

AFTER RECORDATION PLEASE RETURN TO:

Butler Snow LLP
1801 California Street, Suite 5100
Denver, Colorado 80202
Attention: Kimberley K. Crawford, Esq.

Pursuant to Section 39-13-104(1)(j), Colorado Revised
Statutes, this Site Lease Agreement is exempt from the
documentary fee.

SITE LEASE AGREEMENT

DATED AS OF [____], 2017

BETWEEN

CITY OF COMMERCE CITY, COLORADO,

AS LESSOR

AND

**[____],
SOLELY IN ITS CAPACITY AS TRUSTEE UNDER THE INDENTURE,
AS LESSEE**

This **SITE LEASE AGREEMENT**, dated as of [____], 2017 (this “Site Lease”), is by and between the City of Commerce City, Colorado, a home rule city (the “City”), as lessor, and [____], a national banking association duly organized and validly existing under the laws of the United States of America, solely in its capacity as trustee under the Indenture (the “Trustee”), as lessee.

PREFACE

Unless the context otherwise requires, capitalized terms used herein shall have the meanings ascribed to them herein and in the Lease Purchase Agreement, dated as of [____] (the “Lease”), between the Trustee, as lessor, and the City, as lessee.

RECITALS

1. The City has been duly organized and is validly existing as a home rule city under the Constitution of the State of Colorado and the Charter of the City (the “Charter”).

2. Pursuant to the Charter, the City is authorized to enter into long term installment purchase contracts and rental or leasehold agreements in order to provide necessary land, buildings, equipment and other property for governmental or proprietary purposes.

3. Pursuant to the Charter, the City is also authorized to sell and dispose of real and personal property.

4. The City Council of the City (the “Council”) has heretofore determined that the best interests of the City and the inhabitants thereof require the financing of the cost of the acquisition of 4A Equivalent Residential Units from South Adams County Water and Sanitation District (the “Project”).

5. The Council has determined that it is in the best interests of the City and its inhabitants to execute the Lease and this Site Lease to provide funds to effect the Project.

6. Contemporaneously with the execution and delivery of this Site Lease and the Lease, the Trustee will execute and deliver an Indenture of Trust (the “Indenture”) pursuant to which there is expected to be executed and delivered certain certificates of participation (the “Certificates”) dated as of their date of delivery that shall evidence proportionate interests in the right to receive certain Revenues (as defined in the Lease), shall be payable solely from the sources therein provided and shall not directly or indirectly obligate the City to make any payments beyond those appropriated for any fiscal year during which the Lease shall be in effect.

7. The proceeds of the Certificates will be utilized for the Project, as well as for the payment of the costs of execution and delivery of the Certificates.

8. The City owns, in fee title, the Site and the premises, buildings and improvements located thereon (as more particularly described in **Exhibit A** attached hereto, the “Leased Property”). To accomplish the Project, the Trustee will acquire a leasehold interest in the Leased Property by leasing the Leased Property from the City pursuant to this Site Lease and will lease the Leased Property back to the City pursuant to the Lease.

9. The Trustee and the City intend that this Site Lease set forth their entire understanding and agreement regarding the terms and conditions upon which the Trustee is leasing the Leased Property from the City.

10. The City proposes to enter into this Site Lease with the Trustee as material consideration for the Trustee's agreement to lease the Leased Property to the City pursuant to the Lease. The Trustee shall prepay in full its rental payments due under this Site Lease which rental payments shall be used by the City to effect the Project, all pursuant to the Lease and the Indenture.

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

Section 1. Site Lease and Terms. The City hereby demises and leases to the Trustee and the Trustee hereby leases from the City, on the terms and conditions hereinafter set forth, the Leased Property, subject to Permitted Encumbrances as described in **Exhibit B** hereto.

The term of this Site Lease shall commence on the date hereof and shall end on December 31, 2047 (the "Site Lease Termination Date"), unless such term is sooner terminated as hereinafter provided. If, prior to the Site Lease Termination Date, the Trustee has transferred and conveyed the Trustee's leasehold interests in all of the Leased Property pursuant to Article 11 of the Lease as a result of the City's payment of (a) the applicable Purchase Option Price thereunder; or (b) all Base Rentals and Additional Rentals, all as further provided in Section 11.2 of the Lease, then the term of this Site Lease shall end in connection with such transfer and conveyance.

