to execute, deliver and perform its obligations hereunder.

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

(c) This Site Lease is enforceable against the Trustee in accordance with its terms, limited only by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, by equitable principles, whether considered at law or in equity, by the exercise by the State and its governmental bodies of the police power inherent in the sovereignty of the State and by the exercise by the United States of America of the powers delegated to it by the Constitution of the United States of America.

(d) The execution, delivery and performance of the terms of this Site Lease by the Trustee does not and will not conflict with or result in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Trustee is now a party or by which the Trustee is bound, or constitute a default under any of the foregoing or, except as specifically provided in this Site Lease, the Lease or the Indenture, result in the creation or imposition of a lien or encumbrance whatsoever upon any of the property or assets of the Trustee.

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

**Section 3. Representations, Covenants and Warranties by City.** The City represents, covenants and warrants that:

(a) The City is authorized under Article XX of the Constitution of the State, its Charter and all other applicable law to lease the Site Leased Property to the Trustee and to execute, deliver and perform its obligations under this Site Lease.

(b) The lease of the Site Leased Property to the Trustee pursuant to this Site Lease serves a public purpose and is in the best interests of the City and its residents.

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

(d) This Site Lease is enforceable against the City in accordance with its terms, limited only by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, by equitable principles, whether considered at law or in equity, by the exercise by the State and its governmental bodies of the police power inherent in the sovereignty of the State and by the exercise by the

United States of America of the powers delegated to it by the Constitution of the United States of America.

(e) The execution, delivery and performance of the terms of this Site Lease by the City does not and will not conflict with or result in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is now a party or by which the City is bound, or constitute a default under any of the foregoing or, except as specifically provided in this Site Lease, the Lease or the Indenture, result in the creation or imposition of a lien or encumbrance whatsoever upon any of the property or assets of the City.

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

(g) No provision of the Series 2019 Certificates, the Indenture, the Lease or this Site Lease shall be construed or interpreted (i) to directly or indirectly obligate the City to make any payment in any Fiscal Year in excess of amounts appropriated for such Fiscal Year; (ii) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of Article XI, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; (iii) as a delegation of governmental powers by the City; (iv) as a loan or pledge of the credit or faith of the City or as creating any responsibility by the City for any debt or liability of any person, company or corporation within the meaning of Article XI, Section 1 of the Colorado Constitution; or (v) as a donation or grant by the City to, or in aid of, any person, company or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution.

**Section 4. Lease and Terms.** The City hereby leases to the Trustee and the Trustee hereby leases from the City, on the terms and conditions hereinafter set forth, the Site Leased Property, which consists of the real property and the improvements thereon described in Exhibit A attached hereto and made a part hereof, subject to Permitted Encumbrances (as defined in the Lease).

The term of this Site Lease shall commence on the date hereof and shall end on December 31, 20\_\_ (the "Site Lease Termination Date"); provided that, if prior to the Site Lease Termination Date, the interest of the Trustee in the Site Leased Property has been conveyed to the City pursuant to Article IX of the Lease, then the term of this Site Lease shall end on the date of such conveyance.

**Section 5. Rent and Payment.** The City acknowledges receipt from the Trustee as rent and payment hereunder, in full, the lump-sum of [INSERT VALUE OF SITE LEASED PROPERTY, EXCLUSIVE OF FINANCED IMPROVEMENTS, UP TO PAR AMOUNT] and other good and valuable consideration.

**Section 6. Purpose.** The Trustee shall use the Site 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 or Event of Default under the Indenture, the City shall vacate the Site Leased Property as provided in the Lease, the Trustee may exercise the remedies provided in the Lease and the Indenture and the Trustee may use or sublet the Site Leased Property for any lawful purposes.

**Section 7. Owner in Fee.** The City covenants that it is the owner in fee of the Site Leased Property, subject only to Permitted Encumbrances (as defined in the Lease).

**Section 8. Assignments and Subleases.**

(a) 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 Trustee may not assign its rights under this Site Lease or sublet the Site Leased Property without the written consent of the City.

(b) In the event that (i) the Lease is terminated for any reason prior to the expiration of its term and (ii) this Site Lease is not terminated, the Trustee may sublease the Site Leased Property or any portion thereof or sell or assign its interest in this Site Lease. Except as provided in this Site Lease, the City and the Trustee agree that, except as may otherwise be provided in the Lease, neither the City nor the Trustee will sell, mortgage or encumber the Site Leased Property or any portion thereof during the term of this Site Lease.

**Section 9. 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 Site Leased Property at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

**Section 10. Termination.** The Trustee agrees, upon the termination of this Site Lease, to quit and surrender the Site Leased Property to the City, and agrees that any fixtures, permanent improvements and structures existing as a part of the Site Leased Property at the time of the termination of this Site Lease shall remain thereon and all legal interests of the Trustee thereto shall vest in the City. The Trustee 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 11. Default.** In the event the Trustee 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 Trustee, the City may exercise any and all remedies granted by law, except that no merger of this Site Lease and of the Lease shall be deemed to occur as a result thereof and except for any other exceptions enumerated in the Lease. In addition, so long as the Lease is in effect, this Site Lease shall not be terminated except as described in Section 10 hereof.

**Section 12. Quiet Enjoyment and Acknowledgment of Ownership.** The Trustee at all times during the term of this Site Lease shall peaceably and quietly have, hold and enjoy the Site

Leased Property, subject to the provisions of the Lease, and the City hereby acknowledges that the Trustee shall have a leasehold interest in the Site Leased Property, subject to the Lease.

