

ALAMOSA CITY COUNCIL

Regular Meeting Agenda

Council Chambers
300 Hunt Avenue, Alamosa, CO
March 1, 2017

As a full service municipal government, our mission is to enhance the quality of life for our residents, visitors, and businesses. We strive to provide balanced business, employment, recreational, and residential opportunities.

Any person needing reasonable accommodation to attend or participate in a public meeting, please contact the Alamosa City Clerk's office by telephone (719) 589-2593, by email cityclerk@ci.alamosa.co.us, in person at 300 Hunt Avenue, or by mail at POB 419, Alamosa, CO 81101.

Council Calendar

6:00 PM - Work Session: Marijuana Building Code Issues, Moratorium on Marijuana Consumption Clubs, and Marijuana Petition Discussions

7:00 PM - Regular Meeting

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

II. ROLL CALL

III. AGENDA APPROVAL

IV. CITIZEN COMMENT

Alamosa City Council welcomes your comments. Citizens wishing to speak may obtain and complete a speaker card through the City Clerk at the start of the meeting.

A. Audience Comments

B. Follow-Up

V. CONSENT CALENDAR A

The Consent Calendar allows multiple actions with one motion. Consent Calendar A contains routine items which have been recommended for action by staff or advisory boards. Council may remove a consent calendar item for separate consideration.

C.7.a. Approve Minutes of Meeting February 15, 2017

C.4.a. Award of Bid - AFRC Ellipticals

VI. REGULAR BUSINESS

C. Business Brought Forward by City Staff

1. Finance

- a. Second reading and public hearing, Ordinance No. 4-2017, an ordinance authorizing and approving the execution and delivery of a lease purchase agreement and other documents and actions in connection with financing the

City's acquisition of certain water rights and water storage rights and construction of associated infrastructure projects.

2. Police

- a. First Reading, Ordinance 5-2017, an ordinance repealing and replacing chapter 3 of the *Alamosa Code of Ordinances*, governing animals, to introduce a spay, neuter, return program for feral cats, allow for burial of pets in yards, revise terms under which animal impoundments take place, and make other clarifying changes to the chapter

3. Parks and Recreation

- a. Award of Bid – AFRC Treadmills

4. City Manager/Legal

- a. SLV Code of Ethics
- b. First Reading, Ordinance No. 6-2017, An ordinance establishing a temporary moratorium on the establishment of marijuana consumption clubs through September 30, 2017
- c. Resolution No. 6-2017 Amending the ex officio directors of the Alamosa Capital Leasing Company

D. Committee Reports

E. Staff Announcements

COUNCIL COMMENT

ADJOURNMENT

ALAMOSA CITY COUNCIL
COUNCIL COMMUNICATION

Subject/Title:

Council Calendar

ATTACHMENTS:

Description		Type
 Council Calendar		Cover Memo

Alamosa City Council Meetings and Events

Updated 2/24/2017

All events are held in Alamosa Colorado unless otherwise noted

CITY HALL IS LOCATED AT 300 HUNT

Date	Time	Event	Location	Additional Information
February 24, 2017	11:00 a.m.	Community Corrections Meeting	Admin Conf. Room	*
March 1, 2017	6:00 p.m.	Work Session: Marijuana Building Code Issues, Moratorium on Marijuana Consumption Clubs, and Marijuana Petition Discussion	Council Chambers	*
March 6, 2017	6:30 p.m.	Board Appreciation Dinner	Bistro Rialto	****
March 15, 2017	6:00 p.m.	Work Session: Non-Harassment/Evaluation Training	Council Chambers	*
June 20 - 23, 2017	All Day	CML Annual Conference	Breckenridge, CO	**
August 4 - 5, 2017	All Day	Annual Retreat	Trinchera	*

* Work sessions are informal Council meetings for the purpose of discussion among Council members. No action is taken. The public is invited to attend, but public comment is generally not received unless otherwise noted.

**Sponsored by outside entity. Council members have been invited to attend. Please check with originating entity for registration information

*** Citizens are encouraged to attend this community event

**** This is a purely social event and not open to the public

*****This is a closed session and not open to the public

**ALAMOSA CITY COUNCIL
COUNCIL COMMUNICATION**

Subject/Title:

Approve Minutes of Meeting February 15, 2017

ATTACHMENTS:

Description	Type
☐ Minutes of Meeting February 15, 2017	Cover Memo

ALAMOSA CITY COUNCIL

Regular Meeting Minutes

Council Chambers
300 Hunt Avenue, Alamosa, CO
February 15, 2017

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7:00 PM - Regular Meeting

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

The Regular Meeting of the Alamosa City Council was called to order on the above date by Mayor Josef Lucero at 7:00 p.m. The Pledge of Allegiance was recited.

II. ROLL CALL

Present at roll call: Mayor Lucero, Councilors Ty Coleman, Charles Griego, Liz Hensley, and Kristina Daniel. Councilors Jan Vigil and Michael Stefano previously requested to be excused. A quorum was declared. Also present: City Manager Heather Brooks, City Attorney Erich Schwiesow, and City Clerk Holly Martinez.

III. AGENDA APPROVAL

Heather Brooks clarified for Council that the potential work session after the meeting is going to be needed. Councilor Griego moved, seconded by Councilor Daniel to approve the agenda as amended and to excuse Councilors Vigil and Stefano. The motion carried unanimously.

IV. CITIZEN COMMENT

Alamosa City Council welcomes your comments. Citizens wishing to speak may obtain and complete a speaker card through the City Clerk at the start of the meeting.

A. Audience Comments

Audrey Liu spoke in regards to the Habitat for Humanity replat.

Martin Jones also spoke in regards to the Habitat for Humanity replat.

Mick Daniel spoke in regards to the SLV Great Outdoors Trust for Public Land grant.

Rosanna Atencio spoke in regards to Colorado Creative Clouds, a common consumption club and wanting to expand their business into the City.

B. Follow-Up

Heather Brooks informed Council that staff would contact the applicants of the consumption club and let them know the process that they would need to follow in order to bring the consumption club in Alamosa.

V. CONSENT CALENDAR A

The Consent Calendar allows multiple actions with one motion. Consent Calendar A contains routine items which have been recommended for action by staff or advisory boards. Council may remove a consent calendar item for separate consideration.

Councilor Daniel moved, seconded by Councilor Hensley to approve Consent Calendar A as presented. The motion carried unanimously.

C.7.a. Approve Minutes of Meeting February 1, 2017

C.8.a. Receive January 2017 Monthly Reports

C.1.a. Resolution No. 2-2017; A Resolution approving deviation from existing off-street parking requirements for Justice Center and Ice Rink/Multipurpose facility

C.2.a. Receive January 2017 Financial Reports

C.1.b. Request of Verizon Wireless for the expansion of an existing Permitted Use by Special Review for the installation of additional telecommunications equipment on a city-owned water tower.

C.1.c. Request of Crown Castle for the expansion of an existing Permitted Use by Special Review for the installation of additional telecommunications equipment on an existing cell tower.

C.4.a. Award of Bid - Cemetery Rotary Mower

C.4.b. Award of Bid - Wide Area Rotary Mower

VI. REGULAR BUSINESS

C. Business Brought Forward by City Staff

1. Public Works

- a. Resolution No. 4-2017, The Request of San Luis Valley Habitat for Humanity for a Final Plat approval for the Replat of Lot 40 Adjusted, McClain-Fink Subdivision, located in the northwest quarter (NW1/4) of Section 15, Township 37 North, Range

Pat Steenburg presented information to Council. This subdivision will create two lots from one original lot. This request is a common action in that area of town as the lots were very large when this subdivision was originally platted in the county in 1938. The original lot sizes were roughly 160 feet deep and 132 feet wide; in contrast, most of the lots platted in that era of town were on the order of 25-40 feet wide and 150 feet deep. This subdivision will better represent current development trends. All utilities are in place other than service connections and the property is served with a paved street.

Mayor Lucero opened the public hearing at 7:18 p.m. and asked for those wishing to speak on this resolution.

Audrey Liu spoke in favor of this resolution.

Dan McCann spoke in favor of this resolution.

Marty Jones spoke in favor of this resolution.

There being no one else wishing to speak on this resolution, the hearing closed at 7:21 p.m.

Councilor Coleman spoke in appreciation for Habitat for Humanity. Councilor Griego also thanked Habitat for Humanity.

Councilor Daniel moved, seconded by Councilor Hensley to adopt Resolution No. 4-2017. The motion carried unanimously.

2. Finance

a. Direction on Eight Utility Accounts Receiving Rate Reductions

Heather Brooks reviewed information with Council. Prior to 2008, the City of Alamosa offered a utility rate reduction for employees. The language for the utility rate reduction was included in the ordinance that established the employee pay plan. The exact language that was included in the 2007 Ordinance was *"Section II. As further compensation, all full-time employees and officers, including volunteer firefighters, whose primary place of residence is within city limits, excepting members of the City Council shall receive up to seven thousand-five hundred (7,500) gallons of water per month without charge."* The City knows that this practice ceased in 2008 but documentation of the details of how the program ended have not been found. It was determined after conversations with staff in the Finance

department at that time, the program ended for all employees except retired volunteer firefighters.

While updating the Utility Billing Software with the new rates and categories, staff came across eight accounts that appear to fall into this grandfathered account. However, a more generous utility rate reduction was applied to these accounts than what was included in the ordinance referenced above. The rate that was created for these eight account is a charge of \$.0.60 per 1,000 gallons for usage above 7,000 gallons. All water usage below 7,000 gallons per month is free.

Staff recommends that the current rate structure adopted by Council for usage above 8,000 should be applied in order to be consistent with the focus on conservation.

Councilor Griego asked for clarification on whether the accounts carried over to the spouses of the retired firefighters should they pass away. Heather Brooks stated there wasn't much memory from staff in regards to the spouse however, she stated if the retired firefighter passed and the spouse moved, it wouldn't carry over.

Councilor Daniel stated she appreciates that staff found this and thinks that the rates should be continued for these eight accounts but to also modify it to reflect the rates above while also including the rate structure for usage above 8,000.

Councilor Daniel moved, seconded by Councilor Griego to modify the existing rate structure to reflect the original intent of the ordinance and that anything above 8,000 falls under the current rate structure that the City has in place.

Counselor Schwiesow asked if the motion included reference to the spouse issue. Councilor Daniel amended her motion to include either the original employee or their spouse if they are living in the same house that they were originally in. Councilor Griego seconded the motion. The motion carried unanimously.

- b. Resolution No. 3-2017; A Resolution amending Ordinance 17-2016 for the 2017 Budget also known as the 1st Budget Amendment.

Judy Kelloff presented information to Council. The major items include \$3,740 in the General Fund-Revenue, \$3,740 in the General Fund-Expense, \$382,200 in the Enterprise fund, \$383,000 in the Enterprise Debt Fund, and \$1,500 in the Parks and Recreation Fund.

Heather Brooks presented information in regards to the additional FTE in Water as there is a limited opportunity to address a personnel constraint in the division. Recent interviews for vacant Water/Waste Water Technician I yielded two very promising applicants. Staff's plan

prior to the interviews was to fill the immediate vacancy and bring the request for an additional FTE before Council in a less rush manner, but the possibility of hiring the second qualified candidate prompted staff to escalate that timeframe. The reason for this request, which is a total of \$33,000 which includes the salary and the benefits, is the City is having issues getting the right number of employees within the Water/Wastewater areas with the right certifications. Getting the second FTE will allow for the rotation of employees between the different plants and getting the certifications needed and building the depth that needed to be built. The opportunities will be available to all current employees as well as the new employees.

Regarding the financial aspect of how this will be covered is through the utility increases that were passed and the sales tax language that was identified, the sales tax will be able to take care of some of the immediate needs in the water/wastewater plant. Pat Steenburg reiterated the need of this FTE.

