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**INDENTURE OF TRUST**

**DATED AS OF [\_\_\_\_], 2017**

**BY**

**[\_\_\_\_],  
As Trustee**

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This Table of Contents is not a part of this Indenture and is only for convenience of reference

## TABLE OF CONTENTS

	<u>Page</u>
<b><u>ARTICLE 1 DEFINITIONS</u></b> .....	<b>3</b>
Section 1.01 <u>Certain Funds and Accounts</u> .....	3
Section 1.02 <u>Definitions</u> .....	3
<b><u>ARTICLE 2 THE CERTIFICATES</u></b> .....	<b>9</b>
Section 2.01 <u>Amount of the Certificates; Nature of the Certificates</u> .....	9
Section 2.02 <u>Forms, Denominations, Maturities and Other Terms of Certificates</u> .....	9
Section 2.03 <u>Execution</u> .....	11
Section 2.04 <u>Delivery of Certificates</u> .....	11
Section 2.05 <u>Mutilated, Lost, Stolen or Destroyed Certificates</u> .....	12
Section 2.06 <u>Registration of Certificates; Persons Treated as Owners; Transfer and</u> <u>Exchange of Certificates</u> .....	12
Section 2.07 <u>Cancellation of Certificates</u> .....	13
Section 2.08 <u>Additional Certificates</u> .....	13
Section 2.09 <u>Uniform Commercial Code</u> .....	15
<b><u>ARTICLE 3 REVENUES AND FUNDS</u></b> .....	<b>16</b>
Section 3.01 <u>Segregation and Disposition of Proceeds of Certificates</u> .....	16
Section 3.02 <u>Application of Revenues and Other Moneys</u> .....	16
Section 3.03 <u>Base Rentals Fund</u> .....	16
Section 3.04 <u>Reserved</u> .....	16
Section 3.05 <u>Rebate Fund</u> .....	16
Section 3.06 <u>Costs of Execution and Delivery Fund</u> .....	17
Section 3.07 <u>Reserved</u> .....	18
Section 3.08 <u>Reserved</u> .....	18
Section 3.09 <u>Moneys to be Held in Trust</u> .....	18
Section 3.10 <u>Nonpresentment of Certificates</u> .....	18
Section 3.11 <u>Repayment to the City from the Trustee</u> .....	18
<b><u>ARTICLE 4 REDEMPTION OF CERTIFICATES</u></b> .....	<b>20</b>
Section 4.01 <u>Optional Redemption</u> .....	20
Section 4.02 <u>Reserved</u> .....	20
Section 4.03 <u>Extraordinary Mandatory Redemption</u> .....	20
Section 4.04 <u>Partial Redemption</u> .....	21
Section 4.05 <u>Notice of Redemption</u> .....	22
Section 4.06 <u>Redemption Payments</u> .....	22
<b><u>ARTICLE 5 INVESTMENTS</u></b> .....	<b>23</b>
Section 5.01 <u>Investment of Moneys</u> .....	23
Section 5.02 <u>Method of Valuation and Frequency of Valuation</u> .....	24
<b><u>ARTICLE 6 DEFEASANCE AND DISCHARGE</u></b> .....	<b>25</b>
Section 6.01 <u>Defeasance and Discharge</u> .....	25
<b><u>ARTICLE 7 EVENTS OF INDENTURE DEFAULT AND REMEDIES</u></b> .....	<b>27</b>
Section 7.01 <u>Events of Indenture Default Defined</u> .....	27
Section 7.02 <u>Remedies</u> .....	27
Section 7.03 <u>Legal Proceedings by Trustee</u> .....	27

Section 7.04	<u>Discontinuance of Proceedings by Trustee.</u>	28
Section 7.05	<u>Owners of Certificates May Direct Proceedings.</u>	28
Section 7.06	<u>Limitations on Actions by Owners of Certificates.</u>	28
Section 7.07	<u>Trustee May Enforce Rights Without Possession of Certificates.</u>	29
Section 7.08	<u>Remedies Not Exclusive.</u>	29
Section 7.09	<u>Delays and Omissions Not to Impair Rights.</u>	29
Section 7.10	<u>Application of Moneys in Event of Indenture Default.</u>	29
<b>ARTICLE 8 CONCERNING THE TRUSTEE</b>		<b>30</b>
Section 8.01	<u>Duties of the Trustee.</u>	30
Section 8.02	<u>Liability of Trustee; Trustee's Use of Agents.</u>	30
Section 8.03	<u>Representations and Covenants of Trustee.</u>	32
Section 8.04	<u>Compensation.</u>	33
Section 8.05	<u>Notice of Default; Right to Investigate.</u>	33
Section 8.06	<u>Obligation to Act on Defaults.</u>	34
Section 8.07	<u>Reliance on Requisition, etc.</u>	34
Section 8.08	<u>Trustee May Own Certificates.</u>	34
Section 8.09	<u>Construction of Ambiguous Provisions.</u>	34
Section 8.10	<u>Resignation of Trustee.</u>	35
Section 8.11	<u>Removal of Trustee.</u>	35
Section 8.12	<u>Appointment of Successor Trustee.</u>	35
Section 8.13	<u>Qualification of Successor.</u>	35
Section 8.14	<u>Instruments of Succession.</u>	35
Section 8.15	<u>Merger of Trustee.</u>	36
Section 8.16	<u>Intervention by Trustee.</u>	36
Section 8.17	<u>Books and Record of the Trustee; Trustee Record Keeping.</u>	36
Section 8.18	<u>Environmental Matters.</u>	36
<b>ARTICLE 9 SUPPLEMENTAL INDENTURES AND AMENDMENTS OF THE LEASE AND SITE LEASE</b>		<b>37</b>
Section 9.01	<u>Supplemental Indentures and Amendments Not Requiring Certificate Owners' Consent.</u>	37
Section 9.02	<u>Supplemental Indentures and Amendments Requiring Certificate Owners' Consent.</u>	37
Section 9.03	<u>Amendment of the Lease and the Site Lease.</u>	38
Section 9.04	<u>Reserved.</u>	39
Section 9.05	<u>Opinions.</u>	39
<b>ARTICLE 10 MISCELLANEOUS</b>		<b>40</b>
Section 10.01	<u>Evidence of Signature of Owners and Ownership of Certificates.</u>	40
Section 10.02	<u>Inspection of the Leased Property.</u>	40
Section 10.03	<u>Parties Interested Herein.</u>	40
Section 10.04	<u>Titles, Headings, Etc.</u>	41
Section 10.05	<u>Severability.</u>	41
Section 10.06	<u>Governing Law.</u>	41
Section 10.07	<u>Execution in Counterparts.</u>	41
Section 10.08	<u>Notices.</u>	41
Section 10.09	<u>Successors and Assigns.</u>	41
Section 10.10	<u>Consent and Notice to the Initial Purchaser.</u>	41

<a href="#"><u>Section 10.11</u></a>	<a href="#"><u>Payments Due on Saturdays, Sundays and Holidays.</u></a>	41
<a href="#"><u>Section 10.12</u></a>	<a href="#"><u>Undertaking to Provide Financial Statements.</u></a>	42
<a href="#"><u>Section 10.13</u></a>	<a href="#"><u>Electronic Storage.</u></a>	42

EXHIBIT A - FORM OF CERTIFICATE

A-1

## INDENTURE OF TRUST

THIS INDENTURE OF TRUST dated as of [\_\_\_\_\_], 2017 (this “Indenture”), is executed and delivered by [\_\_\_\_\_], a national banking association duly organized and existing under the laws of the United States of America, solely in its capacity as trustee (the “Trustee”) for the benefit of the Owners of the Certificates as set forth in this Indenture.

### PREFACE

All capitalized terms used herein will have the meanings ascribed to them in Article 1 of this Indenture.

### RECITALS

1. This Indenture is being executed and delivered to provide for the execution, delivery and payment of and security for the Certificates, the net proceeds of which will be used to finance the Project. The Certificates evidence undivided interests in the right to receive Revenues under the Lease.

2. Pursuant to the Lease, and subject to the rights of the City to not appropriate the Base Rentals and Additional Rentals thereunder and, therefore, to not renew and to terminate the Lease and other limitations as therein provided, the City is to pay certain Base Rentals directly to the Trustee, for the benefit of the Owners of the Certificates, in consideration of the City’s right to possess and use the Leased Property.

3. The Trustee has entered into this Indenture for and on behalf of the Owners of the Certificates and the Trustee will hold the Revenues and the Leased Property and will exercise the Trustee’s rights under the Site Lease and the Lease for the equal and proportionate benefit of the Owners of the Certificates as described herein, and will disburse money received by the Trustee in accordance with this Indenture.

4. The proceeds from the sale of the Certificates to the Owners will be disbursed by the Trustee to implement the Improvement Project and the Refunding Project as described herein and in the Lease and for other purposes set forth herein.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that the Trustee, in consideration of the premises, the purchase of the Certificates by the Owners and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to secure the payment of the principal of, premium, if any, and interest on the Certificates and all other amounts payable to the Owners with respect to the Certificates, to secure the performance and observance of all the covenants and conditions set forth in the Certificates and the Indenture, and to declare the terms and conditions upon and subject to which the Certificates are executed, delivered and secured, has executed and delivered this Indenture and has granted, assigned, pledged, bargained, sold, alienated, remised, released, conveyed, set over and confirmed, and by these presents does grant, assign, pledge, bargain, sell, alienate, remise, release, convey, set over and confirm, in trust upon the terms set forth herein all and singular the following described property, franchises and income, including any title or interest therein acquired after these

presents, all and singular the following described property, franchises and income, including any title therein acquired after these presents (collectively, the "Trust Estate"):

(a) all rights, title and interest of the Trustee in, to and under the Site Lease and the Lease relating to the Leased Property, subject to Permitted Encumbrances (other than the Trustee's rights to payment of its fees and expenses under the Site Lease and the Lease and the rights of third parties to Additional Rentals payable to them under the Lease);

(b) all Revenues and any other receipts receivable by or on behalf of the Trustee pursuant to the Lease, including without limitation, all Base Rentals, prepayments under the Lease, the Purchase Option Price and Net Proceeds; and

(c) all money and securities from time to time held by the Trustee under this Indenture in the Base Rentals Fund, and the Costs of Execution and Delivery Fund (but not the Rebate Fund), any and all other property, revenues or funds from time to time hereafter by delivery or by writing of any kind specially granted, assigned or pledged as and for additional security hereunder, by any Person in favor of the Trustee, which shall accept any and all such property and hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD IN TRUST, NEVERTHELESS, the Trust Estate for the equal and ratable benefit and security of all Owners of the Certificates, without preference, priority or distinction as to lien or otherwise of any one Certificate over any other Certificate upon the terms and subject to the conditions hereinafter set forth.

PROVIDED, HOWEVER, that if the principal of the Certificates, the premium, if any, and the interest due or to become due thereon, shall be paid at the times and in the manner mentioned in the Certificates, according to the true intent and meaning thereof, and if there are paid to the Trustee all sums of money due or to become due to the Trustee in accordance with the terms and provisions hereof, then, upon such final payments, this Indenture and the rights hereby granted shall cease, terminate and be void; otherwise this Indenture shall be and remain in full force and effect.

THIS INDENTURE FURTHER WITNESSETH and it is expressly declared, that all Certificates are to be executed and delivered and all said property, rights, interests, revenues and receipts hereby pledged are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Trustee has agreed and covenanted, and does hereby agree and covenant, for the benefit of the Owners, as follows:

## ARTICLE 1 DEFINITIONS

**Section 1.01 Certain Funds and Accounts.** All references herein to any Funds and Accounts shall mean the Funds and Accounts so designated which are established pursuant to Article 3 hereof.

**Section 1.02 Definitions.** All capitalized terms defined in Article 1 of the Lease shall have the same meaning in this Indenture. In addition, the following capitalized terms shall have the following meanings under this Indenture; provided, however, that in the event of any inconsistency, any term defined below shall have the meaning ascribed to it in the Lease:

“Additional Certificates” means Additional Certificates which may be executed and delivered pursuant to this Indenture.

“Additional Rentals” means the payment or cost of all:

(a) (i) reasonable expenses and fees of the Trustee related to the performance or discharge of its responsibilities under the provisions of the Lease, the Site Lease or this Indenture, including the reasonable fees and expenses of any person or firm employed by the City to make rebate calculations under the provisions of Section 3.05 of this Indenture and the expenses of the Trustee in respect of any policy of insurance or surety bond obtained in respect of the Certificates executed and delivered with respect to the Lease, (ii) the cost of insurance premiums and insurance deductible amounts under any insurance policy reasonably deemed necessary to protect the Trustee from any liability under the Lease, and approved by the City Representative, which approval shall not be unreasonably withheld, (iii) reasonable legal fees and expenses incurred by the Trustee to defend the Trust Estate or the Trustee from and against any legal claims, and (iv) reasonable expenses and fees of the Trustee incurred at the request of the City Representative;

(b) taxes, assessments, insurance premiums, utility charges, maintenance, upkeep, repair and replacement with respect to the Leased Property or as otherwise required under the Lease; and

(c) all other charges and costs (together with all interest and penalties that may accrue thereon in the event that the City shall fail to pay the same, as specifically set forth in the Lease) which the City agrees to assume or pay as Additional Rentals under the Lease.

Additional Rentals shall not include Base Rentals.

