



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
City Attorney	Nina P. Williams, City Attorney	December 19, 2023

ITEM

Ordinance 2023-19, Approving an Option to Ground Lease Real Property, located at 102 D Street and 233 E. First Street, from the City of Salida to Artspace Projects, Inc.

BACKGROUND

On June 14, 2022, a Chaffee County District Court Final Rule & Order granted the City fee simple interest in Property (known as 102 D Street and 233 E. First Street, Salida) via eminent domain “to construct and maintain affordable housing and related improvements, and for other municipal uses.”

This Property is located in downtown Salida and prime for redevelopment as workforce housing for the community.

The provision of safe, affordable housing in Salida is a critical need, and the 2022 Chaffee County Housing Needs Assessment indicated that 1,105 new homes are needed for the local workforce by 2027, with 415 new rental units needed in Salida alone.

The City, in partnership with Artspace, a non-profit housing organization, identified in a Feasibility Study and Needs Survey that the community has goals for Preserving Affordability, Supporting Rural Creatives and Art Forms, Supporting a Diverse Cultural Community, and Anchoring a Creative District with new housing opportunities in downtown Salida.

In furtherance of these goals, the City Council wishes to ground lease the Property to Artspace for the purposes of developing, constructing, renovating and operating, in accordance with the Space to Create Colorado program, an affordable live/work project for individuals and their families, consisting of approximately nineteen (19) apartments and related uses.

STAFF RECOMMENDATION City staff recommends approval of Ordinance No. 2023-19, Approving an Option to Ground Lease Real Property, located at 102 D Street and 233 E. First Street, from the City of Salida to Artspace Projects, Inc.

SUGGESTED MOTION

A City Councilmember should state, “I move to approve Ordinance 2023-19 on second reading, approving an Option to Ground Lease Real Property, located at 102 D Street and 233 E. First Street, from the City of Salida to Artspace Projects, Inc.”

CITY OF SALIDA, COLORADO
ORDINANCE NO. 19
(Series of 2023)

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO,
APPROVING AN OPTION TO GROUND LEASE REAL PROPERTY, LOCATED AT
102 D STREET AND 233 E. FIRST STREET, FROM THE CITY OF SALIDA TO
ARTSPACE PROJECTS, INC.**

WHEREAS, the City of Salida, Colorado (“City”) is a statutory city, duly organized and existing under the laws of the State of Colorado; and

WHEREAS, pursuant to Colorado Revised Statutes § 31-15-401, the City, acting by and through its City Council (“Council”), possesses the authority to adopt laws and ordinances within its police power in furtherance of the public health, safety and welfare; and

WHEREAS, pursuant to Colorado Revised Statutes § 31-15-713, the Council also possesses the authority to approve leases of City property for periods in excess of one year by ordinance; and

WHEREAS, the City owns certain real property within the City, located in downtown Salida, prime for redevelopment as workforce housing for the community, commonly known as 102 D Street and 233 E. First Street, Salida, Colorado 81201, and more specifically described and referred to within the Option to Ground Lease Agreement, attached hereto as **Exhibit A** (the “Property”); and

WHEREAS, pursuant to a Final Rule & Order filed by the Chaffee County District Court, dated June 14, 2022, the City was granted fee simple interest in the Property via eminent domain “to construct and maintain affordable housing and related improvements, and for other municipal uses,” and

WHEREAS, the provision of safe, affordable housing in Salida is a critical need, and whereas the 2022 Chaffee County Housing Needs Assessment indicated that 1,105 new homes are needed for the local workforce by 2027, with 415 new rental units needed in Salida alone; and

WHEREAS, the City, in partnership with Artspace, a non-profit housing organization, identified in a Feasibility Study and Needs Survey that the community has goals for Preserving Affordability, Supporting Rural Creatives and Art Forms, Supporting a Diverse Cultural Community, and Anchoring a Creative District with new housing opportunities in downtown Salida; and

WHEREAS, in furtherance of these goals, the City wishes to ground lease the Property to Artspace for the purposes of developing, constructing, renovating and operating, in accordance with the Space to Create Colorado program, an affordable live/work project for individuals and their families, consisting of approximately nineteen (19) apartments and related uses; and

WHEREAS, the City Council therefore desires to enter into the Option to Ground Lease Agreement with Artspace Projects, Inc., attached hereto as **Exhibit A**, finding that the lease of the Property will benefit the City, its workforce, its residents, its businesses, its customers and its Creative Art District.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO:

Section 1. The City Council incorporates the foregoing recitals as conclusions, facts, determinations and findings by the City Council.

Section 2. Option to Ground Lease Approved. Pursuant to Colorado Revised Statutes § 31-15-713, the City Council hereby accepts and approves the Option to Ground Lease Agreement between the City of Salida and Artspace Projects, Inc., attached hereto as **Exhibit A**.

Section 3. Execution of Option to Ground Lease Agreement. The City Council authorizes the Mayor on behalf of the City to execute the Option to Ground Lease Agreement, attached hereto as **Exhibit A**, and to execute and deliver any and all other documents reasonably necessary or convenient to effectuated the intent of the Option to Ground Lease Agreement, in accordance with the terms of this Ordinance.

Section 4. Severability. The provisions of this ordinance are severable and the invalidity of any section, phrase, clause or portion of the ordinance as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the ordinance.

INTRODUCED ON FIRST READING, on December 5, 2023, ADOPTED and ORDERED PUBLISHED IN FULL in a newspaper of general circulation by the City Council on this ____ day of _____, 2023, and set for second reading and public hearing on the 19th day of December, 2023.

INTRODUCED ON SECOND READING FINALLY ADOPTED and ORDERED PUBLISHED IN FULL BY TITLE ONLY by the City Council on this 19th day of December, 2023.

City of Salida

Mayor Dan Shore

ATTEST:

City Clerk Erin Kelley

EXHIBIT A

Option to Ground Lease Agreement between City of Salida and Artspace Projects, Inc.

OPTION TO GROUND LEASE

THIS OPTION TO GROUND LEASE (the “**Agreement**”) is made and entered into this ___ day of _____, 2023 (the “**Effective Date**”), by and between the **CITY OF SALIDA, COLORADO** (hereinafter the “**City**”), a statutory city existing under the laws of the State of Colorado having an address at 448 E 1st Street, Salida, Colorado 81201, and **ARTSPACE PROJECTS, INC.** (hereinafter “**API**”), a Minnesota nonprofit corporation having an address at 250 Third Avenue North, Suite 400, Minneapolis, Minnesota 55401. Hereinafter the City and API shall individually be referred to as “Party” or collectively referred to as the “Parties.”

WITNESSETH :

WHEREAS, pursuant to that certain Final Rule & Order filed by the District Court, Chaffee County, Colorado dated June 14, 2022 (the “**Order**”), which Order is attached hereto as **Exhibit A**, the City is the owner of certain real property located at 102 D Street and 233 E. First Street within the City of Salida, more particularly described on **Exhibit B** (the “**Property**”); and

WHEREAS, API intends to ground lease the Property and develop at the Property, in accordance with the Space to Create Colorado program, an affordable live/work project for individuals and their families, consisting of, but not necessarily limited to, approximately nineteen (19) apartments and related uses (the “**Project**”), which Project shall be funded, in part, with use financing necessary for the development and operation of the Project; and

WHEREAS, API has requested, and the City has agreed to grant API an option to ground lease the Property for purposes of developing the Project on the Property, all in accordance with the terms set forth herein as well as in compliance with all local, State and federal laws, rules, regulations and requirements, as amended from time to time.

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00), and the mutual covenants and agreements herein contained, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Definitions.** As used in this Agreement, the following terms shall have the meanings ascribed thereto:
 - a. **Affiliate Person** shall mean an individual or entity controlled directly or indirectly by API, which will own the Project in lieu of API.
 - b. **CHFA** shall mean the Colorado Housing and Finance Authority.
 - c. **Commencement Date** shall mean the date API delivers written notice to the City of the exercise of the Option.
 - d. **DOLA** shall mean the Colorado Department of Local Affairs

e. Encumbrances shall mean all liens, security, interests, claims, encumbrances, easements, rights-of-way, encroachments, reservations, restrictions, covenants, conditions and any other matters affecting title to the Property.

f. Environment shall mean water or water vapor, land surface or subsurface, air, wildlife, biota and all other natural resources.

g. Environmental Law shall mean any applicable, or relevant and appropriate, statutes, ordinances, by-laws, directives or other written, published laws, any written, published rules or regulations, orders, and any licenses, permits, orders, judgments, notices or other requirements issued pursuant thereto, enacted, promulgated or issued by any Governmental Authority, in effect as of the Effective Date, relating to pollution or protection of public health or the Environment from Hazardous Materials (including, but not limited to, any air, surface water, groundwater, land surface or sub-surface strata, whether outside, inside or under any structure), or to the identification, reporting, generation, manufacture, processing, distribution, use, handling, treatment, storage, disposal, transporting, presence, Release or threatened Release, of any Hazardous Substances. Without limiting the generality of the foregoing, Environmental Laws shall include the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Toxic Substances Control Act, as amended, the Hazardous Materials Transportation Act, as amended, the Resource Conservation and Recovery Act, as amended, the Clean Water Act, as amended, the Safe Drinking Water Act, as amended, the Clean Air Act, as amended, and all analogous laws enacted, promulgated or lawfully issued by any Governmental Authority, but shall exclude the Occupational Safety and Health Act, as amended, and similar state laws.

h. Governmental Authority shall mean any federal, state or local governmental court, agency or other entity, body, organization or group exercising any executive, legislative, judicial, quasi-judicial, regulatory or administrative government function.

i. Ground Lease shall have the meaning provided in Section 3.

j. Hazardous Material shall mean any petroleum, PCBs, asbestos, chemical substance, waste, pollutant or contaminant, as defined in, or regulated by, any Environmental Law or as determined by any Governmental Authority.

k. Option shall have the meaning provided in Section 2.

l. Option Term shall mean the period from the Effective Date to the Termination Date.

m. Permitted Encumbrances shall mean the Encumbrances listed on the schedule of exceptions to be contained in the leasehold title policy to be dated as of the Commencement Date, or as described as a Permitted Encumbrance in this Agreement.

n. Person shall mean a natural person, a partnership, a joint venture, an unincorporated association, a limited liability company, a corporation, a trust, any other legal entity, or any Governmental Authority.

o. Project shall have the meaning provided in the Recitals.

p. Property shall have the meaning provided in the Recitals.

q. Taking shall mean any taking or pending or threatened taking, in condemnation or under the right of eminent domain of the Property or any portion thereof.

r. Termination Date shall have the meaning provided in Section 2.