Councilor Griego asked for the information on all the projects that are occurring at the water/wastewater plant. Ms. Brooks and Mr. Steenburg reviewed the projects for Council.

Councilor Daniel asked for clarification if all the money that is there is already in the budget or not. Ms. Brooks clarified that the \$250,00 was identified as major projects but not included in the budget, the \$33,000 was not in the budget, and the money for the augmentation plan was also not included in the budget, although approved; which is why the budget amendments are necessary.

Councilor Hensley moved, seconded by Councilor Daniel to adopt Resolution No. 3-2017. The motion carried unanimously.

- c. First Reading, Ordinance No. 4-2017, an ordinance authorizing and approving the execution and delivery of a lease purchase agreement and other documents and actions in connection with financing the City's acquisition of certain water rights and water storage rights and construction of associated infrastructure projects.

Counselor Schwiesow presented information to Council. Council has determined that it is in the City's best interests to pursue an augmentation plan in order to be able to continue to utilize the City's municipal wells when the Rules Governing the Withdrawal of Groundwater in Division 3, recently promulgated by the State Engineer, become effective. In order to do that the City needs to (i) acquire certain water rights and water storage rights in connection with (a) an independent augmentation plan and sustainability plan, or (b) as an asset to be used in contracting for coverage with with a subdistrict of the Rio Grander Water Conservation District, in order the City's municipal wells will comply with new groundwater pumping rules, (ii) relocate and construct a new discharge point for its wastewater treatment plant, and

(iii) pay the legal and engineering costs of implementing such plans and construction.

This ordinance sets the bounds for financing for the water project in all of its various elements. The ordinance establishes the purposes for the financing which are acquisition of water and water storage rights in connection with the augmentation plan and its sustainability. Also the acquisition of the same potential assets for use in a potential contract with a subdistrict if that's the route taken instead and also for payment for associated expenses being construction, legal and engineering expenses. Staff has estimated approximately \$3.5 million will be necessary to implement the water plan and accordingly, the ordinance authorizes \$3.7 million in principal amount of the Certificates of Participation. UMB Bank has provided the debt service schedule assuming 15 year financing at 5% interest. The parameters of the funding mechanism set for in this ordinance are based on this projection, but final terms of the financing will not be known until UMB Bank actually locates buyers for the Certificates of Participation. The ordinance provides an outside limit to the terms of the financing of \$3.7 million principal, \$5.6 million total payment, and maximum annual payment of \$375,000.

Councilor Griego moved, seconded by Councilor Daniel to approve Ordinance No. 4-2017 on first reading and set for a public hearing thereon on Wednesday, March 1, 2017 or as soon thereafter as the matter may be heard. The motion carried unanimously.

3. Police

- a. Public Hearing and Second Reading, Ordinance 2-2017, an ordinance amending sections 1-5, 11-7 and 11-171, and adding new sections 11-11, and relocating section 10-23 (open containers of alcohol) of the Alamosa code of ordinances to bring Alamosa's marijuana possession and consumption laws in line with changed state constitutional and statutory provisions and to relocate the alcohol open container ordinance.

Counselor Schwiesow reviewed this ordinance with Council.

Mayor Lucero opened the public hearing at 7:57 p.m. and asked for those wishing to speak on this ordinance.

There being no one wishing to speak, the hearing closed at 7:57 p.m.

Councilor Daniel moved, seconded by Councilor Hensley to finally adopt Ordinance No 2-2017. The motion carried unanimously.

- b. Public Hearing and Second Reading, Ordinance No. 3-2017, an ordinance repealing section 11-53 of the Alamosa code of ordinances concerning the regulation of panhandling

Counselor Schwiesow reviewed this ordinance with Council.

Heather Brooks also commented stating that the signs that are up will be removed as they create confusion and wrong expectations.

Mayor Lucero opened the public hearing at 8:00 p.m. and asked for those wishing to speak on this ordinance.

There being no one wishing to speak, the hearing closed at 8:00 p.m.

Councilor Griego asked for clarification on what citizens, home owners, can do if there is a panhandler on their property. Counselor Schwiesow clarified what can be done.

Councilor Griego moved, seconded by Councilor Daniel to finally adopt Ordinance No. 3-2017. The motion carried unanimously.

4. City Manager/Legal

a. Endorsement of the 2017 Comprehensive Plan

Heather Brooks presented information to Council. After a year of public outreach and work, the 2017 Comprehensive Plan was adopted by the Planning Commission on January 25, 2017. Pursuant to state statute, planning commissions adopt comprehensive plans, not Council. The comprehensive plan is not regulatory but is rather a guidance document unless and until further action of the Council makes all or any part of the plan a regulatory document. The City of Alamosa's last update to its Comprehensive Plan was June 6, 1987. The goal of the update was to have a thorough review of existing conditions and identification of what is needed for the future. A significant portion of the process was dedicated to public outreach including stakeholder meetings, focus group meetings, and non-scientific surveys.

Gabe Preston presented the Comprehensive Plan in a condensed version and highlighted what the scope of work to the plan included.

Council thanked all those involved who helped work on this plan and for the community members who provided their input.

Councilor Griego moved, seconded by Councilor Daniel to endorse the 2017 Comprehensive Plan. The motion carried unanimously.

b. Selection of Art for the First Annual Public Art on Loan Program

Heather Brooks provided information to Council. Alamosa will soon be enriched with a variety of sculpture artwork throughout the downtown

thanks to the City's new art on loan program called Artscape. The goal of this program is to promote and exhibit artwork while also enhancing the community atmosphere and creating a unique sense of place. Public art was identified in the 2017 Comprehensive Plan as a goal for the downtown and Council included \$20,000 in the 2016 and 2017 budgets for a public art program. Once the pieces are finalized including a contract with each artist, staff will identify the exact locations for each piece.

2017 marks the first annual public art on loan program for the City. Artists nationwide were invited to fill out and submit an application. The application process opened December 7, 2016 and closed January 30, 2017. Artwork was selected through a jury process and will be displayed for a one-year period starting on June 3, 2017. The community will also have the opportunity to purchase artwork and to select their favorite artwork for a "People's Choice Award." The City received 115 submissions and the Art Jury selected 15 pieces that were presented.

Councilor Hensley asked if some of the art was fragile in the sense of weather wise. Heather Brooks stated those individuals on the art committee have a lot of background on the materials used in the art and there were pieces that were removed because of the weather conditions that could happen here.

Councilor Daniel commented in regards to advertisement and appreciated those who volunteered their time to sit on the art jury.

Councilor Griego asked if this was an annual thing and thanked Ms. Brooks in regards to the art program and making it reality. Ms. Brooks stated that yes, it is an annual thing and that it the artist's responsibility to get the art here, and to remove it when the year is over.

Councilor Coleman asked if the locations for the art have been identified. Ms. Brooks informed Council that the pieces just got confirmed today so all that is known at the current time is that they will be placed downtown.

Councilor Daniel moved, seconded by Councilor Griego to accept the recommended art pieces from the Art Jury for the June 3, 2017 unveiling and to authorize the mayor to sign the contracts with the artists. The motion carried unanimously.

- c. Resolution No. 4-2017, A Resolution Adopting and Providing for Standards for Procurement, Bidding and Contract Awards for Loans and/or Grants from the USDA

Ms. Brooks provided information on this resolution to Council. The City has applied and been approved for a \$10,000 grant to be made by the United State of America acting through USDA, Rural Development for

the provision of two-way digital radios. The USDA's regulations require that the City adopt standards (a) relating to the conduct of its officers, employees, and agents in contracting and in expending loan and/or grant funds, and (b) establishing procurement and contracting procedures. The USDA provide a sample resolution adopting the standards required in Title 7, Code of Federal Regulations, Section 1942.18 (j) thru (k), which this resolution is modeled upon. The City already has in place the contracting standards specified in the Code of Federal Regulations, see *Code of Ordinances Section 2-38 (prohibited gifts); 2-229 to 2-234 (ethics in contracting); 2-178 to 2-187 (contract award and formation - bid process)*. In addition, the CFR standards are applicable through this Resolution, so no new standards need to be adopted to comply.

Councilor Daniel asked for clarification of the resolution number as Council has already approved a resolution No. 4 above. Staff clarified that this resolution will be Resolution No. 5.

Councilor Daniel moved, seconded by Councilor Coleman to adopt Resolution No. 5-2017. The motion carried unanimously.

d. Recommendation of Kirk Thompson for the Colorado Water Conservation Board

Ms. Brooks presented information to Council. Kirk Thompson has been an instrumental member of the City's Water Team as we have evaluated the impacts on the City's water supply from the new regulations. Mr. Thompson has evaluated all potential options to meet the regulations and provided detailed analysis on costs, feasibility, and reasonableness of such options. He has worked with the calculations provided by the State to provide direction on the varying water right amounts that are needed to protect the City's provision of municipal water. Mr. Thompson's contribution to the team has been enormous and staff believes that he would represent valley interests in a very balanced and informed manner in this position.

Kirk Thompson was present for any questions and/or concerns. Mr. Thompson spoke to Council asking for a letter of support and provided background information on himself and what he would be able to bring to this position.

Councilor Griego asked if he has already agreed to a letter of support for a different candidate for the same position, if he voted on this item if it would create a conflict of interest. Counselor Schwiesow clarified that this is not a concern of conflict of interest as he did so on another board non-related to the City, however, it was up to him if he felt he need to abstain from the vote.

Councilor Hensley moved, seconded by Councilor Daniel to provide a letter of support for the appointment of Kirk Thompson to the Rio Grand

River Basin's Director. The motion carried with Councilor Griego abstaining from the vote.

D. Committee Reports

Councilor Daniel reported on the marketing board meeting that she attended.

Mayor Lucero commented on the legislative session and policy committee in Denver he attended last week.

E. Staff Announcements

Heather Brooks reminded council of upcoming meetings including:

- March 1st: Building code issues/marijuana and expansion into petition discussion.
- March 6th: Board Appreciation Dinner at the Bistro Rialto
- February 22nd: Feral cat/Broader nuisance ordinance work session

Heinz Bergann gave Council a Ride the Rockies event update.

Pat Steenburg informed Council of the amount of potholes that been fixed since January.

Holly Martinez informed Council of updates in Municipal Court including online payments now being an option and the court dockets being available on the website.

COUNCIL COMMENT

None.

EXECUTIVE SESSIONS

1. Potential executive session if desired pursuant to C.R.S. § 24-6-402(4)(a) to discuss the numbers in Ordinance No. 4-2017 as they relate to the acquisition of water assets for a potential augmentation plan.

Councilor Daniel moved, seconded by Councilor Hensley to enter into Executive Session (9:30 p.m.) pursuant to C.R.S. §24-6-402(4)(a) to discuss the acquisition of water assets for a potential augmentation plan. The motion carried

unanimously.

After the executive session, Council will move back into regular session and no further business will be discussed.

ADJOURNMENT

The meeting adjourned immediately after the executive session.

Holly C. Martinez, City Clerk

Josef P. Lucero, Mayor

ALAMOSA CITY COUNCIL COUNCIL COMMUNICATION

Subject/Title:

Award of of Bid - AFRC Ellipticals

Recommended Action:

That Council approves the selection of HealthStyles Exercise Equipment for the purchase of three ellipticals in the amount of \$14,385.

Background:

Community Recreation Department released an Invitation for Bids to replace three aging ellipticals at the Recreation Center. Staff researched various commercial-grade models available, took into account design issues we have had with the current equipment, and weighed the need to bring in new, modern-designed units encouraging patron usage. The research resulted in staff approving two models for vendors to bid on with the specifications to purchase two of one model and a single unit of the other.

The City received four bids from three vendors.