The term of any sublease of the Leased Property or any portion thereof, or any assignment of the Trustee's interest in this Site Lease, pursuant to Section 5 hereof, the Lease and the Indenture, shall not extend beyond December 31, 2047, unless this Site Lease is terminated sooner as hereinafter provided. At the end of the term of this Site Lease, all right, title and interest of the Trustee, or any sublessee or assignee, in and to the Leased Property, shall terminate. Upon such termination, the Trustee and any sublessee or assignee shall execute and deliver to the City any necessary documents releasing, assigning, transferring and conveying the Trustee's, sublessee's or assignees' respective interests in the Leased Property.

Section 2. Rental. The Trustee has paid to the City and the City hereby acknowledges receipt from the Trustee as and for rental hereunder, paid in advance, the sum of \$[7,200,000], as and for all rent due hereunder, and other good and valuable consideration, the receipt and the sufficiency of which are hereby acknowledged. The City hereby determines that such amount is reasonable consideration for the leasing of the Leased Property to the Trustee for the term of this Site Lease.

Section 3. Purpose. The Trustee shall use the Leased Property solely for the purpose of leasing the Leased Property back to the City pursuant to the Lease and for such purposes as may be incidental thereto; provided, that upon the occurrence of an Event of Nonappropriation or an Event of Lease Default and the termination of the Lease, the City shall vacate the Leased

Property, as provided in the Lease, and the Trustee may exercise the remedies provided in this Site Lease, the Lease and the Indenture.

Section 4. Owner in Fee. The City represents that (a) it is the owner in fee of the Leased Property, subject only to Permitted Encumbrances as described in Exhibit B hereto, and (b) the Permitted Encumbrances do not and shall not interfere in any material way with the Leased Property.

Section 5. Sales, Assignments and Subleases. Unless an Event of Nonappropriation or an Event of Lease Default shall have occurred and except as may otherwise be provided in the Lease, the Trustee may not sell or assign its rights and interests under this Site Lease or sublet all or any portion of the Leased Property, without the written consent of the City and the Initial Purchaser.

In the event that (a) the Lease is terminated for any reason and (b) this Site Lease is not terminated, the Trustee may sublease the Leased Property or any portion thereof, or sell or assign the Trustee's leasehold interests in the Leased Property, pursuant to the terms of the Indenture, and any purchasers from or sublessees or assignees of the Trustee may sell or assign its respective interests in the Leased Property, subject to the terms of this Site Lease, the Lease and the Indenture. The City and the Trustee (or any purchasers from or assignees or sublessees of the Trustee) agree that, except as permitted by this Site Lease, the Lease and the Indenture and except for Permitted Encumbrances (including purchase options under the Lease), neither the City, the Trustee, nor any purchasers from or sublessees or assignees of the Trustee will sell, mortgage or encumber the Leased Property or any portion thereof during the term of this Site Lease.

The Trustee and any other person who has the right to use the Leased Property under this Site Lease, at its own expense, may install equipment and other personal property in or on any portion of the Leased Property unless it is permanently affixed to the Leased Property or removal of it would materially damage the Leased Property, in which case it will become part of the Leased Property.

Section 6. Right of Entry. Subject to the terms of the documents described in Exhibit B, to the extent that the Lease is terminated and this Site Lease is still in effect, the City reserves the right 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 7. Termination. The Trustee agrees, upon the termination of this Site Lease, to quit and surrender all of the Leased Property, and agrees that any permanent improvements and structures existing upon the Leased Property at the time of the termination of this Site Lease shall remain thereon and title thereto shall vest in the City.