**Section 13. Waiver of Personal Liability.** All liabilities under this Site Lease on the part of the Trustee are solely liabilities of the Trustee, and the City hereby releases each and every member, director, employee and officer of the Trustee of and from any personal or individual liability under this Site Lease. No member, director, employee or officer of the Trustee shall at any time or under any circumstances be individually or personally liable under this Site Lease for anything done or omitted to be done by the Trustee hereunder.

**Section 14. Taxes; Maintenance; Insurance.**

(a) During the Lease Term of the Lease and in accordance with the provisions of the Lease, the City covenants and agrees to perform its obligations under the Lease with respect to the payment of any and all assessments of any kind or character and all taxes levied or assessed upon the Site Leased Property, if any, and all maintenance costs, insurance premiums and costs and utility charges in connection with the Site Leased Property, subject to the terms of the Lease.

(b) In the event that (i) the Lease is terminated for any reason, (ii) this Site Lease is not terminated and (iii) the Trustee subleases all or any portion of the Site Leased Property or sells an assignment of its interest in this Site Lease, the Trustee or any sublessee or assignee of the Site Leased Property shall solely from the proceeds of such leasing or sale, obtain and keep in force all insurance that it is required to maintain under the Lease, pay or cause to be paid when due all taxes and assessments imposed thereon and maintain the Site Leased Property in good condition.

**Section 15. Damage, Destruction or Condemnation.** The provisions of the Lease shall govern with respect to any damage, destruction or condemnation of the Site Leased Property during the Lease Term of the Lease. In the event that (a) the Lease is terminated for any reason and (b) this Site Lease is not terminated and (c) either (i) the Site Leased Property or any portion thereof is destroyed (in whole or in part) or damaged by fire or other casualty, (ii) title to, or the temporary or permanent use of the Site Leased Property or any portion thereof or the estate of the City, the Trustee or any sublessee or assignee of the Trustee in the Site Leased Property or any portion thereof, shall be taken under the exercise of the power of eminent domain, (iii) breach of warranty or any material defect with respect to the Site Leased Property shall become apparent, or (iv) title to or the use of all or any portion of the Site Leased Property shall be lost by reason of defect in the title thereto, the Trustee or any sublessee or assignee of the Trustee shall cause any Net Proceeds of any insurance, performance bonds, condemnation award or any Net Proceeds received as a consequence of default or breach of warranty under any contract relating to the Site Leased Property to be applied in accordance with the provisions of Section 8.08 of the Lease.

**Section 16. 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 17. Compliance with Requirements of Law.** To the best knowledge of the City: (a) the Site Leased Property has at all times been operated in substantial compliance with all Requirements of Law; (b) all permits required by Requirements of Law in respect of the Site Leased Property have been obtained and are in full force and effect and the City is in substantial compliance with the material terms and conditions of such permits; (c) there is no pending litigation, investigation, administrative or other proceeding of any kind before or by any governmental authority or other Person relating to, or alleging, any violation of any Requirements of Law in connection with the Site Leased Property and there are no grounds on which any such litigation, investigation or proceedings might be commenced; and (d) the Site Leased Property is not subject to any judgment, injunction, writ, order or agreement respecting any Requirements of Law.

**Section 18. No Merger.** The City and the Trustee 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 Trustee 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 19. Binding Effect.** This Site Lease shall inure to the benefit of and shall be binding upon the Trustee and the City and their respective successors and assigns, subject, however, to the limitations set forth in Section 8 hereof.

**Section 20. Trustee and City Representatives.** Whenever under the provisions hereof the approval of the Trustee or the City is required, or the City or the Trustee is required to take some action at the request of the other, unless otherwise provided, such approval or such request shall be given for the Trustee by the Trustee Representative and for the City by the City Representative, and the Trustee and the City shall be authorized to act on any such approval or request.

**Section 21. 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 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 22. Amendments, Changes and Modifications.** Except as otherwise provided herein, this Site Lease may not be effectively amended, changed, modified or altered other than by the execution of a subsequent document in the same manner as this Site Lease is executed.

**Section 23. Events Occurring on Days That Are Not Business Days.** If the date for making any payment or the last day for performance of any act or the exercising of any right under this Site Lease is a day that is not a Business Day, such payment may be made, such act



may be performed or such right may be exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in this Site Lease.

**Section 24. Applicable Law.** The laws of the State of Colorado shall be applied in the interpretation, execution and enforcement of this Site Lease.

**Section 25. 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 26. Attorneys' Fees and Costs.** In any dispute arising from or relating to this Site Lease, the prevailing party shall be awarded its reasonable attorneys' fees, costs and expenses, including any attorneys' fees, costs and expenses incurred in enforcing or collecting upon any judgment, order or award.

**Section 27. Electronic Storage.** The parties hereto agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**Section 28. Limitation of Obligations of the City.** No provision of the Series 2019 Certificates, the Indenture, the Lease or this Site Lease shall be construed or interpreted (a) to directly or indirectly obligate the City to make any payment in any Fiscal Year in excess of amounts appropriated for such Fiscal Year; (b) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of Article XI, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; (c) as a delegation of governmental powers by the City; (d) as a loan or pledge of the credit or faith of the City or as creating any responsibility by the City for any debt or liability of any person, company or corporation within the meaning of Article XI, Section 1 of the Colorado Constitution; or (e) as a donation or grant by the City to, or in aid of, any person, company or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution.

**Section 29. 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.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the City and the Trustee have caused this Site Lease to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

[SEAL]

THE CITY OF COLORADO SPRINGS,  
COLORADO

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

Attest:

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

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

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



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

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

WITNESS my hand and official seal.

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

**EXHIBIT A**

**DESCRIPTION OF THE SITE LEASED PROPERTY**

[To be inserted]