1. HealthStyles Exercise Equipment (Denver)	\$14,385.00
2. Push-Pedal-Pull (Denver)	\$15,263.28
3. Push-Pedal-Pull (Denver)	\$26,673.01
4. Promaxima Manufacturing (Houston)	\$10,588.00

Upon review of the bids, bid numbers 2, 3, and 4 were removed from consideration.

- Number 2 did not bid on the two approved models staff was looking for. Also, this bid only included three units of one model, not 2 plus 1 as specified by the IFB.
- Number 3 did not bid on the two approved models staff was looking for. Also, this bid only included three units of another model, not 2 plus 1 as specified by the IFB.
- Number 4 did not bid on the two approved models staff was looking for. Also, the models that were bid did not come up during staff's research and appear to not be of the quality staff was looking for – thus staff believes it would not be in the City's best interest to purchase even if they were the lowest bidder.

Issue Before the Council:

Does Council wish to award the elliptical purchases to the lowest responsive and responsible bidder?

Alternatives:

While Council is free to select or develop any number of alternatives, those listed below are examples.

- Award the bid to HealthStyles Exercise Equipment for the purchase of three ellipticals in the amount of \$14,385.
- Award the bid to one of the other vendors.
- Not award the bid and provide staff with further direction.

Fiscal Impact:

The 2017 budget included \$32,000 for new cardio equipment (ellipticals and treadmills).

Legal Opinion:

City Attorney will be present if there are any legal questions regarding this action.

Conclusion:

In addition to replacing aging equipment, the new ellipticals come with additional features for our patrons to enjoy during their workouts, such as audio access to all three televisions.

ATTACHMENTS:

Description	Type
▣ Octane Ellipticals Info Sheets	Cover Memo

THE PRO3700Classic

SAME HIGH-END FEATURES AND EXCEPTIONAL QUALITY AT AN UNBEATABLE VALUE

PRO3700C

Features the natural, smooth motion that Octane is known for, digital contact heart rate sensors, signature advanced programs, exclusive Workout Boosters and full commercial warranty.



OCTANE ADVANTAGES

- MultiGrip & Converging Path handlebars
- Biomechanically correct pedal spacing
- Advanced Training — MMA and 30:30
- Workout Boosters
- CROSS CIRCUIT compatible



UPPER-BODY ERGONOMICS

Patented, one-of-the-kind MultiGrip and Converging Path handlebars that better engage the upper body and assist with fitting every exerciser better.

MMA

Mimics real-life MMA bouts and gives participants an effective training routine like a fighter in the ring.

REAL RUNNING MOTION

Delivers supremely comfortable natural movement and flow, both forward and backward, without stress on the joints.

LCD EXPERIENCE

Please every member with individual viewing screens for the ultimate workout experience.

PRO3700Classic SPECIFICATIONS

KEY MECHANICAL FEATURES	ENTERTAINMENT OPTIONS	• Standard	◦ Optional	FITNESS ASSESSMENT PROTOCOL
Stride length	Personal Viewing Screen	◦		Navy PRT
Close pedal spacing	Wireless 900 Mhz	◦		
Low step-up height				WORKOUT BOOSTERS
Covered track and rollers				X-Mode™
MultiGrip™ and Converging Path™ handlebars	Number of programs	20		GluteKicker™
Moving handlebar lock-out option				ArmBlaster
1-time adjustable handlebar position	PRESET RESISTANCE PROGRAMS			
CROSS CIRCUIT compatible	Manual	•		PRODUCT SPECIFICATIONS
Water bottle holder	Random	•		Max user weight
Tablet/reading rack	Interval	•		400 lbs (181 Kg)
Transport wheels	Custom Interval	•		31" x 69"
	Hill	•		(78 cm x 175 cm)
	10K	•		34" x 83"
		•		(86 cm x 210 cm)
	HEART RATE-CONTROLLED PROGRAMS			Product weight
	Heart Rate Fat Burn	•		320 lbs (145 Kg)
	Heart Rate Cardio	•		Footprint
	Heart Rate Interval	•		35" x 84"
	Heart Rate Custom Interval	•		with CROSS CIRCUIT stands (W x L)
	Heart Rate Hill	•		Product weight
	Heart Rate Speed Interval	•		with CROSS CIRCUIT stands
	New Leaf® Custom	•		405 lbs (183 Kg)
	ADVANCED PROGRAMS			WARRANTY
	CROSS CIRCUIT Solo	•		Parts
	CROSS CIRCUIT Group	•		3 years
	30:30 Interval	•		Labor
	MMA	•		1 year
	Constant Power Watts	•		
	Constant Power METs	•		

THE LATERALX

MOVE IN A NEW DIRECTION

LateralX

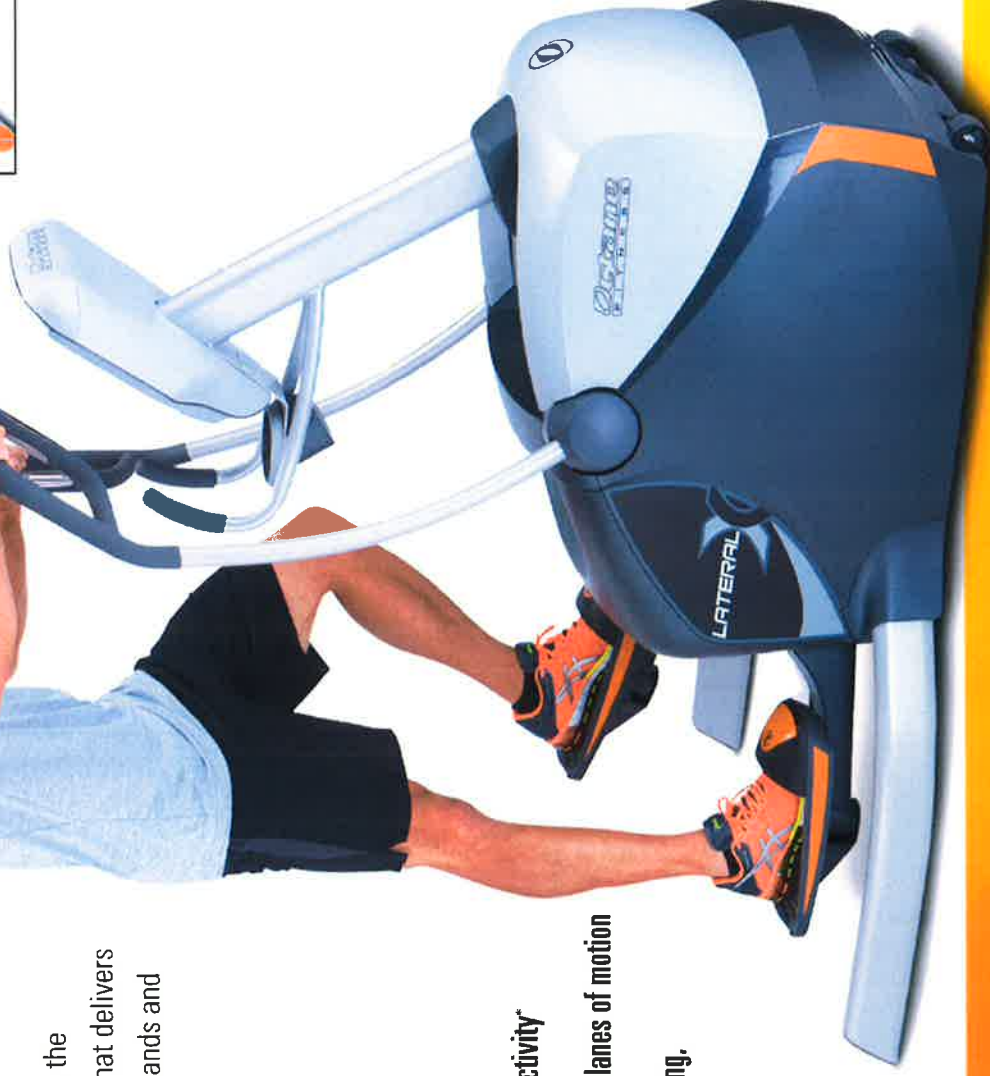
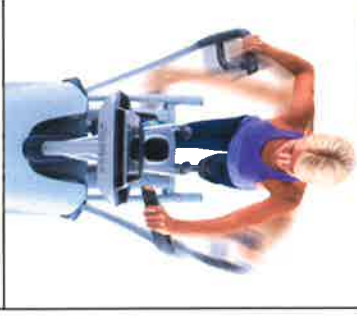
Add a new dimension and excitement to the cardio floor with the LateralX elliptical that delivers functional challenges, more muscle demands and greater caloric burn.

OCTANE ADVANTAGES

- Adjustable lateral 3-D motion
- 27% increase in caloric expenditure*
- 30% increase in hip abductor/adductor activity*
- Adds muscle confusion with 10 varying planes of motion
- Great for sports, rehab and stability training, working the hips, thighs and glutes
- CROSS CIRCUIT compatible

LATERALX

MOVE IN A NEW DIRECTION



*Study conducted by Minnesota State University Mankato going from lateral width 1 to lateral width 10

ALAMOSA CITY COUNCIL

COUNCIL COMMUNICATION

Subject/Title:

Second reading and public hearing, Ordinance No. 4-2017, an ordinance authorizing and approving the execution and delivery of a lease purchase agreement and other documents and actions in connection with financing the City's acquisition of certain water rights and water storage rights and construction of associated infrastructure projects.

Recommended Action:

Unless information is presented to the contrary, adopt Ordinance No. 4-2017 as proposed to be changed between first and second reading, to increase principal from \$3.7 Million to \$4.3 Million, with corresponding changes to other parameters.

Background:

Council has determined that it is in the City's best interests to pursue an augmentation plan in order to be able to continue to utilize the City's municipal wells when the Rules Governing the Withdrawal of Groundwater in Water Division 3, recently promulgated by the State Engineer, become effective.

In order to do that the City needs to (i) acquire certain water rights and water storage rights in connection with (a) an augmentation plan and sustainability plan, with or without the participation of East Alamosa Water and Sanitation District or (b) as an asset to be used in contracting for coverage with a subdistrict of the Rio Grande Water Conservation District, in order that the City's municipal wells will comply with new groundwater pumping rules, (ii) relocate and construct a new discharge point for its wastewater treatment plant, and (iii) pay the legal and engineering costs of implementing such plans and construction.

In order to fund the water projects outlined above, the most efficient method would use a lease purchase arrangement involving a lease and leaseback of City property, similar to the method used to fund the Rec Center and City Hall. That will involve leasing City property of a value roughly equivalent to the amount of financing needed to the Alamosa Capital Leasing Corporation, and subleasing that property back from the ACLC for the City's use under a lease purchase agreement. Certificates of Participation, which represent proportionate undivided interests in rights to receive base rentals paid by the City to ACLC under the sublease, will be sold to certain accredited investors to be identified by UMB Bank, n.a., as placement agent. Moneys derived from the sale of the Certificates will fund the necessary purchases for the augmentation plan and water project.

The most readily available City property in sufficient value is a portion of the Ranch. Which portion will be determined based upon considerations of value and utility, and the portion that will be the subject of the lease purchase agreement will be approved by separate resolution of Council at a later date. In essence, the Ranch will serve as security for the repayment of the funding.

Under this structure, the obligation of the City to pay rental payments to ACLC under the sublease shall be from year to year only, shall constitute currently budgeted expenditures of the City, shall not constitute a mandatory charge or requirement in any ensuing budget year, and shall not constitute a general obligation or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of any constitutional or statutory limitation or requirement concerning the creation of indebtedness, nor a mandatory payment obligation of the City in any ensuing fiscal year beyond any fiscal year during which the Lease shall be in effect.