2. Option to Ground Lease: The City hereby grants to API an exclusive option to ground lease the Property (the "**Option**"). The Option shall remain in full force and effect and may be exercised by API at any time until the first to occur of (i) the closing of the primary construction financing (excluding predevelopment financing) for the Project or (ii) December 31, 2025 (hereinafter referred to as the "**Termination Date**"). API has the right to extend the date in item (ii) above by twelve (12) months upon securing financing necessary to complete the Project.

3. Terms and Conditions of Lease: The City and API shall enter into a ground lease for the Property in a form substantially the same as the form attached hereto as Exhibit C, subject to changes required by any lender or funder of the Project and approved by the City, which approval shall not be unreasonably withheld, conditioned, delayed or denied (the "**Ground Lease**") no later than the Termination Date. On the Commencement Date the mutually acceptable finalized version of the Ground Lease shall take effect. The parties shall negotiate the Ground Lease in good faith. If, despite reasonable efforts, the Parties are unable to negotiate a Ground Lease that is acceptable to both Parties, then this Option and all obligations of the Parties shall terminate on the Termination Date. While not specific to this Option, API understands that the City may be interested in additional terms for the Ground Lease, including but not limited to: local preference in procurement of goods and services as is reasonable for the construction of any future improvements; the City's participation in design, architecture, financing and construction of future improvements; the City's interest in any non-residential space or other City-funded improvements; the final term of the lease and the timing of project construction; lease renewal options.

4. Ground Lease Rent and Term: The rent payable under the Ground Lease is anticipated to be ONE DOLLAR (\$1.00) per year. The term of the Ground Lease shall be no less than thirty-five (35) years from the Commencement Date with two (2) five (5) year extensions. The Ground Lease's rent and term shall ultimately be decided in consultation with the any lender or funder of the Project and the City of Salida. Notwithstanding the foregoing, this Agreement and the terms contained herein shall not constitute a multiyear fiscal obligation for the City.

5. Limitations on City's Contribution to the Project. The Parties recognize and acknowledge that the City acquired the Property as a result of substantial expenditure of public funds, and that the City's contribution to the Project is the value of the Property that is being provided for use of the Project at little cost to API in order for the City to receive the benefits

described above and for the community. The Parties do not contemplate further contributions from the City other than those payments made in accordance with that certain Professional Services Agreement between the City and API dated May 16, 2023. However, the City may, in its sole discretion, provide further contributions, funds, donations, or outlay of funds or in-kind services to assist in the development of the Project. API represents and warrants that it believes it can provide or acquire all necessary funding for the Project, other than for acquisition of the Property, from sources other than the City. The Parties acknowledge that some sources of financing may require the City to participate in the application, receipt and deployment of such funds.

6. Restrictive Covenants. The Parties acknowledge and agree that API will be permitted to record restrictive covenants (as contained in certain land use restriction agreement(s) required by CHFA, DOLA and such other applicable Persons as may be necessary to develop the Project (the “**LURA**”)) on the land and all improvements and that the LURA shall be binding on the City and any successor in interest to the City’s interest in the Property. The Parties further acknowledge and agree that upon the termination of the LURA by foreclosure or deed in lieu thereof, the Parties agree not to evict any residential tenants without cause and likewise acknowledge and agree that they will not increase the gross rent for a period of three (3) years.

7. Right to Inspect Property. The Parties acknowledge and agree that this Option is subject to a determination by the API on the desirability of the Property for the Project, including API’s environmental review of the Property. During the Option Term, API may conduct inspections, tests, and studies with respect to the physical and environmental condition of the Property, including all environmental, surveying, engineering, soil borings and other tests with respect to the Property. API and its consultants, agents, engineers, inspectors, contractors, and employees, upon notice to the City, shall be given reasonable access to the Property for the purpose of performing such due diligence.

8. Warranties and Representations of the City. As a material inducement to cause API to enter into this Agreement, the City represents to API that as of the Effective Date, throughout the term of this Agreement and as of the Commencement Date the following are true:

a. The City has full right, power and authority to execute, deliver and perform this Agreement without obtaining any consents or approvals from, or the taking of any other actions with respect to, any third parties, and this Agreement when fully executed will constitute a valid and binding agreement of the City, enforceable against the City according to its terms.

b. The City has title to the Property. The City is not aware of any party that has or shall have any right in, or to acquire the Property. At the Commencement Date, the Property shall be free and clear of all Encumbrances except Permitted Encumbrances.

c. There is no action, suit, proceeding or investigation pending or, to the City’s knowledge, threatened before any Governmental Authority which relates to the Property or the City’s use of the Property.

d. There is no known Taking affecting the Property.

e. The Property is not situated in any area classified by any Governmental Authority as being a “wetland” or “flood-prone.”

f. The City has received no notice from any Governmental Authority of a violation of any requirement of such Governmental Authority with respect to the use or occupation of the Property, including, but not limited to, Environmental Law, zoning, subdivision and other land use requirements, and the City has received no notice and have no knowledge of any violations or investigations relating to any such requirement.

g. The City has received no notice of any default or breach by the City under any covenant, condition, restriction, right of way or easement affecting the Property or any portion thereof, and no such default or breach is known by the City to now exist.

h. There are none, and, without the prior written consent of API, on the Commencement Date will be no service contracts, leases, purchase agreements or rights of first refusal affecting all or any part of the Property and there are and will be no oral or written promises, understandings, agreements or commitments between the City and any third party with respect to the Property.

i. There is no litigation or proceeding pending, or to the City’s knowledge, threatened against or relating to the Property.

j. To the best of the City’s knowledge, the Property is in compliance with, and the City has not been charged with, has not received any notice of and is not under investigation for, failure to comply with any Environmental Law. Neither the City nor, to the best of the City’s knowledge, any prior owners and occupants of the Property have stored, treated, generated, transported, processed, handled, produced or disposed of any Hazardous Materials (except in compliance with applicable Environmental Laws) at the Property. There are no underground storage tanks at the Property of which the City is aware.

k. The Property is presently vacant land not being used for a governmental purpose.

l. The City is a statutory city under the laws of the State of Colorado and pursuant to the provisions of Section 31-15-713, Colorado Revised Statutes, prior to entering into the Ground Lease or this Agreement, the City shall adopt an ordinance authorizing the City to enter into the Ground Lease and this Agreement.

m. The City was granted fee simple interest in the Property via eminent domain by the Order “to construct and maintain affordable housing and related improvements, and for other municipal uses.”

n. The City’s entering into this Agreement and the Ground Lease, and the transferring of a leasehold estate in the Property to API, or its Affiliate, does not and will not violate the Order.

9. Covenants of the City. The City covenants that during the Option Term:

a. It shall not encumber the Property or enter into any lease or other occupancy agreement with respect thereto without the prior written consent of API.

b. The City shall, at its sole cost and expense, comply with all notices, orders and requirements issued by any Governmental Authority against or affecting the Property, to the extent such notices, orders and requirements are issued as a result of the City's use or ownership of the Property.

c. The City, upon knowledge of the same, shall promptly notify API of any material change with respect to the Property, or with respect to any information, representation or warranty heretofore or hereafter furnished by the City to API concerning the Property.

d. The City shall, upon request, provide API with reasonable access to the Property for the purpose of verifying the City's performance of its obligations hereunder.

10. Warranties and Representations of API. As a material inducement to cause the City to enter into this Agreement, API represents and warrants to the City that as of the Effective Date, throughout the term of this Agreement and as of the Commencement Date:

a. API has full right, power and authority to execute, deliver and perform this Agreement without obtaining any consents or approvals from, or the taking of any other actions with respect to, any third parties, and this Agreement when fully executed will constitute a valid and binding agreement of API, enforceable against API according to its terms.

b. API has substantial experience in the financing and development through completion of workforce and affordable housing projects similar to the Project and, further, that API intends to diligently pursue financing and development of the Project through the completion stage.

11. Covenants of API. API covenants that during the Option Term:

a. API shall work judiciously and in good faith at its sole cost to perform any and all due diligence regarding the historical or current use or uses of the Property.

b. API shall, upon knowledge of the same, promptly notify the City of any material findings with respect to the Property, or with respect to any representation or warranty heretofore or hereafter furnished by API to the City.

c. API shall, upon request, provide the City with reasonable satisfactory evidence or proof for the purpose of verifying API's compliance with performance of its obligations hereunder. Failure of API to provide such evidence or proof to the City for a period of twelve (12) consecutive months shall constitute an event of default under this Agreement which entitled the City to terminate the Option.

d. API shall not encumber the Property or enter into any lease or other occupancy agreement with any other person, party, or entity with the express written approval of the City.

