

**TOWN OF PALMER LAKE, COLORADO**

**RESOLUTION NO. 55-2023**

**A RESOLUTION TO AUTHORIZE A LEASE AGREEMENT AND OPTION TO PURCHASE AGREEMENT WITH ECOSPA TO ALLOW ECOSPA TO SEEK TO AMEND THE PUD FOR LAND USE OF 2.8 ACRES AT THE TOWN ELEPHANT ROCK PROPERTY, HWY 105, PALMER LAKE, COLORADO**

WHEREAS, the Board of Trustees of the Town of Palmer Lake, Colorado, pursuant to Colorado statute and the Town of Palmer Lake Municipal Code, is vested with the authority of administering the affairs of the Town of Palmer Lake, Colorado; and

WHEREAS, the Town Board of Trustees has authority over Town property; and

WHEREAS, the Town Board and EcoSpa LLC desire to enter into a Lease Agreement and Option to Purchase Agreement to allow EcoSpa the use of 2.8 acres of the Elephant Rock Property, located at Hwy 105, as a tenant to the Town of Palmer Lake; and

WHEREAS, the tenant will need to amend the current Planned Unit Development (PUD) on the property with said PUD amendment following all Town processes including being reviewed and approved by the Board of Trustees at a public meeting for which the Town will require a further Redevelopment Agreement with the tenant.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF PALMER LAKE, COLORADO AS FOLLOWS:**

1. The Town Board of Trustees hereby authorizes signature to a Lease Agreement and Option to Purchase Agreement with EcoSpa, LLC as attached herein, including exhibits thereto.
2. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Resolution is held to be unconstitutional or invalid for any reason such decision shall not affect the validity or constitutionality of the remaining portions of this Resolution. The Board of Trustees hereby declares that it would have passed this resolution and each part or parts thereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.
3. Repeal. Existing resolutions or parts of resolutions covering the same matters embraced in this Resolution are hereby repealed and all resolutions or parts of resolutions inconsistent with the provisions of this Resolution are hereby repealed.

**INTRODUCED, RESOLVED, AND PASSED AT A REGULAR MEETING OF THE BOARD OF TRUSTEES OF THE TOWN OF PALMER LAKE ON THIS 28th DAY OF SEPTEMBER 2023.**

ATTEST:

TOWN OF PALMER LAKE, COLORADO

  
\_\_\_\_\_  
Dawn A. Collins  
Town Administrator/Clerk

BY:   
\_\_\_\_\_  
Grant Havenar  
Mayor

## LEASE AGREEMENT

**THIS LEASE AGREEMENT**, hereinafter called the "Agreement" or "Lease", is made and entered into as of the 29 day of September, 2023, by and, between the **TOWN OF PALMER LAKE, COLORADO**, hereinafter "Town", a Colorado statutory municipality and EcoSpa, LLC, a Colorado limited liability company, hereinafter "EcoSpa."

### WITNESSETH:

**WHEREAS**, the Town is the owner of certain real property and improvements thereon located at 290 Hwy 105, Palmer Lake, CO, consisting of approximately 28 acres, commonly known as "the Elephant Rock Property, (hereinafter, "Elephant Rock Property"); and

**WHEREAS**, the Town desires to lease a portion of the Property to EcoSpa consisting of approximately 2.8 acres more fully described in Exhibit A ("2.8 Acres" or "Leased Property").

**WHEREAS**, EcoSpa intends to develop the 2.8 Acres pursuant to a Redevelopment Agreement with the Town and use the Leased Property to operate a business on the 2.8 Acres, as more fully set out in paragraph 1.2 below.

**NOW THEREFORE**, in consideration of the mutual obligations and other consideration set forth herein, the Town hereby leases to EcoSpa and EcoSpa leases from the Town, the following described real property situated in the Town of Palmer Lake, County of El Paso, and State of Colorado, to-wit:

A 2.8 Acre portion of the Elephant Rock Property as depicted on Exhibit A which is attached hereto and incorporated herein;

and all improvements and appurtenances; however, tenants will reserve one bay of the maintenance garage for storage to be used by the Town of Palmer Lake Parks Commission (hereinafter referred to as "2.8 Acres" or the "Leased Property") on the following terms and conditions:

### ARTICLE 1 TERM, RENT AND USES

- 1.1 **Term:** The term of this Lease shall commence on the 29 day of September, 2023 ("Commencement Date"), and shall continue for a period of eight (8) years thereafter, expiring on the 29 day of September, 2031 ("Term").