When this matter was presented on first reading, Staff had estimated approximately \$3.5 Million would be necessary to implement the water plan. Subsequently, staff has thought it advisable to make provision for acquiring water also for East Alamosa Water and Sanitation District, who share the water and wastewater treatment plant with us, in the event they decide to join in the augmentation plan. Their participation would require an IGA for addressing their proportionate share of costs. The cost estimate is still just a rough guess, at this point. Accordingly, this ordinance authorizes up to \$4.3 Million in principal amount of the Certificates of Participation. UMB Bank has provided the attached payment schedule assuming 15 and 20 year financing at 5% interest. The parameters of the funding mechanism set forth in Ordinance No. 4 are based on the higher amounts of these two projections, but the final terms of the financing will not be known until UMB bank actually locates buyers for the Certificates of Participation. The Ordinance provides an outside limit to the terms of the financing of \$4.3 Million principal, \$7.25 Million total payment (from the 20 year schedule), and maximum annual payment of \$425,000 (from the 15 year schedule). The financing that is actually concluded must fall within those parameters.

Issue Before the Council:

Does Council wish to approve the Ordinance on second reading?

Alternatives:

- 1) Adopt the Ordinance as changed between first and second reading, attached.
- 2) Adopt the Ordinance with changes to the parameters (principal and repayment numbers), for instance for lower or higher principal and/or length of repayment.
- 3) Decline to approve the Ordinance in whole or in part, and give staff further direction.

Fiscal Impact:

The fiscal impact is set forth within the ordinance itself, and shown on the attached Base Rental Payment estimate prepared by UMB. The maximum total interest cost on \$4.3 Million principal is \$2.768 Million. Actual total costs may not exceed the \$7.25 million amount authorized in this ordinance.

Legal Opinion:

The City Attorney and Bond Counsel will be available at the meeting if needed.

Conclusion:

This ordinance puts in place the parameters for funding the necessary elements of the City's augmentation plan. In order to move forward with the plan, including the scheduled April closing of the contract the City currently has on one element of the plan, the funding mechanism must be in place.

ATTACHMENTS:

Description	Type
▣ Parameters Ordinance	Ordinance
▣ Site Lease template exhibit to ordinance	Exhibit
▣ Lease purchase template exhibit to ordinance	Exhibit
▣ 15 year base rental schedule	Backup Material
▣ 20 year base rental schedule	Backup Material
▣ Mortgage and Indenture template	Backup Material

ORDINANCE NO. 4-2017

AUTHORIZING AND APPROVING THE EXECUTION AND DELIVERY OF A LEASE PURCHASE AGREEMENT AND OTHER DOCUMENTS AND ACTIONS IN CONNECTION WITH FINANCING THE CITY'S ACQUISITION OF CERTAIN WATER RIGHTS AND WATER STORAGE RIGHTS AND CONSTRUCTION OF ASSOCIATED INFRASTRUCTURE PROJECTS.

WHEREAS, the City Council (the "City Council") of the City of Alamosa, Colorado (the "City") has the power, pursuant to the Charter of the City (the "Charter") and Sections 31-15-101(1)(d) and 31-15-801, Colorado Revised Statutes, to acquire, hold and lease real property, and to enter into rental or leasehold agreements to provide necessary land, buildings, equipment and other property for governmental or proprietary purposes, and such agreements may include an option to purchase and acquire title to such leased or rented property within a period not exceeding the useful life of such property and not exceeding thirty years; and

WHEREAS, the City Council has the power, pursuant to the Charter and Sections 31-15-101(1)(d) and 31-15-713(1)(c), Colorado Revised Statutes, to lease real property, and to lease any real estate, together with any facilities thereon, owned by the City when deemed by the City Council to be in the best interest of the City; and

WHEREAS, the City Council has determined, and hereby determines, that the City needs to (i) acquire certain water rights and water storage rights in connection with (a) an augmentation plan and sustainability plan, with or without the participation of the East Alamosa Water and Sanitation District, or (b) as an asset to be used in contracting for coverage with a subdistrict of the Rio Grande Water Conservation District, in order that the City's municipal wells will comply with new groundwater pumping rules, (ii) relocate and construct a new discharge point for its wastewater treatment plant, and (iii) pay the legal and engineering costs of implementing such plans and construction (collectively, the "Water Projects"); and

WHEREAS, the City owns certain real property known as the Alamosa Ranch and associated farm buildings and structures located thereon and water rights that are currently only authorized to be used on the Alamosa Ranch (collectively, the "Alamosa Ranch Property"); and

WHEREAS, the City is authorized by the Charter and by Sections 31-15-101(1)(d) and 31-15-713(1)(c), Colorado Revised Statutes, to lease all or any portion of the Alamosa Ranch Property to the Alamosa Capital Leasing Corporation (the "Corporation") when deemed by the City Council to be in the best interest of the City; and

WHEREAS, the City Council has determined, and hereby determines, that it is necessary and in the best interests of the City that the Water Projects be carried out and implemented; and

WHEREAS, for purposes of financing the Water Projects, the City Council has determined, and hereby determines, that it is in the best interests of the City and its residents that the City lease a portion of the Alamosa Ranch Property (the "Leased Property") to the Corporation pursuant to a Site Lease (the "Site Lease"), between the City, as lessor, and the

Corporation, as lessee, and that the City and the Corporation enter into a Lease Purchase Agreement (the "Lease") for the subleasing by the City from the Corporation of the Leased Property; and

WHEREAS, the obligation of the City to pay Base Rentals and Additional Rentals (both as defined in the Lease) shall be from year to year only, shall constitute currently budgeted expenditures of the City, shall not constitute a mandatory charge or requirement in any ensuing budget year, and shall not constitute a general obligation or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of any constitutional or statutory limitation or requirement concerning the creation of indebtedness, nor a mandatory payment obligation of the City in any ensuing fiscal year beyond any fiscal year during which the Lease shall be in effect; and

WHEREAS, there have been presented to the City Council at this meeting copies of the proposed forms of the Lease and the Site Lease; and

WHEREAS, pursuant to a Mortgage and Indenture of Trust (the "Indenture"), between the Corporation and UMB Bank, n.a., as Trustee (the "Trustee"), Certificates of Participation (the "Certificates"), which represent proportionate undivided interests in rights to receive Base Rentals paid by the City under the Lease, will be distributed to certain accredited investors to be identified by UMB Bank, n.a., as Placement Agent (the "Placement Agent"); and

WHEREAS, neither the Lease nor the execution and delivery of the Certificates shall directly or indirectly obligate the City to make any payments beyond those appropriated for any fiscal year during which the Lease shall be in effect; and

WHEREAS, the City Council is desirous of authorizing, approving and directing (i) the execution of the agreements and instruments described above to be executed by the City and (ii) the transactions outlined above;

NOW THEREFORE, BE IT ORDAINED by the City Council of Alamosa as follows:

Section 1. All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the City Council or the officers, employees and agents of the City Council or the City, directed toward (i) the leasing of a portion of the Alamosa Ranch Property (the "Leased Property") to the Corporation, (ii) the subleasing of the Leased Property from the Corporation to the City, and (iii) implementing and completing the Water Projects, are hereby ratified, approved and confirmed.

Section 2. The City Council hereby finds and determines that the Leased Property shall be a portion of the Alamosa Ranch Property that has a value approximately equal to the Principal Component of the Base Rentals (as defined in the Lease), with the exact location of the Leased Property on the Alamosa Ranch to be identified by the City Manager and the City Attorney and approved by resolution of the City Council.

Section 3. The City Council hereby finds and determines, pursuant to the constitution, the Charter and laws of the State of Colorado, that the leasing of the Leased Property to the Corporation under the terms and provisions of the Site Lease, and subleasing of the Leased

Property from the Corporation under the terms and provisions of the Lease, are necessary, convenient and in furtherance of the governmental purposes of the City and are in the best interests of the City and its residents; and the City Council hereby authorizes, approves and directs the accomplishment of the foregoing under the terms and provisions of the Lease and the Site Lease.

Section 4. The Lease, in substantially the form and with substantially the content presented to this meeting of the City Council, is in all respects approved, authorized and confirmed, and the Mayor or, in the absence thereof, the Mayor pro-tempore is authorized and directed to execute the Lease in substantially the form and with substantially the same content as the form thereof presented to this meeting of the City Council, for and on behalf of the City, but with such changes therein as shall be consistent with this Ordinance and as the City Attorney shall approve, the execution thereof being deemed conclusive of the approval of any such changes. The City Council hereby approves the amount of \$7,250,000 as the maximum total amount of Base Rentals and the amount of \$425,000 as the maximum annual amount of Base Rentals to be paid for the subleasing of the Leased Property by the City from the Corporation under the terms and conditions of the Lease. The number of Renewal Terms (as defined in the Lease) of the Lease shall not exceed twenty-one.

Section 5. The Site Lease, in substantially the form and with substantially the content presented to this meeting of the City Council, is in all respects approved, authorized and confirmed, and the Mayor or, in the absence thereof, the Mayor pro-tempore is authorized and directed to execute the Site Lease in substantially the form and with substantially the same content as the form thereof presented to this meeting of the City Council, for and on behalf of the City, but with such changes therein as shall be consistent with this Ordinance and as the City Attorney shall approve, the execution thereof being deemed conclusive of the approval of any such changes.

Section 6. The City Council hereby approves the execution and delivery by the Corporation and the Trustee of the Indenture in connection with the transactions authorized herein, and approves the amount of \$4,300,000 as the maximum principal amount of the Certificates that may be executed and delivered thereunder.

Section 7. The City Council hereby acknowledges and consents to the assignment by the Corporation to the Trustee, pursuant to the Indenture, of all right, title and interest of the Corporation in, to and under the Site Lease and the Lease (with certain exceptions as provided in the Site Lease, the Lease and the Indenture), and the delegation by the Corporation to the Trustee, pursuant to the Indenture, of all duties of the Corporation under the Site Lease and the Lease.

Section 8. The City Clerk or, in the absence thereof, the Deputy City Clerk is hereby authorized and directed to attest all signatures and acts of any official of the City Council or the City in connection with the matters authorized by this Ordinance, and to place the seal of the City on the Lease and the Site Lease authorized and approved by this Ordinance and all other additional certificates, agreements, documents and other papers, associated with the transactions and other matters authorized by this Ordinance. The Mayor or, in the absence thereof, the Mayor pro-tempore and other officials, employees and agents of the City Council or the City are hereby

authorized to execute and deliver for and on behalf of the City any and all additional certificates, agreements, documents and other papers, and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized or contemplated by this Ordinance. The appropriate members or officers of the City Council or the City are authorized to execute on behalf of the City agreements concerning the deposit and investment of funds in connection with the transactions contemplated by this Ordinance.

Section 9. No provision of this Ordinance, the Lease, the Site Lease, the Indenture or the Certificates or other additional certificates, agreements, documents and other papers associated with the transactions authorized by this Ordinance shall be construed as creating or constituting a general obligation or multiple fiscal year direct or indirect indebtedness or other financial obligation whatsoever of the City nor a mandatory payment obligation of the City in any fiscal year beyond a fiscal year for which the Lease is in effect. The City shall have no obligation to make any payment under the Indenture or with respect to the Certificates except in connection with the payment of the Base Rentals (as defined in the Lease) and certain other payments under the Lease, which payments may be terminated by the City in accordance with the provisions of the Lease.

Section 10. The City Council hereby determines and declares that the Base Rentals represent the fair rental value of the use of the Leased Property, and that the Purchase Option Price (as defined in the Lease) represents the fair purchase price of the Leased Property. The City Council hereby determines and declares that the Base Rentals do not exceed a reasonable amount so as to place the City under an economic or practical compulsion to renew the Lease or to exercise its option to purchase the Leased Property pursuant to the Lease. In making such determinations, the City Council has given consideration to the current value of the Leased Property, the cost of acquiring property similar to the Leased Property, the uses and purposes for which the Leased Property is being and will be employed by the City, the benefit to the citizens and residents of the City by reason of the use of the Leased Property by the City pursuant to the terms and provisions of the Lease, the option of the City to purchase the Leased Property, and the expected eventual vesting of full title to the Leased Property in the City. The City Council hereby determines and declares that the duration of the Lease, including all optional renewal terms, authorized under this Ordinance, does not exceed the weighted average useful life of the Leased Property.