“Base Rate” means the greatest of (i) the Wells Fargo Bank, N.A. prime rate plus 1.00%, (ii) the Federal Funds Rate as determined by the Federal Reserve plus 2.00%, or (iii) 7.00%.

“Base Rentals” means the rental payments payable by the City during the Lease Term, which constitute payments payable by the City for and in consideration of the right to possess and use the Leased Property as set forth in Exhibit C (Base Rentals Schedule) of the Lease. Base Rentals does not include Additional Rentals.

“Base Rentals Fund” means the fund created under Section 3.03 hereof.

“Business Day” means any day, other than a Saturday, Sunday or legal holiday or a day (a) on which banks located in Denver, Colorado, or where the Trustee’s corporate trust offices is located, are required or authorized by law or executive order to close or (b) on which the Federal Reserve System is closed.

“Certificate” or “Certificates” means the Certificate of Participation, Series 2017B, Evidencing Proportionate Interests in the Base Rentals and other Revenues under an annually renewable Lease Purchase Agreement dated as of [\_\_\_\_\_], 2017, between [\_\_\_\_\_], solely in its capacity as trustee under the Indenture, as lessor, and the City, as lessee, which Certificates shall be dated as of their date of delivery.

“Charter” means the home rule charter of the City, and any amendments or supplements thereto.

“City” means the City of Commerce City, Colorado.

“City Manager” means the City Manager of the City or his or her successor in functions, if any.

“City Representative” means the Mayor, the City Manager, the Director of Finance or such other person at the time designated to act on behalf of the City for the purpose of performing any act under the Lease, the Site Lease or this Indenture by a written certificate furnished to the Trustee containing the specimen signature of such person or persons and signed on behalf of the City by the Mayor or Mayor Pro Tem.

“Closing” means the date of execution and delivery of the Certificates.

“Costs of Execution and Delivery” means all items of expense directly or indirectly payable by the Trustee related to the authorization, execution and delivery of the Site Lease and the Lease and related to the authorization, sale, execution and delivery of the Certificates and to be paid from the Costs of Execution and Delivery Fund, including but not limited to, survey costs, title insurance premiums, closing costs and other costs relating to the leasing of the Leased Property under the Site Lease and the Lease, costs of preparation and reproduction of documents, costs of printing the Certificates, initial fees and charges of the Trustee and Paying Agent, legal fees and charges, including fees and expenses of Bond Counsel, and Counsel to the Trustee, fees and disbursements of professionals, fees and charges for preparation, execution and safekeeping of the Certificates, and any other cost, charge or fee in connection with the original sale and the execution and delivery of the Certificates; provided, however, that Additional Rentals shall not be Costs of Execution and Delivery of the Certificates and are to be paid by the City as provided in the Lease.

“Costs of Execution and Delivery Fund” means the fund created under Section 3.06 hereof.

“Council” means the City Council of the City or any successor to its functions.

“CRS” means Colorado Revised Statutes.



“Default Rate” means the Base Rate plus 3.00% per annum. In no event shall the Default Rate exceed the Maximum Rate.

“Director of Finance” means the Director of Finance of the City or his or her successor in functions, if any.

“Event(s) of Indenture Default” means those defaults specified in Section 7.01 of this Indenture.

“Event of Taxability” means the occurrence of an event which causes the interest payable on the Certificates to become includable in gross income for federal income tax purposes. Such a determination shall be based on 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 payable on the Certificates is includable in the gross income for federal income tax purposes of the Owners of the Certificates pursuant to Section 103(b) of the Internal Revenue Code and the rules and regulations promulgated thereunder. 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.

“Extraordinary Mandatory Redemption” means any redemption made pursuant to Section 4.03 hereof.

“Federal Securities” means non-callable bills, certificates of indebtedness, notes or bonds which are direct obligations of, or the principal of and interest on which are unconditionally guaranteed by, the United States of America.

“Fiscal Year” means the City’s fiscal year, which begins on January 1 of each calendar year and ends on December 31 of the same calendar year, or any other twelve month period which the City or other appropriate authority hereafter may establish as the City’s fiscal year.

“Fixed Rate” means the initial fixed rate borne by the Certificates from the date of delivery through and including December 31, 2022, such rate being [\_\_\_\_] %.

“Indenture” means this Indenture of Trust dated as of [\_\_\_\_], 2017, entered into by the Trustee as the same may be hereafter amended or supplemented.

“Initial Purchaser” means Wells Fargo Municipal Capital Strategies, LLC, a wholly owned subsidiary of Wells Fargo Bank, N.A., Wells Fargo Bank, N.A., or any other wholly owned subsidiary of Wells Fargo Bank, N.A., and its successors and assigns, as the initial purchaser and Owner of the Certificates.

“Interest Payment Date” means, in respect of the Certificates, the first day of each calendar month, commencing October 1, 2017, whether or not a Business Day.

“Interest Portion 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 Portion Rate shall be fixed at [\_\_\_\_] % through December 31, 2022 (the “Fixed

Rate”), and from January 1, 2023 and thereafter, the rate determined by the City and the Initial Purchaser not later than 120 days prior to December 31, 2022, provided, however, that the Interest Portion Rate, as adjusted, shall not exceed the Maximum Rate.

“Lease” means the Lease Purchase Agreement dated as of [\_\_\_\_\_], 2017, between the Trustee, as lessor, and the City, as lessee, as the same may be amended.

“Leased Property” means the Site and the premises, buildings and improvements situated thereon, including all fixtures attached thereto, as more particularly described in **Exhibit A** to the Lease, together with any and all additions and modifications thereto and replacements thereof.

“Maturity Date” means [\_\_\_\_\_], 2037.

“Margin Rate Factor” means the greater of (i) 1.0, and (ii) the product of 1.0 minus the Maximum Federal Corporate Tax Rate multiplied by 1.53846; but in no event shall the Margin Rate Factor be less than 1.0.

“Mayor” means the Mayor of the City, or in his or her absence, the Mayor Pro Tem.

“Maximum Interest Rate” means the per annum interest rate of 18.00%.

“New Facility” means any real property, buildings or equipment leased by the City to the Trustee pursuant to a future amendment to the Site Lease and leased back by the City from the Trustee pursuant to a future amendment to the Lease in connection with the execution and delivery of Additional Certificates.

“Optional Redemption” means any redemption made pursuant to Section 4.01 hereof.

“Optional Redemption Date” means the date of redemption of Certificates upon the prepayment of Base Rentals or the payment of the Purchase Option Price under the Lease.

“Outstanding” means, with respect to the Certificates, all Certificates executed and delivered pursuant to this Indenture as of the time in question, except:

(a) All Certificates theretofore canceled or required to be canceled under Section 2.07 of this Indenture;

(b) Certificates in substitution for which other Certificates have been executed and delivered under Section 2.05 or 2.06 of this Indenture;

(c) Certificates which have been redeemed as provided in Article 4 of this Indenture;

(d) Certificates for the payment or redemption of which provision has been made in accordance with Article 6 of this Indenture; provided that, if such Certificates are being redeemed, the required notice of redemption has been given or provision satisfactory to the Trustee has been made therefor; and

(e) Certificates deemed to have been paid pursuant to Section 6.01 of this Indenture.

“Owners” means the registered owners of any Certificates.

“Paying Agent” means the Trustee or any successor or additional paying agent appointed pursuant to this Indenture.

“Permitted Investments” means those investments the City is authorized to enter into under the laws of the State of Colorado and any City investment policy then in effect.

“Project” means the acquisition of 4A Equivalent Residential Units from South Adams County Water and Sanitation District.

“Rebate Fund” means the fund created under Section 3.05 hereof.

“Regular Record Date” means the close of business on the fifteenth day (whether or not a Business Day) of the calendar month next preceding an interest payment date.

“Revenues” means (a) all amounts payable by or on behalf of the City or with respect to the Leased Property pursuant to the Lease including, but not limited to, all Base Rentals, prepayments under the Lease, the Purchase Option Price and Net Proceeds, but not including Additional Rentals; (b) any portion of the proceeds of the Certificates deposited into the Base Rentals Fund created under this Indenture; (c) any moneys which may be derived from any insurance in respect of the Certificates; and (d) any moneys and securities, including investment income, held by the Trustee in the Funds and Accounts established under this Indenture (except for moneys and securities held in the Rebate Fund or any defeasance escrow account).

“Site” means the real property owned by the City and leased by the City to the Trustee under the Site Lease and subleased by the Trustee to the City under the Lease, the legal descriptions of which are set forth in Exhibit A to the Lease, or an amendment or supplement thereto.

“Site Lease” means the Site Lease Agreement, dated as of [\_\_\_\_\_], 2017, between the City, as lessor, and the Trustee, as lessee, as the same may hereafter be amended.

“Special Counsel” means any counsel experienced in matters of municipal law and listed in the list of municipal bond attorneys, as published semiannually by *The Bond Buyer*, or any successor publication. So long as the Lease Term is in effect, the City shall have the right to select Special Counsel.

“Supplemental Act” means the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, C.R.S.

“Tax Certificate” means the Tax Compliance Certificate entered into by the City with respect to the Lease.

“Tax Code” means the Internal Revenue Code of 1986, as amended, and all regulations and rulings promulgated thereunder.

“Taxable Rate” means a per-annum interest rate equal to the then-current Interest Portion Rate multiplied by [1.55]. In no event shall the Taxable Rate exceed the Maximum Rate.

“Trust Estate” means all of the property placed in trust by the Trustee pursuant to the Granting Clauses hereof.

“Trustee” means [\_\_\_\_\_], solely in its capacity as Trustee under this Indenture for the benefit of the Owners of the Certificates and any Additional Certificates, and its successors and assigns.

“Yield Maintenance Premium” means

## ARTICLE 2 THE CERTIFICATES

**Section 2.01 Amount of the Certificates; Nature of the Certificates.** Except as provided in Section 2.08 hereof, the aggregate original principal amount of Certificates that may be executed and delivered pursuant to this Indenture shall be \$[7,200,000]. The Certificates shall constitute proportionate interests in the Trustee's right to receive the Base Rentals under the Lease and other Revenues. The Certificates shall constitute a contract between the Trustee and the Owners. In no event shall any decision by the Council not to appropriate any amounts payable under the Lease be construed to constitute an action impairing such contract.

The Certificates shall not constitute a mandatory charge or requirement of the City in any ensuing Fiscal Year beyond the current Fiscal Year, and shall not constitute or give rise to a general obligation or other indebtedness of the City or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City, within the meaning of any constitutional, Charter or statutory debt provision or limitation. No provision of the Certificates shall be construed or interpreted as creating a delegation of governmental powers nor as a donation by or a lending of the credit of the City within the meaning of Sections 1 or 2 of Article XI of the Colorado Constitution. The execution and delivery of the Certificates shall not directly or indirectly obligate the City to renew the Lease from Fiscal Year to Fiscal Year or to make any payments beyond those appropriated for the City's then current Fiscal Year.

**Section 2.02 Forms, Denominations, Maturities and Other Terms of Certificates.** The Certificates shall be in substantially the form attached hereto as Exhibit A and all provisions and terms of the Certificates set forth therein are incorporated in this Indenture.

The Certificates shall be executed and delivered in fully registered form not exceeding the aggregate principal amount stated to mature on any given date. The Certificates shall be numbered consecutively in such manner as the Trustee shall determine; provided that while the Certificates are held by the Initial Purchaser, there shall be one certificate registered in the name of the Initial Purchaser or a designee.

The Certificates are executed and delivered under the authority of the Supplemental Act and shall so recite. Pursuant to Section 11-57-210 of the Supplemental Act, such recital shall be conclusive evidence of the validity and the regularity of the execution and delivery of the Certificates after their delivery for value.

The Certificates shall be dated [\_\_\_\_\_], 2017, shall mature on the Maturity Date, and shall bear interest at the Fixed Rate until December 31, 2022.

The Certificates shall be subject to mandatory tender on December 31, 2022. Not later than 120 days prior to December 31, 2022, the City and the Initial Purchaser shall determine the interest rate to be borne by the Certificates from January 1, 2023 through the Maturity Date. In the event that the City and the Initial Purchaser cannot reach an agreement as to the interest rate, the City shall use its best efforts to exercise its option to purchase the Certificates under the Lease. If the Certificates are not redeemed in full or defeased on or prior to December 31, 2022,

the Certificates shall bear interest at the Default Rate until such time and the Certificates are redeemed in full or defeased.

In the event that the portion of the Base Rental which is designated in the Lease as interest and paid as interest on the Certificates should become subject to taxation upon the occurrence of an Event of Taxability as provided in Section 10.5 of the Lease, the Certificates shall bear interest at the Taxable Rate until such time, if at all, as the interest on the Certificates is again excludable from federal income taxation, as evidenced by an opinion of Special Counsel to such effect.

The Certificates shall bear interest from their dated date to maturity or prior redemption at the rate set forth above, payable on each Interest Payment Date and calculated on the basis of a 360-day year of twelve 30-day months.

The Owner of the Certificate is entitled to receive, subject to the terms of the Lease, the principal amount of such Certificate, in the principal installments in the amounts and on the dates specified below, and is entitled to receive interest on the principal amount at the interest rate specified above.

<u>Date</u>	<u>Principal Installment</u> \$
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\*Maturity.

*Notwithstanding any provisions to the contrary contained herein, the Owner of the shall not be required to surrender such Certificate to the Trustee to receive payment in connection with principal installments, but shall be required to surrender the Certificate only on the final Maturity Date to receive payment of the final principal payment hereof.*

The payment of principal, premium, if any, and interest represented by the Certificates shall be made in lawful money of the United States of America.