12. Notice: All notices under this Agreement, including notice of the exercise of this Option, shall be in writing and shall be sent by certified or registered mail, return receipt requested, Federal Express, or similar private overnight carrier, addressed to the Party for which such notice is intended, at such Party's address set forth below or at such other address as may be provided by such Party to the other Party by notice complying with this Section. All notices sent pursuant to this Section shall be deemed effective when deposited in the mail or delivered to the overnight carrier, as the case may be, addressed as follows:

To the City: City of Salida, Colorado
448 E 1st Street, Suite 112
Salida, Colorado 81201
Attn: City Administrator

With a copy to: Wilson Williams LLP
1314 Main Street, Suite 101
Louisville, Colorado 80027
Attn: Nina P. Williams, Esq.

To API: Artspace Projects, Inc.
250 Third Avenue North
Suite 400
Minneapolis, Minnesota 55401
Attn: President/COO/Sr. VP Properties

With a copy to: Cannon Heyman & Weiss, LLP
726 Exchange Street, Suite 500
Buffalo, New York 14210
Attn: Steven J. Weiss, Esq.

13. Miscellaneous Provisions.

a. Unless terminated pursuant to its provisions, this Agreement, and all of its agreements, warranties and representations, shall survive the Option Term and commencement of the Ground Lease.

b. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Colorado, without regard to principles of conflict of laws. The Parties agree and consent that venue for purposes of resolving any dispute or controversy relating to this Agreement shall be Chaffee County.

c. This Agreement embodies and constitutes the entire understanding between the Parties with respect to the transaction contemplated herein, and all prior agreements,

understandings, representations and statements, oral or written, are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument signed by the Party against whom enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

d. No waiver by either Party hereto of any failure or refusal by the other Party hereto to comply with its obligations hereunder shall be deemed a waiver of any other or subsequent failure or refusal by such Party to so comply.

e. The captions in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this contract or any of the provisions hereof.

f. Upon prior written notice to the City, API may assign all of its rights under this Agreement to an Affiliate Person, including, but not limited to, the eventual tenant, in its sole and absolute discretion, without the consent of the City.

g. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs or successors and assigns.

h. As used in this Agreement, the masculine shall include the feminine and neuter, the singular shall include the plural and the plural shall include the singular, as the context may require.

i. This Agreement may be executed in a number of identical counterparts, each of which for all purposes is to be deemed as original, and all of which constitute, collectively, one agreement.

j. In the event that any one or more of the provisions contained in this Agreement should be found or held to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein or therein shall not in any way be affected or impaired thereby.

k. Time is of the essence of this Agreement.

l. City and API acknowledge that each Party's entry into this Agreement is voluntary in nature.

m. This Agreement has been carefully read by the Parties, the contents hereof are known and understood by the Parties, and it is signed freely by each Party executing this Agreement. Each Party has had the opportunity to review this Agreement with independent legal counsel.

n. The Parties recognize and acknowledge that the City is a Colorado municipality and is entitled to the protections of the Colorado Governmental Immunity Act,

Sections 24-10-101, et seq., Colorado Revised Statutes (“**CGIA**”). By entering into this Agreement, the City does not waive, and does not intend to waive any of the protections to which it is entitled under CGIA.

[Remainder of page intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, the City and API have caused this Agreement to be executed under seal as of the day and year first above written.

CITY:

CITY OF SALIDA, COLORADO

By: _____

Name: Dan Shore

Title: Mayor

API:

ARTSPACE PROJECTS, INC.

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENTS

STATE OF COLORADO)
 :ss.
COUNTY OF CHAFFEE)

On the ___ day of December, in the year 2023, before me, the undersigned, a notary public in and for said state, personally appeared **Dan Shore**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ___ day of December, 2023 by [INSERT SIGNATORY NAME], the [INSERT TITLE] of Artspace Projects, Inc., a nonprofit corporation under the laws of Minnesota.

NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RANK)

SIGNATURE OF NOTARY PUBLIC OR OTHER OFFICAL

EXHIBIT A

Order

See Attached

EXHIBIT B

Description of Property

102 D Street: Lots 1 and 2 and Southeasterly 20 feet of Lot 3 of Block 23 of Sacketts Addition, City of Salida, plat recorded at Reception No. 444196 of the Chaffee County Recorder Office

233 E. First Street: Northwesterly 5 feet of Lot 3; all of Lots 4 and 5; and Southeasterly 7.5 feet of Lot 6 of Block 23 of the Sacketts Addition, City of Salida, plat recorded at Reception No. 444196 of the Chaffee County Recorder Office

EXHIBIT C

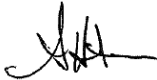
Form of Ground Lease
See Attached

DISTRICT COURT, CHAFFEE COUNTY, COLORADO	
Court Address: 142 CRESTONE AVENUE, P.O. BOX 279, SALIDA, CO, 81201	
Petitioner(s) CITY OF SALIDA v. Respondent(s) PMM LLC et al.	<p>DATE FILED: June 30, 2022 4:39 PM CASE NUMBER: 2021CV30028</p> <p style="text-align: center;">△ COURT USE ONLY △</p> <p>Case Number: 2021CV30028 Division: 2 Courtroom:</p>
Order:Final Rule & Order (proposed) with Exhibit 1 - Subject Property Legal Description	

The motion/proposed order attached hereto: SO ORDERED.

This Order was issued with the consent of the parties and any appeal must be taken pursuant to C.R.M. Rule 7(b).

Issue Date: 6/14/2022



AMANDA HUNTER
Magistrate

DISTRICT COURT, CHAFFEE COUNTY, STATE OF COLORADO Chaffee Combined Court 142 Crestone Avenue; P.O. Box 279 Salida, CO 81201 (719) 539-2561	
<p>PETITIONER:</p> <p>CITY OF SALIDA, a Colorado statutory municipality,</p> <p>v.</p> <p>RESPONDENTS:</p> <p>PMM, LLC, a Colorado limited liability company; PENELOPE L. MEHOS, an individual; JOHN G. MEHOS, an individual; PLAINTIFFS IN CASE NO. 2021CV30014; and DEE DEE COPPER in her official capacity as Treasurer/Public Trustee of Chaffee County, Colorado.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
	<p>Case Number: 2021CV30028</p> <p>Division: 2</p>
FINAL RULE & ORDER	

In accordance with C.R.S. §§ 38-1-105(3) and (4), the Court enters this Final Rule & Order.

THE COURT HEREBY FINDS AS FOLLOWS:

1. This matter is an eminent domain proceeding brought pursuant to the procedures set forth in Title 38, Article 1, Colorado Revised Statutes (“C.R.S.”). In this action, Petitioner City of Salida, Colorado (“City”) sought to acquire by eminent domain a fee interest in a tract of land to construct and maintain affordable housing and related improvements, and for other municipal uses.

2. The Petitioner caused a Petition in Condemnation to be filed on, or about, August 3, 2021. The real property interest the Petitioner sought to acquire by eminent domain is more particularly described on the attached **Exhibit 1** (the “Subject Property”).

3. Based upon the records and files herein, the Court finds that all persons interested as owners or otherwise appearing of record have been joined as Respondents in this action; that service of process has been properly perfected on all named Respondents as required by law, or that the same have subjected themselves to the jurisdiction of this Court; and that the Court has full and complete jurisdiction over the parties hereto. The Court further finds that it has subject matter jurisdiction pursuant to C.R.S. §38-1-102, and that venue is proper since the Subject Property is located in Chaffee County, Colorado.

4. All of the named Respondents have been properly joined as Respondents to this case:

- a. On September 16, 2021, through counsel, in her official capacity as Chaffee County Treasurer and Public Trustee, Respondent Dee Dee Copper filed a Disclaimer of Interest;
- b. On September 24, 2021, on behalf of Plaintiffs in Case No. 2021cv30014 (hereinafter, collectively the “Class-Action Plaintiffs”), Matthew K. Hobbs filed an entry of appearance;
- c. On, or about, August 17, 2021, through the Chaffee County Sheriff Office, the City caused personal service of the Petition in Condemnation and related pleadings on Respondent John Mehos, Respondent Penelope Mehos, and Respondent PMM, LLC (hereinafter, collectively, the “Respondent-Landowners”);
- d. On October 19, 2021, from the bench and as recorded in its Minute Order, the Court found the City properly served the Respondent-Landowners; and
- e. The Respondent-Landowners did not respond to the City’s Petition in Condemnation or otherwise appear before this Court.

5. On March 26, 2022, through counsel, the Class-Action Plaintiffs filed with this Court a pleading captioned as Notice From Plaintiff’s in Case No. 2021cv30014 Regarding Further Case Participation (“Notice of Non-Participation”). In their Notice of Non-Participation, the Class-Action Plaintiffs notified the Court that “they will be not contesting or participating in the valuation hearing, or otherwise further participating in this case, unless otherwise ordered to do so by the Court.”

6. On April 20, 2022, the Court accepted the Class Action Plaintiffs’ Notice of Non-Participation.

7. This matter then came before the Court on May 2, 2022 for a valuation trial to a commission. The commission was sworn and given written instruction. The City appeared with counsel, Joseph Rivera, at the valuation hearing. None of the Respondents participated in the valuation trial.