Section 11. The City Council hereby determines and declares that, in the event the Site Lease shall remain in effect after the termination of the Lease related thereto and authorized under this Ordinance, the rentals received by the City under the Site Lease represent the fair rental value of the property leased by the City to the Corporation under the Site Lease, and that such rentals do not place the City under an economic or practical compulsion to renew the Lease related thereto or to exercise its option to purchase the Leased Property.

Section 12. The City Council hereby elects to apply all of the provisions of the Supplemental Public Securities Act, part 2 of article 57 of title 11, Colorado Revised Statutes, as amended, to the transactions authorized by this Ordinance and delegates to the City Manager or the City Finance Director the authority to determine the terms and details of the leasing and subleasing of the Leased Property, including, but not limited to, the final schedule and amounts

of Base Rentals due under the Lease and other terms and details thereof, not otherwise determined herein and within the parameters set forth in this Ordinance.

Section 13. If any section, paragraph, clause or provision of this Ordinance (other than provisions as to the payment of Base Rentals by the City during the Lease Term and provisions for the conveyance of the Leased Property to the City under the conditions provided in the Lease) shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 14. All bylaws, orders, ordinances and resolutions, or parts thereof, inconsistent with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, ordinance or resolution, or part thereof.

Section 15. This Ordinance, immediately upon its passage, shall be authenticated by the signatures of the Mayor and City Clerk, recorded in the City book of Ordinances kept for that purpose, and published according to law.

Section 16. This Ordinance shall take effect ten (10) days after publication following final passage. Publication both before and after final passage shall be by the title of this Ordinance, which the City Council determines constitutes a sufficient summary of the Ordinance, together with the statement that the full text of the Ordinance is available for public inspection and acquisition on the City's website and in the office of the City Clerk.

Section 17. This Ordinance is necessary to preserve the peace, health, safety, welfare, and to serve the best interest of the citizens of the City of Alamosa, Colorado.

INTRODUCED, READ AND APPROVED on first reading the 15th day of February, 2017, and ordered published by title and reference as provided by law with notice of a public hearing to be held for consideration of the adoption of said Ordinance on the 1st day of March, 2017, at 7:00 p. m, or as soon thereafter as the matter may be heard, or on such subsequent date to which the public hearing or City Council consideration may be continued.

APPROVED, AND ADOPTED after public hearing the 1st day of March, 2017

CITY OF ALAMOSA

[SEAL]

By _____
Josef P. Lucero, Mayor

ATTEST:

By _____
Holly C. Martinez, City Clerk

SITE LEASE

by and between

CITY OF ALAMOSA, COLORADO,
as Lessor

and

ALAMOSA CAPITAL LEASING CORPORATION,
as Lessee

Dated April __, 2017

THIS SITE LEASE dated April __, 2017 (this “Site Lease”), by and between the **CITY OF ALAMOSA, COLORADO**, as lessor (the “City”), a political subdivision duly organized and existing as a home rule municipal corporation under the constitution and laws of the State of Colorado (the “State”), and the **ALAMOSA CAPITAL LEASING CORPORATION**, as lessee (together with its successors and assigns, the “Corporation”), a Colorado nonprofit corporation.

W I T N E S S E T H:

WHEREAS, the Corporation is a nonprofit corporation duly organized and existing under the laws of the State for the purpose of acquiring by purchase, lease, or otherwise, interests in real and personal property, acquiring, constructing and installing improvements of every character and leasing or otherwise conveying all or any part of said interests in real and personal property and facilities and improvements to the City; and

WHEREAS, the City is authorized by the Charter of the City (the “Charter”) and by Sections 31-15-101(1)(d) and 31-15-713(1)(c), Colorado Revised Statutes, to lease real property, and to lease any real estate together with any facilities thereon, owned by the City when deemed by the Council of the City (the “City Council”) to be in the best interest of the City; and

WHEREAS, the City needs to (i) acquire certain water rights and water storage rights in connection with (a) an independent augmentation plan and sustainability plan, or (b) as an asset to be used in contracting for coverage with a subdistrict of the Rio Grande Water Conservation District, in order that the City’s municipal wells comply with new groundwater pumping rules, (ii) relocate and construct a new discharge point for its wastewater treatment plant, and (iii) pay the legal and engineering costs of implementing such plans and construction (collectively, the “Project”); and

WHEREAS, the City owns certain real property known as the Alamosa Ranch and associated farm buildings and structures located thereon and water rights that are currently only authorized to be used on the Alamosa Ranch (collectively, the “Alamosa Ranch Property”); and

WHEREAS, the City is authorized by the Charter and by Sections 31-15-101(1)(d) and 31-15-713(1)(c), Colorado Revised Statutes, to lease all or any portion of the Alamosa Ranch Property to the Alamosa Capital Leasing Corporation (the “Corporation”) when deemed by the City Council to be in the best interest of the City; and

WHEREAS, the City owns the portion of the Alamosa Ranch Property described in Exhibit A hereto (the “Leased Property”), which it intends to lease to the Corporation hereunder, and the City is authorized by the Charter and by Sections 31-15-101(1)(d) and 31-15-713(1)(c), Colorado Revised Statutes, to lease such property to the Corporation when deemed by the City Council to be in the best interest of the City; and

WHEREAS, the City Council has determined that the City, as sublessee, shall enter into that certain Lease Purchase Agreement dated April __, 2017 (the “Lease”), with the Corporation, as sublessor, to acquire the Leased Property; and

WHEREAS, the City shall lease the Leased Property back from the Corporation under the Lease; and

WHEREAS, the City proposes to enter into this Site Lease with the Corporation as a material consideration for the Corporation's agreement to lease the Leased Property back to the City pursuant to the Lease and pay the proceeds of Certificates of Participation (the "Certificates"), evidencing assignments of interests in certain payments to be made by the City as sublessee under the Lease, as rent to the City hereunder that the City will use for the Project.

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

Section 1. Definitions. Unless the context otherwise requires, capitalized terms used herein shall have the meanings ascribed to them herein or in the Lease.

Section 2. Site Lease and Terms. The City hereby leases to the Corporation and the Corporation hereby leases from the City, on the terms and conditions hereinafter set forth, the portion of the Alamosa Ranch Property described in Exhibit A hereto and made a part hereof, subject to Permitted Encumbrances as defined in the Lease (collectively the "Leased Property"), and such lease to the Corporation is hereby deemed to be in the best interests of the City and its residents. Full pedestrian and vehicular access to the Leased Property from a public right of way or street will be provided by the City at all times during the term of this Site Lease.

The term of this Site Lease shall commence on the date hereof and shall end on the earlier of (a) December 31, 2047, or (b) if the hereinafter defined Indenture has been discharged pursuant to Article __ thereof, the date that the rights of all subsequent transferees, assignees or sublessees of the hereinafter defined Trustee's interest in this Site Lease expire (the "Site Lease Termination Date"), unless such term is sooner terminated as provided in the next sentence. If prior to the Site Lease Termination Date, (a) all of the Leased Property has been conveyed to the City pursuant to the Lease as a result of the City's payment or prepayment of (i) the related Purchase Option Price thereunder or (ii) all Base Rentals and Additional Rentals as provided in Section 12.02 of the Lease and (b) the Mortgage and Indenture of Trust dated April __, 2017 (the "Indenture"), between the Corporation and UMB Bank, n.a., as trustee (the "Trustee"), has been discharged as to the Leased Property, then the term of this Site Lease shall end on the date of such conveyance.

The term of any sublease of the Leased Property by the Trustee or any portion thereof or any sale or assignment of the Trustee's interest in this Site Lease shall not extend beyond December 31, 2047.

Section 3. Rent and Payment. The City acknowledges, as rent and payment hereunder, that (i) the Trustee has paid or will pay in full the lump sum of _____ (\$_____) to the City from the Project Account of the Acquisition Fund established under the Indenture, and (ii) the Trustee will deposit the sum of _____ (\$_____) in the Costs of Issuance Account of the Acquisition Fund established under the Indenture in order to pay, on behalf of the City, the costs of executing and delivering the Certificates, all as

consideration for the lease of the Leased Property, and the receipt of other good and valuable consideration.

Section 4. Purpose. The Corporation shall use the Leased Property solely for the purpose of subletting the same to the City pursuant to the Lease and for such purposes as may be incidental thereto; provided, that upon the occurrence of an Event of Nonappropriation or an Event of Default under the Lease, the City shall vacate the Leased Property as provided in the Lease and the Corporation and the Trustee may exercise the remedies provided in the Lease and use or sublet the Leased Property for any lawful purpose.

Section 5. Owner in Fee. The City covenants that it is the owner in fee of the Leased Property, subject only to Permitted Encumbrances as described in Exhibit B hereto.

Section 6. Assignments and Subleases. Unless an Event of Nonappropriation or an Event of Default under the Lease shall have occurred and except as may otherwise be provided in the Lease, the Corporation may not assign its rights under this Site Lease, except to the Trustee, or sublet the Leased Property except to the City, without the written consent of the City.

In the event that (a) the Lease is terminated for any reason and (b) this Site Lease is not terminated, the Corporation and the Trustee may sublease Leased Property or any portion thereof, or sell an assignment of their interest in this Site Lease, pursuant to the terms of the Lease and the Indenture. Except as provided in this Site Lease, the City, the Corporation, and the Trustee (or any assignee or lessee or sublessee of the Trustee) agree that, except for Permitted Encumbrances (including purchase options under the Lease), neither the City, the Corporation, the Trustee, nor any lessee, sublessee or assignee of the Trustee will sell, mortgage or encumber the Leased Property or any portion thereof during the term of this Site Lease.

Section 7. Right of Entry. The City reserves the right for any of its duly authorized representatives to enter upon the Leased Property at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

Section 8. Termination. The Corporation agrees, upon the termination of this Site Lease, to quit and surrender the Leased Property and any improvements and structures built on the Leased Property after the date hereof, in the same order and condition as the same were at the time of commencement of the term hereunder, reasonable wear and tear excepted, to the City, and agrees that any fixtures, permanent improvements and structures existing upon the Leased Property, including any improvements and structures built on the Leased Property after the date hereof, at the time of the termination of this Site Lease shall remain thereon and title thereto shall vest in the City. The Corporation, the Trustee and any lessee, sublessee or assignee shall execute and deliver, upon request by the City, any instrument of transfer, conveyance or release necessary or appropriate to confirm the vesting of such right, title and interest in the City.

Section 9. Default. In the event the Corporation shall be in default in the performance of any obligation on its part to be performed under the terms of this Site Lease, which default continues for 30 days following notice and demand for correction thereof to the Corporation and the Trustee, the City may exercise any and all remedies granted by law, except that the City shall not terminate this Site Lease as a remedy for such default, and no merger of this Site Lease and

of the Lease shall be deemed to occur as a result thereof and that so long as any of the Certificates are Outstanding and unpaid in accordance with the terms thereof, the Base Rentals assigned by the Corporation to the Trustee under the Indenture shall continue to be paid to the Trustee except as provided in the Lease. In addition, so long as any of the Certificates are Outstanding, this Site Lease shall not be terminated except as described in Section 2 hereof.

Section 10. Quiet Enjoyment and Acknowledgment of Ownership. The Corporation at all times during the term of this Site Lease shall peaceably and quietly have, hold and enjoy the Leased Property, including any improvements and structures built on the Leased Property after the date hereof, subject to the provisions of the Lease and the Indenture, and the City hereby acknowledges that the Corporation shall have a leasehold interest in the Leased Property and all improvements and structures built on the Leased Property after the date hereof, subject to the Lease.

