


I, Sarah B. Johnson, City Clerk of the City of Colorado Springs, Colorado, do hereby certify that the attached is a true and complete copy of Ordinance No. 16-94, as finally passed by the City Council of Colorado Springs, Colorado, on the 27<sup>th</sup> day of September 2016, the original of which is a held on file by the office of the City Clerk of Colorado Springs, Colorado.

Dated in Colorado Springs, Colorado, this 12th day of October 2016.

  
Sarah B. Johnson, City Clerk



**CITY OF COLORADO SPRINGS, COLORADO**

**ORDINANCE NO. 16-94**

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF COLORADO SPRINGS OF A SITE LEASE BETWEEN THE CITY AS LESSOR AND A FINANCIAL INSTITUTION TO BE IDENTIFIED, AND, IN CONNECTION THEREWITH, A LEASE PURCHASE AGREEMENT BETWEEN THE CITY, AS LESSEE, AND SUCH FINANCIAL INSTITUTION, WITH RESPECT TO CERTAIN REAL PROPERTY FOR THE PURPOSE OF FINANCING THE CONSTRUCTION AND IMPROVEMENT OF A POLICE SUBSTATION; 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, 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 Council desires to undertake the financing of the construction and improvement of certain facilities to be used as the Colorado Springs Police Department's Sand Creek Division Substation (the "Project") within the City limits; and

WHEREAS, the City is 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, the City has issued its Request for Proposals (the "RFP"), soliciting bids from potential investors specifying terms and other details in order to identify a suitable financial institution (as more particularly described herein, the "Investor") to assist the City in completing the Project; and

WHEREAS, in order to finance the costs of the Project, the Council has determined that the City shall demise to the Investor 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 the Investor, as lessee, a leasehold interest in the Leased Property for a lump-sum payment of not to exceed

\$14,000,000 and sublease the Leased Property back from the Investor pursuant to that certain Lease Purchase Agreement dated as of the date of the Site Lease (the "Lease") between the Investor, 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 funds paid by the Investor may be required to be held in escrow pursuant to an escrow agreement (the "Escrow Agreement") among the City, the Investor and a third-party escrow agent to be identified in a final terms certificate of the City (the "Escrow Agent"); therefore

BE IT ORDAINED BY THE 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 Project, including without limitation the preparation of the forms of Lease and the Site Lease, the Escrow Agreement, if any, 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 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 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, the Lease and the Escrow Agreement, 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 any member of the Council are hereby authorized and directed 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 Lease, the Site Lease and the Escrow Agreement, if any, 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 directs the Mayor and Finance Director (and any persons authorized by law to act on their behalf in their absence) to select Bank of America Merrill Lynch, or a suitable alternative financial institution, to act as the Investor, and the Council hereby designates 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 an Authorized 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, the members of the Council 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 \$14,000,000;

(b) the interest component of Base Rentals shall accrue at a net effective interest rate not to exceed 3.00%;

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

(d) the City shall have the option to purchase the Investor'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 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 the Investor'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 the Investor'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 the Investor'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 the Investor'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. 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 the Investor'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.

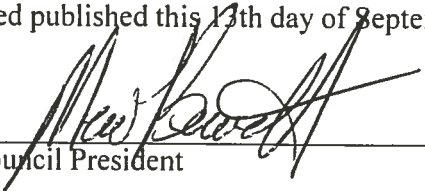
**Section 10. Repealer of Measures.** All acts, orders, resolutions, ordinances or parts thereof, in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof heretofore repealed.

**Section 11. 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 12. 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 13th day of September, 2016.

Finally passed: September 27th, 2016

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

**Mayor's Action:**

Approved on Oct 2, 2016.

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

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

  
\_\_\_\_\_  
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, City Clerk  


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 A FINANCIAL INSTITUTION TO BE IDENTIFIED, AND, IN CONNECTION THEREWITH, A LEASE PURCHASE AGREEMENT BETWEEN THE CITY, AS LESSEE, AND SUCH FINANCIAL INSTITUTION, WITH RESPECT TO CERTAIN REAL PROPERTY FOR THE PURPOSE OF FINANCING THE CONSTRUCTION AND IMPROVEMENT OF A POLICE SUBSTATION; 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 September 13, 2016; that said ordinance was finally passed at a regular meeting of the City Council of said City, held on the 27<sup>th</sup> day of September, 2016, and that the same was published by title and summary, in accordance with Section 3-80 of Article III of the Charter, in the Transcript, 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 3<sup>rd</sup> day of October, 2016.

  
Sarah B. Johnson, City Clerk



1<sup>st</sup> Publication Date: September 16, 2016  
2<sup>nd</sup> Publication Date: October 5, 2016

Effective Date: October 10, 2016 Initial: SBS  
City Clerk

**E-RECORDED**

**LEASE PURCHASE AGREEMENT**

between

**SPECIALIZED LENDING, LLC,**  
as Lessor,

and

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

Dated as of October 12, 2016

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## LEASE PURCHASE AGREEMENT

**THIS LEASE PURCHASE AGREEMENT** dated as of October 12, 2016 (this "Lease"), between **SPECIALIZED LENDING, LLC**, a Delaware limited liability company, together with its successors and assigns, as investor, (the "Investor"), as lessor, and the **CITY OF COLORADO SPRINGS, COLORADO** (the "City"), 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, the Colorado Springs City Council (the "Council") has determined that it is in the best interests of the City and its residents to undertake the construction and improvement of certain facilities to be used as the Colorado Springs Police Department's Sand Creek Division Substation (the "Project") within the City limits; and

WHEREAS, for the purpose of providing funds for the construction of the 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 Investor pursuant to that certain Site Lease (as hereafter defined) dated as of the date of this Lease for a lump-sum payment, and sublease the Leased Property back from the Investor pursuant to this Lease; and

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 Project, 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	Lease
Investor	Leased Property
City	Project
Council	State

**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 Investor 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 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.

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

*“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. In the event that Exhibit B sets forth separate schedules of Base Rentals payable with respect to one or more separate portions of the Leased Property, such payments will be combined for purposes of Section 6.02, but may be treated as separate schedules for other purposes of this Lease.