8. On May 2, 2022, after deliberation, the commission returned a Certificate of Ascertainment and Assessment and Report of Commissioners (hereinafter "Certificate"). In its Certificate, the commission ascertained the value of the property actually taken as six hundred and twenty thousand dollars and no cents (\$620,000.00) ("Certificate Amount").

9. On May 3, 2022 the Court has caused the commissioners' Certificate to be entered upon the records of the Court in accordance with C.R.S. §38-1-116.

NOW THEREFORE, based upon these findings and other matters in the Court record, along with the commissioners' Certificate, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that a fee simple interest in the Subject Property, as described in **Exhibit 1**, is and has been duly and lawfully taken and condemned by Petitioner pursuant to the statutes and the Constitution of the State of Colorado, that all interests of all Respondents in the Subject Property have been acquired by and vested in Petitioner, and that the Subject Property is hereby conveyed to Petitioner free and clear of same. All claims for compensation or damages resulting from the taking of the Subject Property must be made against the amounts deposited by the Petitioner in the Court's registry, as described herein, and not against Petitioner or against the Subject Property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the sum of six hundred and twenty thousand dollars and no cents (\$620,000.00) represents the full and final compensation to be paid by Petitioner for the taking of a fee simple interest in the Subject Property, and the Court's Registry shall accept from the City a deposit of six hundred and twenty thousand dollars and no cents (\$620,000.00) and shall hold same in an interest bearing account until claimed.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that a certified copy of this Final Rule & Order may be recorded and indexed in the office of the Clerk and Recorder of Chaffee County, Colorado, in like manner and in like effect as if it were a deed of conveyance of a fee simple interest in the Subject Property (as shown on the attached **Exhibit 1**) from the owners and parties interested therein to Petitioner City of Salida, Colorado. Upon recording of this Rule & Order, the Lis Pendens recorded on October 15, 2021 at Reception No. 475047 with the Clerk and Recorder of Chaffee County, Colorado, shall be released and of no further effect.

SO ORDERED, this _____ day of _____, 2022.

BY THE COURT:

District Court Judge

EXHIBIT 1

TO

FINAL RULE & ORDER

SUBJECT PROPERTY LEGAL DESCRIPTION

CITY OF SALIDA v. PMM, LLC, a Colorado limited liability company; PENELOPE L. MEHOS, an individual; JOHN G. MEHOS, an individual; PLAINTIFFS IN CASE NO. 2021CV30014; and DEE DEE COPPER in her official capacity as Treasurer/Public Trustee of Chaffee County, Colorado
[Chaffee County District Court Case No. 2021CV30028]

EXHIBIT 1

TO

DATE FILED: August 3, 2021 5:00 PM
FILING ID: EB633DA92D6E3
CASE NUMBER: 2021CV30028

PETITION IN CONDEMNATION

SUBJECT PROPERTY LEGAL DESCRIPTION

PMM, LLC, a Colorado limited liability company; PENELOPE L. MEHOS, an individual;
JOHN G. MEHOS, an individual; PLAINTIFFS IN CASE NO. 2021CV30014; and DEE DEE
COPPER in her official capacity as Treasurer/Public Trustee of Chaffee County, Colorado

Attachment to Order - 2021CV30028

GROUND LEASE

THIS GROUND LEASE (“this Lease” or “the Lease”) made and entered into as of the [] day of [], 20[], by and between **CITY OF SALIDA, COLORADO** (“Lessor”), a statutory city existing under the laws of the State of Colorado having an address at 448 E 1st Street, Salida, Colorado 81201 and [] (“Lessee”), a [] having an address at 250 Third Avenue North, Suite 400, Minneapolis, Minnesota 55401, hereinafter, the Lessor and Lessee shall individually be referred to as “Party” or collectively referred to as the “Parties.”

WHEREAS, Lessor owns certain parcels of land located at 102 D Street and 233 E. First Street in the City of Salida, County of Chaffee, State of Colorado, all as more fully described on **Exhibit 1**, annexed hereto (the “Land”). Lessor desires to lease the Land to Lessee for the purpose of developing, constructing, renovating and operating an affordable live/work project for individuals and their families, consisting of, but not necessarily limited to, approximately nineteen (19) apartments and related uses (the “Project”).

WHEREAS, the Lessee enters into this Lease to lease the Premises ;

NOW, THEREFORE, in consideration of the foregoing recitals, of mutual promises of Lessor and Lessee, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

ARTICLE 1: Demise of Leased Premises

1.1 **LEASED PREMISES:** Lessor leases to Lessee and Lessee leases from Lessor, the Land and any improvements now or hereafter located thereon (collectively referred to in this Lease as the “Leased Premises”) described in the attached **Exhibit 1**. Lessor represents and warrants that as of the date of this Lease, the Leased Premises are free and clear of all lien or encumbrances other than those consented to by Lessee as of the date hereof (the “Permitted Encumbrances”). Lessee takes the Leased Premises upon the terms and conditions set forth herein, subject only to the Permitted Encumbrances.

ARTICLE 2: Duration of Lease

2.1 **TERM:** The term of this Lease will be thirty-five years commencing on [] (the “Effective Date”), and terminating on the thirty-fifth (35th) anniversary of the Effective Date, unless terminated sooner as hereinafter set forth (the “Initial Term”). To facilitate refinancings as may be needed with respect to the Leased Premises, if any, so long as Lessee is not in default hereunder at the time of exercise of Lessee’s option to renew hereunder at the conclusion of the Initial Term, Lessee shall have the right to extend this Lease for two additional terms of five (5) years (individually, a “Renewal Term” and collectively the “Renewal Terms”; provided, however, that the right of Lessee to extend the Lease for the Renewal Term shall be effective only if Lessee shall give written notice to Lessor of Lessee’s exercise of such option not less than ninety (90) days prior to the expiration of the Initial Term. Reference to the “Term” shall mean either the Initial Term or the Renewal Term(s) consistent with whether the Lease has been extended for the Renewal Term(s).

ARTICLE 3: Use of Leased Premises

3.1 **USE:** Pursuant to a Professional Services Agreement between the Lessor and Artspace Projects, Inc., a Minnesota nonprofit corporation, (“Artspace”), dated May 16, 2023, the Project shall be developed on the Land by Artspace. Lessee and any person occupying the Leased Premises will use the Leased Premises only for the Project. The Leased Premises shall not be used by Lessee for any unrelated purpose without the prior written consent of the Lessor.

3.2 **RESPONSIBLE USE AND COMPLIANCE WITH LAW:** Lessee will maintain the Leased Premises or cause the Leased Premises to be maintained in good, safe and habitable condition in all respects, except for normal wear and tear, in full compliance with all applicable laws and regulations.

3.3 **RESPONSIBLE FOR OTHERS:** Lessee will be responsible for the use of the Leased Premises by all tenants, invitees, guests, visitors, members of the public, and anyone else using the Leased Premises.

3.4 **INSPECTION:** Subject to the rights of any tenants, Lessor may inspect the Leased Premises at any reasonable time and in a reasonable manner upon at least twelve (12) hours written notice to Lessee.

3.5 **LESSEE’S RIGHT TO PEACEFUL ENJOYMENT:** So long as Lessee fulfills its obligations under this Lease, it will have the peaceful and undisturbed enjoyment of the Leased Premises.

ARTICLE 4: Ground Lease Fee

4.1 **GROUND LEASE FEE:** On the Effective Date or at such other time as Lessor and Lessee may mutually agree, Lessee agrees to pay to the Lessor rent in advance in the amount of One Dollar (\$1.00) per annum (the “Ground Lease Fee”).

4.2 **NET LEASE:** Lessor shall not be required to furnish Lessee any facilities or services of any kind whatsoever. Lessee shall pay or cause to be paid, as additional rent, all expenses of every kind and nature, relating to or arising from the Leased Premises, including expenses arising from the leasing, insuring, management, operation, maintenance, repair, use or occupancy of the Leased Premises and payment of all real estate taxes, special assessments, and governmental assessments and impositions of any kind that relate to the Leased Premises, if any.

ARTICLE 5: Nature of Lease

5.1 **ANNUAL APPROPRIATION.** No provision of this Lease shall be construed or interpreted as creating a general obligation, multiple fiscal year financial obligation, or other indebtedness of the Lessor within the meaning of any constitutional, home rule charter or statutory debt limitation. No provision of this Lease shall be construed or interpreted as creating an unlawful delegation of governmental powers nor as a donation by or a lending of the credit of the Lessor within the meaning of Article XI, Sections 1 or 2 of the Colorado constitution. This Lease nor the execution and delivery of any documents related to the construction and maintenance of the Leased Premises shall directly or indirectly obligate the Lessor to make any payments beyond those duly

budgeted and appropriated for the Lessor's then current fiscal year. No provision of this Lease shall be construed to pledge or to create a lien on any class or source of Lessor's moneys, nor shall any provision of this Lease restrict the future issuance of any City of Salida Bonds, or obligations payable from any class or source of Lessor's moneys.

ARTICLE 6: Ownership Rights

6.1 **EXCLUSIVE RIGHTS TO LEASED PREMISES:** Lessee shall have the exclusive right during the term of this Lease to occupy and possess the Leased Premises and any improvements existing at the time of the execution of this Lease or hereinafter constructed by Lessee during the term of this lease.