Section 11. Waiver of Personal Liability. All liabilities under this Site Lease on the part of the Corporation are solely liabilities of the Corporation, and the City hereby releases each and every, member, director, employee and officer of the Corporation of and from any personal or individual liability under this Site Lease. No member, director, employee or officer of the Corporation shall at any time or under any circumstances be individually or personally liable under this Site Lease for anything done or omitted to be done by the Corporation hereunder.

Section 12. Taxes; Maintenance; Insurance. During the Lease Term of the Lease and in accordance with the provisions of the Lease, the City covenants and agrees to pay any and all assessments of any kind or character and all taxes, including possessory interest taxes, levied or assessed upon the Leased Property, and any improvements and structures built on the Leased Property after the date hereof, and all maintenance costs and utility charges in connection with the Leased Property, and any improvements and structures built on the Leased Property after the date hereof, subject to the terms of the Lease. In the event that (a) the Lease is terminated for any reason, (b) this Site Lease is not terminated, and (c) the Trustee subleases all or any portion of the Leased Property or sells an assignment of its interest in this Site Lease, the Corporation, the Trustee or any sublessee or assignee of the Leased Property shall pay or cause to be paid when due, in the case of the Corporation and the Trustee, solely from the proceeds of such subleasing or sale, all taxes and assessments imposed thereon and maintain or cause to be maintained the Leased Property and all fixtures, improvements and structures built on the Leased Property after the date hereof in good condition and in good working order.

The provisions of the Lease shall govern with respect to the maintenance of insurance hereunder during the Lease Term of the Lease. In the event that (a) the Lease is terminated for any reason, (b) this Site Lease is not terminated, and (c) the Trustee subleases all or any portion of the Leased Property or sells an assignment of its interest in this Site Lease, the Corporation, the Trustee or any sublessee or assignee of the Leased Property and any improvements and structures built on the Leased Property after the date hereof shall obtain and keep in force, in the case of the Corporation and the Trustee, solely from the proceeds of such leasing or sale, (i) comprehensive general public liability insurance against claims for personal injury, death or damage to property of others occurring on or in the Leased Property and any improvements and structures built on the Leased Property after the date hereof in an amount not less than \$990,000 and (ii) property insurance in an amount not less than the full replacement value of any

improvements and structures built on the Leased Property. All such insurance shall name the Corporation, the Trustee, any sublessee or assignee and the City as insureds. The City, the Corporation and the Trustee shall waive any rights of subrogation with respect to the Corporation, the Trustee, and the City, and their members, directors, officers, agents and employees, while acting within the scope of their employment and each such insurance policy shall contain such a waiver of subrogation by the issuer of such policy.

Section 13. Damage, Destruction or Condemnation. The provisions of the Lease shall govern with respect to any damage, destruction or condemnation of the Leased Property or any improvements and structures built on the Leased Property during the Lease Term of the Lease. In the event that (a) the Lease is terminated for any reason and (b) this Site Lease is not terminated, and either (i) the Leased Property, any improvements and structures built on the Leased Property after the date hereof or any portion thereof are damaged or destroyed, in whole or in part, by fire or other casualty, or (ii) title to or use of the Leased Property, any improvements and structures built on the Leased Property after the date hereof or any part thereof shall be taken under the exercise of the power of eminent domain, the City, the Corporation and the Trustee or any sublessee or assignee of the Trustee shall cause the Net Proceeds of any insurance claim or condemnation award to be applied to the prompt replacement, repair and restoration of the Leased Property, any improvements and structures built on the Leased Property after the date hereof or any portion thereof. Any Net Proceeds remaining after such work has been completed will be paid to the Trustee or any sublessee or assignee of the Trustee. If the Net Proceeds are insufficient to pay the full cost of the replacement, repair and restoration, the Trustee or any sublessee or assignee shall complete the work and pay any cost in excess of the Net Proceeds (provided, however, that the Trustee is obligated to pay any such cost in excess of Net Proceeds only to the extent of any moneys available therefor in any of the Funds or Accounts created under the Indenture).

The City agrees that, to the extent permitted by law, in the event it brings an eminent domain or condemnation proceeding with respect to the Leased Property or any part thereof, the appraised value of the condemned property shall not be less than (a) if the Certificates are then subject to optional redemption under the Indenture, the redemption price of an amount of the remaining outstanding Certificates, with such amount of the remaining outstanding Certificates to be equal to the ratio of the principal amount of the Certificates that are attributed to the portion of the Leased Property to be condemned divided by the total principal amount of the Certificates that were executed and delivered, or (b) if the Certificates are not then subject to optional redemption, the amount necessary to pay the principal of and interest on an amount of the remaining outstanding Certificates, with such amount of the remaining outstanding Certificates to be equal to the ratio of the principal amount of the Certificates that are attributed to the portion of the Leased Property to be condemned divided by the total principal amount of the Certificates that were executed and delivered, to the first date on which such amount of Certificates are subject to optional redemption under the Indenture plus the redemption price of such amount of Certificates on such date.

Section 14. Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Site Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and

conditions of this Site Lease shall be affected thereby, and each provision of this Site Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 15. Amendments. This Site Lease may not be amended, changed or modified without the prior written consent of the Trustee.

Section 16. No Merger. The City, the Corporation and the Trustee intend that the legal doctrine of merger shall have no application to this Site Lease and that neither the execution and delivery of the Lease by the Corporation and the City nor the exercise of any remedies under this Site Lease or the Lease shall operate to terminate or extinguish this Site Lease or the Lease, except as specifically provided herein and therein.

Section 17. Notices. All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if mailed by United States registered mail, return receipt requested, postage prepaid, at the addresses indicated in the Lease, or to such other addresses as the respective parties may from time to time designate in writing.

Section 18. Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Site Lease.

Section 19. Execution. This Site Lease may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same Site Lease.

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

[SEAL]

CITY OF ALAMOSA, COLORADO, as Lessor

By _____
Mayor

Attest:

By _____
City Clerk

ALAMOSA CAPITAL LEASING
CORPORATION, as Lessee

By _____
President

Attest:

By _____
Secretary

STATE OF COLORADO)
) ss.
COUNTY OF ALAMOSA)

The foregoing instrument was acknowledged before me this _____ day of April, 2017, by Josef Lucero, as Mayor of the City of Alamosa, Colorado, and by Holly Martinez, as City Clerk of the City of Alamosa, Colorado.

WITNESS my hand and official seal.

Notary Public

[SEAL]

My Commission Expires:

STATE OF COLORADO)
) ss.
COUNTY OF ALAMOSA)

The foregoing instrument was acknowledged before me this _____ day of April, 2017,
by _____, as President of the Alamosa Capital Leasing Corporation, and by
_____, as Secretary of the Alamosa Capital Leasing Corporation.

WITNESS my hand and official seal.

Notary Public

[SEAL]

My Commission Expires:

EXHIBIT A
DESCRIPTION OF THE LEASED PROPERTY

EXHIBIT B

PERMITTED ENCUMBRANCES

LEASE PURCHASE AGREEMENT

by and between

ALAMOSA CAPITAL LEASING CORPORATION,
as Sublessor,

and

CITY OF ALAMOSA, COLORADO,
as Sublessee

Dated April __, 2017

All right, title and interest of the Alamosa Capital Leasing Corporation in the Revenues derived under this Lease Purchase and Sublease Agreement have been assigned to UMB Bank, n.a., as Trustee, under the Mortgage and Indenture of Trust dated April __, 2017, between such Corporation and such Trustee, and this Lease Purchase Agreement and the Leased Property leased hereby are subject to the lien and security interest of UMB Bank, n.a., as Trustee.

TABLE OF CONTENTS

	Page
ARTICLE I	
DEFINITIONS	
Section 1.01.	Terms Defined in Preamble and Recitals..... 3
Section 1.02.	Certain Funds and Accounts 3
Section 1.03.	Terms Defined in the Indenture 3
Section 1.04.	Additional Definitions 3
ARTICLE II	
REPRESENTATIONS, COVENANTS AND WARRANTIES	
Section 2.01.	Representations, Covenants and Warranties of the City..... 7
Section 2.02.	Representations, Covenants and Warranties of the Corporation 8
ARTICLE III	
LEASE OF LEASED PROPERTY 10	
ARTICLE IV	
LEASE TERM	
Section 4.01.	Duration of Lease Term; City's Annual Right to Renew Lease..... 10
Section 4.02.	Termination of Lease Term 11
ARTICLE V	
ENJOYMENT OF LEASED PROPERTY..... 12	
ARTICLE VI	
PAYMENTS BY THE CITY	
Section 6.01.	Payments to Be Paid From Currently Budgeted Expenditures of the City..... 12
Section 6.02.	Base Rentals and Additional Rentals 12
Section 6.03.	Interest Component..... 13
Section 6.04.	Manner of Payment..... 13
Section 6.05.	Expression of City's Need for the Leased Property..... 14
Section 6.06.	Nonappropriation 14
Section 6.07.	Disposition of Base Rentals 15
ARTICLE VII	
THE PROJECT	
Section 7.01.	Agreement to Complete the Project..... 16
Section 7.02.	Completion of the Project 16
ARTICLE VIII	
TITLE TO THE LEASED PROPERTY; LIMITATIONS ON ENCUMBRANCES	
Section 8.01.	Title to the Leased Property 16
Section 8.02.	No Encumbrance, Mortgage or Pledge of Leased Property 17

Section 8.03.	Title Insurance	17
---------------	-----------------------	----

ARTICLE IX MAINTENANCE; TAXES; INSURANCE AND OTHER CHARGES

Section 9.01.	Maintenance of the Leased Property by the City.....	17
Section 9.02.	Modification of the Leased Property; Installation of Furnishings and Machinery of the City	17
Section 9.03.	Replacement and Substitution of Equipment.....	18
Section 9.04.	Taxes, Other Governmental Charges and Utility Charges.....	19
Section 9.05.	Provisions Regarding Liability, Property and Workers' Compensation Insurance	20
Section 9.06.	Reserved.....	21
Section 9.07.	Granting of Easements	21

ARTICLE X DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

Section 10.01.	Damage, Destruction and Condemnation	22
Section 10.02.	Obligation of the City to Repair and Replace the Leased Property	22
Section 10.03.	Insufficiency of Net Proceeds.....	23
Section 10.04.	Cooperation of the Corporation	23

ARTICLE XI DISCLAIMER OF WARRANTIES; OTHER COVENANTS

Section 11.01.	Disclaimer of Warranties	24
Section 11.02.	Further Assurances and Corrective Instruments	24
Section 11.03.	Compliance with Requirements.....	24
Section 11.04.	City Acknowledgment of the Indenture.....	25
Section 11.05.	Covenant to Comply with Internal Revenue Code	25
Section 11.06.	Immunity and Indemnification	26
Section 11.07.	Access To Leased Property.....	27
Section 11.08.	Environmental Covenant	27

ARTICLE XII PURCHASE AND CONVEYANCE OF THE LEASED PROPERTY

Section 12.01.	Purchase Option	28
Section 12.02.	Conveyance of the Leased Property	28
Section 12.03.	Manner of Conveyance	28

ARTICLE XIII ASSIGNMENT AND SUBLEASING

Section 13.01.	Assignment by the Corporation; Replacement of the Corporation.....	29
Section 13.02.	Assignment and Subleasing by the City	29

ARTICLE XIV EVENTS OF DEFAULT AND REMEDIES

Section 14.01.	Events of Default Defined	30
Section 14.02.	Remedies on Default.....	30

Section 14.03.	Limitations on Remedies	31
Section 14.04.	No Remedy Exclusive.....	32
Section 14.05.	Waivers	32
Section 14.06.	Agreement to Pay Attorneys' Fees and Expenses	32
Section 14.07.	Waiver of Appraisalment, Valuation, Stay, Extension and Redemption Laws	32

ARTICLE XV MISCELLANEOUS

Section 15.01.	Sovereign Powers of Corporation and City	33
Section 15.02.	Notices	33
Section 15.03.	Binding Effect.....	33
Section 15.04.	Amendments, Changes and Modifications	33
Section 15.05.	Amounts Remaining in Funds	33
Section 15.06.	Net Lease	33
Section 15.07.	Payments Due on Holidays.....	33
Section 15.08.	Severability	34
Section 15.09.	No Merger.....	34
Section 15.10.	Execution in Counterparts.....	34
Section 15.11.	Applicable Law	34
Section 15.12.	Captions	34

EXHIBIT A DESCRIPTION OF LEASED PROPERTY	1
--	---

EXHIBIT B BASE RENTALS SCHEDULE.....	1
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EXHIBIT C PERMITTED ENCUMBRANCES	1
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LEASE PURCHASE AGREEMENT

THIS LEASE PURCHASE AGREEMENT dated April __, 2017 (this “Lease”), between the **ALAMOSA CAPITAL LEASING CORPORATION** (the “Corporation”), a Colorado nonprofit corporation, as sublessor, and the **CITY OF ALAMOSA, COLORADO** (the “City”), a political subdivision duly organized and existing as a home rule municipal corporation under the constitution and laws of the State of Colorado (the “State”), as sublessee.