The Certificates shall be subject to redemption prior to maturity, all as provided in Article 4 hereof.

The principal of, premium, if any, and interest on all Certificates shall be payable to the Owner thereof at its address last appearing on the registration books maintained by the Trustee. Notwithstanding the foregoing, the installments of principal of, premium, if any, and interest on such Certificates shall be payable, without presentment, by wire transfer of funds to a bank account designated by the Certificate Owner in written instructions to the Trustee.

Interest shall be paid to the Owner of each Certificate, as shown on the registration books kept by the Trustee, as of the close of business on the Regular Record Date, irrespective of any transfer of ownership of Certificates subsequent to the Regular Record Date and prior to such Interest Payment Date, or on a special record date, which shall be fixed by the Trustee for such purpose, irrespective of any transfer of ownership of Certificates subsequent to such special record date and prior to the date fixed by the Trustee for the payment of such interest. Notice of the special record date and of the date fixed for the payment of such interest shall be given by providing a copy thereof by electronic means or by first class mail postage prepaid at least ten (10) days prior to the special record date, to the Owner of each Certificate upon which interest will be paid, determined as of the close of business on the day preceding the giving of such notice.

**Section 2.03 Execution.** Each Certificate shall be executed with the manual signature of a duly authorized representative of the Trustee. It shall not be necessary that the same authorized representative of the Trustee sign all of the Certificates executed and delivered hereunder. In case any authorized representative of the Trustee whose signature appears on the Certificates ceases to be such representative before delivery of the Certificates, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such authorized representative had remained as such authorized representative until delivery.

No Certificate shall be valid or obligatory for any purpose or entitled to any security or benefit hereunder unless and until executed in the manner prescribed by this Section, and such execution of any Certificate shall be conclusive evidence that such Certificate has been properly executed and delivered hereunder.

**Section 2.04 Delivery of Certificates.** The Certificate shall initially be registered in the name of Wells Fargo Bank, N.A. Upon the execution and delivery of this Indenture, the Trustee is authorized to execute and deliver the Certificates to the Initial Purchaser thereof in the aggregate principal amount set forth in Section 2.01 hereof, as provided in this Section:

(a) Before or upon the delivery by the Trustee of any of the Certificates, there shall be filed with the Trustee an originally executed counterpart of this Indenture, the Lease, the Site Lease, and a title insurance commitment or commitments (with a title insurance policy to be delivered in a timely fashion after the delivery of the Certificates) under which the Trustee's leasehold interests in the Leased Property are insured; and

(b) Thereupon, the Trustee shall execute and deliver the Certificates to the Initial Purchaser, upon payment to the Trustee of the purchase price set forth in any commitment for purchase or term sheet. Portions of such amounts so received shall be deposited in the Accounts in the Base Rentals Fund, and the Cost of Execution and Delivery Fund, all as provided in Article 3 hereof and in the Lease. Notwithstanding anything herein to the contrary, the Trustee is authorized to execute and transfer or cause to be transferred to the Initial Purchaser in advance of the date of execution and delivery of the Certificates, Certificates to effect the registration and delivery thereof to the Owners pending and subject to the delivery of the opinion of Special Counsel necessary to effect the delivery of the Certificates.

**Section 2.05 Mutilated, Lost, Stolen or Destroyed Certificates.** In the event the Certificates are in the hands of the Owners and one or more of the Certificates is mutilated, lost, stolen or destroyed, a new Certificate shall be executed by the Trustee, of like date, maturity and denomination as that mutilated, lost, stolen or destroyed; provided that the Trustee shall have received indemnity from the Owner of the Certificate, as the case may be, satisfactory to it and provided further, in case of any mutilated Certificate, that such mutilated Certificate shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Certificate, that there shall be first furnished to the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee. The Trustee may charge the Owner of the Certificate with its reasonable fees and expenses in connection herewith.

**Section 2.06 Registration of Certificates; Persons Treated as Owners; Transfer and Exchange of Certificates.** Books for the registration and for the transfer of Certificates shall be kept by the Trustee which is hereby appointed the registrar. Upon surrender for transfer of any Certificate at the principal corporate trust office of the Trustee or at such other location as it shall designate, the Trustee shall execute and deliver in the name of the transferee or transferees a new Certificate of a like aggregate principal amount and interest rate and of the same maturity.

Certificates may be exchanged at the principal corporate trust office of the Trustee or at such other location as it shall designate for an equal aggregate principal amount of Certificates. The Trustee shall execute and deliver Certificates which the Owner making the exchange is entitled to receive, bearing numbers not contemporaneously outstanding.

All Certificates presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to the Trustee, duly executed by the Owner or by his or her attorney duly authorized in writing.

The Trustee shall not be required to transfer or exchange any Certificate during the period of fifteen (15) days next preceding any Interest Payment Date nor to transfer or exchange any Certificate after the mailing of notice calling such Certificate for redemption has been made as herein provided, nor during the period of fifteen (15) days next preceding the mailing of such notice of redemption.

New Certificates delivered upon any transfer or exchange shall evidence the same obligations as the Certificates surrendered, shall be secured by this Indenture and entitled to all



of the security and benefits hereof to the same extent as the Certificates surrendered. The person in whose name any Certificate shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of either principal or interest on any Certificate shall be made only to or upon the written order of the Owner thereof or his, her or its legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge such Certificate to the extent of the sum or sums paid.

The Trustee shall require the payment, by any Owner requesting exchange or transfer of Certificates, of any reasonable transfer fees, tax, fee or other governmental charge required to be paid with respect to such exchange or transfer.

**Section 2.07 Cancellation of Certificates.** Whenever any outstanding Certificates shall be delivered to the Trustee for cancellation pursuant to this Indenture, upon payment thereof or for or after replacement pursuant to Sections 2.05 or 2.06 hereof, such Certificates shall be promptly canceled and destroyed by the Trustee in accordance with customary practices of the Trustee and applicable record retention requirements.

**Section 2.08 Additional Certificates.** So long as no Event of Indenture Default, Event of Nonappropriation or Event of Lease Default has occurred and is continuing and the Lease Term is in effect, one or more series of Additional Certificates may be executed and delivered upon the terms and conditions set forth herein. The principal of any Additional Certificates shall mature on December 1 and interest payment dates therefore shall be the same as the interest payment dates for the Certificates; otherwise the times and amounts of payment of Additional Certificates shall be as provided in the supplemental resolution or indenture and amendment to the Lease entered into in connection therewith.

Additional Certificates may be executed and delivered only upon the prior written consent of the Initial Purchaser if at such time it is Owner of 100% of the Certificates then Outstanding, and if it is not such Owner, then Additional Certificates may be executed and delivered without the consent of or notice to the Owners of Outstanding Certificates, to provide moneys to pay any one or more of the following:

- (a) the costs of acquiring, constructing, improving and installing any New Facility, or of acquiring a Site for any New Facility (and costs reasonably related thereto);
- (b) the costs of completing the Improvement Project or for making, at any time or from time to time, such substitutions, additions, modifications and improvements for or to the Leased Property as the City may deem necessary or desirable, and as in accordance with the provisions of the Lease; or
- (c) for the purpose of refunding or refinancing all or any portion of Outstanding Certificates.

Additional Certificates may be executed and delivered only upon there being furnished to the Trustee:

(a) Originally executed counterparts of a supplemental Indenture and related and necessary amendments to the Site Lease and the Lease (including any necessary amendment to the Base Rentals Schedule); and

(b) A commitment or other evidence that the amount of the title insurance policy delivered in respect of the Certificates will be increased, if necessary, to reflect the amount of the Additional Certificates and all other Outstanding Certificates (or such lesser amount) as shall be the maximum insurable value of the real property included in the Leased Property); and

(c) A written opinion of Special Counsel to the effect that:

(i) the execution and delivery of Additional Certificates have been duly authorized and that all conditions precedent to the delivery thereof have been fulfilled;

(ii) the excludability of interest from gross income for federal income tax purposes on the Certificates will not be adversely affected by the execution and delivery of the Additional Certificates being executed and delivered; and

(iii) the sale, execution and delivery of the Additional Certificates, in and of themselves, will not constitute an Event of Indenture Default or an Event of Lease Default nor cause any violation of the covenants or representations herein or in the Lease; and

(d) Written directions from the underwriter, placement agent or purchaser with respect of the Additional Certificates, together with written acknowledgment of the City, to the Trustee to deliver the Additional Certificates to the purchaser or purchasers therein identified upon payment to the Trustee of a specified purchase price.

Each Additional Certificate executed and delivered pursuant to this Section shall evidence a proportionate interest in the rights to receive the Revenues under this Indenture and shall be ratably secured with all Outstanding Certificates and in respect of all Revenues, and shall be ranked *pari passu* with such Outstanding Certificates and with Additional Certificates that may be executed and delivered in the future, if any.

Notwithstanding any provision in this Section to the contrary, so long as the Initial Purchaser is the Owner of all Outstanding Certificates, no Additional Certificates shall be issued without the prior written consent of the Initial Purchaser in its sole and absolute discretion.

**Section 2.09 Uniform Commercial Code.** Subject to the registration provisions hereof, the Certificates shall be fully negotiable and shall have all the qualities of negotiable paper, and the owner or owners thereof shall possess all rights enjoyed by the holders or owners of investment securities under the provisions of the Uniform Commercial Code-Investment Securities. The principal of and interest on the Certificates shall be paid, and the Certificates shall be transferable, free from and without regard to any equities, set-offs or cross-claims between or among the City, the Trustee and the original or any intermediate owner of any Certificates.

### ARTICLE 3 REVENUES AND FUNDS

**Section 3.01 Segregation and Disposition of Proceeds of Certificates.** The proceeds of the Certificates shall be accounted for as follows:

(a) \$[ ] of the proceeds of the Certificates to the City to pay for the costs of the Project; and

(b) \$[ ] from the proceeds of the Certificates to the Costs of Execution and Delivery Fund to pay the Costs of Execution and Delivery of the Certificates.

**Section 3.02 Application of Revenues and Other Moneys.**

(a) All Base Rentals payable under the Lease and other Revenues shall be paid directly to the Trustee. If the Trustee receives any other payments on account of the Lease, the Trustee shall immediately deposit the same as provided below.

(b) Except as otherwise required by the provisions of the Lease, the Trustee shall deposit all Revenues and any other payments received in respect of the Lease, immediately upon receipt thereof, to the Base Rentals Fund in an amount required to cause the aggregate amount on deposit therein to equal the amount then required to make the principal and interest payments due on the Certificates on the next Interest Payment Date. In the event that the Trustee receives prepayments under the Lease, the Trustee shall apply such prepayments to the Optional Redemption of the Certificates or portions thereof in accordance with Section 4.01 hereof.

**Section 3.03 Base Rentals Fund.** A special fund is hereby created and established with the Trustee denominated the “Base Rentals Fund” which shall be used for the deposit of all Revenues, upon receipt thereof by the Trustee, except as otherwise required by the Lease. Moneys in the Base Rentals Fund shall be used solely for the payment of the principal of and interest on the Certificates whether on an Interest Payment Date, at maturity or upon prior redemption, except as provided in Section 3.05 hereof.

The Base Rentals Fund shall be in the custody of the Trustee. Base Rental payments are due and payable to the Trustee on or before the 15<sup>th</sup> day of each month. The Trustee shall withdraw sufficient funds from the Base Rentals Fund to pay the principal of and interest on the Certificates as the same become due and payable whether on an Interest Payment Date, at maturity or upon prior redemption, which responsibility, to the extent of the moneys therein, the Trustee hereby accepts.

Any moneys held in the Base Rentals Fund shall be invested by the Trustee in accordance with Article 5 hereof.

**Section 3.04 Reserved.**

**Section 3.05 Rebate Fund.** A special fund is hereby created and established to be held by the Trustee, and to be designated the “City of Commerce City, Colorado, 2017B Refunding and Improvement Certificates of Participation, Rebate Fund” (the “Rebate Fund”). To the extent

necessary to comply with the provisions of the Tax Certificate, the City shall transfer funds to the Trustee to be deposited in the Rebate Fund investment income on moneys in any fund created hereunder (except any defeasance escrow). In addition to the deposit of investment income as provided herein, there shall be deposited into the Rebate Fund moneys received from the City as Additional Rentals for rebate payments pursuant to the Lease; moneys transferred to the Rebate Fund from any other fund created hereunder pursuant to the provisions of this Section 3.05; and all other moneys received by the Trustee when accompanied by directions not inconsistent with the Lease or this Indenture that such moneys are to be paid into an account of the Rebate Fund. The City will cause (or direct the Trustee to cause) amounts on deposit in the Rebate Fund to be forwarded to the United States Treasury at the address and times provided in the Tax Certificate, and in the amounts calculated to ensure that the City's rebate obligations are met, in accordance with the City's tax covenants in Section 10.5 of the Lease. Amounts on deposit in the Rebate Fund shall not be subject to the lien of this Indenture to the extent that such amounts are required to be paid to the United States Treasury.