6.2 **ATTORNEY IN FACT:** Lessor hereby irrevocably and unconditionally agrees, promptly upon the request of Lessee, in each instance, and at the Lessee's expense, (i) to execute and deliver all agreements, documents and instruments necessary or advisable to effect any benefits arising in connection with and issued by the Lenders pursuant to the applicable provisions under Title 39 of the Colorado Revised Statutes or other applicable law in connection with the Project, and (ii) any other government agency which may confer benefits to the Project or Property, as applicable. Lessor hereby unconditionally and unequivocally constitutes and appoints Lessee to be its lawful and true agent and attorney-in-fact coupled with an interest, with full power of substitution to execute and/or record any such documents or instruments. The Parties agree that Lessor's failure to comply with the provisions of this Article 6 shall cause irreparable harm to Lessee for which no adequate remedy at law will be available and, in addition to any other available remedies, Lessee shall be entitled to the right of specific performance in the event of a breach by the Lessor of the provisions of this Section 6.2.

6.3 **CONSTRUCTION AND ALTERATION:** Any construction in connection with an existing or new improvement is subject to the following conditions:

- (a) Lessee will bear all costs of construction;
- (b) All construction will be performed in a work-like manner in compliance with all applicable laws and regulations; and
- (c) All construction will be consistent with the permitted uses set forth in Article 3.

6.4 **PROHIBITION OF LIENS:** Lessee will procure the record discharge of any mechanic's or materialman's claim of lien which might be filed against the Leased Premises within forty-five (45) days of its filing. If Lessee fails to procure the record discharge of a claim of lien within the time allowed, Lessor may, but is not obligated to, discharge the same by paying the amount in question. Lessee may contest the validity of any lien asserted so long as Lessee furnishes a bond in an amount sufficient to release the Leased Premises from the lien. Any amounts paid by Lessor hereunder in respect of the liens will be deemed an additional Ground Lease Fee payable by Lessee upon demand.

6.5 **MAINTENANCE AND SERVICES:** Lessee will, at Lessee's sole expense, maintain the Leased Premises as required by Section 3.2 above. Lessor will not be required to

furnish any services or facilities, including but not limited to heat, electricity, air conditioning, or water, or to make any repairs to the Leased Premises, and Lessee hereby assumes the sole responsibility for furnishing and paying for all fees, charges, costs, expenses or services.

6.6 DISPOSITION OF LEASED PREMISES UPON EXPIRATION OF LEASE TERM: Upon the expiration of the Term of this Lease as such Term may be terminated in accordance with this Lease, Lessee will surrender the Leased Premises to the Lessor without liens or encumbrances of any kind, except for Permitted Encumbrances. Any and all improvements constructed during the Term shall be in good condition, reasonable wear and tear excepted and shall, at the end of the Term, become the property of the Lessor. The exclusive right to possess the Leased Premises will thereupon revert to Lessor.

6.7 TRANSFER OF TITLE TO IMPROVEMENTS: Upon expiration of the Term, Lessee, at Lessor's election, shall execute and deliver to Lessor such deed, bill of sale or other instruments reasonably required to evidence the vesting of title to the Leased Premises and the improvements thereon to the Lessor.

6.8 HOLDING OVER: If Lessee shall hold the Leased Premises after the expiration of the term, such holding over, in the absence of written agreement to the contrary, shall be deemed to have created a month-to-month tenancy terminable on thirty (30) days' notice by either Party to the other.

6.9 RIGHT OF FIRST REFUSAL: The Lessee hereby grants to Lessor a right of first refusal ("ROFR") to purchase the Project and Lessee's interest in the Leased Premises subject to the terms and conditions set forth in this Section 6.9.

If the Lessee desires to sell, transfer, assign, or convey the Project and its interest in the Leased Premises, then the Lessee shall follow the following procedures:

(a) If the Lessee receives a bona fide offer that is from a party that is not related to the Lessee or Artspace and that is acceptable to Lessee, and the Lessee intends to accept such offer ("Offer"), the Lessee shall promptly give written notice to the Lessor of all relevant terms of the Offer, including any letter of intent, term sheet, or other written materials related to the Offer ("Offer Notice"). If the Lessee fails to give the Offer Notice to the Lessor and accepts the Offer, any subsequent transfer is null and void, and the Lessor may seek any remedy at law or equity to enforce its rights under the ROFR including injunctive relief and specific performance.

(b) Upon receipt of the Offer Notice, the Lessor shall have fifteen (15) days to deliver to the Lessee a written notice of its intent to exercise the ROFR on terms no less favourable to the Lessee as the terms set forth in the Offer ("Acceptance Notice").

(c) If the Lessor delivers the Acceptance Notice, then within thirty (30) days the Lessee and the Lessor shall negotiate a definitive purchase and sale agreement based on substantially the same terms as the Offer; provided, that if the Lessee and the Lessor are unable to reach agreement within thirty (30) days, the disputed terms shall be resolved by arbitration under the rules of the American Arbitration Association.

(d) If the Lessor does not deliver its Acceptance Notice within fifteen (15) days, withdraws the Acceptance Notice, or waives its ROFR in writing, then the Seller may sell the Project or its interest in the Leased Premises upon substantially the same the terms of the Offer. If the Lessee consummates the sale, this ROFR will terminate.

(e) The Lessor shall, at the request of the Lessee, execute any necessary documents to memorialize the termination or expiration of this ROFR in accordance with its terms, including such documents as may be necessary to satisfy the third-party purchaser and the title insurance company that the ROFR does not apply.

ARTICLE 7: Encumbrances

7.1 LESSEE MORTGAGE:

(a) Lessee may mortgage or otherwise encumber its interest in the Leased Premises with the prior written consent of the Lessor. Lessor hereby consents to the mortgages and encumbrances set forth in the leasehold owners policy issued to Lessee at construction loan closing, as may be updated at permanent loan closing.

(b) Lessor may consent to the granting by Lessee of leasehold mortgage liens on, and security interests in, Lessee's interests in the Leased Premises, including any improvements thereon, Lessee's personal property and/or trade fixtures located thereon, and this Lease. Lessor does hereby certify to Lenders that: (i) Lessor is the current owner of the fee interest in the Leased Premises; (ii) Lessor is the current owner of: (A) the interests demised under the Lease, and (B) all of the rights and benefits of "lessor" under the Lease; and (C) the Lease is the only instrument governing Lessor's and Lessee's rights and obligations with respect to the Leased Premises.

(c) Lessor may, upon review, execute any and all documents necessary to grant to the financial institution or institutions making loans to Lessee a mortgage or mortgages and any similar security interests on the Property and the Project, as well as any documents reasonably required by the Lessee to be executed by the Lessor in connection with the development of the Property and the operation and management of the Project, provided that the Lessor shall execute such documents for the sole purpose of encumbering its interest in the Property and the Project, and provided further that all such mortgages and notes secured by such mortgages shall be non-recourse to the Lessor and the only recourse for satisfaction of any obligations of the Lessor thereunder shall be to the Lessee's interest in the Property.

7.2 LESSOR MORTGAGES: Except for the Permitted Encumbrances, Lessor may not encumber, lien, mortgage, and/or create or grant any rights and/or interests in or to its fee interest in the Leased Premises or the Project or otherwise encumber its interest in the Leased Premises or Project and/or any part or parts thereof, and any encumbrance, lien, mortgage, right and/or interest purported to be created, granted, permitted and/or resulting from any action of the Lessor in connection with the Leased Premises and the Project and/or any part or parts thereof shall be void, unenforceable and of no effect whatsoever and shall not be binding in any manner upon Lessee. In addition, this Lease shall be superior to any mortgage on the fee interest in the Leased Premises, which may now or hereafter affect such fee interest and to all renewals,

modifications, consolidations, replacements and extensions of any such mortgages. Lessor represents and warrants that there is currently no mortgage on the fee interest in the Leased Premises.

7.3 **LAND USE RESTRICTION AGREEMENT:** Lessor hereby authorizes and agrees at the direction of Lessee to execute and record, as applicable, any and all documents required by Colorado Housing Finance Authority (CHFA), Colorado Department of Local Affairs (DOLA), and such other applicable Persons as may be necessary to develop the Project in connection with placing restrictive covenants on the fee and/or leasehold interest(s) in the Leased Premises, including, without limitation, a certain land use restriction agreement.

ARTICLE 8: Liability, Insurance, Damage and Destruction, Eminent Domain

8.1 **LESSEE'S LIABILITY:** Lessee assumes sole responsibility and liability to all persons and authorities related to the possession, occupancy, and use of the Leased Premises and will defend, indemnify, and hold Lessor harmless against all liability and claims of liability for injury or damage to person or property from any cause on or about the Leased Premises unless it occurred prior to the date of this Lease or is caused by Lessor's gross negligence or intentional wrongdoing by Lessor in its capacity as lessor of the Premises. Lessee waives all claims against Lessor for injury or damage arising from the Leased Premises except for claims arising prior to the commencement of this Lease or out of Lessor's gross negligence or intentional wrongdoing.

8.2 **LESSOR'S LIABILITY:** Lessor shall defend, indemnify and hold harmless Lessee against any and all liability and claims of liability for injury or damage to person or property from any cause on or about the Leased Premises that occurred solely prior to the commencement of this lease.

8.3 **PAYMENT BY LESSOR:** If Lessor is required to pay any sum that is the Lessee's responsibility or liability, the Lessee will reimburse the Lessor for the payment and for reasonable expenses caused thereby.