Section 8. Default. In the event the Trustee shall be in default in the performance of any obligation on its part to be performed under the terms of this Site Lease, which default continues for 30 days following notice and demand for correction thereof to the Trustee, the City may exercise any and all remedies granted by law, except that no merger of this Site Lease and

of the Lease shall be deemed to occur as a result thereof and that so long as any Certificates are Outstanding and unpaid under the Indenture, the Base Rentals due under the Lease shall continue to be paid to the Trustee except as otherwise provided in the Lease. In addition, so long as any of the Certificates are Outstanding, this Site Lease shall not be terminated except as described in Section 1 hereof.

Section 9. Quiet Enjoyment and Acknowledgment of Ownership. The Trustee at all times during the term of this Site Lease shall peaceably and quietly have, hold and enjoy the Leased Property, subject to the provisions of the Lease and the Indenture, and the City hereby acknowledges that the Trustee shall have a leasehold interest in all improvements or additions to be built on the Leased Property subject to this Site Lease, the Lease and the Indenture.

Section 10. Trustee's Disclaimer. It is expressly understood and agreed that (a) this Site Lease is executed by [_____] solely in its capacity as Trustee under the Indenture, and (b) nothing herein shall be construed as creating any liability on [_____] other than in its capacity as Trustee under the Indenture. All financial obligations of the Trustee under this Site Lease, except those resulting from its willful misconduct or negligence, are limited to the Trust Estate.

Section 11. Taxes; Maintenance; Insurance. During the Lease Term of the Lease and in accordance with the provisions of the Lease, including Sections 8.1 and 8.3 thereof, the City covenants and agrees to pay any and all taxes, assessments or governmental charges due in respect of the Leased Property and all maintenance costs and utility charges in connection with the Leased Property. In the event that (a) the Lease is terminated for any reason, and (b) this Site Lease is not terminated, the Trustee, or any purchaser, sublessee or assignee of the Leased Property (including the leasehold interests of the Trustee resulting from this Site Lease) shall pay or cause to be paid when due, all such taxes, assessments or governmental charges and maintain the Leased Property in good condition and working order. Any such payments that are to be made by the Trustee shall be made solely from (a) the proceeds of such sale, subleasing or assignment, (b) from the Trust Estate, or (c) from other moneys furnished to the Trustee under Section 8.02(m) of the Indenture, and in the absence of available moneys identified in the preceding clauses (a) through (c), the Trustee shall be under no obligation to pay or cause to be paid when due, all such taxes, assessments or governmental charges and maintain the Leased Property in good condition and working order.

The provisions of the Lease shall govern with respect to the maintenance of insurance hereunder during the Lease Term of the Lease. In the event that (a) the Lease is terminated for any reason, and (b) this Site Lease is not terminated, the Trustee, or any sublessee, purchaser or assignee of the Leased Property shall obtain and keep in force, (i) commercial general liability insurance against claims for personal injury, death or damage to property of others occurring on or in the Leased Property in an amount not less than \$990,000 and (ii) property insurance in an amount not less than the full replacement value of the improvements and structures constituting the Leased Property. Any such insurance that is to be obtained by the Trustee shall be paid for solely from (a) the proceeds of such sale, subleasing or assignment, (b) the Trust Estate, or (c) other moneys furnished to the Trustee under Section 8.02(m) of the Indenture. All such insurance shall name the Trustee, any sublessee, purchaser or assignee and the City as insureds. The City and the Trustee shall waive any rights of subrogation with respect to the Trustee, any

sublessee, purchaser or assignee, and the City, and their members, directors, officers, agents and employees, while acting within the scope of their employment and each such insurance policy shall contain such a waiver of subrogation by the issuer of such policy.

Nothing in the preceding paragraphs or in this Site Lease shall be interpreted or construed to require the Trustee to sublease all or any portion of the Leased Property or sell or assign its interests in this Site Lease, in the event that the Lease is terminated for any reason and this Site Lease is not terminated.