*“Base Rental Payment Dates”* means semiannual payments due on June 1 and December 1 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.

*“Certificate of Completion”* means a certificate stating that, to the best of the City’s knowledge based upon the representations of the related contractors, engineers, vendors or other consultants, and except for any amounts estimated by the City to be necessary for payment of any costs of the Project not then due and payable, the Project has been completed and accepted by the City, and all costs of the Project have been paid.

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

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

“*Default Rate*” means 12% per annum.

“*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).

“*Escrow Agent*” means UMB Bank, n.a., and any successor thereto, acting as escrow agent pursuant to the Escrow Agreement.

“*Escrow Agreement*” means the Escrow Agreement, dated as of October 12, 2016, by and among the City, the Escrow Agent and the Investor.

“*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 1.62%.

*“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”* is defined in Section 6.02(a).

*“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 Investor.

*“OFAC”* means the Office of Foreign Assets Control of the United States Department of the Treasury.

*“Original Term”* means the portion of the Lease Term that terminates on December 31, 2016.

*“Opinion of Counsel”* means a written opinion of legal counsel.

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



*“Project Contract”* means any contract between the City and any Person for the design, engineering, acquisition, construction or installation of all or any portion of the Project.

*“Project Fund”* means the escrow fund to be held and administered by the Escrow Agent and applied to the Project pursuant to the Escrow Agreement.

*“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 IV 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.

*“Sanction(s)”* means any international economic sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

*“Site Lease”* means the Site Lease dated of even date herewith, whereby the City demises to the Investor 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 35%. The Taxable Rate Factor is 1.54 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, the Site Lease and the Escrow Agreement.

(b) The lease of the Leased Property from the Investor pursuant to this Lease serves a public purpose and is in the best interests of the City, its residents and taxpayers. The construction of the 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 proprietary purposes and functions and is in the best interests of the citizens of the City, and no portion of the 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, the Site Lease or the Escrow Agreement, nor the fulfillment of or compliance with the terms and conditions of this Lease, the Site Lease or the Escrow Agreement, 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 Investor, the City has experienced no material adverse change in its financial condition since December 31, 2015.

(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) None of (A) the City or to the knowledge of the City, any of its directors, 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 an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction.

(i) Except for any action which lies or could lie in tort, the City does not have sovereign immunity under the laws of the State of Colorado.

(j) The City has conducted its business in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act of 2010 and other similar

anti-corruption legislation in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

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

(a) The Investor 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, the Site Lease and the Escrow Agreement and to carry out its obligations under this Lease, the Site Lease and the Escrow Agreement, 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 Investor 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 Investor 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 Investor is now a party or by which the Investor is bound, or constitutes a default under any of the foregoing.

(d) Except as specifically provided in this Lease, the Site Lease and the Escrow Agreement, the Investor will not assign its duties and obligations under this Lease, the Site Lease or the Escrow Agreement to any other person, firm or Investor, 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 Investor or any other person affecting the right of the Investor to execute this Lease or the Site Lease and to perform its obligations hereunder and thereunder.

(f) The Investor 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 Investor 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 Investor demises and leases the Leased Property, including any interest of the Investor in the Leased Property, to the City, and the City leases the Leased Property, including any interest in the Leased Property, from the Investor, 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 ten (10) additional terms; provided, however, that the sum of the Original Term and all Renewal Terms shall not extend beyond 124 months from the date hereof. The City shall have the right to annually renew the Lease Term unless (a) the City gives written notice to the Investor 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 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 officer of the City at any time charged with the responsibility of formulating budget proposals is hereby directed 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 Investor 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/.](https://coloradosprings.gov/)) within seven

days after the budget is adopted, but not later than the fourth day after the end of such Fiscal Year, provided that telephonic notice is provided by the City to the Investor 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 Investor shall notify the City in writing as further provided in Section 6.06 hereof.

**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). 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 Investor or its assigns.

## ARTICLE V

### ENJOYMENT OF LEASED PROPERTY

The Investor 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 Investor, except as expressly required or permitted by this Lease. The Investor 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 Investor 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 Investor 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 Investor 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 may, at any time during the Lease Term with the prior written consent of the Investor, pay the then applicable Purchase Option Price related to the Leased Property for the purpose of terminating this Lease and purchasing the Leased Property shown on Exhibit A, as further provided in Article XI of this Lease. The City shall give the Investor notice of its intention to exercise its option not less than 15 days in advance of the date of exercise and shall deposit with the Investor on or prior to a Base Rental Payment Date an amount equal to the Purchase Option Price.

(c) 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 Investor under Section 4.01 of this Lease, the City shall furnish an itemization of such estimated Additional Rentals to the Investor 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 Investor in lawful money of the United States of America to the Investor 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 Investor



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 Investor, 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 Investor 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 Investor shall declare an Event of Nonappropriation on any earlier date on which the Investor receives specific written notice from the City that this Lease will be terminated.

(b) Absent such notice from the City, the Investor 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 Investor to give such written notice shall not prevent the Investor from declaring an Event of Nonappropriation or from taking any remedial action which would otherwise be available to the Investor.

(c) The Investor shall waive any Event of Nonappropriation which is cured by the City, within ten days of the giving of notice by the Investor 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 Investor to the City to such effect (subject to waiver by the Investor 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 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 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 Investor may proceed to exercise all or any Lease Remedies. All property, funds and rights acquired by the Investor upon the termination of this Lease by reason of an Event of Nonappropriation as provided herein, less any moneys due and owing to the Investor, shall be held by the Investor.

## ARTICLE VII

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

**Section 7.01. Title to the Leased Property.** 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 Investor shall have no right or interest in the Leased Property or any additions and modifications thereto or replacements thereof.