WITNESSETH:

WHEREAS, the City is a duly and regularly created, organized and existing home rule municipal corporation and political subdivision of the State, existing as such under and by virtue of the constitution and laws of the State; and

WHEREAS, the City Council of the City (the “City Council”) has the power, pursuant to the Charter of the City (the “Charter”) and Sections 31-15-101(1)(d) and 31-15-801, Colorado Revised Statutes, to acquire, hold and lease real property, and to enter into rental or leasehold agreements to provide necessary land, buildings, equipment and other property for governmental or proprietary purposes, and such agreements may include an option to purchase and acquire title to such leased or rented property within a period not exceeding the useful life of such property not exceeding thirty years; and

WHEREAS, the City Council has the power, pursuant to the Charter and Sections 31-15-101(1)(d) and 31-15-713(1)(c), Colorado Revised Statutes, to lease real property, and to lease any real estate, together with any facilities thereon, owned by the City when deemed by the City Council to be in the best interest of the City; and

WHEREAS, the City needs to (i) acquire certain water rights and water storage rights in connection with (a) an independent augmentation plan and sustainability plan, or (b) as an asset to be used in contracting for coverage with a subdistrict of the Rio Grande Water Conservation District, in order that the City’s municipal wells comply with new groundwater pumping rules, (ii) relocate and construct a new discharge point for its wastewater treatment plant, and (iii) pay the legal and engineering costs of implementing such plans and construction (collectively, the “Project”); and

WHEREAS, the City owns certain real property known as the Alamosa Ranch and associated farm buildings and structures located thereon and water rights that are currently only authorized to be used on the Alamosa Ranch (collectively, the “Alamosa Ranch Property”); and

WHEREAS, the City is authorized by the Charter and by Sections 31-15-101(1)(d) and 31-15-713(1)(c), Colorado Revised Statutes, to lease all or any portion of the Alamosa Ranch Property to the Alamosa Capital Leasing Corporation (the “Corporation”) when deemed by the City Council to be in the best interest of the City; and

WHEREAS, the City owns the portion of the Alamosa Ranch Property described in Exhibit A hereto (the “Leased Property”), and the Corporation has acquired a leasehold interest

in the Leased Property pursuant to the Site Lease dated April __, 2017 (the "Site Lease"), between the City, as lessor, and the Corporation, as lessee; and

WHEREAS, for purposes of financing the Project, the City Council has determined and hereby determines that it is in the best interest of the City that the City and the Corporation enter into this Lease to provide for the subleasing by the City from the Corporation of the Leased Property; and

WHEREAS, the Corporation is a nonprofit corporation, duly organized, existing and in good standing under the laws of the State, and is duly qualified to do business in the State, and under its articles of incorporation, the Corporation is authorized to own and hold real and personal property and to lease the same as lessor or sublessor and to act in the manner contemplated herein; and

WHEREAS, the Corporation desires to sublease the Leased Property to the City, and the City desires to sublease the Leased Property from the Corporation, pursuant to the terms and conditions and for the purposes set forth herein; and

WHEREAS, pursuant to a Mortgage and Indenture of Trust of even date herewith (the "Indenture"), by and between the Corporation and UMB Bank, n.a., as trustee (the "Trustee"), the Corporation will assign all of its rights, title and interest in, to and under the Site Lease and this Lease (except the rights of the Corporation under Sections 9.05, 11.06, 14.06 and 15.02 of this Lease) to the Trustee; and

WHEREAS, the obligation of the City to pay Base Rentals and Additional Rentals (both as hereinafter defined) hereunder shall be from year to year only; shall constitute currently budgeted expenditures of the City; shall not constitute a mandatory charge or requirement in any ensuing budget year; and shall not constitute a general obligation or a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of any constitutional or statutory limitation or requirement concerning the creation of indebtedness, nor a mandatory payment obligation of the City in any ensuing fiscal year beyond any fiscal year during which this Lease shall be in effect; and

WHEREAS, the execution, delivery and performance of this Lease by the Corporation, and the assignment by the Corporation to the Trustee, pursuant to the Indenture, of all rights, title and interest of the Corporation in, to and under the Site Lease and this Lease (except the rights of the Corporation under Sections 9.05, 11.06, 14.06 and 15.02 of this Lease), have been authorized, approved and directed by all necessary and appropriate action of the Corporation, its board of directors and its officers; and

WHEREAS, since the City has no obligation to make any payments under this Lease beyond those appropriated for any fiscal year in which this Lease shall be in effect, the requirements and other limitations of the Charter, Colorado Constitution Article X, Section 20, and Section 31-15-801, Colorado Revised Statutes, have been satisfied;

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

ARTICLE I

DEFINITIONS

Section 1.01. Terms Defined in Preamble and Recitals. The following terms shall have the meanings set forth in the preamble and recitals hereto:

Charter	Indenture
City Council	Lease
Corporation	State
City	Trustee

Section 1.02. Certain Funds and Accounts. All references herein to any Funds and Accounts shall mean the funds and accounts so designated which are established pursuant to the Indenture.

Section 1.03. Terms Defined in the Indenture. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Indenture.

Section 1.04. Additional Definitions. The following additional terms shall have the meanings specified below:

“Additional Rentals” means the cost of all (a) reasonable expenses and fees of the Trustee and the Corporation related to the performance of the provisions of this Lease or any Security Document related to the Leased Property, or otherwise incurred at the request of the City, (b) taxes, if any, insurance premiums, utility charges, maintenance, upkeep, repair, improvement and replacement in respect of the Leased Property, (c) payments or deposits in the Rebate Fund as required by Section 3.16 of the Indenture, and (d) all other charges and costs (together with all interest and penalties that may accrue thereon in the event that the City shall fail to pay the same, as specifically set forth herein) which the City assumes or agrees to pay hereunder. Additional Rentals do not include Base Rentals.

“Alamosa Ranch Property” means the real property known as the Alamosa Ranch and associated farm buildings and structures located thereon and water rights that are currently only authorized to be used on the Alamosa Ranch.

“Authorized Officer” means (a) in the case of the Corporation, the President, Vice President, Secretary, Treasurer or Assistant Secretary, and when used with reference to any act or document also means any other person authorized by resolution of the Corporation to perform such act or execute such documents; (b) in the case of the City, any person authorized by ordinance or resolution of the City Council, to perform any act or execute any document; and (c) in the case of the Trustee, any person authorized to perform any act or sign any document by or pursuant to the bylaws or any resolution of the governing body of the Trustee.

“Base Rentals” means the payments payable by the City during the Lease Term pursuant to Section 6.02 of this Lease and as set forth in Exhibit B, as it may be amended hereunder from time to time, which constitute the payments payable by the City for and in consideration of the right to use the Leased Property during the Lease Term. In the event that Exhibit B sets forth

separate schedules of Base Rentals payable with respect to one or more separate portions of the Leased Property, such payments will be combined for purposes of Section 6.02, but may be treated as separate schedules for other purposes of this Lease.

“Base Rental Payment Dates” means June 1 and December 1 of each Fiscal Year.

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

“Completion Date” means April __, 2020, or such later date established by the City with the Approval of Bond Counsel, for acceptance of all components of the Project by the City, as evidenced by the certificate provided for in Section 7.02 hereof.

“Counsel” means an attorney at law or law firm (who may be counsel for the Corporation or the City) who is satisfactory to the Trustee.

“Equipment” means (a) any equipment, machinery or related property included in the Leased Property, and (b) any items of equipment, machinery and related property acquired in replacement or substitution for all or a portion of the Leased Property pursuant to Section 9.02, 9.03 or 10.02 of this Lease, less equipment, machinery and related property released from this Lease pursuant to Section 9.03 hereof, or damaged, destroyed or condemned as provided in Section 10.01 hereof.

“Event of Default” means one or more events of default as defined in Section 14.01 of this Lease.

“Event of Nonappropriation” means a termination of this Lease by the City, determined by the City’s failure for any reason, to duly enact by the last day of each Fiscal Year an appropriation resolution for the ensuing Fiscal Year which includes (a) by specific line item reference amounts authorized and directed to be used to pay all Base Rentals and (b) sufficient amounts to pay such Additional Rentals as are estimated to become due, as provided in Section 6.06 of this Lease. The term also means notice under Section 4.01 of this Lease of the City’s intention to terminate and an event described in Section 6.06 of this Lease relating to the failure by the City to appropriate amounts due as Additional Rentals in excess of the amounts estimated to become due.

“Fiscal Year” means the fiscal year of the City, which currently begins on January 1 of each year and ends on December 31 of such year, or any other fiscal year of the City in the event the fiscal year of the City shall be modified.

“Force Majeure” means, without limitation, the following, acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies or officials or any civil or military authority; insurrection; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accidents to machinery, transmission pipes or canals; or any other cause or event not within the control of the City.

“Insurance Consultant” means an independent person or firm chosen by the City and acceptable to the Trustee experienced in providing the specific type of insurance in question and

capable of making an evaluation of the actuarial risk of loss from the types of events customarily covered by such insurance policies.

“Interest Payment Date” means June 1 and December 1 of each calendar year, commencing December 1, 2017.

“Lease Purchase Agreement Balance” means the principal amount of the Certificates as set forth on Exhibit B attached hereto and made a part hereof by this reference, less the aggregate principal amount of the Certificates paid or prepaid by the City pursuant to this Lease; provided that if shown on Exhibit B, this Lease shall be deemed to refer to one or more portions of the Lease Purchase Agreement Balance related to separate portions of the Leased Property.

“Lease Remedy” or *“Lease Remedies”* means any or all remedial steps provided in Section 14.02 of this Lease whenever an Event of Default hereunder has happened and is continuing, which may be exercised by the Trustee as provided in Article VII of the Indenture.

“Lease Term” means the time during which the City is the lessee and sublessee of the Leased Property under this Lease, including the Original Term and all Renewal Terms as provided in and subject to Article IV and Sections 6.01, 6.02 and 6.06 of this Lease; certain provisions of this Lease survive the termination of the Lease Term, as provided in Section 4.02 of this Lease.

“Leased Property” means the portion of the Alamosa Ranch Property described in Exhibit A attached hereto.

“Net Proceeds” when used with respect to any performance or payment bond proceeds, or proceeds of insurance, including self-insurance, required by this Lease, or proceeds from any condemnation award, or any proceeds resulting from default or breaches of warranty under any contract relating to the Leased Property or proceeds from any Lease Remedy, means the amount remaining after deducting from such proceeds (a) all expenses (including, without limitation, attorneys’ fees and costs) incurred in the collection of such proceeds or award; and (b) all other fees, expenses and payments due to the Trustee or the Corporation.