1.2 Termination. During the Term of this Lease, the Town may terminate the Lease after providing EcoSpa notice of such intent to terminate the Lease and an opportunity to be heard by the Board of Trustees. If EcoSpa can cure or otherwise address the issue, the Lease may continue. If the Board determines that EcoSpa has failed to, or is unable to cure or otherwise address the issue, the Board may terminate the Lease. This Agreement may be terminated after the Lease expires by either party, with or without cause, in the sole discretion of such terminating party, by the terminating party serving written notice to the other party of the terminating party's intention to terminate the Agreement. Such written notice shall be provided no less than ninety (90) days prior to the stated termination date. If this Agreement is terminated, EcoSpa's accrued liability to the Town arising under this Agreement prior to the effective date of such termination shall survive the termination, and the Town may re-enter, take possession of the Leased Property and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages or pursuant to any other authority granted pursuant to Colorado law.

Holding Over. In the event that EcoSpa, or its successor in interest, if any, shall remain after the Term of this Lease, and provided that this Lease has not been terminated pursuant to "Termination", above, it is the intention of the parties and it is hereby agreed that the right of use from month-to-month shall then arise subject to all provisions and conditions of this Agreement in connection with such right, except that the Town shall have the sole right to determine reasonable fees for any holdover period. The Lease may be terminated by either party during the hold over period upon 30 days written notice. Notwithstanding any other provision to the contrary, EcoSpa shall not have a right to hold over should the Town terminate this lease prior to the expiration of the Term, above.

1.3 Rent: EcoSpa agrees to pay the Town as rent for the Leased Property as follows:

- a. EcoSpa shall pay to the Town monthly rent in an amount equal to \$50.00 per month during the Term of the Lease. Rent is due on the first day of each month; and
- b. An amount equal to \$2.00 for each sale of a product or service not subject to sales tax ("Transaction") in a business conducted on the Leased Property ("Service Fee"). EcoSpa shall account to the Town for the Service Fees collected for each calendar month and remit the Service Fees accrued within ten (10) days of the last day of the month.
- c. Payments not received by the Town by the 15<sup>th</sup> day of each month constitute a breach of the Agreement. A late fee of \$25 will be added to each payment on all payments not received by the 15<sup>th</sup> day of each month.
- d. Payment for all rent and fees shall be by check or money order payable to the order of "The Town of Palmer Lake".

- 1.4 Uses: EcoSpa shall have the exclusive use of the Leased Property for those uses more fully set out in Exhibit B which is attached hereto.

**ARTICLE 2  
ECOSPA'S DUTIES WITH RESPECT TO THE LEASED PROPERTY**

- 2.1 Designation of Smoking Areas. The Leased Property shall remain a non-smoking area.
- 2.2 Compliance with Applicable Laws And Directives. EcoSpa agrees to comply fully with all applicable state and federal laws and regulations, local laws and regulations, and Town of Palmer Lake municipal ordinances, as well as all rules and regulations adopted by the Town or any of its Boards, Divisions, Departments, Commissions having jurisdiction over the Elephant Rock Property.
- 2.3 Days and Hours Of Operation. Days and hours of operation shall be determined by mutual agreement of the parties memorialized by a separate memorandum.
- 2.4 EcoSpa Personnel. EcoSpa shall control the conduct and demeanor of its agents, independent contractors, and employees. Upon objection from the Town concerning the conduct or demeanor of any such person, EcoSpa shall immediately take all lawful steps to remove the cause of the objection.
- 2.5 Physical Interference. EcoSpa shall not do, nor permit to be done, anything which may interfere with the effectiveness or accessibility of the drainage system, sewage system, fire protection system, sprinkler system, alarm system, and fire hydrants and hoses, if any, installed or located in the Leased Premises unless otherwise agreed to in writing by the Town.
- 2.6 Taxes. EcoSpa agrees to pay all local, state and federal social security, unemployment insurance, workers' compensation insurance, sales, use, personal property and other taxes, assessments and payments-in-lieu which, during the term of this Agreement or any extension hereof, may be due. EcoSpa shall not cause, permit or otherwise allow any lien to be levied against the Property.
- 2.7 Licenses. EcoSpa agrees to obtain and pay for all licenses necessary in connection with its operation, including but not limited to, a Town business /sales tax license.
- 2.8 Record keeping and Inspection of Books. EcoSpa shall keep books and records of the Transactions subject to the Service Fee in accordance with good accounting practices.

Those books and records shall be made available to Town upon request, after 24 business hours' notice.

**ARTICLE 3  
RIGHTS OF INGRESS AND EGRESS**

- 3.1 In General. EcoSpa shall have the right of ingress and egress to and from the Leased Premises for EcoSpa's employees, agents and invitees to the extent reasonably necessary in connection with the conduct of EcoSpa's business under this Lease. Areas designated as restricted areas by the Town will be excluded from such ingress and egress. Keys to the Property and Buildings will be provided to EcoSpa and if EcoSpa changes the locks to any portion of the Property, EcoSpa will provide a copy of said key to the Town. EcoSpa assumes all responsibility and liability associated with actions of those individuals who EcoSpa provides keys to the Leased Premises.
  
- 3.2 Closures. The Town may, at any time, temporarily or permanently, close or consent to or request the closing of any roadway or any other way at, in, or near the Property, presently or hereafter used as such. However, such notice of closure shall immediately be addressed to resolve, avoid, and not be unreasonably imposed.