**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 Investor 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 Investor shall notify the City that, in the Opinion of Counsel, by nonpayment of any such items the Investor'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 Investor 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 Investor 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 Investor 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 Investor 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 Investor 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 Investor 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 Investor), 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 Investor. With the prior written consent of the Investor, 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 Investor, as loss payee and/or additional insured, and to make losses exceeding \$100,000, if any, payable to the City and the Investor, 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 Investor 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 Investor 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 Investor 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 Investor may (but shall not be obligated to) pay such Additional Rentals and the City agrees to reimburse the Investor 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 Investor, 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 Investor 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 Investor 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 Investor, 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 Investor. Unless the City shall certify in writing to the Investor 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 Investor 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 Investor 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 Investor, 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 Investor 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 Investor 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 Investor 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 Investor 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 Investor 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 INVESTOR 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 INVESTOR DOES NOT HAVE ANY RESPONSIBILITY THEREFOR. For the purpose of enabling the City to discharge such responsibility, the Investor 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 Investor may have in respect of the Leased Property against any manufacturer, supplier, contractor or other person. In no event shall the Investor 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 Investor 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 Investor 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 Investor, 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 (except, with respect to corporations, as such interest is required to be taken into account in determining "adjusted net book income" for the purpose of computing the alternative minimum tax imposed on such 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 Investor by its employees and agents under this Lease, including (without limiting the foregoing) the application of moneys and the investment of funds, the Investor 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 Investor 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 Investor 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 Investor 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 Investor 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 Investor 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 Investor or any of its employees or agents, shall defend the Investor and its employees and agents in any such action or proceeding.

**Section 10.07. Access To Leased Property.** The City agrees that the Investor 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 Investor 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 Investor, annually, within 240 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://coloradosprings.gov/>. Also, during the Lease Term, the City covenants and agrees to provide to the Investor any additional information that the Investor 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://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 Investor 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 Investor 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 Investor 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 Investor in any action against or involving the Investor, 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 Investor and any successors and assigns of the Investor 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 Investor in the Leased Property and terminate this Lease, but only with the prior written consent of the Investor and only if it is not then in default under this Lease. 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 Investor 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 Investor of its intention to purchase the Leased Property, but shall not have deposited the amounts with the Investor 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 Investor 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 Investor shall transfer and convey the Leased Property to the City.

The City is hereby granted the option to terminate this Lease and to purchase the interest of the Investor in the Leased Property with the prior written consent of the Investor upon payment by the City of the then applicable Purchase Option Price. It is the intent of this Section to provide for and allow the release of the Leased Property shown on Exhibit A subject to this Lease if the City has fulfilled all payment obligations with respect hereto and is not then in default hereunder.

**Section 11.03. Manner of Release.** At the closing of any purchase or other conveyance of the Investor's interest in the Leased Property pursuant to Section 11.02 of this Lease, the Investor shall execute and deliver to the City a Release of Site Lease and Lease, releasing all of the Investor'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 Investor 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. However, the Leased Property may be subleased to any other person or entity, as a whole or in part, by the City, but without the necessity of obtaining the consent of the Investor, subject, however, 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 Investor, notwithstanding any sublease;

(b) the City shall furnish or cause to be furnished to the Investor 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.

## 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 by the tenth Business Day of the Fiscal Year in respect of which 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 Investor, unless the Investor 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 Investor 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 Investor 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 Investor shall notify the Escrow Agent and, without any further demand or notice, take one or any combination of the following remedial steps:

(a) The Investor may terminate the Lease Term and give notice to the City to vacate and surrender possession of the Leased Property within ten Business Days of such notice.

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

(c) The Investor 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 Investor may take possession of all funds or accounts held by the Escrow Agent pursuant to the Escrow Agreement and apply the same to reduce the Remaining Lease Balance and any other amounts owing under this Lease.

(e) The Investor 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 ten Business 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 Investor 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 Investor 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 Investor 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

### CONSTRUCTION OF THE PROJECT

**Section 14.01. Agreement to Construct the Project.** The Project shall be acquired, constructed and installed by the City as provided in this Article XIV. The City's obligations to pay Base Rentals and Additional Rentals pursuant to the Lease begin on the date of execution and delivery of this Lease notwithstanding that the Project is not completed.

At the time of the execution and delivery of this Lease, the City and the Investor shall have entered into the Site Lease. The City hereby agrees that, as lessee, it will act as agent for the Investor in making all contracts, orders, receipts, writings and instructions, including all Project Contracts, with any persons, firms or corporations and in general do all things that may be necessary, requisite or proper for the construction of the Project.

At the time of the execution and delivery of this Lease, the City reasonably expects that \$500,000 of Lease proceeds will be allocated to the purchase of furniture, fixtures and equipment. The City and the Investor hereby agree that such furniture, fixtures and equipment do not constitute Leased Property under this Lease.

The City agrees to comply with all applicable federal, State and local law in connection with the making of contracts for the Project. All Project Contracts shall be fully and freely assignable to the Investor. Notwithstanding anything to the contrary contained in this Lease, all Project Documents shall be made and approved by the City. The City hereby further agrees:

- (a) The City, acting on behalf of the Investor, shall cause the Project to be completed as herein provided;
- (b) Title to the Leased Property shall be in the name of the City, subject to this Lease and the Site Lease;
- (c) The City, acting on behalf of the Investor, agrees to complete the Project with all reasonable dispatch, and to use its best efforts to have the Project completed by September 30, 2018.

So long as this Lease is in full force and effect and no Event of Nonappropriation or Event of Default shall have occurred, the City shall have full power to carry out the acts and agreements provided in this Section 14.01, and such power is granted and conferred under this Lease to the City, and is accepted by the City and shall not be terminated or restricted by act of the Investor or the City, except as provided in this Section 14.01.

The City agrees to construct the Project pursuant to this Article XIV through the application of moneys to be disbursed by the Escrow Agent pursuant to the Escrow Agreement. If for any reason the Project is not completed by the date of final completion, there shall be no resulting liability on the part of the City or the Investor, or an Event of Default hereunder, and there shall be no diminution in or postponement of the Base Rentals and Additional Rentals required to be paid by the City and for which an appropriation has been effected by the City during the Lease Term. However, in the event that the Escrow Agent shall not receive the

Certificate of Completion evidencing that the Project has been completed, as required in Section 14.03 of this Lease, on or before the date of final completion, the Investor shall, upon 30 days written notice to the City, be authorized, but not required, to complete the remainder of any of the Project from any moneys remaining in the Project Fund.