If, at any time after the Trustee receives instructions by the City to make any payments from the Rebate Fund, the Trustee determines that the moneys on deposit in an account of the Rebate Fund are insufficient for the purposes thereof, and if the Trustee does not receive Additional Rentals or cannot transfer investment income so as to make the amount on deposit in the appropriate account in the Rebate Fund sufficient for its purpose, the Trustee may transfer moneys to an account in the Rebate Fund from the Base Rentals Fund. Any moneys so advanced from the Base Rentals Fund shall be included as an Additional Rental for the current Fiscal Year pursuant to the Lease, and shall be repaid to the fund from which advanced upon payment to the Trustee of such Additional Rentals. Upon receipt by the Trustee of an opinion of nationally recognized bond counsel to the effect that the amount in an account of the Rebate Fund is in excess of the amount required to be therein pursuant to the provisions of the Tax Certificate, such excess shall be transferred to the Base Rentals Fund.

The Trustee shall not be responsible for calculating rebate amounts or for the adequacy or correctness of any rebate report. The City may, at its own expense, retain an independent firm of professionals in such area to calculate such rebate amounts.

Notwithstanding the foregoing, in the event that the Lease has been terminated or the City has failed to comply with Section 10.5 thereof so as to make the amount on deposit in the appropriate account in Rebate Fund sufficient for its purpose, the Trustee shall make transfers of investment income or of moneys from the above-described funds in such combination as the Trustee shall determine to be in the best interests of the Certificate Owners.

**Section 3.06 Costs of Execution and Delivery Fund.** Special funds are hereby created and established with the Trustee and denominated the "City of Commerce City, Colorado, 2017B Certificates of Participation Costs of Execution and Delivery Fund" (the "Costs of Execution and Delivery Fund"). Upon the delivery of the Certificates there shall be deposited into the Costs of Execution and Delivery Fund from the proceeds of the Certificates the amounts directed by Section 3.01 hereof and the [City Representative? Financial Advisor? Initial Purchaser?] shall deliver to the Trustee a closing memorandum detailing the anticipated amounts of Costs of Execution and Delivery. Payments from the Costs of Execution and Delivery Fund shall be made by the Trustee upon receipt of a statement or a bill for the provision of Costs of Execution

and Delivery of the Certificates in the form approved by the City Representative, and (a) stating the payee, the amount to be paid and the purpose of the payment and (b) certifying that the amount to be paid is due and payable, has not been the subject of any previous requisition and is a proper charge against the Costs of Execution and Delivery Fund. The Trustee may rely conclusively upon any such requisition received and shall have no obligation to make an independent investigation in connection therewith.

Any moneys held in the Costs of Execution and Delivery Fund shall be invested in accordance with this Indenture.

The Trustee shall transfer all moneys remaining in the Costs of Execution and Delivery Fund to the credit of the City upon the final payment of all Costs of Execution and Delivery, as certified in writing by the City Representative. Any amounts remaining in the Costs of Execution and Delivery Fund 90 days after the execution and delivery of the Certificates, shall be remitted to the City.

**Section 3.07 Reserved.**

**Section 3.08 Reserved.**

**Section 3.09 Moneys to be Held in Trust.** The ownership of the Base Rentals Fund, the Costs of Execution and Delivery Fund and all accounts within such Funds and any other fund or account created hereunder shall be held in trust by the Trustee for the benefit of the Owners of the Certificates; provided that moneys in the Rebate Fund shall be used only for the specific purpose provided in Section 3.05 hereof.

**Section 3.10 Nonpresentment of Certificates.** Any moneys deposited with the Trustee pursuant to the terms of this Indenture to be used for the payment of principal of, premium, if any, or interest on any of the Certificates and remaining unclaimed by the Owners of such Certificates for a period of three (3) years after the final due date of any Certificate (during which three year period such moneys shall not be required to be invested by the Trustee), whether the final date of maturity or the final redemption date, shall, upon the written request of the City, be paid to the City and such Owners shall thereafter look only to the City for payment and then only (a) to the extent of the amounts so received by the City from the Trustee without interest thereon, (b) subject to the defense of any applicable statute of limitations and (c) subject to the City's Appropriation of such payment. After payment by the Trustee of all of the foregoing, if any moneys are then remaining under this Indenture, the Trustee shall pay such moneys to the City as an overpayment of Base Rentals.

**Section 3.11 Repayment to the City from the Trustee.** After payment in full of the Certificates, the interest thereon, any premium thereon, the fees, charges and expenses of the Trustee, any amounts required to be deposited to the Rebate Fund, and all other amounts required to be paid hereunder, any amounts remaining in the Base Rentals Fund, the Costs of Execution and Delivery Fund, or otherwise held by the Trustee pursuant hereto (but excluding the Rebate Fund and any defeasance escrow account) shall be paid to the City upon the expiration or sooner termination of the Lease Term as a return of an overpayment of Base

Rentals. After payment of all amounts due and owing the federal government held in the Rebate Fund, if any, any excess amounts in the Rebate Fund shall be paid to the City.

## ARTICLE 4 REDEMPTION OF CERTIFICATES

**Section 4.01 Optional Redemption.** The Certificates shall be subject to redemption at any time prior to the Maturity Date at the option of the City, in whole, or in part, and if in part, no more than one partial prepayment annually, and in such order of redemption as the City shall determine and by lot on a pro rata basis within each installment, at a redemption price equal to the principal amount of the Certificates so redeemed plus accrued interest to the redemption date; provided, however, if the Certificates are redeemed in part and such prepayment amount exceeds 20% of the then-Outstanding aggregate principal amount of the Certificates, the redemption price shall equal the principal amount of the Certificates so redeemed plus accrued interest to the redemption date together with any applicable Yield Maintenance Premium that shall be due on that portion of the prepayment amount that exceeds said 20%.

In the case of a prepayment in part of Base Rentals under the Lease, the Trustee shall confirm that the revised Base Rentals Schedule to be provided by the City Representative pursuant to Section 6.2(b) of the Lease sets forth Principal Portions and Interest Portions of Base Rentals that are equal to the principal and interest due on the Certificates that remain Outstanding after such Optional Redemption. For such confirmation, the Trustee may conclusively rely on a certification of the City Representative or other person as provided in Section 8.07.

**Section 4.02 Reserved.**

**Section 4.03 Extraordinary Mandatory Redemption.** If the Lease is terminated by reason of the occurrence of:

- (a) an Event of Nonappropriation, or
- (b) an Event of Lease Default, or
- (c) in the event that (1) the Leased Property is damaged or destroyed in whole or in part by fire or other casualty, or (2) title to, or the temporary or permanent use of, the Leased Property has been taken by eminent domain by any governmental body or (3) breach of warranty or any material defect with respect to the Leased Property becomes apparent or (4) title to or the use of the Leased Property is lost by reason of a defect in title thereto, and the Net Proceeds of any insurance, performance bond or condemnation award, or Net Proceeds received as a consequence of defaults under contracts relating to the Leased Property, made available by reason of such occurrences, shall be insufficient to pay in full, the cost of repairing or replacing such Leased Property, and the City does not appropriate sufficient funds for such purpose or cause the Lease to be amended in order that Additional Certificates may be executed and delivered pursuant to this Indenture for such purpose, then the Certificates are required to be called for redemption. If called for redemption, as described herein, the Certificates are to be redeemed in whole on such date or dates as the Trustee may determine, for a redemption price equal to the principal amount thereof, plus accrued interest to the redemption date (subject to the availability of funds as described below).



If the Net Proceeds, including the Net Proceeds from the exercise of any Lease Remedy under the Lease, otherwise received and other moneys then available under this Indenture are insufficient to pay in full the principal of and accrued interest on all Outstanding Certificates, the Trustee may, with the consent of the Initial Purchaser, or at the request of the Owners of a majority in aggregate principal amount of the Certificates Outstanding, and upon indemnification as provided in Section 8.01(d) of this Indenture, without any further demand or notice, shall, exercise all or any combination of Lease Remedies as provided in the Lease and the Certificates shall be redeemed by the Trustee from the Net Proceeds resulting from the exercise of such Lease Remedies and all other moneys, if any, then on hand and being held by the Trustee for the Owners of the Certificates.

If the Net Proceeds resulting from the exercise of such Lease Remedies and other moneys are insufficient to redeem the Certificates at 100% of the principal amount thereof plus interest accrued to the redemption date, then such Net Proceeds resulting from the exercise of such Lease Remedies and other moneys shall be allocated proportionately among the Certificates, according to the principal amount thereof Outstanding. In the event that such Net Proceeds resulting from the exercise of such Lease Remedies and other moneys are in excess of the amount required to redeem the Certificates at 100% of the principal amount thereof plus interest accrued to the redemption date, then such excess moneys shall be paid to the City as an overpayment of the Purchase Option Price. Prior to any distribution of the Net Proceeds resulting from the exercise of any of such remedies, the Trustee shall be entitled to payment of its reasonable and customary fees for all services rendered in connection with such disposition, as well as reimbursement for all reasonable costs and expenses, including attorneys' fees, incurred thereby, from proceeds resulting from the exercise of such Lease Remedies and other moneys.

IF THE CERTIFICATES ARE REDEEMED PURSUANT TO THIS SECTION 4.03 FOR AN AMOUNT LESS THAN THE AGGREGATE PRINCIPAL AMOUNT THEREOF PLUS INTEREST ACCRUED TO THE REDEMPTION DATE, SUCH PARTIAL PAYMENT SHALL BE DEEMED TO CONSTITUTE A REDEMPTION IN FULL OF THE RELATED CERTIFICATES, AND UPON SUCH A PARTIAL PAYMENT NO OWNER OF SUCH CERTIFICATES SHALL HAVE ANY FURTHER CLAIM FOR PAYMENT AGAINST THE TRUSTEE OR THE CITY.

Notwithstanding the foregoing or any other provisions to the contrary in the Lease or this Indenture, so long as the Initial Purchaser is the sole Owner of the Certificates, the Certificates shall not be subject to extraordinary mandatory redemption under this Section 4.03 and the Trustee may not apply any Net Proceeds or other available moneys to the redemption of the Certificates prior to their maturity date or mandatory sinking fund redemption dates without the prior written consent of the Initial Purchaser. In the absence of such consent, the Trustee shall apply the Net Proceeds to the payment of the principal of and interest on the Certificates on the regularly scheduled maturity date thereof, mandatory sinking fund redemption dates thereof, and interest payment dates of the Certificates.

**Section 4.04 Partial Redemption.** The Certificates shall be redeemed only in integral multiples of \$5,000. The Trustee shall treat any Certificate of denomination greater than \$5,000 as representing that number of separate Certificates each of the denomination of \$5,000 as can be obtained by dividing the actual principal amount of such Certificate by \$5,000.

Upon surrender of any Certificate for redemption in part, the Trustee shall execute and deliver to the Owner thereof, at no expense of the Owner, a new Certificate or Certificates in an aggregate principal amount equal to the unredeemed portion of the Certificates so surrendered.

**Section 4.05 Notice of Redemption.** Whenever Certificates are to be redeemed under any provision of this Indenture, the Trustee shall, not less than thirty (30) and not more than sixty (60) days prior to the redemption date (except for Extraordinary Mandatory Redemption under Section 4.03, which notice shall be immediate), mail notice of redemption to the Owner of the Certificate to be redeemed at its registered address, by first class mail, postage prepaid or by electronic means. In addition, the Trustee shall at all reasonable times make available to the City and any Certificate Owner, including the Initial Purchaser, if applicable, information as to Certificates which have been redeemed or called for redemption. Any notice of redemption shall:

- (a) identify the Certificates to be redeemed;
- (b) specify the redemption date and the redemption price;
- (c) (in the event the redemption is occurring under Section 4.01 hereof) state that the City has given notice of its intent to exercise its option to purchase or prepay Base Rentals under the Lease;
- (d) state that such redemption is subject to the deposit of the funds related to such option by the City on or before the stated redemption date; and
- (e) state that on the redemption date the Certificates called for redemption will be payable at the principal corporate trust office of the Trustee and that from that date interest will cease to accrue.

Any notice of redemption may contain a statement that the redemption is conditioned upon the receipt by the Trustee of funds on or before the date fixed for redemption sufficient to pay the redemption price of the Certificates so called for redemption, and that if such funds are not available, such redemption shall be canceled by written notice to the owners of the Certificates called for redemption in the same manner as the original redemption notice was given.

**Section 4.06 Redemption Payments.** On or prior to the date fixed for redemption, funds shall be deposited with the Trustee to pay the Certificates called for redemption, together with accrued interest thereon to the redemption date, and any required premium. Upon the giving of notice and the deposit of such funds as may be available for redemption pursuant to this Indenture (which, in certain cases as set forth above may be less than the full principal amount of the Outstanding Certificates and accrued interest thereon to the redemption date), interest on the Certificates or portions thereof thus called shall no longer accrue after the date fixed for redemption. Payments in full redemption shall be accompanied by a written designation prepared by the Trustee stating the portions of the payment representing principal, interest, and premium, if any.