8.4 **INSURANCE:** Lessee will keep or cause to be kept all improvements continuously insured against loss or damage by fire and other hazards and will maintain premises liability insurance with excess coverage limits of not less than [\$2,000,000 per occurrence, \$4,000,000 aggregate] covering the Land and improvements insuring Lessee against all liability assumed under this Lease, as well as all liability imposed by law. The property and liability insurance policies will name both Lessee and Lessor as "named insureds" so as to create the same liability on the part of insurer as though separate policies had been written for Lessee and Lessor.

8.5 **DAMAGE OR DESTRUCTION:** If any improvements are damaged or destroyed by fire or other casualty, Lessee shall have the right to receive any insurance proceeds available from such casualty and may use such proceeds (with any costs in excess of the insurance proceeds paid for by the Lessee) to replace the improvements or demolish such improvements and remove all debris if permitted by law. In no event shall the Lease terminate, however. Lessee's receipt and use on insurance proceeds is subject to Lenders requirements as set forth in Lenders' loan documents.

8.6 ***EMINENT DOMAIN, CONDEMNATION AND PUBLIC DEDICATION:***

(a) The Parties hereto shall promptly give Lender notice of any condemnation proceedings or of any pending adjustment of insurance claims as each may relate to the Improvements.

(b) No partial casualty or condemnation shall result in a termination of this Lease.

(c) If the entire Leased Premises are taken by eminent domain, this Lease will terminate as of the date the Lessee is required to surrender possession of the Leased Premises.

(d) If this Lease is terminated by reason of any such taking, then subject to Section 8.6(f), Lessor shall be entitled to receive 100% of any award ("Condemnation Proceeds") for the remainder value of the Land as encumbered by this Lease and exclusive of the value of any improvements, and Lessee and/or Lender, as applicable, shall be entitled to the balance of any award.

(e) If the Lessee reasonably determines that the Leased Premises cannot be restored to a use consistent with this Lease, Lessee may, with Lender's consent, as applicable, terminate this Lease on sixty (60) days written notice to Lessor.

(f) If Lessee shall assign to any Lender any Condemnation Proceeds to which it shall be entitled under the provisions of Section 8.6(d), Lessor shall recognize such assignment and agrees that the Condemnation Proceeds shall be paid to such assignee as its interest may appear.

(g) Lessee and the Lenders shall have the right to participate in any condemnation proceeding for the purpose of protecting their rights under this Lease, and in this connection, specifically and without limitation to introduce evidence independently of Lessor to establish the value of or damage to the improvements.

ARTICLE 9: Transfer, Sale, or Disposition of Leasehold

9.1 ***LESSOR'S RIGHT TO SELL:*** Subject to the provision of this Article 9, Lessor may, only upon the consent of Lessee and Lenders, sell or transfer the Leased Premises provided, however, that Lessor shall require any purchaser to assume each and every obligation under the Lease and to agree not to disturb Lessee's possession under this Lease except to the extent permitted by this Lease.

ARTICLE 10: Assignment and Sublease

10.1 Lessee shall not assign, sublease, sell, or otherwise convey any of Lessee's rights under this Lease without the prior written consent of the Lessor, provided that (i) no such transfer shall relieve Lessee of its obligations hereunder, and (ii) any assignee or subtenant shall be bound by the use restrictions set forth in Section 3.1. Lessor hereby agrees that Lessee shall be able to sublease the Project's units in the normal course of business without such prior written consent.

ARTICLE 11: Default

11.1 **EVENTS OF DEFAULT:** The following events are referred to collectively as “Events of Default,” or individually as an “Event of Default”:

(a) Lessee defaults in the due and punctual payment of the Ground Lease Fee or any other amounts due to Lessor pursuant to this Lease and such default continues for one hundred eighty (180) days after written notice of the failure is given to Lessee and any Lender;

(b) This Lease or the Leased Premises or any part of the Leased Premises is taken upon execution or by other process of law directed against Lessee, or are taken upon or subject to any attachment at the instance of any creditor or claimant against Lessee and the attachment is not discharged or disposed of within ninety (90) days after its levy;

(c) Lessee files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or admits the material allegations of any such petition by answer or otherwise, or is dissolved or makes an assignment for the benefit of creditors;

(d) Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of Lessee are instituted against Lessee, or a receiver or trustee is appointed for all or substantially all of the property of Lessee, and such proceeding is not dismissed or such receivership or trusteeship vacated within ninety (90) days after such institution or appointment; or

(e) Lessee breaches any of the other material agreements, terms, covenants or conditions which this Lease requires Lessee to perform, and such breach continues for a period of ninety (90) days after notice from Lessor to Lessee; or if such breach cannot reasonably be cured within such ninety (90) day period, Lessee fails promptly within said ninety (90) day period to commence and proceed diligently and in good faith to cure such breach and fails to complete such cure within a reasonable time.

Notwithstanding the foregoing, Lessee’s limited partners or any of the limited partners’ members or partners, shall have the right, but not the obligation, to cure a default under this Lease within the same time period as Lessee. Lenders shall have the rights afforded them as set forth in Section 12.2.

11.2 **TERMINATION:** In the case of any of the Events of Default described above, Lessor may terminate this Lease and initiate summary ejectment proceedings allowing Lessor to enter and repossess the entire Leased Premises. If this Lease is terminated by Lessor, or if Lessor reenters the Leased Premises after an Event of Default, the Lessee agrees to pay and be liable for any due and any unpaid Ground Lease Fee, damages which may be due or sustained prior to or in connection with the termination or reentry, and all reasonable costs, fees and expenses (including, without limitation, reasonable attorneys’ fees) incurred by Lessor in pursuit of its remedies in law or in equity that may be available to Lessor under this Lease. Upon such termination, and so long as there are no events of default under applicable subleases, Lessor shall grant non-disturbance and attornment agreements to such subtenants.

11.3 **FORBEARANCE:** Notwithstanding anything to the contrary in this Lease, so long as any leasehold mortgage remains outstanding on the Leased Premises (the “Forbearance Period”), the Lessor agrees that it shall not bring any action to terminate the Lease, to transfer Lessee’s interest under the Lease or otherwise to disturb or affect the Lessee’s rights and enjoyment of possession of the Leased Premises or result in the termination of the Lease (a “Lease Enforcement Action”), nor name Lessee, and/or any subtenant as a party defendant to any Lease Enforcement Action, nor shall the Lease be terminated by Lessor in connection with, or by reason of, any Lease Enforcement Action, unless the Lease Enforcement Action will not result in a direct or indirect termination, cancellation or other cessation of the Lease.

11.4 **DEFAULT BY LESSOR:** Lessor will in no event be in default in the performance of any of its obligations under the Lease unless and until Lessor has failed to perform the obligations within one hundred eighty (180) days, or within the additional time as is reasonably required to correct any default, after notice by Lessee to Lessor properly specifying Lessor's failure to perform any obligation.

ARTICLE 12: General Provisions

12.1 **NOTICES:** Whenever this Lease requires either Party to give notice to the other, the notice will be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the Party at the address set forth below, or the other address designated by like written notice

If to Lessor: City of Salida, Colorado
The Touber Building
448 E. First Street, Suite 112
Salida, Colorado 81201
Attention: City Administrator

With a copy to: Wilson Williams LLP
1314 Main Street, Suite 101
Louisville, CO 80027
Attn: Nina P. Williams, Esq.

If to Lessee: [_____]
c/o Artspace Projects, Inc.
250 Third Avenue North, Suite 400
Minneapolis, Minnesota 55401
Attention: President/COO/Sr. VP Properties

With a copy to: Cannon Heyman & Weiss, LLP
726 Exchange Street, Suite 500
Buffalo, New York 14210
Attention: Steven J. Weiss, Esq.

With a copy to: []
[]
[]
[]
[]

With a copy to: []
[]
[]
[]
[]

All notices, demands and requests will be effective upon being deposited in the United States Mail or, in the case of personal delivery, upon actual receipt.

12.2 **RIGHTS OF LENDERS:** Lessor shall concurrently with the giving of any notice of Event of Default under the Lease, provide a duplicate copy thereof to any Lender of which Lessor has been notified (the "Lenders").

(a) If Lessor shall give any notice, demand, election, or other communication (other than rent and other periodic billing notices), including without limitation a notice of an Event of Default (as defined in Article 11) hereunder (hereinafter collectively "Notices"), to Lessee hereunder, Lessor shall simultaneously give a copy of each such Notice to Lender at the address theretofore designated by it. Such copies of Notices shall be sent by Lessor and deemed received as described in Section 12.1 above. No Notice given by Lessor to Lessee shall be binding upon or affect a Lender unless a copy of said Notice shall be given to such Lender pursuant to this Section. In the case of an assignment of any Lender's mortgage or change in address of any Lender, said assignee or Lender, by written notice to Lessor, may change the address to which such copies of Notices are to be sent. Lessor shall not be bound to recognize any assignment of any mortgage unless and until Lessor shall be given written notice thereof, a copy of the executed assignment, and the name and address of the assignee. Thereafter, such assignee shall be deemed to be the Lender hereunder with respect to such mortgage being assigned.

(b) In the event of any default by Lessee under the provisions of this Lease, any Lender will have the same periods as are given Lessee for remedying such default or causing it to be remedied, plus, in each case, an additional period of (i) with respect to any monetary default, thirty (30) days after the expiration of the initial period or after Lessor has served a notice or a copy of a notice of such default upon the Lender, whichever is later and (ii) with respect to any non-monetary default, (A) ninety (90) days after the date such default is required to be cured by Lessee under the terms of this Lease, and (B) ninety (90) days after the date Lender is given notice of Lessee's default, whichever is later; provided that no such Lender shall be obligated to cure any default hereunder. Any Lender's failure to exercise its cure right under this subparagraph does not waive such Lender's right to a new lease under subparagraph (e) below.