**Section 14.02. Disbursements for Costs of the Project.** The Escrow Agreement provides that the Escrow Agent shall, at the direction of the City, disburse the moneys held by the Escrow Agent in the Project Fund to pay the costs of the Project. Disbursements shall be made from the Project Fund by the Escrow Agent upon receipt by the Escrow Agent of requisitions meeting the requirements of the Escrow Agreement

If an Event of Nonappropriation or an Event of Default shall occur prior to the final completion of the Project, any moneys held in the Project Fund may be utilized by the Investor to complete, repair or modify the Project or may be disbursed to the Investor.

At least 15 days prior to the commencement of construction of the Project, the City shall notify the Investor thereof and shall give notice to all contractors, subcontractors and material suppliers as required by Section 38-22-105, C.R.S., that the City's and the Investor's interests in the Project are not subject to any liens. Prior to the start of any construction or installation of any future additions or improvements to the Project by the City, as lessee, and throughout the period of construction and installation, the City will also, for the benefit of the City and the Investor, post in a conspicuous place on the Project the notice required by Section 38-22-105, C.R.S. that the City's and the Investor's interests in the Project are not subject to any liens. Notwithstanding the foregoing and subject to the provisions of Section 14.02 hereof, if a lien is established against the Project, the City shall not permit such mechanic's or other lien to remain against the Project for labor or materials furnished to or requested by it in connection with such future additions or improvement to the Project; provided that if any such lien is established, the City shall either discharge the lien or, in good faith, contest and diligently pursue to conclusion any lien filed or established against the Project and in such event the City may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom. The Investor shall cooperate with the City in the discharge or contest process, but all related costs and expenses of the Investor shall be paid by the City.

**Section 14.03. Completion of the Project.** Upon the final completion of the Project and the acceptance thereof by the City, on behalf of the Investor (which acceptance shall not be unreasonably withheld), the City shall deliver to the Escrow Agent and the Investor a Certificate of Completion.

In the event that, after the delivery of the Certificate of Completion, there remains in the Project Fund any unreserved balance, such balance shall be paid to the Investor and used, as directed by the City, to pay Base Rentals.

**Section 14.04. Title Insurance.** 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 Investor and/or its designee, or commitment therefor acceptable to the Investor, in an amount equal to no less than the original Lease Balance, insuring the Investor's interest in the Leased Property subject to Permitted Encumbrances.

**Section 14.05. Project Contracts.** The City represents that, based upon an examination of property, estimated construction and acquisition costs and the configuration of the Project, the Project can, to the best of the City's present knowledge, be constructed and acquired for a total cost within the amount of funds to be available in the Project Fund, together with other legally available funds and anticipated investment income. In the event that the cost of the Project exceeds such amounts, either (a) the City shall make such modifications to the plans and specifications for the Project as will permit the Project to be acquired and constructed from the amounts available therefor or (b) the City shall pay such excess costs. If the City pays any such excess costs, it shall not be entitled to any reimbursement therefor from the Investor, nor shall it be entitled to any diminution in or postponement of the Base Rentals and the Additional Rentals payable under this Lease.

Upon the occurrence of an Event of Nonappropriation or an Event of Default, the Investor may complete the Project utilizing any moneys available therefor. All Project Contracts shall provide that, upon a termination of the Lease Term by reason of the occurrence of an Event of Nonappropriation or an Event of Default or upon the Investor's assuming control over completion of the Project as provided in Section 14.01 of this Lease, and upon written notice by the Investor to the party or parties to the Project Contracts that any of such events has occurred: (a) such contracts shall be fully and freely assignable to the Investor without the consent of any other person and the Investor may choose to assume or not assume such contracts; and (b) if the Investor does so assume such contracts, the other party or parties thereto shall perform the agreements contained therein for the Investor. All Project Contracts shall also provide that, upon an Event of Nonappropriation or an Event of Default and upon written notice from the Investor, the Investor may, in its full discretion, terminate some or all of such Project Contracts; and the other party or parties thereto shall then be entitled to payment only from amounts available therefor in the Project Fund and only for work done prior to such termination. Upon the occurrence of an Event of Nonappropriation or an Event of Default or upon the Investor's assuming control over the implementation and completion of the Project as provided in Section 14.02 hereof, and upon receipt of a written request from the Investor, the City shall assign all of its right, title, and interest in and to any or all Project Contracts to the Investor and shall deliver all Project Documents held by it to the Investor.

**Section 14.06. Project Documents.** The City shall furnish to the Investor, but the Investor shall have no duty to review, copies of the Project Documents as soon after the commencement of the Lease Term as such Project Documents shall become available to the City and from time to time thereafter. Neither the Project Documents nor any change or amendment thereto shall (a) cause the Project to be used for any purpose prohibited hereby or by the Constitution or laws of the State; (b) result in a material reduction in the value of the Project (except as provided in Section 14.05 hereof); or (c) adversely affect the ability of the City to meet its obligations hereunder.

**Section 14.07. Defaults Under Project Contracts.** In the event of any material default by a contractor under a Project Contract, or in the event of a material breach of warranty with respect to any materials, workmanship, or performance, the City shall promptly proceed, either separately or in conjunction with others, to pursue diligently its remedies against such contractor and/or against each surety of any bond securing the performance of such Project Contract. The Net Proceeds of any amounts recovered by way of damages, liquidated damages,



refunds, adjustments, or otherwise in connection with the foregoing, remaining after deduction of expenses incurred in such recovery (including without limitation, attorneys' fees and costs) shall be paid to the Escrow Agent for deposit in the Project Fund.