## **ARTICLE 5 INVESTMENTS**

**Section 5.01 Investment of Moneys.** The Trustee shall be entitled to assume that any investment which is purchased pursuant to the terms of the Indenture is a Permitted Investment. All moneys held as part of the Base Rentals Fund, the Rebate Fund, or any other fund or account created hereunder (other than any defeasance escrow accounts) shall be deposited or invested and reinvested by the Trustee, at the written direction of the City, in Permitted Investments; provided, however, that the Trustee shall make no deposits or investments of any fund or account created hereunder which shall interfere with or prevent withdrawals for the purpose for which the moneys so deposited or invested were placed in trust hereunder or for payment of the Certificates at or before maturity or interest thereon as required hereunder. The Trustee may make any and all such deposits or investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades, including cash sweep account fees. Except as otherwise provided in Sections 3.04 and 3.05 hereof, deposits or investments shall at all times be a part of the fund or account from which the moneys used to acquire such deposits or investments shall have come, and all income and profits on such deposits or investments shall be credited to, and losses thereon shall be charged against, such fund or account. Any interest or other gain from any fund or account created hereunder (except defeasance escrow accounts) shall be deposited to the Rebate Fund to the extent required and permitted pursuant to Section 3.05 hereof. The Trustee shall sell and reduce to cash a sufficient amount of such deposits or investments whenever the cash balance in the Base Rentals Fund is insufficient to pay the principal of and interest on the Certificates when due, or whenever the cash balance in any fund or account created hereunder is insufficient to satisfy the purposes of such fund or account.

The Trustee hereby agrees to secure and retain the documentation with respect to investments of moneys in the funds and accounts created under this Indenture as required by and as described in the Tax Certificate.

The Trustee may rely upon the City's written direction as to both the suitability and the legality of the directed investments, and shall have no liability or responsibility for any loss or for failure to maximize earnings resulting from any investment made in accordance with the provisions of this Article V.

The Trustee may transfer investments from any Fund or Account to any other Fund or Account in lieu of cash when a transfer is required or permitted by the provisions of this Indenture.

If the Trustee is not provided written directions concerning investment of moneys held in the Funds, the Trustee shall invest in a money market fund available to the Trustee, provided such investment matures or are subject to redemption prior to the date such funds will be needed. Unless otherwise confirmed or directed in writing, an account statement delivered periodically by the Trustee to the City shall confirm that the investment transactions identified therein accurately reflect the investment directions of the City, unless the City notifies the Trustee in writing to the contrary within thirty (30) days of the date of delivery of such statement.

The Trustee may make any and all such investments through its trust department, and it is specifically provided herein that the Trustee may purchase or invest in shares of any investment company provided that such investments are Permitted Investments at the time of such investment and that such investment company: (i) is registered under the Investment Company Act of 1940, as amended (including both corporations and Massachusetts business trusts, and including companies for which the Trustee may provide advisory, administrative, custodial or other services for compensation); (ii) invests substantially all of its assets in short term high quality money market instruments, limited to obligations issued or guaranteed by the United States, or repurchase agreements backed by such obligations; and (iii) maintains a constant asset value per share.

The Trustee is specifically authorized to implement its automated cash investments system to assure that cash on hand is invested and to charge reasonable cash management fees, which may be deducted from income earned on investments.

**Section 5.02 Method of Valuation and Frequency of Valuation.** In computing the amount in any fund or account (except defeasance escrows), Permitted Investments shall be valued at the market price, exclusive of accrued interest. With respect to all funds and accounts (except defeasance escrows, and except as otherwise provided in the Tax Certificate with respect to the Rebate Fund), valuation shall occur as of December 31 of each year.

## **ARTICLE 6 DEFEASANCE AND DISCHARGE**

### **Section 6.01 Defeasance and Discharge.**

(a) When the principal or redemption price (as the case may be) of, and interest on, all the Certificates executed and delivered hereunder have been paid or provision has been made for payment of the same (or, in the case of redemption of the Certificates pursuant to Section 4.03 of this Indenture, if full or partial payment of the Certificates and interest thereon is made as provided in Section 4.03 of this Indenture), together with all other sums payable hereunder relating to the Certificates, then the right, title and interest of the Trustee in and to the Trust Estate and all covenants, agreements and other obligations of the Trustee to the Owners shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, the Trustee shall (1) release the Site Lease and transfer and convey the Trustee's leasehold interest in the Leased Property to the City as provided by Article 11 of the Lease, (2) release the Lease and this Indenture, (3) execute such documents to evidence such releases as may be reasonably required by the City, and (4) turn over to the City all balances then held by the Trustee in the Funds or Accounts hereunder except for amounts held in any defeasance escrow accounts. If payment or provision therefor is made with respect to less than all of the Certificates, the particular Certificates (or portion thereof) for which provision for payment shall have been considered made shall be selected by the City.

(b) Provision for the payment of all or a portion of the Certificates shall be deemed to have been made when the Trustee holds in the Base Rentals Fund, or there is on deposit in a separate escrow account or trust account held by a trust bank or escrow agent, either moneys in an amount which shall be sufficient, and/or Federal Securities, the principal of and the interest on which when due, and without any reinvestment thereof, will provide moneys which, together with the moneys, if any, concurrently deposited in trust, shall be sufficient to pay when due the principal of, premium, if any, and interest due and to become due on said Certificates on and prior to the redemption date or maturity date thereof, as the case may be. Prior to any discharge of this Indenture pursuant to this Section or the defeasance of any Certificates pursuant to this Section becoming effective, there shall have been delivered to the Trustee a report of an independent firm of nationally recognized certified public accountants verifying the sufficiency of the escrow established to pay the applicable Certificates in full on the maturity or redemption date thereof unless fully funded with cash.

(c) Neither the Federal Securities nor the moneys deposited in the Base Rentals Fund or separate escrow account or trust account pursuant to this Section shall be withdrawn or used for any purpose other than, and shall be segregated and held in trust for, the payment of the principal of, premium, if any, and interest on the Certificates or portions thereof; provided, however, that other Federal Securities and moneys may be substituted for the Federal Securities and moneys so deposited prior to their use for such purpose.

(d) Whenever moneys or Federal Securities shall be deposited with the Trustee or a separate escrow agent for the payment or redemption of any Certificates more than forty-five (45) days prior to the date that such Certificates are to mature or be redeemed, the Trustee shall mail a notice stating that such moneys or Federal Securities have been deposited and identifying

the Certificates for the payment of which such moneys or Federal Securities are being held, to all Owners of Certificates for the payment of which such moneys or Federal Securities are being held.

## **ARTICLE 7**

### **EVENTS OF INDENTURE DEFAULT AND REMEDIES**

**Section 7.01 Events of Indenture Default Defined.** Each of the following shall be an Event of Indenture Default:

- (a) Failure to pay the principal of or premium, if any, on any Certificate when the same shall become due and payable, whether at the stated maturity thereof or upon proceedings for redemption;
- (b) Failure to pay any installment of interest on any Certificate when the same shall become due and payable;
- (c) the occurrence of an Event of Nonappropriation; or
- (d) the occurrence of an Event of Lease Default.

Upon the occurrence of any Event of Indenture Default of which the Trustee is by Section 8.05 required to take notice, or if notice of an Event of Indenture Default is given as provided in said Section, the Trustee shall give notice thereof to the Owners of the Certificates, unless such Event of Indenture Default has been cured or waived. The Trustee shall waive any Event of Nonappropriation which is cured by the City within thirty (30) days of the receipt of notice by the Trustee as provided by Section 4.1 of the Lease, by a duly effected Appropriation to pay all Base Rentals and sufficient amounts to pay reasonably estimated Additional Rentals coming due for such Renewal Term. The Trustee may waive any Event of Nonappropriation which is cured by the City within a reasonable time with the procedure described in the preceding sentence.

**Section 7.02 Remedies.** If any Event of Indenture Default occurs and is continuing, the Trustee may, with the consent of the Initial Purchaser, or shall at the request of the Owners of a majority in aggregate principal amount of the Certificates then Outstanding and upon indemnification as provided in Section 8.01(d) hereof, without any further demand or notice, enforce for the benefit of the Owners of the Certificates each and every right of the Trustee as the lessee under the Site Lease and the lessor under the Lease. In exercising such rights of the Trustee and the rights given the Trustee under this Article 7 and Article 8, the Trustee may, with the consent of the Initial Purchaser, or shall at the request of the Owners of a majority in aggregate principal amount of the Certificates then Outstanding and upon indemnification as provided in Section 8.01(d) hereof, take such action as, in the judgment of the Trustee, would best serve the interests of the Owners of the Certificates, including calling the Certificates for redemption prior to their maturity in the manner and subject to the provisions of Article 4 hereof and exercising the Lease Remedies provided in the Lease, provided however that such action shall not include consequential or punitive damages against the City.

**Section 7.03 Legal Proceedings by Trustee.** If any Event of Indenture Default has occurred and is continuing, the Trustee in its discretion may, with the consent of the Initial Purchaser, and upon the written request of the Owners of a majority in aggregate principal amount of all Outstanding Certificates and receipt of indemnity to its satisfaction, shall, in its capacity as Trustee hereunder:

(a) By mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Owners of the Certificates, including enforcing any rights of the Trustee in respect of the Trustee's leasehold interest in the Leased Property including its rights as lessor under the Lease and as lessee under the Site Lease and its rights under this Indenture and to enforce the provisions of this Indenture and any collateral rights hereunder for the benefit of the Owners of the Certificates; or

(b) By action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Owners of Certificates; or

(c) Take any other action at law or in equity that may appear necessary or desirable to enforce the rights of the Owners of Certificates.

Notwithstanding the foregoing or any other provisions to the contrary in the Lease or this Indenture, so long as the Initial Purchaser is the sole Owner of the Certificates, the Trustee shall not take any remedial action under the Lease or this Indenture, including without limitation this Section 7.03, without the prior written consent and direction of the Initial Purchaser. Before taking any such action as directed by the Initial Purchaser, the Trustee shall be entitled to the indemnification provided in this Indenture.

**Section 7.04 Discontinuance of Proceedings by Trustee.** If any proceeding commenced by the Trustee on account of any Event of Indenture Default is discontinued or is determined adversely to the Trustee, then the Trustee and the Owners of Certificates shall be restored to their former positions and rights hereunder as though no such proceeding had been commenced.

**Section 7.05 Owners of Certificates May Direct Proceedings.** The Owners of a majority in aggregate principal amount of Outstanding Certificates shall have the right, after furnishing indemnity satisfactory to the Trustee, to direct the method and place of conducting all remedial proceedings by the Trustee hereunder, provided that such direction shall not be in conflict with any rule of law or with this Indenture or unduly prejudice the rights of minority Owners of Certificates.

**Section 7.06 Limitations on Actions by Owners of Certificates.** No Owner of Certificates shall have any right to pursue any remedy hereunder unless:

- (a) the Trustee shall have been given written notice of an Event of Indenture Default;
- (b) the Owners of at least a majority in aggregate principal amount of all Outstanding Certificates shall have requested the Trustee, in writing, to exercise the powers hereinabove granted to or pursue such remedy in its or their name or names;
- (c) the Trustee shall have been offered indemnity as provided in Section 8.01(d) hereof; and
- (d) the Trustee shall have failed to comply with such request within a reasonable time.



Notwithstanding the foregoing provisions of this Section or any other provision of this Indenture, the obligation of the Trustee shall be absolute and unconditional to pay hereunder, but solely from the Revenues pledged under this Indenture, the principal of, premium, if any, and interest on the Certificates to the respective Owners thereof on the respective due dates thereof, and nothing herein shall affect or impair the right of action, which is absolute and unconditional, of such Owners to enforce such payment.

**Section 7.07 Trustee May Enforce Rights Without Possession of Certificates.** All rights under this Indenture and the Certificates may be enforced by the Trustee without the possession of any Certificates or the production thereof at the trial or other proceedings relative thereto, and any proceeding instituted by the Trustee shall be brought in its name for the ratable benefit of the Owners of the Certificates.

**Section 7.08 Remedies Not Exclusive.** Subject to any express limitations contained herein, no remedy herein conferred is intended to be exclusive of any other remedy or remedies, and each remedy is in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

**Section 7.09 Delays and Omissions Not to Impair Rights.** No delays or omissions in respect of exercising any right or power accruing upon any default shall impair such right or power or be a waiver of such default, and every remedy given by this Article 7 may be exercised from time to time and as often as may be deemed expedient.

**Section 7.10 Application of Moneys in Event of Indenture Default.** Any moneys received, collected or held by the Trustee following an Indenture Event of Default and any other moneys held as part of the Trust Estate (except for moneys held in the Rebate Fund or any defeasance escrow account) shall be applied in the following order:

(a) To the payment of the reasonable costs and expenses of the proceedings resulting in the collection of such moneys and of all fees, costs, expenses, liabilities and advances incurred or made by the Trustee, including, but not limited to, its counsel fees, and disbursements of the Trustee, and the payment of its reasonable compensation and any advances, including any amounts remaining unpaid;

(b) To the payment of interest then owing on the Certificates, and in case such moneys shall be insufficient to pay the same in full, then to the payment of interest ratably, without preference or priority of one Certificate over another or of any installment of interest over any other installment of interest; and

(c) To the payment of principal or redemption price (as the case may be) then owing on the Certificates, and in case such moneys shall be insufficient to pay the same in full, then to the payment of principal or redemption price ratably, without preference or priority of one Certificate over another.

The surplus, if any, shall be paid to the City.

## **ARTICLE 8 CONCERNING THE TRUSTEE**

### **Section 8.01 Duties of the Trustee.**

(a) The Trustee hereby accepts the provisions of the Site Lease, the Lease and this Indenture and accepts the trusts imposed upon it by this Indenture and agrees to perform said trusts as a corporate trustee ordinarily would perform said trusts under a corporate indenture, but only upon and subject to the express terms and conditions set forth in the Site Lease, the Lease and this Indenture, and no implied covenants or obligations shall be read into this Indenture, the Lease, or the Site Lease against the Trustee.

