

REAL ESTATE DONATION OF PROPERTY AGREEMENT

FirstBank – Northgate Open Space

THIS REAL ESTATE DONATION AGREEMENT (“Agreement”), dated this _____ day of _____, 2015, is between FIRSTBANK, a Colorado Corporation, formerly known as FirstBank of El Paso County, having an address at 2 North Cascade Ave, Suite 130, Colorado Springs, CO 80903, “Grantor”, and the CITY OF COLORADO SPRINGS, Colorado, a home rule city and Colorado municipal corporation, having an address at 30 South Nevada Avenue, Colorado Springs, Colorado, 80903, “Grantee” or “City”. Grantor and Grantee may be collectively referred to as the “Parties” or singularly, a “Party”.

WHEREAS, Grantor is the fee owner of that certain real property located in El Paso County, Colorado, consisting of approximately 9.46 acres and known as Tax Schedule Number 6206100002, the “Property”; and

WHEREAS, the Property possesses natural, scenic, open space, aesthetic, ecological, and environmental values of great importance to the citizens of the City of Colorado Springs, El Paso County, and the State of Colorado, which environmental values are worthy of preservation and protection; and

WHEREAS, Grantor has previously conveyed to the Board of County Commissioners of El Paso County, Colorado a Deed of Conservation Easement, recorded as Instrument Number 210114261, on November 10, 2010, in the El Paso County Clerk-Recorder Office (“Conservation Easement”), for the purpose of El Paso County perpetual stewardship of the conservation values of the Property; and

WHEREAS, the City of Colorado Springs Trails, Open Space and Parks Advisory Committee and the City of Colorado Springs Parks and Recreation Advisory Board both support the continued preservation of the Property and acceptance of the Property into City ownership; and

WHEREAS, the Property provides opportunities for public access, including future extension of the Smith Creek Regional Trail; and

WHEREAS, the Property is adjacent to the 72 acre Lonnie C. Arnold Conservation Easement held by El Paso County, and on the South to approximately 90 acres of Northgate Open Space which is held by the City of Colorado Springs; and

WHEREAS, Grantor intends to convey the Property to Grantee for Grantee's stewardship of the environmental values of the Property and to enhance the open space value and management of the Property; and

WHEREAS, Pursuant to Section 4.4 of Chapter 4 of the *City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interest*, Grantee agrees to accept this donation of land, subject to the Conservation Easement, for public purpose; to enhance the quality of life and well-being of the citizens of the City of Colorado Springs by acquiring, maintaining, preserving, and protecting open space and environmental values.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, Grantor and Grantee hereby agree as follows:

I. DONATION OF PROPERTY

- 1.1 **Property:** Grantor is the owner of certain real property located in the County of El Paso, State of Colorado, described in **Exhibit A**, attached hereto and made a part hereof, also known as Tax Schedule Number 6206100002. Grantor intends to donate the Property to Grantee on the terms and conditions contained in this Agreement.
- 1.2 **Deposit:** No deposit is required.
- 1.3 **Donation:** Grantor will convey to Grantee at no cost and Grantee shall accept the Property on the terms and conditions of this Agreement. The Grantee will accept the Property from Grantor in the form of an in kind donation from Grantor to the Grantee.
- 1.4 **Force and Effect:** If any provision of this Agreement shall be determined to be invalid, illegal or without force by a court of law or rendered so by legislative act, then the remaining provisions of this Agreement shall remain in full force and effect.

II. CLOSING

- 2.1 Time and Place: The closing of the conveyance of the Property shall occur at the offices of Land Title Guarantee Company, located at 102 South Tejon Street, Suite 760, in Colorado Springs, in Colorado Springs, Colorado, at a date and time mutually agreed upon by the parties, but in no event later than December 31, 2015.
- 2.2 Procedure: At closing, the following shall occur:
- a. Conveyance: Grantor shall convey the Property to Grantee by Special Warranty Deed, as shown on **Exhibit B**, attached hereto and made a part hereof, free and clear of any liens or encumbrances whether recorded or unrecorded, but subject to easements, conditions and restrictions of record, insofar as to Grantee's satisfaction, and as they may lawfully affect the Property. Grantor shall convey and Grantee shall accept the Property in the form of an in-kind donation and other good and valuable consideration with no monetary exchange. The in-kind donation will be reflected in the Settlement Statements to be signed by Grantor and Grantee.
 - b. Real Property Taxes: Grantor shall be responsible for paying all real property taxes that have accrued through the date of closing.
 - c. Possession: Grantor shall deliver possession of the Property to Grantee at closing.
- 2.3 Closing Costs: Grantee shall pay all costs of closing including the title policy, recording fees and documentary fees, if any.
- 2.4 Title Commitment and Policy: Grantee shall instruct Land Title Guarantee Company to prepare a title commitment for Grantee's review. The Grantee shall have the right to review the title commitment and approve or disapprove those items which may affect the title of the Property. Grantor shall cooperate with Land Title Guarantee Company to correct condition(s) that adversely