**ARTICLE 4  
IMPROVEMENTS, MAINTENANCE AND UTILITIES**

- 4.1 Acceptance. On the date of commencement of EcoSpa's occupancy of the Leased Premises, EcoSpa shall acknowledge that it accepts the Leased Premises as well as any Town equipment and fixtures "AS IS."
  
- 4.2 Maintenance And Repair. EcoSpa shall improve, maintain and repair the Leased Premises, equipment and fixtures. The Town shall not in any way be liable to EcoSpa for failure to make repairs to the Leased Property.
  - 4.2.1 EcoSpa shall neither hold nor attempt to hold the Town liable for any injury or damage, either approximate or remote, occasioned through or caused by any condition of the Property, known or unknown, including but not limited to defective electrical wiring or the breaking or stoppage of plumbing or sewage upon the Leased Premises, whether said breakage or stoppage results from freezing or otherwise.
  
- 4.3 Cleaning. EcoSpa shall keep the Leased Premises, its fixtures, and all areas used in clean and in good sanitary condition as required by the ordinances, resolutions, statutes and

health, sanitary and police regulations of the Town of Palmer Lake and State of Colorado and policies of the Town.

4.3.1. EcoSpa is responsible for the ongoing cleanliness of the Leased Premises in order to provide a clean and orderly appearance for the public, including but not limited to, busing and cleaning tables, chairs, deck, floor areas, windows, and removing trash accumulations to designated trash containers.

4.3.2 EcoSpa is responsible to provide and pay for all cleaning supplies used in connection with its obligation to maintain the cleanliness of the Leased Premises.

4.4 Utilities: EcoSpa shall pay the utility charges for water, storm water, sewer, gas, trash collection, telephone, and electric services to the Leased Premises shall be metered separately and paid directly to the respective utility as billed. Payments not made each month constitute a breach of the Agreement and may, in the discretion of the town, constitute a basis for terminating the Agreement.

4.5 Installation Of Equipment And Trade Fixtures. Equipment, trade fixtures, signs or other personal property used by EcoSpa in its business, or any improvements thereon, shall be installed without the prior written approval of the Town for the interior. Exterior fixtures are subject to respective town code and/or regulation (ie., sign permit). In any event, the installation of Equipment and/or Trade Fixtures shall be done in compliance with any rules, regulations, or laws.

4.6 Removal Of Equipment And Trade Fixtures. EcoSpa shall have the right at any time during the term of this Agreement or upon termination and within thirty (30) days thereafter, to remove all personal property such as trade fixtures, equipment and other personal property, but subject to any valid lien the Town may have thereon for unpaid portions of the rent or fees and any other amounts due from EcoSpa to the Town pursuant to the provisions of this Agreement, Town ordinances, or otherwise. No fixtures or other property shall be removed if such removal will result in damage to the property of the Town. Any property not so removed by EcoSpa upon termination as provided in this Section shall become a part of the realty on which it is located and title thereto shall vest in the Town.

4.7 Title To Improvements. No improvements shall be made to the Leased Property without the prior written approval of the Town. Upon installation or erection of Improvements, such Improvements shall become a part of the realty upon which they are erected and title thereto shall vest in the Town, unless the parties agree otherwise in writing and in advance of such installation. Upon vesting, the Improvements become part of the Leased

Property and are subject to the terms applicable to the Leased Property within this Agreement.

- 4.8 Conformance with Applicable Laws. All improvements and all trade fixtures, equipment or other personal property installed by EcoSpa shall be subject to and conform in all respects to the applicable statutes, ordinances, building codes, rules and regulations of all governmental agencies which have jurisdiction over such matters.

## **ARTICLE 5 DAMAGE BY ECOSPA**

5.1 The Tenant shall be liable for and shall repair, replace or cause to be repaired or replaced within five (5) days after occurrence, any damage to the Leased Property, including the Business Space, or to the Town's property, equipment and fixtures caused by Tenant, Tenant's agents, employees, independent contractors working at Tenant's direction, or anyone else acting under Tenant's his direction and control, ordinary wear and tear excepted. All repairs or replacements shall be made promptly and when necessary and shall be in a quality and of a class at least equal to the original. If the damage for which Tenant is liable is to the Leased Property, Tenant shall continue to be liable for the Leased Property Rental Fee and all other charges provided for in this Agreement, even if the Leased Property has been rendered untenable or unusable.

5.2 Tenant shall deposit with the Town a security deposit in the amount of \$100.00. At the end of the lease, the security deposit will be returned to the Tenant after deductions for unpaid Rent, Utilities, and damage to the Leased Property, other than ordinary wear and tear. The Tenant shall not use the deposit at any time for payment of Rent, but instead, should Tenant fail to pay amounts due upon termination or breach of the Agreement, the Town may at its option use the security deposit to satisfy any portion of the amounts owed. However, the use of the security deposit shall not limit the ability of the Town to recover any damages in excess of the security deposit amount.