(b) The Trustee hereby covenants for the benefit of the Owners of the Certificates that the Trustee will observe and comply with its obligations under the Site Lease, the Lease and this Indenture.

(c) After the occurrence of an Event of Indenture Default, the Trustee shall at all times, to the extent permitted by law, defend, preserve and protect its interest in the Leased Property and the other property or property rights included in the Trust Estate and all the rights of the Owners under this Indenture against all claims and demands of all Persons whomsoever.

(d) Before taking any action hereunder, or under the Lease or Site Lease, the Trustee may require that satisfactory indemnity be furnished to it for the reimbursement of all costs and expenses (including without limitation attorney's fees and expenses) which it may incur and to protect it against all liability, including, but not limited to, any liability arising directly or indirectly under any federal, state or local statute, rule, law or resolution related to the protection of the environment or hazardous substances, except liability which is adjudicated to have resulted from its negligence or willful misconduct, by reason of any action so taken.

(e) The Trustee, prior to the occurrence of an Event of Indenture Default and after the curing of all Events of Indenture Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture.

### **Section 8.02 Liability of Trustee; Trustee's Use of Agents.**

(a) The Trustee shall be liable only for its own negligence or willful misconduct. However, the Trustee shall not be liable for any error of judgment made in good faith, provided the Trustee was not negligent in ascertaining the pertinent facts.

(b) The Trustee may exercise any powers under this Indenture and perform any duties required of it through attorneys, agents, officers, receivers or employees, and shall be entitled to the advice or opinion of counsel concerning all matters involving the Trustee's duties hereunder, and may in all cases pay such reasonable compensation to all such agents, attorneys and receivers as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorney engaged by the Trustee in the exercise of reasonable care without liability for any loss or damage resulting from any action or omission taken in good faith reliance upon that opinion or advice. The Trustee shall not be liable for any loss or damage resulting from any action or omission taken by its agents, officers, receivers and

employees to whom discretion or authority hereunder has been delegated by the Trustee, provided the Trustee was not negligent in its selection of or delegation to the agent, officer or employee.

(c) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and the Trustee shall not be answerable for other than its negligence or willful misconduct.

(d) The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or nonfulfillment of contracts during any period in which it may be in possession of or managing the Leased Property.

(e) The Trustee shall not be liable for actions taken at the direction of Owners pursuant to the provisions of Article 7.

(f) Any person hired by the Trustee to enforce Lease Remedies shall be considered the Trustee's agent for the purposes of this Section.

(g) The Trustee shall not be responsible for any recital herein or in the Certificates (except in respect to the execution of the Certificates on behalf of the Trustee), or for the recording or rerecording, filing or refiling of the Site Lease, the Lease or this Indenture or of any supplements thereto or hereto or instruments of further assurance or any financing statements (other than continuation statements) in connection therewith, or, except as otherwise provided in the Site Lease, for insuring the Leased Property, or collecting any insurance moneys, or for the sufficiency of the security for the Certificates issued hereunder or intended to be secured hereby, or for the value of or title to the Leased Property, and the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of the City, except as provided herein; but the Trustee may require of the City full information and advice as to the performance of the covenants, conditions and agreements aforesaid. The Trustee shall have no obligation to perform any of the duties of the City under the Site Lease or the Lease; and the Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with Section 5.01 of this Indenture.

(h) The Trustee makes no representations as to the value or condition of the Trust Estate or any part thereof, or as to the validity or sufficiency of this Indenture or of the Certificates. The Trustee shall not be accountable for the use or application of any Certificates or the proceeds thereof or of any money paid to or upon the order of the City under any provision of this Indenture, the Lease or the Site Lease. The Trustee shall not be accountable for the use of any proceeds of any Certificates authenticated and delivered to the Underwriter hereunder.

(i) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, or whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee shall be entitled to conclusively rely upon a certificate signed on behalf of the City by the City Representative or such other person as may be

designated for such purpose by resolution of the Council, as sufficient evidence of the facts therein contained, and prior to the occurrence of a default of which the Trustee has been notified as provided in Section 8.05, or of which by said Section it is deemed to have notice, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same.

(j) All moneys received by the Trustee shall, until used or applied or invested as herein provided, be held in trust in the manner and for the purposes for which they were received but need not be segregated from other funds except to the extent required by this Indenture or law. The Trustee shall not be under any liability for interest on any moneys received hereunder except that the Trustee is responsible for complying with the written investment direction of the City.

(k) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(l) Notwithstanding anything in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand in respect of the execution and delivery of any Certificates, the withdrawal of any cash, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the City to the execution and delivery of any Certificates, the withdrawal of any cash, or the taking of any other action by the Trustee.

(m) Notwithstanding any other provision hereof, the Trustee shall not be required to advance any of its own funds in the performance of its obligations hereunder unless it has received assurances from the Owners of the Certificates or indemnity from the Owners of the Certificates satisfactory to it that it will be repaid.

(n) The Trustee shall have no responsibility with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the Certificates.

(o) Notwithstanding any other provision of this Indenture to the contrary, any provision relating to the conduct of, intended to provide authority to act, right to payment of fees and expenses, protection, immunity and indemnification to the Trustee, shall be interpreted to include any action of the Trustee, whether it is deemed to be in its capacity as Trustee, registrar, or Paying Agent.

**Section 8.03 Representations and Covenants of Trustee.** The Trustee represents, warrants and covenants as follows:

(a) So long as no Event of Indenture Default has occurred and is then continuing or existing, except as specifically provided in the Site Lease or the Lease or as necessary to transfer the Trust Estate to a successor Trustee, the Trustee shall not pledge or assign the Trustee's right, title and interest in and to (i) the Lease or the Site Lease, (ii) the Base Rentals, other Revenues

and collateral, security interests and attendant rights and obligations which may be derived under the Lease or the Site Lease and/or (iii) the Leased Property and any reversion therein or any of its or the Trustee's other rights under the Lease or the Site Lease or assign, pledge, mortgage, encumber or grant a security interest in its or the Trustee's right, title and interest in, to and under the Lease or the Site Lease or the Leased Property except for Permitted Encumbrances.

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

(c) To the Trustee's knowledge, there is no litigation or proceeding pending against the Trustee affecting the right of the Trustee to execute the Lease and the Site Lease or to execute this Indenture, and perform its obligations thereunder or hereunder, except such litigation or proceeding as has been disclosed in writing to the City on or prior to the date this Indenture is executed and delivered.

**Section 8.04 Compensation.** The Trustee shall be entitled to payment and reimbursement for its reasonable fees for its ordinary services rendered hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) and all advances, agent and counsel fees and other ordinary expenses for its services rendered hereunder as and when the same become due and all expenses reasonably and necessarily made or incurred by the Trustee in connection with such services as and when the same become due, as provided in Section 6.2 of the Lease. In the event that it should become necessary for the Trustee to perform extraordinary services, the Trustee shall be entitled to reasonable additional compensation therefor and to reimbursement for reasonable and necessary extraordinary expenses in connection therewith; provided that if such extraordinary services or extraordinary expenses are occasioned by the negligence or willful misconduct of the Trustee it shall not be entitled to compensation or reimbursement therefore. The Trustee shall be entitled to payment and reimbursement of the reasonable fees and charges of the Trustee as Paying Agent and as registrar for the Certificates.

**Section 8.05 Notice of Default; Right to Investigate.** If an Event of Indenture Default occurs of which the Trustee is by this Section required to take notice, then the Trustee shall, within thirty (30) days after it receives notice thereof, give written notice by first class mail or electronic means to the Owners of the Certificates and send a copy of such notice to the City, unless such defaults have been remedied. The Trustee shall not be required to take notice or be deemed to have notice of any default unless it has actual knowledge thereof or has been notified in writing of such default by the City or the owners of at least 25% in aggregate principal amount of the Outstanding Certificates. For purposes of this section, "actual knowledge" of the Trustee means actual knowledge of any officer within the Corporate Trust Department (or any successor group) of the Trustee, including any vice president, assistant vice president, assistant secretary or any other officer or assistant officer of the Trustee customarily performing functions similar to those performed by the person who at the time shall be the officer, respectively, who is responsible for the administration of this Indenture. The Trustee may, however, at any time

request the City to provide full information as to the performance of any covenant under the Site Lease or the Lease; and, if information satisfactory to it is not forthcoming, the Trustee may make or cause to be made an investigation into any matter related to the Site Lease, the Lease and the Leased Property.

**Section 8.06 Obligation to Act on Defaults.** If any Event of Indenture Default shall have occurred and be continuing of which the Trustee has notice of or is deemed to have notice of pursuant to Section 8.05, the Trustee shall exercise such of the rights and remedies vested in it by this Indenture and shall use the same degree of care and skill in their exercise as a prudent person would exercise or use in the circumstances in the conduct of his or her own affairs in exercising any rights or remedies or performing any of its duties hereunder; provided, that if in the opinion of the Trustee such action may tend to involve expense or liability, it shall not be obligated to take such action unless it is furnished with indemnity satisfactory to it.

**Section 8.07 Reliance on Requisition, etc.** The Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any written requisition, resolution, notice, telegram, request, consent, waiver, certificate, statement, affidavit, voucher, bond, or other paper or document which it in good faith believes to be genuine and to have been passed or signed by the proper persons or to have been prepared and furnished pursuant to any of the provisions of this Indenture; and the Trustee shall be under no duty to make any investigation as to any statement contained in any such instrument, but may accept the same as conclusive evidence of the accuracy of such statement. The Trustee may rely conclusively on any such certificate or other document and shall not be required to make any independent investigation in connection therewith.

The Trustee shall be entitled to rely upon the advice and opinions of Counsel and shall not be responsible for any loss or damage resulting from reliance in good faith thereon, except for its own negligence or willful misconduct.

Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who, at the time of making such request or giving such authority or consent is the Owner of any Certificate, shall be conclusive and binding upon all future Owners of the same Certificate and upon Certificates delivered in exchange therefor or upon transfer or in substitution thereof.

**Section 8.08 Trustee May Own Certificates.** The Trustee, in its individual or any other capacity, may in good faith buy, sell, own and hold any of the Certificates and may join in any action which any Owner may be entitled to take with like effect as if the Trustee were not the party to this Indenture. The Trustee may also engage in or be interested in any financial or other transaction with the City provided that if the Trustee determines that any such relation is in conflict with its duties under this Indenture, it shall eliminate the conflict or resign as Trustee.

**Section 8.09 Construction of Ambiguous Provisions.** The Trustee may construe any ambiguous or inconsistent provisions of this Indenture, and any such construction by the Trustee shall be binding upon the Owners. In construing any such provision, the Trustee will be entitled to rely upon opinions of Counsel and will not be responsible for any loss or damage resulting from reliance in good faith thereon, except for its own negligence or misconduct.



**Section 8.10 Resignation of Trustee.** The Trustee may resign and be discharged of the trusts created by this Indenture by written resignation filed with the City and the Initial Purchaser not less than sixty (60) days before the date when it is to take effect; provided notice of such resignation is mailed by registered or certified mail to the Owner of each Outstanding Certificate at the address shown on the registration books, or by electronic means. Such resignation shall take effect only upon the appointment of a successor Trustee. If no successor Trustee is appointed within sixty (60) days following the date designated for the resignation of the Trustee, the resigning Trustee may apply to a court of competent jurisdiction to appoint a successor Trustee. The rights of the Trustee to be held harmless, to insurance proceeds, or to other amounts due arising prior to the date of such resignation shall survive resignation.

**Section 8.11 Removal of Trustee.** Any Trustee hereunder may be removed at any time, after payment of all outstanding fees and expenses of the Trustee being so removed, by the City, the Initial Purchaser, or by the Owners of a majority in aggregate principal amount of the Certificates then Outstanding, upon written notice being filed with the Trustee, the City and the Owner of each Outstanding Certificate at the address shown on the registration books. Such removal shall take effect only upon the appointment of a successor Trustee. The rights of the Trustee to be held harmless, to insurance proceeds or to other amounts due arising prior to the date of such removal shall survive removal.

**Section 8.12 Appointment of Successor Trustee.** If the Trustee or any successor trustee resigns or is removed or dissolved, or if its property or business is taken under the control of any State or federal court or administrative body, a vacancy shall forthwith exist in the office of the Trustee, and the City shall appoint a successor, which has been approved by the Initial Purchaser, and shall cause a notice of such appointment to be mailed by registered or certified mail to the Owners of all Outstanding Certificates at the address shown on the registration books. If the City fails to make such appointment within thirty (30) days after the date notice of resignation is filed, the Owners of a majority in aggregate principal amount of the Certificates then Outstanding may do so. If the Owners have failed to make such appointment within sixty (60) days after the date notice of resignation is filed, the Trustee may petition a court of competent jurisdiction to make such appointment.

**Section 8.13 Qualification of Successor.** Any successor trustee shall be a national or State bank with trust powers or a bank and trust company or a trust company, in each case having capital and surplus of at least \$50,000,000, if there be one able and willing to accept the trust on reasonable and customary terms.

**Section 8.14 Instruments of Succession.** Any successor trustee shall execute, acknowledge and deliver to the City an instrument accepting such appointment under this Indenture; and thereupon such successor trustee, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor in the trust under this Indenture, with like effect as if originally named Trustee herein and thereupon the duties and obligations of the Trustee ceasing to act shall cease and terminate. The Trustee ceasing to act under this Indenture shall pay over to the successor trustee all moneys held by it under this Indenture; and, upon request of the successor Trustee ceasing to act shall, upon the payment of the fees and expenses owed to the Trustee

ceasing to act, execute and deliver an instrument transferring to the successor trustee all the estates, properties, rights, powers and trusts under this Indenture of the Trustee ceasing to act.