(c) In the event that Lessee shall default under any of the provisions of this Lease, any Lender, without prejudice to its rights against Lessee, shall have the right to cure such default within the applicable grace periods provided for in the preceding Subsection 12.2(b),

above, whether the same consists of the failure to pay rent or the failure to perform any other matter or thing that Lessee is hereby required to do or perform, and Lessor shall accept such performance on the part of such Lender as though the same had been done or performed by Lessee. For such purpose, Lessor and Lessee hereby authorize such Lender to enter upon the Leased Premises and to exercise any of its rights and powers under this Lease and subject to the provisions of this Lease.

(d) In the event of any default by Lessee, and if prior to the expiration of the applicable grace period specified in Subsection 12.2(b), above, a Lender shall give Lessor written notice that it intends to undertake the curing of such default, or to cause the same to be cured, or to exercise its rights to acquire the leasehold interest of Lessee by foreclosure or otherwise, and shall immediately commence and then proceed with all due diligence to do so, whether by performance on behalf of Lessee of its obligations under this Lease, or by entry on the Leased Premises and/or the improvements by foreclosure or otherwise, then Lessor will not terminate or take any action to effect a termination of the Lease or re-enter, take possession of or relet the Leased Premises or the improvements or similarly enforce performance of this Lease in a mode provided by law so long as such Lender is with all due diligence and in good faith engaged in the curing of such default, or effecting such foreclosure; provided, however, that the Lender shall not be required to continue such possession or continue such foreclosure proceedings if such default shall be cured.

(e) If this Lease is terminated for any reason or if this Lease is rejected or disaffirmed by Lessee pursuant to any bankruptcy, insolvency or other law affecting creditor's rights, Lessor shall give prompt notice thereof to each Lender which has an unsatisfied mortgage at the time in question (which notice shall set forth in reasonable detail a description of all outstanding defaults) and shall, upon written request of any such Lender (or if more than one Lender makes such request, the Lender whose mortgage has the most senior lien), made any time within thirty (30) days after the giving of such notice by Lessor, shall promptly execute and deliver to such Lender or its designee a new lease of the Premises. Such new lease shall be for a term equal to the remainder of the Term before giving effect to such termination and shall contain the same covenants, agreements, terms, provisions and limitations as this Lease, and shall be subject only to the encumbrances and other matters recited in this Lease and acts done or suffered by Lessee. The new lease shall continue to maintain the same priority as this Lease with regard to any fee mortgage or any lien, charge or encumbrance upon this Lease. Lessor's agreement to enter into a new lease with any Lender shall be unaffected by the rejection of this Lease in any bankruptcy or insolvency proceeding by either Lessor or Lessee. Upon the execution and delivery of such new lease, the new Lessee, in its own name or in the name of Lessor, may take all appropriate steps as shall be necessary to remove Lessee from the Leased Premises and the improvements, but Lessor shall not be subject to any liability for the payments of fees, including reasonable attorneys' fees, costs or expenses in connection with such removal; and such new tenant shall pay all such fees, including attorneys' fees, costs and expenses or, on demand make reimbursements therefor to Lessor.

(f) In the event a default under a mortgage (such term defined as any note, loan, or loan agreement, together with any related mortgage, or other lien upon this Lease and the estate created thereby, as may be incurred from time to time by Lessee) shall have occurred, such Lender

may exercise with respect to the Leased Premises and the improvements any right, power or remedy under such mortgage.

(g) In the case of an Event of Default which is not susceptible to being cured by the Lender (for example, the insolvency of Lessee), Lender may, without Lessor's consent, institute foreclosure proceedings and, if so instituted, shall diligently prosecute the same to completion (unless in the meantime it shall acquire Lessee's estate hereunder, either in its own name or through a designee or nominee, by assignment in lieu of foreclosure) and, upon such completion of foreclosure or acquisition, such Event of Default shall be deemed to have been cured.

(h) Foreclosure of any mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the mortgage, or any conveyance of the leasehold estate hereunder from Lessee to any Lender or its designee or nominee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Lessor nor shall they constitute a breach of any provision of or a default under this Lease if Lessor was first given notice of the Event of Default under a mortgage and an opportunity to cure. Upon such foreclosure, sale, or conveyance Lessor shall recognize the Lender or such designee as the Lessee hereunder. If any Lender or other third party shall acquire Lessee's estate as a result of a judicial or nonjudicial foreclosure under any mortgage, or by means of a deed in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure action, such Lender or such other third party purchaser shall thereafter have the right to further assign or transfer Lessee's estate to an assignee upon such assignee's execution of a written agreement with the Lessor that the Land will continue to be used for the Project in accordance with the terms of this Lease. Upon such acquisition of Lessee's estate as described in the preceding sentence by a Lender or its designee or nominee, Lessor shall promptly execute an assignment of this Lease to such Lender, upon the written request therefor by such Lender or its designee or nominee given not later than one hundred twenty (120) days after such Party's acquisition of the Lessee's estate if such Lender or its designee or nominee has entered into a written agreement with the Lessor that the Land will continue to be used for the Project in accordance with the terms of this Lease. Such new ground lease shall be substantially similar in form and content to the provisions of this Lease, except with respect to the Parties thereto, the term thereof (which shall be co-extensive with the remaining Term hereof), and the elimination of any requirements which have been fulfilled by Lessee prior thereto, and such new ground lease shall have priority equal to the priority of this Lease. Upon execution and delivery of such new ground lease, Lessor shall cooperate with the new Lessee, at the sole expense of said new Lessee, in taking such action as may be necessary to cancel and discharge this Lease and to remove Lessee named herein from the Land.

(i) The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, shall not work a merger and shall, at the option of Lessor, operate as an assignment to Lessor of any or all subleases of subtenants. Lessor agrees that neither the surrender, cancellation, expiration, or termination of this Lease, nor Lessor's acquisition of Lessee's estate by any means contemplated hereunder, shall, either by the election of Lessor or by operation of law, work as a merger of Lessor's estate and Lessee's estate unless and until all indebtedness under any mortgage has been repaid pursuant to the terms thereof. The lien of such mortgage shall remain unaffected and in full force and effect upon and following the occurrence of any of the

events described in the preceding sentence, and Lessor shall be subject to, and bound by, the provisions of such mortgage as the successor tenant hereunder following the occurrence of any of such events.

(j) No surrender (except a surrender upon the expiration of the Term or upon termination by Lessor pursuant and subject to the provisions of this Lease) by Lessee to Lessor of this Lease, or of the Leased Premises, or any part thereof, or of any interest therein, and no termination of this Lease by Lessee shall be valid or effective, and neither this Lease nor any of the terms of this Lease may be amended, modified, changed or canceled and no consents of Lessee under this Lease shall be valid or effective without the prior written consent of any Lender who shall have previously given Lessor written notice of the existence of its mortgage. Lessor and Lessee hereby agree to cooperate in including in this Lease by suitable amendment from time to time any provision which may reasonably be requested by any proposed Lender for the purpose of implementing the Lender protection provisions contained in this Lease and allowing such Lender reasonable means to protect or preserve the lien of its mortgage, as well as such other documents containing terms and provisions customarily required by the Lender (taking into account the customary requirements of their participants, syndication partners, or ratings agencies) in connection with any such financing. Lessor and Lessee each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement reasonably necessary to effectuate any such amendment as well as such other documents containing terms and provisions customarily required by lenders in connection with any such financing, provided, however, that any such amendment shall not in any way affect the Term or Ground Lease Fee under this Lease or otherwise in any material respect adversely affect any rights of Lessor under this Lease.

(k) Lessor consents to a provision in mortgages or otherwise for an assignment of rents from subleases of the Leased Premises to the holder of any such mortgage, effective upon any default under such mortgage.

(l) If at any time there shall be more than one mortgage constituting a lien on this Lease and the estate created by this Lease and Lessee's interest in the improvements, and the holder of the mortgage prior in lien to any other mortgage shall fail or refuse to exercise the rights set forth in this Article 12.2, each holder of a mortgage in the order of the priority of their respective liens shall have the right to exercise such rights and provided further, however, that with respect to the right of the holder of a mortgage under Section 12.2(e), above, to request a new lease, such right may, notwithstanding the limitation of time set forth in Section 12.2(e), be exercised by the holder of any junior mortgage, in the event the holder of prior mortgage shall not have exercised such right, more than sixty (60) days but not more than seventy-five (75) days after the giving of notice by Lessor of termination of this Lease as provided in that Section.

(m) Lenders shall not be liable to Lessor unless they expressly assumed such liability in writing. In the event a Lender or its designees becomes lessee under this Lease, Lenders or their designees shall not be personally liable for the obligations of Lessee under this Lease that do not accrue during the period of time that the Lenders or such designees, as the case may be, remains actual lessee under this Lease. In no event shall Lenders or their successors be: (i) liable for any condition of the Leased Premises which existed prior to the date of its acquisition of Lessee's interest in the Leased Premises, or for any damage caused by such pre-existing condition, or for the correction thereof or the compliance with any law related thereto; (ii) bound by any

amendment of this Lease made without the prior written consent of Lenders (for which no such amendment is allowed); or (iii) liable for any act or omission of any prior lessee of any portion of the Leased Premises (including Lessee). Any agreement of Lessee to indemnify Lessor under this Lease shall apply to Lenders only to the extent of any actual damage suffered by Lessor as a result of Lenders' failure to perform any obligation of Lessee under this Lease after the date it acquired Lessee's interest in the Leased Premises, and before the date they assign this Lease to any third party as provided herein. Lenders, or their designees or successors, also shall be entitled to any protections from liability afforded to Lessee hereunder.