## **ARTICLE 6 TOTAL OR PARTIAL DESTRUCTION**

6.1 Leased Property Or Other Major Component Rendered Untenable. In case, during the term of this Agreement, the Leased Property or any principal part of any one of them shall be destroyed or shall be so damaged by fire, flood, or other casualty so as to be rendered untenable or unusable as determined by the Town:

6.1.1 Then, in such event, at the option of the Town, the term hereby created shall cease, and this Agreement shall become null and void from the date of such determination, and Tenant shall immediately surrender the Leased

Property and his interest therein to the Town; provided, however, that the Town or Tenant shall exercise such option to so terminate this Agreement by notice, in writing, delivered to the other party within thirty (30) days after the Town's determination of untenability or non-usability

6.1.2 In the event the Town elects not to exercise its option in 6.1.1 and terminate this Agreement, this Agreement shall continue in full force and effect; and the Tenant shall repair the Leased Property.

- 6.2 Removal Of Rubbish. In any event, upon the occurrence of damage or destruction, Tenant shall remove all rubbish, debris, merchandise, furniture, furnishings, equipment, and other items of its personal property within thirty (30) days after receipt of written request by the Town.
- 6.3 Exception For Damage Caused By Tenant. In the event of damage caused by Tenant, as more specifically addressed in Article 9 of this Agreement, the provisions of Article 9 shall govern in any conflict between Article 9 and Article 10.
- 6.4 No Claim By Tenant. No compensation or claim shall be made by or allowed to Tenant by reason of any inconvenience or annoyance arising from the necessity of repairing portion of or other Town property, however the necessity may occur.

## ARTICLE 7 INDEMNIFICATION AND INSURANCE

- 7.1 The Town's Liability. The Town shall not in any way be liable for any cost, liability, damage or injury, including cost of suit and reasonable expenses of legal services, claimed or recovered by any person whomsoever or whatsoever as a result of any operations, works, acts or omissions performed within the Leased Property by EcoSpa, its agents, employees or contractors.
- 7.2 Indemnification By EcoSpa. EcoSpa covenants that it will indemnify and hold the Town harmless from all claims, demands, judgments, costs and expenses, including attorneys' fees, claimed or recovered (whether justly, unjustly, falsely, fraudulently or frivolously) by any person by reason of injury to or death of any individual person or persons, or by reason of damage to, destruction or loss of use of any property, directly or indirectly arising out of, resulting from, or occurring in connection with any operations, works, acts, or omissions or negligence of EcoSpa. As used herein, the terms "EcoSpa" and "the Town " includes the respective directors, officers, agents, employees and contractors of EcoSpa and the Town.



- 7.3 EcoSpa Insurance. Without limiting any of EcoSpa's obligations hereunder, EcoSpa shall provide and maintain comprehensive liability insurance coverage naming the Town as an additional insured under this Agreement with a minimum aggregate limit of \$1,000,000.00. EcoSpa shall supply the Town with a certificate of insurance.
- 7.4 Precautions Against Injury. EcoSpa shall take all necessary precautions in performing the operations hereunder to prevent injury to persons and property.
- 7.5 Failure To Insure. Failure of EcoSpa to take out and/or maintain, or the taking out and/or maintenance of any required insurance, shall not relieve EcoSpa from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with the obligations of EcoSpa concerning indemnification.
- 7.6 No Waiver of Governmental Immunity. Nothing herein shall be construed as a waiver by the Town of any of the immunities, privileges and defenses available to it under the Colorado Governmental Immunity Act, as may be amended from time to time, or arising under common law.

#### **ARTICLE 8 NO ASSIGNMENT/SUBLET**

EcoSpa shall not assign this Agreement and shall not sublet or otherwise allow any person to take possession of all or any portion of the Leased Premises. Any transfer by operation of law of EcoSpa's interest created hereby, other than by merger or consolidation, must be approved in advance, in writing, by the Town, which shall not be unreasonably withheld.

#### **ARTICLE 9 RIGHT OF THE TOWN TO ENTER, INSPECT, AND MAKE REPAIRS**

- 9.1 In General. The Town and its authorized officers, employees, agents, contractors and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as little interruption to EcoSpa's operation as is reasonably practicable) to enter upon any part of the Leased Property to inspect such premises at reasonable intervals during regular business hours (or at any time in case of emergency) to determine whether EcoSpa has complied with and is complying with the terms and conditions of this Agreement with respect to such premises or to perform or cause to be performed maintenance and make repairs or replacements as the Town deems necessary.