**Section 8.15 Merger of Trustee.** Any corporation into which any Trustee hereunder may be merged or with which it may be consolidated, or any corporation resulting from any sale, merger or consolidation of its corporate trust business to which any Trustee hereunder shall be a party, shall be the successor trustee under this Indenture, without the execution or filing of any paper or any further act on the part of the parties hereto, anything herein to the contrary notwithstanding.

**Section 8.16 Intervention by Trustee.** In any judicial proceeding to which the Trustee or the City is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of Owners of the Certificates, the Trustee may intervene on behalf of the Owners and shall do so if requested in writing by the Owners of at least 25% in aggregate principal amount of Outstanding Certificates and furnished indemnity. The rights and obligations of the Trustee under this Section are subject to the approval of a court of competent jurisdiction.

**Section 8.17 Books and Record of the Trustee; Trustee Record Keeping.** The Trustee shall keep such books and records relating to the Site Lease and the Lease and Funds and Accounts created under this Indenture as shall be consistent with industry practice and make such books and records available for inspection by the City, at all reasonable times and for six years following the discharge of this Indenture according to Article 6 hereof.

**Section 8.18 Environmental Matters.** The Trustee may inform any Owner of environmental hazards that the Trustee has reason to believe exist, and the Trustee has the right to take no further action and, in such event no fiduciary duty exists which imposes any obligation for further action with respect to the Trust Estate or any portion thereof if the Trustee, in its individual capacity, determines that any such action would materially and adversely subject the Trustee to environmental or other liability for which the Trustee has not been adequately indemnified.



**ARTICLE 9**  
**SUPPLEMENTAL INDENTURES AND**  
**AMENDMENTS OF THE LEASE AND SITE LEASE**

**Section 9.01 Supplemental Indentures and Amendments Not Requiring Certificate Owners' Consent.** The Trustee may, with the written consent of the City but without the consent of or notice to the Owners, enter into such indentures or agreements supplemental hereto, for any one or more or all of the following purposes:

- (a) to grant additional powers or rights to the Trustee;
- (b) to authorize the execution and delivery of Additional Certificates for the purposes and under the conditions set forth in Section 2.08 hereof;
- (c) in order to preserve or protect the excludability from gross income for federal income tax purposes of the interest portion of the Base Rentals allocable to the Certificates; or
- (d) for any purpose not inconsistent with the terms of this Indenture or to cure any ambiguity, or to correct or supplement any provision contained herein which may be defective or inconsistent with any other provisions contained herein or to make such other amendments to this Indenture which do not materially adversely affect the interests of the Owners of the Certificates.

Notwithstanding the foregoing, so long as the Initial Purchaser is the Owner of 100% of the Certificates Outstanding, any amendment to this Indenture shall require the prior written consent of the Initial Purchaser, such consent shall not be unreasonably withheld.

**Section 9.02 Supplemental Indentures and Amendments Requiring Certificate Owners' Consent.**

(a) Exclusive of supplemental indentures and amendments covered by Section 9.01 hereof, the written consent of the City and the consent of the Owners of a majority in aggregate principal amount of the Certificates then Outstanding, shall be required for any indenture or indentures supplemental hereto.

(b) Notwithstanding the foregoing, without the consent of the Owners of all of the Certificates at the time Outstanding affected thereby nothing herein contained shall permit, or be construed as permitting:

(i) A change in the terms of redemption or maturity of the principal amount of or the interest on any Outstanding Certificate, or a reduction in the principal amount of or premium payable upon any redemption of any Outstanding Certificate or the rate of interest thereon, without the consent of the Owner of such Certificate;

(ii) The deprivation of the Owner of any Certificate then Outstanding of the interest created by this Indenture (other than as originally permitted hereby) without the consent of the Owner of such Certificate;

(iii) A privilege or priority of any Certificate or Certificates over any other Certificate or Certificates (except with respect to the possible subordination of Additional Certificates); or

(iv) A reduction in the aggregate principal amount of the Certificates required for consent to such supplemental indenture.

If at any time the City shall request the Trustee to enter into a supplemental indenture which requires the consent of the Certificate Owners as provided herein, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental indenture to be mailed to the registered owners of the Certificates at the addresses last shown on the registration records of the Trustee by electronic means. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the principal corporate trust office of the Trustee for inspection by all Certificate Owners. If, within 60 days or such longer period as shall be prescribed by the City following the mailing of such notice, the required consents have been furnished to the Trustee as herein provided, no Certificate Owner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee from executing the same or from taking any action pursuant to the provisions thereof.

### **Section 9.03 Amendment of the Lease and the Site Lease.**

(a) The Trustee and the City shall have the right to amend the Lease and the Site Lease, without the consent of or notice to the Owners of the Certificates, for one or more of the following purposes:

(1) to add covenants of the Trustee or the City or to grant additional powers or rights to the Trustee;

(2) in order to more precisely identify the Leased Property, including any substitutions, additions or modifications to the Leased Property as the case may be, as may be authorized under the Site Lease and the Lease;

(3) to make additions to the Leased Property, amend the schedule of Base Rentals and to make all other amendments necessary for the execution and delivery of Additional Certificates in accordance with Section 2.08 hereof;

(4) in order to preserve or protect the excludability from gross income for federal income tax purposes of the interest portion of the Base Rentals allocable to the Certificates; or

(5) for any purpose not inconsistent with the terms of this Indenture or to cure any ambiguity or to correct or supplement any provision contained therein or in any amendment thereto which may be defective or inconsistent with any other provision contained therein or herein or in any amendment thereto or to make such other amendments to the Lease or the Site Lease which do not materially adversely affect the interests of the Owners of the Certificates.

(b) If the Trustee or the City proposes to amend the Lease or the Site Lease in any way other than as set forth in Section 9.03(a) above, the Trustee shall notify the Owners of the Certificates of the proposed amendment and may consent thereto only with the consent of the Owners of a majority in aggregate principal amount of the Outstanding Certificates; provided, that the Trustee shall not, without the unanimous consent of the Owners of all Certificates affected thereby, consent to any amendment which would (1) decrease the amounts payable in respect of the Lease, or (2) change the Base Rentals Payment Dates, or (3) change any of the prepayment provisions of the Lease.

(c) Any provision of subsections (a) and (b) above to the contrary notwithstanding, so long as the Initial Purchaser is the Owner of 100% of the Certificates Outstanding, any amendment to the Lease or the Site Lease shall require the prior written consent of the Initial Purchaser, which consent shall not be unreasonably withheld.

**Section 9.04 Reserved.**

**Section 9.05 Opinions.** The Trustee shall be entitled to receive, and shall be fully protected in relying upon, an opinion of counsel as conclusive evidence that any proposed supplemental indenture or amendment complies with the provisions of this Indenture, and, if applicable the Lease and/or Site Lease. The Trustee shall not be obligated to consent to any supplemental indenture or amendment or amendment of the Lease or the Site Lease which, in the reasonable judgment of the Trustee, is prejudicial to the rights of the Trustee.

## **ARTICLE 10 MISCELLANEOUS**

**Section 10.01 Evidence of Signature of Owners and Ownership of Certificates.** Any request, consent or other instrument which this Indenture may require or permit to be signed and executed by the Owners may be in one or more instruments of similar tenor, and shall be signed or executed by such Owners in person or by their attorneys appointed in writing. Proof of the execution of any such instrument or of an instrument appointing any such attorney, or the ownership of Certificates shall be sufficient (except as otherwise herein expressly provided) if made in the following manner, but the Trustee may, nevertheless, in its discretion require further or other proof in cases where it deems the same desirable:

(a) The fact and date of the execution by any Owner or his attorney of such instrument may be proved by the certificate of any officer authorized to take acknowledgments in the jurisdiction in which he purports to act that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before a notary public.

(b) The fact of the owning by any person of Certificates and the amounts and numbers of such Certificates, and the date of the owning of the same, may be proved by a certificate executed by any trust company, bank or bankers, wherever situated, stating that at the date thereof the party named therein did exhibit to an officer of such trust company or bank or to such bankers, as the property of such party, the Certificates therein mentioned. The Trustee may, in its discretion, require evidence that such Certificates have been deposited with a bank, bankers or trust company before taking any action based on such ownership. In lieu of the foregoing the Trustee may accept other proofs of the foregoing as it shall deem appropriate.

Any request or consent of the owner of any Certificate shall be conclusive upon and shall bind all future owners of such Certificate and of any Certificate issued upon the transfer or exchange of such Certificate in respect of anything done or suffered to be done by the City, the Trustee in accordance therewith, whether or not notation of such consent or request is made upon any such Certificate.

**Section 10.02 Inspection of the Leased Property.** Under the Lease, the Trustee and its duly authorized agents (a) have the right, but not the duty, on reasonable notice to the City, at all reasonable times, to examine and inspect the Leased Property (subject to such regulations as may be imposed by the City for security purposes) and (b) are permitted, but have no obligation, at all reasonable times, to examine the books, records, reports and other papers of the City with respect to the Leased Property and the Certificates.

**Section 10.03 Parties Interested Herein.** Nothing in this Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person other than the City, the Trustee, and the Owners, any right, remedy or claim under or by reason of this Indenture or any covenant, condition or stipulation of this Indenture; and all the covenants, stipulations, promises and agreements in this Indenture contained by and on behalf of the Trustee shall be for the sole and exclusive benefit of the City, the Trustee, and the Owners.

**Section 10.04 Titles, Headings, Etc.** The titles and headings of the articles, sections and subdivisions of this Indenture have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms or provisions of this Indenture.

**Section 10.05 Severability.** In the event any provision of this Indenture shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Indenture.

**Section 10.06 Governing Law.** This Indenture shall be governed and construed in accordance with the laws of the State of Colorado, without regard to choice of law analysis.

**Section 10.07 Execution in Counterparts.** This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 10.08 Notices.** All notices, certificates or other communications to be given hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified or registered mail, postage prepaid, addressed to the Trustee as follows:

If to the Trustee:                    [\_\_\_\_\_]
    [\_\_\_\_\_]
    Denver, Colorado 80202
    Attention: Corporate Trust and Escrow Services

If to the Initial Purchaser:       Wells Fargo Bank, N.A.
    1700 Lincoln Street, Suite 21
    Denver, CO 80203
    Attn: [\_\_\_\_\_]

The Trustee and the Initial Purchaser may, by written notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**Section 10.09 Successors and Assigns.** All the covenants, promises and agreements in this Indenture contained by or on behalf of the Trustee shall bind and inure to the benefit of its successors and assigns, whether so expressed or not.

**Section 10.10 Consent and Notice to the Initial Purchaser.** Any provision herein requiring the specific consent of or notice to the Initial Purchaser shall be applicable so long as the Initial Purchaser is the Owner of all of the Certificates then Outstanding. Such consent of the Initial Purchaser as the Owner of all of the Certificates then Outstanding shall not be unreasonably withheld. This Section 10.10 shall not be construed to deprive the Initial Purchaser of any notice or right to consent as one of the Owners of the Certificates where the consent of or notice to the Owners of the Certificates in general is required herein.

**Section 10.11 Payments Due on Saturdays, Sundays and 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 Indenture, 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 Indenture.

**Section 10.12     Undertaking to Provide Financial Statements.** The City has covenanted in Section 10.6 of the Lease to provide certain financial information as set forth in the Lease. Notwithstanding any other provision of this Indenture, failure by the City to comply with the covenant to provide financial statements shall not be considered an Event of Indenture Default and the rights and remedies provided by this Indenture upon the occurrence of an Event of Indenture Default shall not apply to any such failure.

**Section 10.13     Electronic Storage.** The parties hereto agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

IN WITNESS WHEREOF, the Trustee has caused this Indenture to be executed all as of the date first above written.

[\_\_\_\_\_], as Trustee

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

**EXHIBIT A  
FORM OF CERTIFICATES**

**CERTIFICATE OF PARTICIPATION,  
SERIES 2017B**

**Evidencing a Proportionate Interest in the  
Base Rentals and other Revenues under an Annually  
Renewable Lease Purchase Agreement, dated [\_\_\_\_], 2017, between  
[\_\_\_\_], as Trustee, as lessor,  
and the City of Commerce City, Colorado  
as lessee**

No. R-1

\$[7,200,000]

Interest Rate	Maturity Date	Dated Date	CUSIP Number
[__]%	[____]	[____], 2017	n/a

Registered Owner:   WELLS FARGO BANK, N.A.

Principal Amount: [SEVEN MILLION TWO HUNDRED THOUSAND DOLLARS]

THIS CERTIFIES THAT the Registered Owner (specified above), or registered assigns, as the Registered Owner (the “Owner”) of this Certificate of Participation, Series 2017B (“Certificate”), is the Owner of a proportionate interest in the right to receive certain designated Revenues, including Base Rentals, under and as defined in the Lease Purchase Agreement (the “Lease”) dated as of [\_\_\_\_], 2017, between [\_\_\_\_], Denver, Colorado, as Trustee (the “Trustee”), as lessor, and the City of Commerce City, Colorado (the “City”), as lessee, and the Indenture of Trust (the “Indenture”) dated as of [\_\_\_\_], 2017, by the Trustee. All terms capitalized but not defined herein shall have the meanings given to them in the Indenture.