(n) Lessor may enter into Lease amendments reasonably requested by a prospective Lender, as long as such requests do not change the rent to be received by the Lessor and do not materially or adversely affect the Lessor's rights or interests in the Leased Premises or the Lessee's obligations to develop the Project.

(o) In the event any Lender or its designee or nominee becomes the Lessee under this Lease or under any new lease obtained pursuant to the terms herein, the Lender or its designee or nominee shall, with the exception of liens against the Land that are superior to all Lender's interests, be personally liable for the obligations of Lessee under this Lease or a new lease only for the period of time that the Lender or its designee or nominee remains the actual beneficial holder of the Lessee's estate, and only to the extent provided in this Lease or such new lease, but, with the exception of liens against the Land that are superior to all Lender's interests, a Lender shall not have any personal liability for the obligations of Lessee first arising prior to the date such Lender, or its designee or nominee, succeeded to the interests of the Lessee under this Lease or pursuant to a new lease. No Lender shall have any personal liability beyond its interest in the improvements for the performance or payment of any covenant, liability, warranty, or obligation hereunder or under any new lease, new agreement, or other agreement entered into in connection herewith, and the Lessor agrees that it shall look solely to the interests of such Lender in the improvements for payment or discharge of any such covenant, liability, warranty, or obligation.

(p) Lessor shall not cancel or agree to the termination or surrender of any existing subleases nor enter into any new subleases hereunder without the prior written consent of the Lender.

12.3 **NO BROKERAGE:** Lessee warrants that it has not dealt with any broker in connection with the consummation of this Lease, and in the event any claim is made against Lessor relative to dealings with brokers, Lessee will defend the claim against Lessor with counsel of Lessee's selection, reasonably acceptable to Lessor, and save harmless and indemnify Lessor on account of loss, cost or damage which may arise by reason of any such claim. Lessor warrants that it has not dealt with any broker in connection with the consummation of this Lease, and in the event any claim is made against Lessee relative to dealings with brokers, Lessor will defend the claim against Lessee with counsel of Lessor's selection, reasonably acceptable to Lessee, and save harmless and indemnify Lessee on account of loss, cost or damage which may arise by reason of any such claim.

12.4 **RECORDING.** At the request of either Lessor or Lessee, a memorandum of lease shall be executed by Lessor and Lessee and recorded in the Office of the County Recorder of Ouray County, State of Colorado. In no event shall this Lease be recorded.

12.5 **SEVERABILITY AND DURATION:** If any part of this Lease is declared unenforceable or invalid, the applicable provision shall be deemed removed from this Lease and will not affect the validity of any other part of this Lease or give rise to any cause of action of Lessee or Lessor against the other, and the remainder of this Lease will be valid and enforced to the fullest extent permitted by law. It is the intention of the Parties that all rights under this Lease will continue in effect for the full term of this Lease and any renewal thereof, and the rights will be considered to be coupled with an interest.

12.6 **WAIVER:** The waiver by Lessor at any given time of any term or condition of this Lease, or the failure of Lessor to take action with respect to any breach of any the term or condition, will not be deemed to be a waiver of the term or condition with regard to any subsequent breach of the term or condition, or of any other term or condition of the Lease. Lessor may grant waivers in the terms of this Lease, but the waivers must be in writing and signed by Lessor before being effective.

The subsequent acceptance of Ground Lease Fee payments by Lessor will not be deemed to be a waiver of any preceding breach by Lessee of any term or condition of this Lease, other than the failure of the Lessee to pay the particular Ground Lease Fee so accepted, regardless of Lessor's knowledge of the preceding breach at the time of acceptance of the Ground Lease Fee payment.

12.7 **LESSOR'S RIGHT TO PROSECUTE OR DEFEND:** Lessor will have the right, but will be under no obligation, to prosecute or defend, in its own or the Lessee's name, any actions or proceedings appropriate to the protection of its title to, and Lessee's interest in, the Leased Premises. Whenever requested by Lessor, Lessee will give Lessor all reasonable aid in any the action or proceeding.

12.8 **CONSTRUCTION:** Whenever in this Lease a pronoun is used it will be construed to represent either the singular or the plural, masculine or feminine, as the case will demand.

12.9 **CAPTIONS:** The captions appearing in this Lease are for convenience only, and are not a part of this Lease and do not in any way limit or amplify the terms or conditions of this Lease.

12.10 **PARTIES BOUND:** This Lease sets forth the entire agreement between Lessor and Lessee with respect to the leasing of the Leased Premises. It is binding upon and inures to the benefit of these Parties and, in accordance with the provisions of this Lease, their respective successors in interest. This Lease may be altered or amended only by written notice executed by Lessor and Lessee or their legal representatives or, in accordance with the provisions of this Lease, their successors in interest.

12.11 **GOVERNING LAW:** This Lease will be interpreted in accordance with and governed by the laws of the State of Colorado. The language in all parts of this Lease will be, in all cases, construed according to its fair meaning and not strictly for or against Lessor or Lessee.

12.12 **ESTOPPEL CERTIFICATES:** Lessor agrees within fifteen (15) business days following a request by Lessee or Lender to execute and deliver an Estoppel Certificate to whichever of them has requested the same if the provisions of the Estoppel Certificate as set forth in the next sentence are true and correct. The term “Estoppel Certificate” shall mean an estoppel certificate, certifying (a) that this Lease is unmodified and in full force and effect, or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect and the date to which the Ground Lease Fee and other charges are paid in advance, if any, (b) that there are no uncured Events of Default on the part of Lessor and Lessee hereunder, or if there exist any uncured Events of Default on the part of Lessor and/or Lessee hereunder stating the nature of such uncured defaults on the part of Lessor and/or Lessee, (c) that no Ground Lease Fee is delinquent or has been paid in advance, and (d) the correctness of such other information respecting the status of this Lease as may be reasonably required by the Party hereto requesting execution of such Estoppel Certificate. Unless the Lessor has notified the requesting Party that one or more provisions in the proposed Estoppel Certificate are not true and correct, its failure to so execute and deliver an Estoppel Certificate within fifteen (15) business days following written request as required above, shall be conclusive upon such Party that as of the date of said request for the same (x) that this Lease is in full force and effect, without modification except as may be represented by the Party hereto requesting execution of such Estoppel Certificate, (y) that there are no uncured Events of Default in Lessor’s or Lessee’s obligations under this Lease except as may be represented by the Party hereto requesting execution of such Estoppel Certificate, and (z) that no Ground Lease Fee is delinquent or has been paid in advance except as may be represented by the Party hereto requesting execution of such Estoppel Certificate.

12.13 **HAZARDOUS SUBSTANCES.:** Except for customary materials necessary for construction, operation, cleaning and maintenance of the Leased Premises, Lessee shall not cause or permit any Hazardous Substance to be brought upon, generated at, stored or kept or used in or about the Leased Premises without prior written notice to the Lessor and all Hazardous Substances, including, customary materials necessary for construction, operation, cleaning and maintenance of the Leased Premises, will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Substance so brought upon or used or kept in or about the Leased Premises.

12.14 **NO WAIVER OF GOVERNMENTAL IMMUNITY.** No provision of this Lease shall act or be deemed to be a waiver by the Lessor of the Colorado governmental Immunity Act, CRS 24-10-101, et seq.

12.15 **AUTHORITY OF LESSOR.** As a material inducement to cause Lessee to enter into this Lease, Lessor represents and warrants to Lessee that:

(a) as of the date hereof, the Leased Premises is vacant land not being used for a governmental purpose;

(b) pursuant to the provisions of Section 31-15-713(1)(c), Colorado Revised Statutes, the Lessor has authorized this Lease pursuant to an Ordinance number [_____] of the City of Salida, Chafee County, Colorado, attached hereto as **Exhibit 2**;

(c) this Lease does not require electoral approval pursuant to the provisions of Section 31-15-713, Colorado Revised Statutes; and

(d) the Lessor has full right, power and authority to execute, deliver and perform this Lease without obtaining any consents or approvals from, or the taking of any other actions with respect to, any third parties, and this Lease when fully executed will constitute a valid and binding agreement of the Lessor, enforceable against the Lessor according to its terms.

[Remainder of page intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, the parties have executed this Lease on the day and year first above written.

LESSEE:

[_____]

By: [_____]
its [_____]

By: _____
Name: _____
Title: _____

LESSOR:

CITY OF SALIDA, COLORADO

By: _____
Name: Dan Shore
Title: Mayor

EXHIBIT 1

Description of Property

102 D Street: Lots 1 and 2 and Southeasterly 20 feet of Lot 3 of Block 23 of Sacketts Addition, City of Salida, plat recorded at Reception No. 444196 of the Chaffee County Recorder Office

233 E. First Street: Northwesterly 5 feet of Lot 3; all of Lots 4 and 5; and Southeasterly 7.5 feet of Lot 6 of Block 23 of the Sacketts Addition, City of Salida, plat recorded at Reception No. 444196 of the Chaffee County Recorder Office

EXHIBIT 2

Authorizing Ordinance