- 9.2 Obstruction By EcoSpa. In the event that any personal property of EcoSpa shall obstruct the access of the Town, its officers, employees, agents or contractors, or a utility company furnishing utility service to any of the existing utility, mechanical, electrical and other systems, and thus shall interfere with the inspection, maintenance or repair of any such system, EcoSpa shall move such property, as directed by the Town or said utility company, in order that access may be had to the system or part thereof for inspection, maintenance or repair. If EcoSpa shall fail to so move such property after direction from the Town or said utility company to do so, the Town or the utility company may move it without liability for damage sustained in moving.
- 9.3 No Eviction Or Abatement. Exercise of any or all of the foregoing rights in this Article, by the Town, or others under right of the Town, shall not be, nor be construed to be, an eviction of EcoSpa, nor be made the grounds for any abatement of the Rent nor any claim or demand for damages against the Town, consequential or otherwise.

**ARTICLE 10  
DEFAULT, RIGHTS OF TERMINATION**

- 10.1 Default By EcoSpa. Time of payment and performance is of the essence in this Agreement. EcoSpa shall be in default under this Agreement upon the occurrence of any one or more of the following nonexclusive list of events:
- 10.1.1 EcoSpa's failure to pay the Rent or any fee or other charge when due to the Town and within five (5) working days after notice from the Town of such non-payment.
- 10.1.2 EcoSpa's failure to maintain the insurance required above.
- 10.1.3 EcoSpa's assignment of any right hereunder or attempt to sublet the Leased Property, a violation of Article 8.
- 10.1.4 EcoSpa's failure to perform, keep or observe any of the terms, covenants or conditions of this Agreement and to cure or remedy such failure within five (5) working days after notice from the Town of such failure.
- 10.1.5 The filing by EcoSpa of a voluntary petition in bankruptcy, the filing of an involuntary petition in bankruptcy against EcoSpa, the taking of possession of all or substantially all of EcoSpa's assets pursuant to proceedings brought under the provisions of any federal reorganization act or the appointment of a receiver of all or substantially all of EcoSpa's

assets and the failure of EcoSpa to secure the return of such assets and/or the dismissal of such proceeding within (90) days after the filing.

10.1.6 The abandonment for a period of fourteen (14) days by EcoSpa of the conduct of all its business operations during the terms of this Agreement.

10.1.7 The assignment by EcoSpa of its assets for the benefit of creditors.

10.1.8 The death or disability of EcoSpa or a principal of EcoSpa.

10.1.9 Any other significant and material breach of this Agreement.

10.2 The Town's Remedies On Default.

10.2.1 In the event of a default by EcoSpa, the Town may terminate this Agreement by notice in writing to EcoSpa. In the alternative, the Town may elect to keep the Agreement in force and work with EcoSpa to cure the default. If this Agreement is terminated, EcoSpa's liability to the Town for damages and fees, including but not limited to the Rent, shall survive the termination, and the Town may re-enter, take possession of the Leased Property, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages.

10.2.2 Following re-entry or abandonment, the Town may make arrangements for use of the Leased Premises by others, and in that connection may make any suitable alterations or refurbish the Leased Property, but the Town shall not be required to make such arrangement for any use or purpose.

10.3 Rights and Remedies Reserved. It is understood and agreed that any rights and remedies reserved pursuant to this Article are in addition to any other rights or remedies the parties may have pursuant to this Agreement or to applicable law to seek judicial enforcement, damages or any other lawful remedy.

**ARTICLE 11  
MISCELLANEOUS PROVISIONS**

11.1 Cumulative Rights. All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of, or exclusive of, each other or of any other remedy available to the Town or EcoSpa, at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

- 11.2 **Non-Waiver.** The failure by either party to exercise any right or rights accruing to it by virtue of the breach of any covenant, condition, or agreement herein by the other party shall not operate as a waiver of the exercise of such right or rights in the event of any subsequent breach by such other party, nor shall such other party be relieved thereby from its obligations under the terms hereof.
- 11.3 **Non-liability of Individuals.** No member, director, officer, agent, or employee of either party hereto shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement because of any breach thereof, or because of its or their execution or attempted execution of the same.
- 11.4 **Limitation on Use.** EcoSpa shall not use, or permit the use of the Leased Property, or any part thereof, for any purpose or use other than those authorized by this Agreement and Exhibit B. Neither shall EcoSpa permit nor suffer any disorderly noise or nuisance whatsoever about the Leased Property, or other Town property.
- 11.5 **Governing Law.** This Agreement shall be performable and enforceable in the Town of Palmer Lake, Colorado, and shall be construed in accordance with the laws of the State of Colorado.
- 11.6 **Benefits.** This Agreement is made for the sole and exclusive benefit of the Town and EcoSpa and is not made for the benefit of any third party.
- 11.7 **Construction.** In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.
- 11.8 **Successors and Assigns.** All covenants, stipulations and agreements in this Agreement shall extend to and bind each party hereto, its legal representatives, successors and assigns. This provision does not render the Agreement assignable, as assignment is governed by Article 9.
- 11.9 **Headings.** The titles of the several articles of this Agreement are inserted herein for convenience only and are not intended and shall not be construed to affect in any manner the terms and provisions hereof, or the interpretation or construction thereof.
- 11.10 **Entire Agreement.** This Agreement and Exhibits, which is the entire agreement between the parties hereto, supersedes all prior agreements, understandings, warranties or

promises between the parties hereto, whether written, spoken or implied from the conduct of the parties hereto.