Section 12. Damage, Destruction or Condemnation. The provisions of the Lease shall govern with respect to any damage, destruction or condemnation of the Leased Property during the Lease Term of the Lease. In the event that (a) the Lease is terminated for any reason and (b) this Site Lease is not terminated, and either (i) the Leased Property or any portion thereof is damaged or destroyed, in whole or in part, by fire or other casualty, or (ii) title to or use of the Leased Property or any part thereof shall be taken under the exercise of the power of eminent domain, the City and the Trustee, or any sublessee, purchaser or assignee of the Leased Property from the Trustee shall cause the Net Proceeds of any insurance claim or condemnation award to be applied in accordance with the provisions of Article 9 of the Lease.

Section 13. Hazardous Substances. Except for customary materials necessary for operation, cleaning and maintenance of the Leased Property, none of the City, the Trustee or any sublessee, purchaser or assignee of the Leased Property from the Trustee shall cause or permit any Hazardous Substance to be brought upon, generated at, stored or kept or used in or about the Leased Property without prior written notice to the City and the Trustee and all Hazardous Substances, including customary materials necessary for construction, operation, cleaning and maintenance of the Leased Property, will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Substance so brought upon or used or kept on or about the Leased Property. If the presence of Hazardous Substance on the Leased Property caused or permitted by the City, the Trustee or any sublessee, purchaser or assignee of the Leased Property from the Trustee, as the case may be, results in contamination of the Leased Property, or if contamination of the Leased Property by Hazardous Substance otherwise occurs for which the City, the Trustee or any sublessee or assignee of the Leased Property, as the case may be, is legally liable for damage resulting therefrom (provided the Trustee shall have no liability under this section unless it is in possession of the Leased Property and unless the presence of such Hazardous Substance is due to the Trustee's negligence or willful misconduct), then the City, the Trustee or any sublessee, purchaser or assignee of the Leased Property from the Trustee, as the case may be, shall reimburse the other party for its reasonable and necessary legal expenses to defend the parties hereto or assignees hereof that have not caused or permitted such contamination and are not so legally liable with respect to this Site Lease from claims for damages, penalties, fines, costs, liabilities or losses; provided that the cost of such defense, (a) in the case of the Trustee, shall be payable solely from the Trust Estate, or (b) in the case of the City, shall be payable only if the cost of such defense has been annually appropriated by the City. This duty to reimburse legal expenses is not an indemnification. It is expressly understood that none of the City, the Trustee or any sublessee, purchaser or assignee is indemnifying any other person with respect to this Site Lease. Without limiting the foregoing, if the presence of any Hazardous Substance on the Leased Property caused or permitted by:

(a) the negligence or willful misconduct of the Trustee or any sublessee, purchaser or assignee of the Leased Property from the Trustee, as the case may be, results in any contamination of the Leased Property, the Trustee or any sublessee, purchaser or assignee of the Leased Property from the Trustee, as the case may be, shall provide prior written notice to the City, the Trustee and the Initial Purchaser and promptly take all actions, solely at the expense of the Trust Estate as are necessary to effect remediation of the contamination in accordance with legal requirements; or

(b) the City, results in any contamination of the Leased Property, the City shall provide prior written notice to the Trustee and the Initial Purchaser and promptly take all actions, solely at the expense of the City, which expenses shall constitute Additional Rentals, as are necessary to effect remediation of the contamination in accordance with legal requirements.

Section 14. Third Party Beneficiaries. It is expressly understood and agreed that the Owners of the outstanding Certificates are third party beneficiaries to this Site Lease and enforcement of the terms and conditions of this Site Lease, and all rights of action relating to such enforcement, shall be strictly reserved to the City, as Lessor, and the Trustee, as Lessee, and their respective successors and assigns, and to the Owners of the Certificates. Except as hereinafter provided, nothing contained in this Site Lease shall give or allow any such claim or right of action by any other or third person on this Site Lease. It is the express intention of the City and the Trustee that any person other than the City, the Trustee or the Owners of the Certificates receiving services or benefits under this Site Lease shall be deemed to be an incidental beneficiary only.

Section 15. Amendments. This Site Lease may only be amended, changed, modified or altered with the prior written consent of the City and the Trustee and in accordance with the provisions of the Indenture. So long Wells Fargo Bank, National Association, or its successors (the "Initial Purchaser") is the registered Owner of all Outstanding Certificates, this Site Lease may not be materially amended, changed, modified or altered without the prior written consent of the Initial Purchaser, which consent shall not be unreasonably withheld.