**Section 14.08. Performance and Payment Bonds.** The contractor under any Project Contract for construction shall be required to furnish a performance and labor and material payment bond on forms acceptable to the City and the Investor, copies of which shall be provided to the Investor, but which the Investor shall have no duty to review. Such bonds shall be made payable to the City and the Investor as their interests may appear, and shall be executed by a corporate surety licensed to transact business in the State, which such surety shall be acceptable to the Investor, and shall be in an amount at least equal to the contract price for such Project Contract, provided the bond amount does not exceed said surety's authorized capacity. If at any time during the construction of any of the Project the surety on such bond shall be disqualified from doing business within the State, an alternate surety meeting the requirements set forth above and acceptable to the City shall be selected. In the event of any change order resulting in the performance of additional work in connection with the Project, the amounts of such bonds shall be increased by an amount at least equal to the cost of such additional work or materials or fixtures to be incorporated in the Project.

**Section 14.09. Commercial General Liability Insurance; Business Automobile Liability Insurance.** Each contractor entering into a Project Contract shall be required to procure and maintain at all times during the term of the Project Contract a business automobile liability and a commercial general liability insurance policy in a form and by a company acceptable to and approved by the City covering all operations hereunder, including the following minimum amounts:

(a) Business automobile liability and property damage insurance in an amount of \$1,000,000 Combined Single Limit with coverage at least as broad as Insurance Services Office form CA0001 (12/93), and covering all on-site and off-site automobile operations associated with the Project Contract. If any vehicle is used to transport hazardous cargo, (CA9948 or its equivalent), Broadened Coverage Endorsement, must be maintained; and

(b) Commercial general liability insurance in the amount of \$1,000,000 per occurrence, \$2,000,000 aggregate, exclusive to the Project as per ISO form CG2503 or its equivalent as noted by reference on the Certificate of Insurance with coverage at least as broad as Insurance Services Office standard form CG0001 (1/96). Commercial general liability coverage shall include the City and the Investor as additional insureds with coverage at least as broad as Insurance Services Office form CG2026, with primary coverage as respects the City and the Investor. Such commercial general liability coverage shall be in the form of not less than \$2,000,000 general liability insurance and not less than \$5,000,000 umbrella coverage per claim and aggregate with a deductible of no more than \$50,000 per claim which will be the responsibility of the contractor entering into a Project Contract.

Section 8.04 of this Lease sets forth the obligations of the City to maintain certain insurance in respect of the Leased Property in the amounts and under the circumstances described therein.

**Section 14.10. Builder's Risk Insurance.** The City shall provide or cause each contractor entering into a Project Contract for the Project to procure and maintain, at its own cost and expense, during the term of the applicable Project Contract and until the Project is accepted and insured by the City, Builder's Risk, Marine Form, Agreed Value, Testing exclusion deleted, Flood and Surface Water exclusion deleted, Difference In Condition coverage, Explosion, Collapse and Underground endorsement, completed value insurance upon the Project to be improved, in whole or in part, by such contractor. The policy may have a deductible clause in an amount not to exceed \$50,000 per claim. A certified copy of such insurance policy with appropriate endorsements attached shall be provided by the City to the Investor prior to commencement of construction of the Project. Such insurance coverage shall be in an amount at least equal to the total contract price for such contractor's work. In the event of any change order resulting in the performance of substantial additional work, the amount of such insurance shall be increased to include the cost of such substantial additional work, as well as related materials and fixtures. Such builder's risk completed value insurance policy shall list as a named insured the contractor under any Project Contract all subcontractors, the City and the Investor as their respective interests may appear. No agent or employee of the City shall have the power to adjust or settle any loss with respect to the Project without the prior written consent of the Investor, except that losses not exceeding \$25,000 may be adjusted or settled by the City without the Investor's consent.

Section 8.04 of this Lease sets forth the obligations of the City to maintain certain insurance in respect of the Leased Property in the amounts and under the circumstances described therein.

**Section 14.11. Worker's Compensation and Employers' Liability.** Each contractor entering into a Project Contract shall be required to procure and maintain, at its own cost and expense, worker's compensation insurance as required in the State during the term of its Project Contract, covering its employees working thereunder, which coverage shall comply with statutory limits and include \$100,000 Employer's Liability for each occurrence and \$100,000 Disease for each employee, to the aggregate amount of \$500,000. Such insurance, if issued by a private carrier, shall contain a provision that such coverage shall not be canceled without at least 30 days prior written notice (ten days prior written notice for nonpayment of premiums) to the City and the Investor. A certificate issued by the worker's compensation carrier evidencing such coverage shall be provided by the City to the Investor with respect to such contractor. Each Project Contract shall also provide that each subcontractor of any contractor who is a party to such Project Contract shall be required to furnish similar worker's compensation insurance.

Each contractor shall provide or cause all insurance coverages contained herein to provide for Waiver of Subrogation and Rights of Recovery against the City, its officers, officials and employees, as their interests may appear.

All private insurers providing insurance under this Lease shall be rated A IX or better by A.M. Best.

The Net Proceeds of any performance or payment bond or insurance policy required by Sections 14.08 and 14.10 of this Lease, and any Net Proceeds received as a consequence of default under a Project Contract as provided by Section 14.07 of this Lease, shall be paid to and deposited in the Project Fund.

## 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 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 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., Colorado Springs, Colorado 80903, Attention: Chief Financial Officer, with a copy to the City Attorney; if to the Investor, Specialized Lending, LLC, 211 N Robinson, 2nd Floor, OK1-100-02-30, Oklahoma City, OK 73102, Attention: Brent Riley. The City and the Investor 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 Investor 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.** 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.