affect the Property as determined by Grantee, in its discretion. Grantor shall have thirty (30) days from notification of disapproval to correct any condition. Both Parties agree to extend closing for Grantor to make corrections on title defects, conditions, requirements and/or exceptions (recorded and/or unrecorded) or known to Grantor. Closing is contingent on Grantee's satisfaction with the update of the title commitment prior to closing.

III. CONDITION OF PROPERTY

3.1 Physical Condition of Property: Grantee acknowledges that Grantor has made no representations or warranties concerning the condition of soils on the Property or drainage conditions on the Property.

IV. DEFAULT

4.1 Grantor Remedies: If Grantee is in default under this Agreement, Grantor may terminate this Agreement by written notice to Grantee, and the Parties shall then be released from all obligations under this Agreement.

4.2 Grantee Remedies: If Grantor is in default under this Agreement, Grantee may terminate this Agreement by written notice to Grantor, and the Parties shall then be released from all obligations under this Agreement.

4.3 Time: Time is of the essence in this Agreement.

V. NOTICES AND OTHER DELIVERIES

5.1 Notices and Other Deliveries: Any notice or other documents or materials required or permitted to be delivered by this Agreement shall be deemed properly delivered upon receipt by the Party to whom the documents or materials are to be delivered. Notices may be hand delivered, sent by first-class mail, return receipt requested, with postage prepaid, or transmitted by electronic facsimile. Notices shall be addressed and delivered as follows:

Grantor:	Grantee:
FirstBank 1010 West Baptist Road Colorado Springs, Colorado 80921 Phone: 719-638-4151 Fax: 719-638-4164	City of Colorado Springs Manager, Real Estate Services 30 South Nevada, Suite 502 Colorado Springs, CO 80903 Phone: (719) 385-5605 Fax: (719) 385-5610

Either Party may, by notice properly delivered, change the person or address to which future notices or delivered to that Party shall be made.

VI. INTERPERTATION OF AGREEMENT

- 6.1 Governing Law: This Agreement is subject to and shall be interpreted under the laws of the State of Colorado, and the Charter, City Code, ordinances, rules and regulation of the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation. Court venue and jurisdiction shall exclusively be in the Colorado District Court for El Paso County, Colorado. The Parties agree that this Agreement shall be deemed to have been made in, and the place of performance is deemed to be in, the City of Colorado Springs, El Paso County, State of Colorado.
- 6.2 Headings: The article and section headings in the Agreement are for convenience only, and shall not be used in its interpretation or considered part of this Agreement.
- 6.3 Appropriation of Funds: In accord with Colorado Constitution, Article X, Section 20, and the City Charter, performance of the Grantee’s obligations under this Agreement is expressly subject to appropriation of funds by City Council and the availability of those appropriated funds for expenditure. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of the Grantee’s obligations under the Agreement, or appropriated funds may not be expended due to Constitutional or City

Charter spending limitations, then the Grantee may terminate this Agreement without compensation to Grantor.

6.4 Special Provision: Grantor agrees that no new easements, liens or encumbrances shall be placed on the Property from the time of Agreement execution through closing, except any easement so designated by the Grantee.

6.5 City Council Approval: Pursuant to Section 4.4 of Chapter 4 of *The City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interests* this Agreement and closing is contingent upon City Council approval as evidenced by a City Council resolution accepting the donation of the Property. If City Council declines to accept the Property by donation, this Agreement will automatically terminate with no compensation or remedies available to Grantor.

6.6 No Third Party Beneficiary: It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any claims or right of action by any other or third person or entity on the Agreement. It is the express intention of the Parties that any person or entity, other than the Parties to this Agreement, receiving services or benefits under this Agreement shall be deemed to be incidental beneficiaries only.

6.7 Agreement: This Agreement shall inure to the benefit of and be binding upon the heirs, successors and assigns of Grantor and Grantee.