Section 16. Right of Initial Purchaser to Direct Remedies. Notwithstanding any provisions to the contrary contained herein, so long as the Initial Purchaser is the registered Owner of all Outstanding Certificates, the Initial Purchaser shall have the right to direct all remedies taken by the Trustee hereunder. Before taking any such action as directed by the Initial Purchaser, the Trustee shall be entitled to the indemnification provided in the Indenture.

Section 17. 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 18. No Merger. The City and the Trustee intend that the legal doctrine of merger shall have no application to this Site Lease and that neither the execution and delivery of

the Lease by the Trustee and the City nor the exercise of any remedies under this Site Lease or the Lease shall operate to terminate or extinguish this Site Lease or the Lease, except as specifically provided herein and therein.

Section 19. 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 20. Recitals. The Recitals set forth in this Site Lease are hereby incorporated by this reference and made a part of this Site Lease.

Section 21. 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 22. 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.

Section 23. Governing Law. This Site Lease shall be governed by and construed in accordance with the law of the State of Colorado without regard to choice of law analysis.

Section 24. No Waiver of Governmental Immunity. No provision of this Site Lease shall act or be deemed to be a waiver by the City of the Colorado Governmental Immunity Act, CRS 24-10-101, et seq.

Section 25. Electronic Transactions. The parties hereto agree that the transactions described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 26. Annual Appropriation. Consistent with Article X, §20 of the Colorado Constitution, any financial obligation of the City under this Site Lease shall be from year to year only, shall be subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year. To the extent that any of the City's obligations under this Site Lease are deemed to constitute a multiple fiscal-year financial obligation, the City's performance will be conditioned upon annual appropriation by the Council, in its sole discretion.

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

CITY OF COMMERCE CITY, [____], solely in its capacity as Trustee
COLORADO, as Lessor under the Indenture, as Lessee

By: _____
Mayor

By: _____
Vice President

[SEAL]

ATTEST:

City Clerk

STATE OF COLORADO)
) ss.
CITY OF COMMERCE CITY)
)
COUNTY OF ADAMS)

The foregoing instrument was acknowledged before me this ____ day of [____], 2017, by Sean Ford and Laura J. Bauer, as Mayor and City Clerk, respectively, of the City of Commerce City, Colorado.

WITNESS my hand and official seal.

(SEAL)

Notary Public

My commission expires:

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

The foregoing instrument was acknowledged before me this ____ day of [____], 2017, by [____], as Senior Vice President of [____], as Trustee.

WITNESS my hand and official seal.

(SEAL)

Notary Public

My commission expires:

EXHIBIT A

DESCRIPTION OF THE LEASED PROPERTY:

The Leased Property consists of the real property and the buildings and improvements located thereon as set forth below, as amended from time to time.

EXHIBIT B

PERMITTED ENCUMBRANCES

“Permitted Encumbrances” means, as of any particular time: (a) liens for taxes and assessments not then delinquent, or liens which may remain unpaid pending contest pursuant to the provisions of the Lease; (b) this Site Lease, the Lease, the Indenture and any related fixture filing and any liens arising or granted pursuant to the Lease or the Indenture; (c) utility, access and other easements and rights of way, licenses, permits, party wall and other agreements, restrictions and exceptions which the City Representative certifies will not materially interfere with or materially impair the Leased Property, including rights or privileges in the nature of easements, licenses, permits and agreements as provided in the Lease; and (d) the easements, covenants, restrictions, liens and encumbrances (if any) to which title to the Leased Property was subject when leased to the Trustee pursuant to this Site Lease, as shown below and which do not interfere in any material way with the Leased Property.

The easements, covenants, restrictions, liens and encumbrances (if any) to which title to the Leased Property was subject when leased to the Trustee pursuant to this Site Lease are as follows:

1. Liens for ad valorem taxes and special assessments not then delinquent, if applicable.
2. This Site Lease.
3. The Lease.
4. All other encumbrances appearing of record on the date hereof.