**Section 15.05. Assignment by Investor.** The City shall serve as registrar for this Lease and the rights to payments hereunder. The Investor agrees that it shall not assign or transfer this Lease or any interest herein except to an "Accredited Investor" as defined in Regulation D under the Securities Act of 1933, as amended (the "1933 Act"), or a bank or trust company acting as trustee for holders of certificates representing interests in one or more obligations, which bank or trust company agrees to (i) maintain, or cause to be maintained, a book-entry system in which a record of the names and addresses of such holders is kept and (ii) require that each person acquiring a beneficial ownership interest in any such certificate be an Accredited Investor. In connection with any transfer or sale the City may require a letter from the transferee to the effect that the transferee is an Accredited Investor purchasing for its own account with no present view to resale or other distribution of any interest in this Lease or is a bank or trust company acting as trustee as described above. 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 Investor are arm’s-length commercial transactions between the City, on the one hand, and the Investor 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 Investor 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) Investor 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 Investor may be engaged in a broad range of transactions that involve interests that differ from those of the City, and the Investor 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 Investor 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 Investor 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 Investor to identify the City in accordance with the Act. The City agrees to, promptly following a request by the Investor, provide all such other documentation and information that the Investor 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 Investor 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 Investor 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 Investor 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 AND 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.

SPECIALIZED LENDING, LLC, as Lessor

By Sania Cabrales  
Vice President

[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.


SPECIALIZED LENDING, LLC, as Lessor


By \_\_\_\_\_  
Vice President

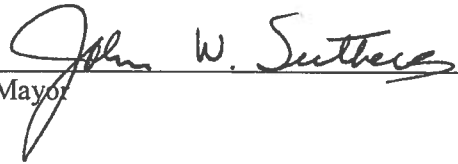
[SEAL]

CITY OF COLORADO SPRINGS,  
COLORADO,  
as Lessee

Attest:

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



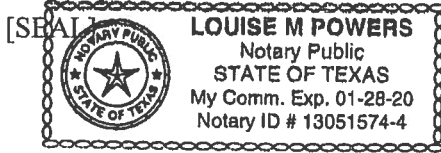
By  \_\_\_\_\_  
Mayor

[Signature Page to Lease Purchase Agreement]

STATE OF ~~COLORADO~~ Texas )  
 ) ss.  
COUNTY OF Dallas )

This instrument was acknowledged before me this 6<sup>th</sup> day of October, 2016, by Sonia Cabrales, as Vice President of Specialized Lending, LLC, a Delaware limited liability company.

Witness my hand and official seal.



Louise M Powers  
Notary Public

My Commission Expires:

Jan 28, 2020

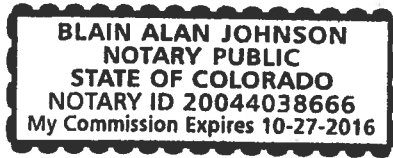


STATE OF COLORADO            )  
  ) ss.  
COUNTY OF EL PASO         )

This instrument was acknowledged before me this 5<sup>th</sup> day of October, 2016, by John 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]



*Blain Alan Johnson*  
\_\_\_\_\_  
Notary Public for the State of Colorado

My Commission Expires:

10/27/2016

## EXHIBIT A

### DESCRIPTION OF LEASED PROPERTY

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 14 SOUTH, RANGE 66 WEST OF THE SIXTH P.M., SITUATE IN THE CITY OF COLORADO SPRINGS, EL PASO COUNTY, COLORADO. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 23, THENCE N 00 DEGREES 25 MINUTES 09 SECONDS W (AN ASSUMED BEARING TO WHICH ALL OTHERS CONTAINED HEREIN ARE RELATIVE THERETO) ALONG THE WEST LINE OF THE SOUTHWEST QUARTER (SW 1/4) OF SAID SECTION 23, A DISTANCE OF 1244.43 FEET;

THENCE N 89 DEGREES 34 MINUTES 51 SECONDS E, 40.00 FEET

THENCE N 00 DEGREES 25 MINUTES 09 SECONDS W PARALLEL WITH SAID WEST LINE OF THE SOUTHWEST QUARTER (SW 1/4) AND 40.00 FEET EASTERLY THEREFROM, A DISTANCE OF 935.31 FEET TO A POINT ON THE RIGHT OF WAY LINE OF ACADEMY PARK LOOP AS PLATTED IN GATEWAY PLAZA FILING NO. 1 AS RECORDED JUNE 11, 1981 IN PLAT BOOK N3 AT PAGE 100 OF THE RECORDS OF SAID EL PASO COUNTY;

THENCE N 89 DEGREES 34 MINUTES 51 SECONDS E ALONG SAID SOUTH RIGHT OF WAY LINE A DISTANCE OF 460.00 FEET TO THE POINT OF BEGINNING;

(THE FOLLOWING 4 COURSES CONTINUE ALONG SAID RIGHT OF WAY LINE);

THENCE N 89 DEGREES 34 MINUTES 51 SECONDS E A DISTANCE OF 116.30 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 56 DEGREES 11 MINUTES 14 SECONDS, A RADIUS OF 653.10 FEET, AND AN ARC LENGTH OF 640.46 FEET;

THENCE S 34 DEGREES 13 MINUTES 55 SECONDS E, 329.88 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 16 DEGREES 14 MINUTES 23 SECONDS, A RADIUS OF 328.22 FEET, AND AN ARC LENGTH OF 93.03 FEET;

THENCE S 79 DEGREES 00 MINUTES 28 SECONDS W ON A NON-TANGENT LINE TO THE LAST DESCRIBED CURVE, A DISTANCE OF 36.90 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 10 DEGREES 34 MINUTES 23 SECONDS, A RADIUS OF 260.00 FEET, AND AN ARC LENGTH OF 47.98 FEET;

THENCE S 89 DEGREES 34 MINUTES 51 SECONDS W A DISTANCE OF 372.98 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 45 DEGREES 00 MINUTES 00 SECONDS, A RADIUS OF 260.00 FEET, AND AN ARC LENGTH OF 204.20 FEET;

THENCE N 45 DEGREES 25 MINUTES 09 SECONDS W, 234.40 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 45 DEGREES 00 MINUTES 00 SECONDS, A RADIUS OF 260.00 FEET, AND AN ARC LENGTH OF 204.20 FEET;

THENCE N 00 DEGREES 25 MINUTES 09 SECONDS W, 232.74 FEET TO THE POINT OF BEGINNING;

EXCEPT THAT PORTION THEREOF PLATTED AS DEDICATED RIGHT OF WAY AS CONTAINED IN THE PLAT OF GATEWAY CORPORATE PLAZA FILING NO. 1 AS RECORDED JUNE 20, 1986 IN PLAT BOOK A4 AT PAGE 135 OF THE RECORDS OF SAID EL PASO COUNTY.