6.8 Assignment: Neither Grantor nor Grantee shall assign or otherwise transfer this Agreement or any right or obligation under this Agreement.

6.9 Entire Agreement, Modification, Survival: This Agreement constitutes the entire agreement between the Parties relating to the conveyance of the Property, and any prior agreements pertaining to the subject of this Agreement, whether oral or written, have been merged and integrated into this Agreement. No subsequent modification of any of the terms of this Agreement shall be valid, binding upon the Parties, or enforceable unless made in writing and signed by the Parties. Any obligation or agreement set

forth in this Agreement that, by its terms, is intended to be performed after termination or Closing shall survive closing.

SIGNATURES APPEAR ON THE FOLLOWING PAGES

Grantee:

City of Colorado Springs:

By: _____ Date _____
Ronn Carlentine, Manager
Office of Real Estate Services

City of Colorado Springs
Parks, Recreation & Cultural Services Department

By: _____ Date _____
Karen Palus, Director
Parks, Recreation & Cultural Services Department

Approved as to form:

_____ Date _____
City Attorney's Office

**EXHIBIT A
LEGAL DESCRIPTION**

A TRACT OF LAND IN THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 12S, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDAN, LYING SOUTHERLY OF DONALA SUBDIVISON NO. 1, EXCEPT THAT PORTION CONVEYED IN BOOK 2612 AT PAGE 992, COUNTY OF EL PASO, STATE OF COLORADO.

RES File # 18871

Grantor int.: _____ Grantee Int: _____
Date: _____ Date: _____

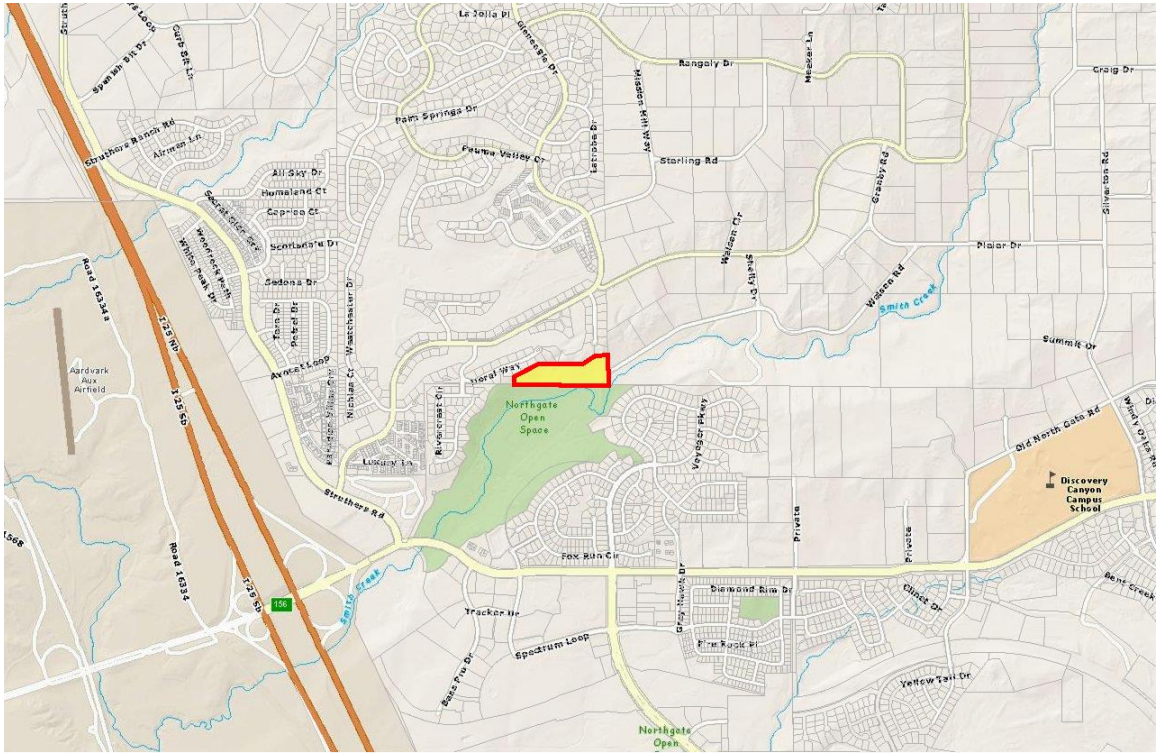
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**ATTACHMENT B
MAP DEPICTION**



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Grantor int.: _____ Grantee Int: _____
Date: _____ Date: _____