- 11.11 Severability. In the event any covenant, condition or provision of this Agreement is held to be invalid by final judgment of any court of competent jurisdiction, the invalidity of such covenant, condition or provision shall not in any way affect any of the other covenants, conditions or provisions of this Agreement, provided that the invalidity of any such covenant, condition or provision does not materially prejudice either the Town or EcoSpa in his or its respective rights and obligations under the valid covenants, conditions or provisions of this Agreement.
- 11.12 Surrender Of Possession. Upon the expiration of this Agreement or its earlier termination as herein provided, Tenant shall remove all of its property from the Business Space and all other Town property and surrender entire possession of its rights to the Town and its improvements in accordance with the above, unless this Agreement is renewed or replaced.
- 11.13 The Town Representative. The Town designates the Town Administrator, or designee, as its representative who shall make, within the scope of her authority, all necessary and proper decisions with reference to this Agreement. All requests for contract interpretations, amendments, and other clarifications or instructions shall be directed to the Town Representative. The representative may be changed by written notification to EcoSpa.
- 11.14 Notices. Notices permitted or required to be given under this Agreement shall be in writing and shall be deemed given upon personal delivery or upon deposit in the United States Mail, certified, return receipt requested, postage fully prepaid, addressed as follows or to such other address as the parties may designate from time to time by notice given in accordance with this Section:

**To EcoSpa: EcoSpa, LLC  
Attn: Richard and Lindsay Willan  
P.O. Box 216  
Palmer Lake, CO 80133  
digbycrofts@gmail.com  
719 648-1419**

**To the Town: Town of Palmer Lake  
Attention: Dawn Collins  
42 Valley Crescent  
PO Box 208**

Palmer Lake, CO 80133  
dawn@palmer-lake.org  
Palmer Lake, CO

Copy To: Matthew Z. Krob, Town Attorney  
8400 E. Prentice Avenue  
Penthouse  
Greenwood Village, CO 80111  
matt@kroblaw.com  
303 694 0099

- 11.15 Paragraph Headings. Paragraph headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provisions of this Agreement.
- 11.16 Schedules And Exhibits. Whenever reference is made in this Agreement to a Schedule or an Exhibit, unless otherwise specifically expressed to the contrary, such Schedule or Exhibit shall be deemed attached to and by this reference incorporated in this Agreement.
- 11.17 Force Majeure. Neither the Town nor EcoSpa shall be deemed in violation of this Agreement if prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of energy or materials, acts of God or nature, act of public enemy, acts of superior governmental authority, weather conditions, rights, rebellion, sabotage or any other circumstances that are not within its control.
- 11.18 No Limitation on General Powers. Nothing in this Agreement shall be construed as in any way limiting the general powers of the Town to fully exercise their governmental functions or their obligations under any bond covenants or federal, state or local laws rules or regulations.
- 11.19 No Relationship. Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of employer and employee, principal and agent or a partnership or a joint venture between the parties hereto. The Town shall not be responsible for any debts or obligations whatsoever of EcoSpa.
- 11.20 At the time of this Lease, the Town anticipates leasing other portions of the Elephant Rock Property to additional Tenant(s). This will necessitate terms regulating the use and maintenance of common or shared spaces that will be applicable to all Tenants. Tenants agree to abide by these terms as will be determined in the sole discretion of the Town.

**ARTICLE 12  
PURCHASE AND FIRST RIGHT OF REFUSAL**

12.1 Purchase. The Tenant shall have the right to purchase the property described on Exhibit A, consisting of 2.8 acres beginning on June 8, 2031. The purchase price for such property shall be one tenth (1/10) of the appraised value as appraised and established by the Opteon Appraisal, for a total purchase price of one hundred and twenty thousand dollars (\$120,000.00). The Parties anticipate executing a separate Option to Purchase Agreement followed by a Purchase Contract to effectuate the purchase. If EcoSpa can cure or otherwise address the issue, the Lease may continue and the Option to Purchase will remain in effect. If the Board determines that EcoSpa has failed to, or is unable to cure or otherwise address the issue, and the Board terminates the Lease, the Option to Purchase will also terminate.

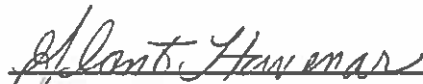
Prior to such purchase, the Property must be properly subdivided and the Property parcel created, and any required redevelopment or development agreements must be executed by Tenants as may be required by the Town.

12.2 First Right of Refusal

Should the Tenant decide not to purchase the Property pursuant to 12.1, or decide to terminate this Lease, the Lease will terminate and the Property will revert back to the Town of Palmer Lake with its improvements there on and title to said improvements shall transfer automatically to the Town.