**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>
June 1, 2017	--	\$141,075.45	\$ 141,075.45	\$13,690,000.00
December 1, 2017	\$1,245,000.00	110,889.00	1,355,889.00	12,445,000.00
June 1, 2018	--	100,804.50	100,804.50	12,445,000.00
December 1, 2018	1,295,000.00	100,804.50	1,395,804.50	11,150,000.00
June 1, 2019	--	90,315.00	90,315.00	11,150,000.00
December 1, 2019	1,315,000.00	90,315.00	1,405,315.00	9,835,000.00
June 1, 2020	--	79,663.50	79,663.50	9,835,000.00
December 1, 2020	1,340,000.00	79,663.50	1,419,663.50	8,495,000.00
June 1, 2021	--	68,809.50	68,809.50	8,495,000.00
December 1, 2021	1,360,000.00	68,809.50	1,428,809.50	7,135,000.00
June 1, 2022	--	57,793.50	57,793.50	7,135,000.00
December 1, 2022	1,380,000.00	57,793.50	1,437,793.50	5,755,000.00
June 1, 2023	--	46,615.50	46,615.50	5,755,000.00
December 1, 2023	1,405,000.00	46,615.50	1,451,615.50	4,350,000.00
June 1, 2024	--	35,235.00	35,235.00	4,350,000.00
December 1, 2024	1,425,000.00	35,235.00	1,460,235.00	2,925,000.00
June 1, 2025	--	23,692.50	23,692.50	2,925,000.00
December 1, 2025	1,450,000.00	23,692.50	1,473,692.50	1,475,000.00
June 1, 2026	--	11,947.50	11,947.50	1,475,000.00
December 1, 2026	1,475,000.00	11,947.50	1,486,947.50	--

<sup>1</sup> Interest Component Rate = 1.62%.

## EXHIBIT C

### PERMITTED ENCUMBRANCES

1. Any facts, rights, interests, or claims thereof, not shown by the public records but that could be ascertained by an inspection of the Site Leased Property or that may be asserted by persons in possession of the Site Leased Property.
2. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Investor's interest in the Site Leased Property that would be disclosed by an accurate and complete land survey of the Site Leased Property and not shown by the 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 the public records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date of the commitment for title insurance issued in accordance with Section 14.04 (the "Commitment") but prior to the date the Investor acquires of record for value the leasehold interest in the Site Leased Property covered by the 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 the 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 the 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. Terms, conditions and provisions of Supplemental Annexation Agreement recorded February 09, 1972 in Book 2466 at Page 758.
9. Any facts, rights, interests or claims which are not shown by the public records, but which could be ascertained by making inquiry of the City.
10. Any loss or damage by reason of the failure to comply with the terms, conditions, burdens and obligations contained in the Site Lease to be insured and described under Item 4, Schedule A, under the Commitment.

**E-RECORDED**

**SITE LEASE**

between

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

and

**SPECIALIZED LENDING, LLC,**  
as Investor

Dated as of October 12, 2016

---

**THIS SITE LEASE** dated as of October 12, 2016 (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 **SPECIALIZED LENDING, LLC**, as investor (together with its successors and assigns, the "Investor");

**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 Council has determined that it is in the best interests of the City and its residents to undertake the construction and improvement of certain facilities to be used as the Colorado Springs Police Department's Sand Creek Division Substation (the "Project") within the City limits; and

WHEREAS, for the purpose of providing funds for the construction of the 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 Investor pursuant to this Site Lease for a lump-sum payment set forth in Section 3 hereof, and sublease the Leased Property back from the Investor pursuant to that certain Lease Purchase Agreement dated as of the date of this Site Lease (the "Lease") between the Investor, 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 Terms.** The City hereby leases to the Investor and the Investor 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 Investor 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, 2033 (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 Investor 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 11.02 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 Investor as rent and payment hereunder, in full, the lump sum of \$13,690,000.00 (the "Investor Rental Payment") and other good and valuable consideration; provided, however, that except as provided herein such amount is to be held by UMB Bank, n.a., as escrow agent (the "Escrow Agent") pursuant to the Escrow Agreement dated as of October 12, 2016 (the "Escrow Agreement") between the City and the Escrow Agent, and disbursed to or upon the order of the City in accordance with the procedures for the payment of costs of the Project set forth in the Escrow Agreement. The City hereby covenants to apply or cause to be applied such funds solely to the costs of the Project or related costs of the transactions contemplated by this Site Lease and the Lease.

**Section 4. Purpose.** The Investor 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 Investor may exercise the remedies provided in the Lease and the Investor may use or sublet the Leased Property for any lawful purposes.

**Section 5. Owner in Fee.** The City covenants that 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 Investor may not assign its rights under this Site Lease or sublet the Leased Property without the written consent of the City.

In the event that (a) the Lease is terminated for any reason and (b) this Site Lease is not terminated, the Investor 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 Investor or assignee of the Investor shall be included in the term "Investor" for the purposes of this Section 6 of this Site Lease. The Investor 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 Investor 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 Investor as required under the provisions of Section 6.06 or Section 13.02 of the Lease, the City may acquire the Investor's interest in the Leased Property, if and only if the City satisfies the following conditions:

(A) the City provides written notice to the Investor of its intent to acquire such interest at least 60 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 Investor 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 Investor from the exercise of its remedies hereunder, plus

(ii) an amount equal to the Investor'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 Investor), less any such expenses that have previously been reimbursed to the Investor; 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 Investor's rights under the Site Lease and amounts related to the sale and/or assignment of the Investor'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 of 12%; 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 of 12%.

**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 Investor 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 Investor 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 Investor with respect to any such leases or tenancies. The Investor 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 Investor therein shall vest in the City. The Investor 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 Investor Rental Payment, the payment obligations of the Investor to the City hereunder shall be deemed fully performed by the Investor

and the leasehold interest granted hereby shall be fully vested in the Investor. In the event the Investor 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 Investor, the City may exercise any and all remedies granted by law, except that 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 Ownership.** The Investor 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 Investor 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.