This Certificate bears interest, matures, is payable, is subject to redemption, and is transferable as provided in the Indenture.

Under the Site Lease, certain Leased Property described therein (the “Leased Property”) has been leased by the City, as lessor, to the Trustee, as lessee. Under the Lease, the Leased Property has been leased back by the Trustee, as lessor, to the City, as lessee, and the City has agreed to pay Base Rentals directly to the Trustee in consideration of the City’s right to possess and use the Leased Property. Certain Revenues, including Base Rentals, are required under the Indenture to be distributed by the Trustee for the payment of the Certificates and interest thereon. The Lease is subject to annual appropriation, non-renewal and, in turn, termination by the City.

This Certificate has been executed and delivered pursuant to the terms of the Indenture. Reference is hereby made to the Site Lease, the Lease and the Indenture (copies of which are on file in the offices of the Trustee) for a description of the terms on which the Certificates are delivered, and the rights thereunder of the Owners of the Certificates, the rights, duties and



immunities of the Trustee and the rights and obligations of the City under the Site Lease and the Lease, to all of the provisions of which Site Lease, Lease and Indenture the Owner of this Certificate, by acceptance hereof, assents and agrees.

Additional Certificates may be executed and delivered only upon the prior written consent of the Initial Purchaser if at such time it is Owner of 100% of the Certificates then Outstanding, and if it is not such Owner, then Additional Certificates may be executed and delivered without the consent of or notice to the Owners of Outstanding Certificates, upon the satisfaction of certain conditions and limitations. Such Additional Certificates, together with the Certificates, are referred to herein as the "Certificates." Additional Certificates will evidence interests in rights to receive Revenues, including Base Rentals, without preference, priority or distinction of any Certificates, including the Certificates, over any others, however, insurance and other credit facilities may be applicable only to particular series of Certificates or portions thereof.

To the extent and in the manner permitted by the terms of the Indenture, the provisions of the Indenture may be amended by the Trustee with the written consent of the Owners of a majority in aggregate principal amount of the Certificates outstanding, and may be amended without such consent under certain circumstances described in the Indenture.

THE OWNER OF THIS CERTIFICATE IS ENTITLED TO RECEIVE, SUBJECT TO THE TERMS OF THE LEASE, THE PRINCIPAL AMOUNT (SPECIFIED ABOVE), ON THE MATURITY DATE (SPECIFIED ABOVE), AND IS ENTITLED TO RECEIVE INTEREST ON THE PRINCIPAL AMOUNT AT THE INTEREST RATE (SPECIFIED ABOVE), AND PRINCIPAL INSTALLMENT AMOUNTS AS SHOWN BELOW.

<u>Date</u>	<u>Principal Installment</u> \$
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\*

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\*Maturity.

***Notwithstanding any provisions to the contrary contained herein, the Owner of this Certificate shall not be required to surrender the Certificate to the Trustee to receive payment in connection with principal installments, but shall be required to surrender the Certificate only on the final Maturity Date to receive payment of the final principal payment hereof.***

The interest hereon is payable at the interest rate from the Dated Date (specified above) on the first day of each month, commencing September 1, 2017 (the "Interest Payment Dates") (A) from the Execution Date (specified below), if this Certificate is executed on an Interest Payment Date or (B) from the last preceding Interest Payment Date to which interest has been paid in all other cases, until the Principal Amount is paid as set forth herein. Interest is to be calculated on the basis of a 360-day year consisting of twelve 30-day months.

THIS CERTIFICATE IS PAYABLE SOLELY FROM THE BASE RENTALS PAYABLE TO THE TRUSTEE PURSUANT TO THE LEASE AND OTHER REVENUES AS DEFINED IN THE INDENTURE. NEITHER THE LEASE, THIS CERTIFICATE, THE CERTIFICATES, OR THE OBLIGATION OF THE CITY TO PAY BASE RENTALS OR ADDITIONAL RENTALS CONSTITUTES A GENERAL OBLIGATION OR OTHER INDEBTEDNESS OF THE CITY 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. NEITHER THE LEASE NOR THE CERTIFICATES, HAVE DIRECTLY OR INDIRECTLY OBLIGATED THE CITY TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED FOR THE CITY'S THEN CURRENT FISCAL YEAR.

Interest hereon is payable to the Owner, as shown on the registration books kept by the Trustee as of the close of business on the "regular record date," which is the 15<sup>th</sup> day of the calendar month immediately preceding the month of the Interest Payment Date (or the Business Day immediately preceding such 15<sup>th</sup> day, if such 15<sup>th</sup> day is not a Business Day) or on a "special record date" established in accordance with the Indenture. The Trustee may treat the Owner of this Certificate appearing on the registration books maintained by the Trustee as the absolute owner hereof for all purposes and is not to be affected by any notice to the contrary. The Principal Amount or redemption price hereof and interest hereon are payable in lawful money of the United States of America.

This Certificate is transferable by the Owner hereof, in person or by his attorney duly authorized in writing, on the registration books kept at the corporate trust office of the Trustee. Upon such transfer, a new fully registered Certificate of the same maturity, for the same aggregate principal amount, will be executed and delivered to the transferee in exchange for this Certificate, all upon payment of the charges and subject to the terms and conditions set forth in the Indenture. The Trustee may deem and treat the person in whose name this Certificate is registered as the absolute owner hereof, whether or not this Certificate shall be overdue, for the purpose of receiving payment and for all other purposes, and neither the City nor the Trustee shall be affected by any notice to the contrary.

*Optional Redemption.* The Certificates shall be subject to redemption at any time prior to the Maturity Date at the option of the City, in whole, or in part, and if in part, no more than one partial prepayment annually, and in such order of redemption as the City shall determine and by

lot on a pro rata basis within each installment, at a redemption price equal to the principal amount of the Certificates so redeemed plus accrued interest to the redemption date; provided, however, if the Certificates are redeemed in part and such prepayment amount exceeds 20% of the then-Outstanding aggregate principal amount of the Certificates, the redemption price shall equal the principal amount of the Certificates so redeemed plus accrued interest to the redemption date together with any applicable Yield Maintenance Premium that shall be due on that portion of the prepayment amount that exceeds said 20%.

*Extraordinary Mandatory Redemption.* If the Lease is terminated by reason of the occurrence of (a) an Event of Nonappropriation, or (b) an Event of Lease Default, or in the event that (1) the Leased Property is damaged or destroyed in whole or in part by fire or other casualty, or (2) title to, or the temporary or permanent use of, the Leased Property has been taken by eminent domain by any governmental body or (3) breach of warranty or any material defect with respect to the Leased Property becomes apparent or (4) title to or the use of the Leased Property is lost by reason of a defect in title thereto, and the Net Proceeds of any insurance, performance bond or condemnation award, or Net Proceeds received as a consequence of defaults under contracts relating to the Leased Property, made available by reason of such occurrences, shall be insufficient to pay in full, the cost of repairing or replacing such Leased Property, and the City does not appropriate sufficient funds for such purpose or cause the Lease to be amended in order that Additional Certificates may be executed and delivered pursuant to this Indenture for such purpose, then the Certificates are required to be called for redemption. If called for redemption, as described herein, the Certificates are to be redeemed in whole on such date or dates as the Trustee may determine, for a redemption price equal to the principal amount thereof, plus accrued interest to the redemption date (subject to the availability of funds as described below).

If the Net Proceeds, including the Net Proceeds from the exercise of any Lease Remedy under the Lease, otherwise received and other moneys then available under this Indenture are insufficient to pay in full the principal of and accrued interest on all Outstanding Certificates, the Trustee may, with the consent of the Initial Purchaser, or at the request of the Owners of a majority in aggregate principal amount of the Certificates Outstanding, and upon indemnification as provided in Section 8.01(d) of this Indenture, without any further demand or notice, shall, exercise all or any combination of Lease Remedies as provided in the Lease and the Certificates shall be redeemed by the Trustee from the Net Proceeds resulting from the exercise of such Lease Remedies and all other moneys, if any, then on hand and being held by the Trustee for the Owners of the Certificates.

If the Net Proceeds resulting from the exercise of such Lease Remedies and other moneys are insufficient to redeem the Certificates at 100% of the principal amount thereof plus interest accrued to the redemption date, then such Net Proceeds resulting from the exercise of such Lease Remedies and other moneys shall be allocated proportionately among the Certificates, according to the principal amount thereof Outstanding. In the event that such Net Proceeds resulting from the exercise of such Lease Remedies and other moneys are in excess of the amount required to redeem the Certificates at 100% of the principal amount thereof plus interest accrued to the redemption date, then such excess moneys shall be paid to the City as an overpayment of the Purchase Option Price. Prior to any distribution of the Net Proceeds resulting from the exercise of any of such remedies, the Trustee shall be entitled to payment of its reasonable and customary fees for all services rendered in connection with such disposition, as well as reimbursement for

all reasonable costs and expenses, including attorneys' fees, incurred thereby, from proceeds resulting from the exercise of such Lease Remedies and other moneys.

IF THE CERTIFICATES ARE REDEEMED PURSUANT TO THIS SECTION 4.03 FOR AN AMOUNT LESS THAN THE AGGREGATE PRINCIPAL AMOUNT THEREOF PLUS INTEREST ACCRUED TO THE REDEMPTION DATE, SUCH PARTIAL PAYMENT SHALL BE DEEMED TO CONSTITUTE A REDEMPTION IN FULL OF THE RELATED CERTIFICATES, AND UPON SUCH A PARTIAL PAYMENT NO OWNER OF SUCH CERTIFICATES SHALL HAVE ANY FURTHER CLAIM FOR PAYMENT AGAINST THE TRUSTEE OR THE CITY.

*Partial Redemption.* If less than all of the Certificates are to be redeemed, the Certificates are to be redeemed only in integral multiples of \$5,000. The Trustee is to treat any Certificates of denomination greater than \$5,000 as representing that number of separate Certificates each of the denomination of \$5,000 as can be obtained by dividing the actual principal amount of such Certificates by \$5,000. Upon surrender of any Certificate for redemption in part, the Trustee is to execute and deliver to the Owner thereof, at no expense of the Owner, a new Certificate or Certificates in an aggregate principal amount equal to the unredeemed portion of the Certificates so surrendered.

*Notice of Redemption.* Whenever Certificates are to be redeemed, the Trustee is required to, not less than thirty (30) and not more than sixty (60) days prior to the redemption date (except for Extraordinary Mandatory Redemption notice which is required to be immediate), mail notice of redemption to all Owners of all Certificates to be redeemed at their registered addresses, by first class mail, postage prepaid or by electronic means. Any notice of redemption is to (1) be given in the name of the Trustee, (2) identify the Certificates to be redeemed, (3) specify the redemption date and the redemption price, (4) in the event of Optional Redemption, state that the City has given notice of its intent to exercise its option to purchase or prepay Base Rentals under the Lease, (5) state that such redemption is subject to the deposit of the funds related to such option by the City on or before the stated redemption date and (6) state that on the redemption date the Certificates called for redemption will be payable at the corporate trust office of the Trustee and that from that date interest will cease to accrue.

This Certificate is executed and delivered under the authority of Part 2 of Article 57, Title 11, Colorado Revised Statutes (the "Supplemental Act"). Pursuant to Section 11-57-210 of the Supplemental Act, such recital shall be conclusive evidence of the validity and the regularity of the issuance of this Certificate after its delivery for value.

This Certificate is executed with the intent that the laws of the State of Colorado shall govern its legality, validity, enforceability and construction. The City has determined that this Certificate is authorized and issued under the authority of and in full conformity with the Constitution of the State of Colorado and all other laws of the State of Colorado thereunto enabling.

This Certificate shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Lease or the Indenture, until executed by the Trustee.

The Trustee has executed this Certificate solely in its capacity as Trustee under the Indenture and not in its individual or personal capacity. The Trustee is not liable for the obligations evidenced by the Certificates except from amounts held by it in its capacity as Trustee under the Indenture.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all things, conditions and acts required by the Constitution and the statutes of the State and the Indenture to exist, to have happened and to have been performed precedent to and the execution and delivery of this Certificate, do exist, have happened and have been performed in due time, form and manner, as required by law.

IN WITNESS WHEREOF, this Certificate has been executed with the manual signature of an authorized representative of the Trustee.

Execution Date: [\_\_\_\_], 2017

[\_\_\_\_], as Trustee

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

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within Certificate and hereby irrevocably constitutes and appoints \_\_\_\_\_ Attorney, to transfer the within Certificate on the books kept for registration thereof, with full power of substitution in the premises.

\_\_\_\_\_  
Signature

Dated: \_\_\_\_\_

Signature Guaranteed:

\_\_\_\_\_  
Signature must be guaranteed by a member  
of a Medallion Signature Program

Address of Transferee:

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

Social Security or other tax  
identification number of transferee:

\_\_\_\_\_

**NOTE:** The signature to this Assignment must correspond with the name as written on the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

(End Form of Assignment)

(Form of Prepayment Panel)

PREPAYMENT PANEL

The following installments of principal (or portions thereof) of this Certificate have been prepaid in accordance with the terms of the Indenture, as amended, authorizing the issuance of this Certificate.

<u>Date of Prepayment</u>	<u>Principal Prepaid</u>	<u>Signature of Authorized Representative of the Trustee</u>

(End of Form of Prepayment Panel)

(End Form of Certificates)