IN WITNESS WHEREOF, the parties have hereunder set their hands and seals as of the day and year first above written.

TOWN OF PALMER LAKE

  
\_\_\_\_\_  
Grant Havenar, Mayor

ATTEST:

  
\_\_\_\_\_  
Dawn Collins

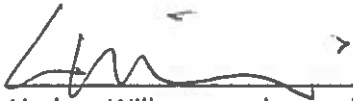
**ECOSPA**

**EcoSpa, LLC**

**By:**



Richard Willan, member and manager



Lindsay Willan, member and manager





# ECO SPA AT CHAUTAUQUA SPRINGS - WILLAN'S PROPOSAL - ESTIMATE & TIMELINE FOR RENOVATION & CONSTRUCTION

BUILDING / USAGE		FORMERLY	PHASES	PVT OR TPL COMM USE	EST. COST / SOURCES	TIMELINE
ECO SPA		OLD POOL	PHASE 1: RENOVATION & CONSTRUCTION AS OUTLINED IN PLAN & MODEL PROVIDED, INC. PARKING.  PHASE 2: EXPANSION	THIS WILL BE A FOR PROFIT BUSINESS, SPECIAL RATES FOR TPL RESIDENTS	PHASE 1: \$1.5M FUNDED BY WILLANS & INVESTORS	APPROXIMATELY ONE YEAR FROM AGREEMENT OF LAND PURCHASE
Year round full service spa						
Therapies, Aqua Classes						
Yoga, Vjitsu,						
Juice Bar, Café						
AMPITHEATRE		AMPITHEATRE	PHASE 1: DEMO & RECONSTRUCTION OF STAGE & BENCHES  PHASE 2: EXTENSION OF SEATING	PART OF ECO SPA, WITH FREE USE GRANTED TO TPL WHEN AVAILABLE	PHASE 1: \$50K FUNDED BY WILLANS	SAME AS ECO SPA (SEE ABOVE)
Plays, Storytelling						
Natural Local History						
Movie Nights						
Acoustic Music Performances						
Star Gazing / Education					PHASE 2: \$10K FUNDED BY PHASE 1 REVENUE	
INDOOR EVENT CENTER		BASKETBALL CT.	PHASE 1: DESIGN & BUILD UNISEX / ADA RESTROOM ON-SITE OF EXISTING STORAGE ROOM & CATERING KITCHENETTE  PHASE 2: CLAD EXTERIOR IN CEDAR AS PER DESIGN & ADD PERGOLA OVER BBQ AREA, OUTDOOR SEATING	PART OF ECO SPA, WITH FREE USE GRANTED TO TPL WHEN AVAILABLE	PHASE 1: \$45K FUNDED BY THE WILLANS	PHASE 1: SOFT OPEN JUNE 2023, GRAND OPENING JULY 4TH, 2023
Community Classes						
Yoga, Tai Chi, Jiu-jitsu						
Community Dances, Classes						
Arts & Crafts Classes						
Exhibitions & Related Gatherings					PHASE 2: \$100K FROM PHASE 1 REVENUE	PHASE 2: PROJECTION 2024
Local youth group meetings						
Wine & Food Tastings						

## OPTION TO PURCHASE AGREEMENT

THIS OPTION TO PURCHASE AGREEMENT (the "Agreement") is made this 29 day of September, 2023, by and between by and between the Town of Palmer Lake, a Colorado statutory town (the "**Town**"), and EcoSpa, LLC, a Colorado limited liability company ("**EcoSpa**"). Town and EcoSpa are sometimes individually referred to as a "**Party**" and collectively referred to as the "**Parties**."

### RECITALS

A. The Town owns that certain real property commonly referred to as the Elephant Rock Property consisting of approximately 28 acres (hereinafter referred to as the "**Entire Elephant Rock Property**"). The Town acquired the Entire Elephant Rock Property pursuant to that certain warranty deed dated June 8, 2021. The Entire Elephant Rock Property was a gift from Living Word Chapel who expressed the desire that the Town develop "a well-articulated plan for how this property will benefit the residents of Palmer Lake" and "the Town will not sell or otherwise dispose of the property for a period of 10 years."

B. There are certain improvements on approximately 2.8 acres of the Entire Elephant Rock Property that have been leased to EcoSpa ("**Leased Property**") consisting of a gymnasium, maintenance shed, a swimming pool and an outdoor amphitheater ("**Improvements**") which are in disrepair. The Leased Property is more fully described in Exhibit A which is attached.

C. As part of the development of the Leased Property, the Town wishes to provide for the development of the Leased Property for the benefit of the community. EcoSpa wishes to redevelop the Leased Property and refurbish the Improvements and construct additional building(s) and improvement(s) ("**Project**"). The uses of the Leased Property are restful and tranquil.