**Section 11. Waiver of Personal Liability.** All liabilities under this Site Lease on the part of the Investor are solely liabilities of the Investor, and the City hereby releases each and every director, member, officer, employee and agent of the Investor of and from any personal or individual liability under this Site Lease. No employee or agent of the Investor 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 Investor 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 Investor 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 Investor 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 Investor 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 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 Investor 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 Investor 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. 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 18. 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 AND THE LEASE

**Section 19. Governing Law.** This Site Lease shall be governed by and construed in accordance with the law of the State of Colorado.

**Section 20. 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 Investor 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 [Signature]  
City Clerk



SPECIALIZED LENDING, LLC,  
as Investor

By: \_\_\_\_\_  
Vice President

[Signature Page to Site Lease]

IN WITNESS WHEREOF, the City and the Investor 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

SPECIALIZED LENDING, LLC,  
as Investor

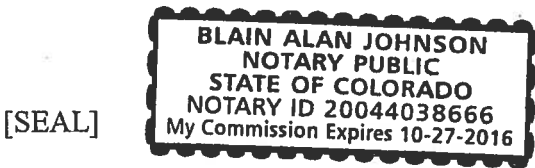
By: Sonia Cabrales  
Vice President

[Signature Page to Site Lease]

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

This instrument was acknowledged before me this 5<sup>th</sup> day of October, 2016, by John 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.



Blain Alan Johnson  
Notary Public

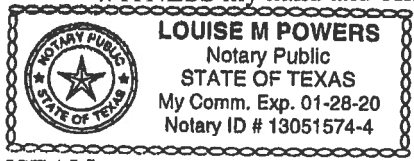
My Commission Expires:

10/27/2016

STATE OF COLORADO Texas )  
 ) ss.  
COUNTY OF Dallas )

This instrument was acknowledged before me this 6th day of October, 2016, by Sonia Cabrales, as Vice President of Specialized Lending, LLC, a Delaware limited liability company.

WITNESS my hand and official seal.



[SEAL]

Louise M Powers  
Notary Public

My Commission Expires:

Jan 28, 2020

**EXHIBIT A**

**DESCRIPTION OF THE LEASED PROPERTY**

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 14 SOUTH, RANGE 66 WEST OF THE SIXTH P.M., SITUATE IN THE CITY OF COLORADO SPRINGS, EL PASO COUNTY, COLORADO. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 23, THENCE N 00 DEGREES 25 MINUTES 09 SECONDS W (AN ASSUMED BEARING TO WHICH ALL OTHERS CONTAINED HEREIN ARE RELATIVE THERETO) ALONG THE WEST LINE OF THE SOUTHWEST QUARTER (SW 1/4) OF SAID SECTION 23, A DISTANCE OF 1244.43 FEET;

THENCE N 89 DEGREES 34 MINUTES 51 SECONDS E, 40.00 FEET

THENCE N 00 DEGREES 25 MINUTES 09 SECONDS W PARALLEL WITH SAID WEST LINE OF THE SOUTHWEST QUARTER (SW 1/4) AND 40.00 FEET EASTERLY THEREFROM, A DISTANCE OF 935.31 FEET TO A POINT ON THE RIGHT OF WAY LINE OF ACADEMY PARK LOOP AS PLATTED IN GATEWAY PLAZA FILING NO. 1 AS RECORDED JUNE 11, 1981 IN PLAT BOOK N3 AT PAGE 100 OF THE RECORDS OF SAID EL PASO COUNTY;

THENCE N 89 DEGREES 34 MINUTES 51 SECONDS E ALONG SAID SOUTH RIGHT OF WAY LINE A DISTANCE OF 460.00 FEET TO THE POINT OF BEGINNING;

(THE FOLLOWING 4 COURSES CONTINUE ALONG SAID RIGHT OF WAY LINE);

THENCE N 89 DEGREES 34MINUTES 51 SECONDS E A DISTANCE OF 116.30 FEET;

THENCE ALONG THE ARC OF A OF A CURVE TO THE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 56 DEGREES 11 MINUTES 14 SECONDS, A RADIUS OF 653.10 FEET, AND AN ARC LENGTH OF 640.46 FEET;

THENCE S 34 DEGREES 13 MINUTES 55 SECONDS E, 329.88 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 16 DEGREES 14 MINUTES 23 SECONDS, A RADIUS OF 328.22 FEET, AND AN ARC LENGTH OF 93.03 FEET;

THENCE S 79 DEGREES 00 MINUTES 28 SECONDS W ON A NON-TANGENT LINE TO THE LAST DESCRIBED CURVE, A DISTANCE OF 36.90 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 10 DEGREES 34 MINUTES 23 SECONDS, A RADIUS OF 260.00 FEET, AND AN ARC LENGTH OF 47.98 FEET;



THENCE S 89 DEGREES 34 MINUTES 51 SECONDS W A DISTANCE OF 372.98 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 45 DEGREES 00 MINUTES 00 SECONDS, A RADIUS OF 260.00 FEET, AND AN ARC LENGTH OF 204.20 FEET;

THENCE N 45 DEGREES 25 MINUTES 09 SECONDS W, 234.40 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 45 DEGREES 00 MINUTES 00 SECONDS, A RADIUS OF 260.00 FEET, AND AN ARC LENGTH OF 204.20 FEET;

THENCE N 00 DEGREES 25 MINUTES 09 SECONDS W, 232.74 FEET TO THE POINT OF BEGINNING;

EXCEPT THAT PORTION THEREOF PLATTED AS DEDICATED RIGHT OF WAY AS CONTAINED IN THE PLAT OF GATEWAY CORPORATE PLAZA FILING NO. 1 AS RECORDED JUNE 20, 1986 IN PLAT BOOK A4 AT PAGE 135 OF THE RECORDS OF SAID EL PASO COUNTY.