D. Because the Project will require the investment of significant capital, EcoSpa wishes to purchase the Leased Property. The Town does not wish to sell the Leased Property until after June 8, 2031. To allow the immediate redevelopment of the Leased Property, the Town has leased the Leased Property to EcoSpa ("**Lease**") and EcoSpa desires the Town to grant EcoSpa this Option to Purchase the Leased Property ("**Option Agreement**"). The Town will also require a Redevelopment Agreement once EcoSpa has a more definite plan of Redevelopment and before redevelopment begins.



THEREFORE, the Recitals above are incorporated herein and made a material part of the Agreement and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### OPTION TO PURCHASE

1. The Town grants EcoSpa, LLC the exclusive option to purchase the Leased Property on the following terms and conditions set out below on and after June 8, 2031 or on an earlier date as the Town advises EcoSpa that it may sell and EcoSpa may purchase the Leased Property.
2. If EcoSpa can cure or otherwise address the issue, the Lease may continue and the Option to Purchase will remain in effect. If the Board determines that EcoSpa has failed to, or is unable to cure or otherwise address the issue, and the Board terminates the Lease, the Option to Purchase will also terminate.
3. The purchase price is One Hundred Twenty Thousand dollars (\$120,000.00) "(Purchase Price)". The purchase price is one tenth (1/10) of the appraised value as appraised and established by the Opteon Appraisal, for a total purchase price of one hundred and twenty thousand dollars (\$120,000.00).
4. To exercise its purchase option, EcoSpa shall give the Town written notice of its exercise of the option. The sale shall be closed at place and on a date and time mutually agreeable between the parties which shall be no later than one hundred and twenty (120) days after the exercise of the option and no later than ninety (90) days after the passage of an ordinance by the Town to sell the Leased Property, whichever is later. At the closing, EcoSpa shall pay the Town the Purchase Price in cash, and the Town shall convey the Leased Property to EcoSpa by general warranty deed containing no exceptions or liens, subject only to ad valorem taxes for the year of such conveyance (which will be prorated as of the date of such conveyance), and other restrictions, easements, and encroachments affecting the premises which are required by the Town in its sole discretion.
5. The Lease will continue until the closing and the exercise of its option will not relieve either party of any of its obligations, covenants, or agreements under the Lease until closing. Upon the closing this Lease will terminate. If the then-existing term of the Lease expires while the closing of the purchase of the premises is pending, the Town may in its sole discretion extend the Lease from day to day at the then-existing lease terms until closing has occurred. The Town and EcoSpa agree to cooperate in order to assure the closing of

the sale and purchase of the Leased Property and to take those actions necessary to complete the sale.

6. The terms of this Option Agreement will bind and benefit the Town and EcoSpa and their respective successors. This Option Agreement shall not be assignable without the written consent of the Town, such consent not to be unreasonably withheld.
7. All offers, acceptances, and any other notices or statements contemplated or required by this Agreement shall be sent by certified or registered United States mail, return receipt requested, to the intended recipient thereof at the addresses stated on the first page of this Agreement, or to such other addresses as may be designated in writing by any party or available from a document recorded in the chain of title to the Leased Property. Any periods of time within which action is to be taken hereunder shall commence on the date notice thereof is received.
8. This Agreement shall be binding upon and shall inure to the benefit of the heirs, successors, and personal representatives of the parties hereto. This Option Agreement shall not be assignable without the written consent of the Town, such consent not to be unreasonably withheld.
9. This Agreement is made in Colorado and shall be governed by and interpreted in accordance with the law of Colorado.
10. **Notices.** Notices permitted or required to be given under this Agreement shall be in writing and shall be deemed given upon personal delivery or upon deposit in the United States Mail, certified, return receipt requested, postage fully prepaid, addressed as follows or to such other address as the parties may designate from time to time by notice given in accordance with this Section:

**To EcoSpa: EcoSpa, LLC  
Attn: Richard and Lindsay Willan  
P.O. Box 216  
Palmer Lake, CO 80133  
digbycrofts@gmail.com  
719 648-1419**

**To the Town: Town of Palmer Lake  
Attention: Dawn Collins  
42 Valley Crescent  
PO Box 208  
Palmer Lake, CO 80133**

dawn@palmer-lake.org

**Copy To: Matthew Z. Krob, Town Attorney**  
**8400 E. Prentice Avenue**  
**Penthouse**  
**Greenwood Village, CO 80111**  
**matt@kroblaw.com**  
**303 694 0099**

IN WITNESS WHEREOF, the parties have hereunder set their hands and seals as of the day and year first above written.

**TOWN OF PALMER LAKE**


  
\_\_\_\_\_  
Grant Havenar, Mayor

ATTEST:

  
\_\_\_\_\_  
Dawn Collins

**ECOSPA**  
**EcoSpa, LLC**

By:   
\_\_\_\_\_  
Richard Willan, member and manager

  
\_\_\_\_\_  
Lindsay Willan, member and manager