“Original Term” means the portion of the Lease Term that terminates on December 31, 2017.

“Owner” or *“owner”* or *“registered owner”* of a Certificate means the registered owner of any Certificate as shown in the registration records of the Trustee.

“Permitted Encumbrances” means, as of any particular time: (a) liens for taxes and assessments not then delinquent, or liens which may remain unpaid pending contest pursuant to the provisions of Article VIII and Article IX of this Lease; (b) this Lease, the Indenture, the Site Lease, and the Security Documents; (c) utility, access and other easements and rights of way, restrictions and exceptions which an Authorized Officer of the City certifies will not interfere with or impair the Leased Property, including rights or privileges in the nature of easements as provided in Section 9.07 of this Lease; (d) any financing statements filed to perfect security interests pursuant to this Lease, the Indenture, the Site Lease, or the Security Documents; (e) any encumbrance represented by financing statements in forms appropriate to perfect purchase

money security interests given by the Corporation in any of the Leased Property; (f) existing easements, covenants, restrictions, liens and encumbrances (if any) to which title to either of the Sites was subject when a leasehold interest therein was conveyed to the Corporation pursuant to the Site Lease or otherwise, as shown on Exhibit C hereto and which do not interfere in any material way with the Leased Property; and (g) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to property of the general character of the Leased Property and as do not render the title unmarketable.

“Project” means (i) the acquisition by the City of certain water rights and water storage rights in connection with (a) an independent augmentation plan and sustainability plan, or (b) as an asset to be used in contracting for coverage with a subdistrict of the Rio Grande Water Conservation District, in order that the City’s municipal wells comply with new groundwater pumping rules, (ii) the relocation and construction of a new discharge point for the City’s wastewater treatment plant, and (iii) the payment of legal and engineering costs of implementing such plans and construction.

“Project Contract” means any contract entered into by the City regarding the Project (including, without limitation, contracts with construction contractors, vendors, architects, engineers and other consultants).

“Purchase Option Price” means the amount payable, at the option of the City, for the purpose of terminating this Lease with respect to the Leased Property and purchasing the Leased Property pursuant to Article XII of this Lease, which amount shall be (a) an amount equal to the City’s outstanding Lease Purchase Agreement Balance, plus all Base Rentals representing interest on the Certificates which may be due to the proposed date of repayment of the Certificates, or (b) an amount that the City shall calculate or shall cause to be calculated by its designee, and verified by an independent certified public accountant, which is due in addition to the Lease Purchase Agreement Balance upon prepayment equal to an amount that together with the amount of such Lease Purchase Agreement Balance, shall be invested in noncallable obligations issued or guaranteed by the United States of America (which shall not have a yield in excess of the yield permitted pursuant to the Code), the principal of and interest on which will be sufficient to pay (i) the principal or redemption price of an amount of prepaid Certificates equal to the amount of such Lease Purchase Agreement Balance and (ii) interest on the related prepaid Certificates coming due on each Interest Payment Date until the last of the prepaid Certificates is redeemed and cancelled, as specified by the City, and plus (c) any other amount for costs or otherwise necessary to discharge the Indenture with respect to this Lease, and plus (d) any Additional Rentals then due or accrued.

“Renewal Term” means any optional renewal of the Lease Term for the next Fiscal Year by the City, as provided in Article IV of this Lease.

“Requirement of Law” means any federal, State or local statute, ordinance, rule or regulation, any judicial or administrative order (whether or not on consent), request or judgment, any common law doctrine or theory, any provision or condition of any permit or any other binding determination of any governmental authority relating to the ownership or operation of the Leased Property, including but not limited to any of the foregoing relating to zoning, environmental, health or safety issues.

“*Revenues*” means (a) all amounts payable by or on behalf of the City with respect to the Leased Property pursuant to this Lease including, but not limited to, all Base Rentals, Purchase Option Prices and Net Proceeds, but not including Additional Rentals other than Reserve Fund payments or deposits, payable hereunder; (b) any portion of the proceeds of the Certificates deposited with the Trustee in the Certificate Fund; (c) any earnings on moneys on deposit in the Certificate Fund; (d) all other revenues derived from this Lease, excluding Additional Rentals; and (e) any other moneys to which the Trustee may be entitled for the benefit of the Owners of the Certificates.

“*Security Document*” means the Indenture, any other deed of trust or mortgage, security instrument, financing statements, if any, and any other instruments or documents providing security for the Owners of the Certificates.

“*Site Lease*” means the Site Lease dated of even date herewith, whereby the City conveys a leasehold interest in the Leased Property, and any existing improvements thereon, to the Corporation.

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.01. Representations, Covenants and Warranties of the City. The City represents, covenants and warrants as follows:

(a) The City is a home rule municipal corporation and political subdivision of the State, duly organized and existing as such under the constitution and laws of the State and the Charter. The City is authorized to enter into the transactions contemplated by this Lease and by the Site Lease and to carry out its obligations under this Lease. The City has duly authorized and approved the execution and delivery of this Lease, the Site Lease, and all other documents to which it is a party and related to the transactions contemplated by this Lease and the Site Lease.

(b) The undertaking of the Project is necessary, convenient, in furtherance of and will at all times be used in connection with the City’s governmental and proprietary purposes and functions and is in the best interests of the residents of the City, and, except for subleases permitted by Section 13.02 of this Lease, no portion of the Leased Property will be used directly or indirectly in any trade or business carried on by any person other than a governmental unit of the State except with the prior Approval of Bond Counsel.

(c) Neither the execution and delivery of this Lease or the Site Lease, nor the fulfillment of or compliance with the terms and conditions of this Lease and the Site Lease, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is now a party or by which the City or its property is bound, or violates the Charter, any statute, regulation, rule, order of any court having jurisdiction, judgment or administrative order applicable to the City, or constitutes a default under any of the foregoing, or results in the creation or

imposition of any lien or encumbrance whatsoever upon any of the property or assets of the City, except for Permitted Encumbrances.

(d) There is no litigation or proceeding pending or threatened against the City or any other person affecting the right of the City to execute this Lease or the Site Lease or the ability of the City to make the payments required hereunder or to otherwise comply with the obligations contained herein or therein.

(e) To the best knowledge of the City, after due inquiry, (i) no dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, as defined in or governed by the provisions of any federal, state or local law, statute, code, ordinance, regulation, requirement or rule relating thereto (collectively, "Environmental Regulations"), and also including urea-formaldehyde, polychlorinated biphenyls, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or any other waste, material, substance, pollutant or contaminant which would subject the owner of the Leased Property to any damages, penalties or liabilities under any applicable Environmental Regulation (collectively, "Hazardous Substances") are now or have been stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited or disposed of in, upon, under, over or from the Leased Property in violation of any Environmental Regulation; (ii) no threat exists of a discharge, release or emission of a Hazardous Substance upon or from the Leased Property into the environment; (iii) the Leased Property has not been used as or for a mine, landfill, a dump or other disposal facility, industrial or manufacturing facility, or a gasoline service station; (iv) no underground storage tank is located at the Leased Property or has previously been located therein but has been removed therefrom; (v) no violation of any Environmental Regulation now exists relating to the Leased Property, no notice of any such violation or any alleged violation thereof has been issued or given by any governmental entity or agency, and there is not now any investigation or report involving the Leased Property by any governmental entity or agency which in any way relates to Hazardous Substances; (vi) no person, party or private or governmental agency or entity has given any notice of or asserted any claim, cause of action, penalty, cost or demand for payment or compensation, whether or not involving any injury or threatened injury to human health, the environment or natural resources, resulting or allegedly resulting from any activity or event described in (i) above; (vii) there are not now any actions, suits, proceedings or damage settlements relating in any way to Hazardous Substances, in, upon, under, over or from the Leased Property; (viii) the Leased Property is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or any other list of Hazardous Substance sites maintained by any federal, state or local governmental agency; and (ix) the Leased Property is not subject to any lien or claim for lien or threat of a lien in favor of any governmental entity or agency as a result of any release or threatened release of any Hazardous Substance.

(f) The duration of this Lease, including all optional Renewal Terms, does not exceed the expected weighted average useful life of the Leased Property.

Section 2.02. Representations, Covenants and Warranties of the Corporation. The Corporation represents, covenants and warrants as follows:

(a) The Corporation is a nonprofit corporation, duly organized and existing and in good standing under the laws of the State, is duly qualified to do business in the State, has all necessary power to acquire a leasehold interest in the Leased Property and enter into the transactions contemplated by this Lease, the Indenture and the Site Lease, and to carry out its obligations under this Lease, the Indenture and the Site Lease, is possessed of full power to acquire a lease hold interest in the Leased Property and to lease the same as sublessor to the City, and has duly authorized and approved the execution and delivery of this Lease, the Indenture, the Site Lease and all other documents to which it is a party and that are related to this Lease.

(b) Except as specifically provided in this Lease, any Security Documents, or the Indenture, the Corporation will not pledge or assign its right, title and interest in and to the Revenues derived under this Lease or any of its other rights under this Lease or assign, pledge, mortgage, encumber or grant a security interest in its right, title and interest in, to and under this Lease or the Leased Property, except for Permitted Encumbrances.

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

(d) Except as specifically provided in this Lease, the Site Lease, the Indenture or any Security Documents, the Corporation will not assign its duties and obligations under this Lease to any other person, firm or corporation, so as to impair or violate the representations, covenants and warranties contained in this Section 2.02.

(e) There is no litigation or proceeding pending or threatened against the Corporation or any other person affecting the right of the Corporation to execute this Lease, the Site Lease, and the Indenture and to perform its obligations hereunder and thereunder.

(f) The Corporation acknowledges that the obligations of the City under this Lease shall not constitute or give rise to a general obligation or multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of any constitutional, Charter or statutory provision or limitation nor a mandatory charge or requirement against the City in any ensuing Fiscal Year beyond any Fiscal Year during which this Lease shall be in effect. The Corporation further acknowledges that the City may elect not to renew this Lease by failure to budget and appropriate funds sufficient to meet its next Fiscal Year's Base Rentals and Additional Rentals, and that the acts of budgeting and appropriating funds are legislative acts and, as such, are solely within the discretion of the City Council.

ARTICLE III

LEASE OF LEASED PROPERTY

The Corporation demises and leases the Leased Property to the City, and the City leases the Leased Property from the Corporation, in accordance with the provisions of this Lease, subject only to Permitted Encumbrances, to have and to hold for the Lease Term.

ARTICLE IV

LEASE TERM

Section 4.01. Duration of Lease Term; City's Annual Right to Renew Lease. The Lease Term shall commence as of the date hereof and continue through the last day of the current Fiscal Year of the City (the "Original Term"). SUBJECT TO THE PROVISIONS OF SECTION 4.02 HEREOF, the Lease Term may be renewed at the end of the Original Term and at the end of each renewal term thereafter for a term of twelve months coinciding with the next succeeding Fiscal Year of the City (the "Renewal Term"), except that the Renewal Term beginning on January 1, 2032 shall terminate on December 1, 2032. The City shall have the right to annually renew the Lease Term unless (a) the City gives written notice to the Trustee not less than 90 days prior to the end of the Original Term or the then current Renewal Term then in effect of the City's intention to terminate and not renew this Lease at the end of the Original Term or the then current Renewal Term, or (b) an Event of Nonappropriation shall have occurred with respect to a Renewal Term occurring after the Original Term or any then current Renewal Term. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except for the amount of Base Rentals and Additional Rentals to be paid during such Renewal Term. The Lease Term, including the Original Term and all Renewal Terms, does not exceed the weighted average useful life of the Leased Property. If this Lease involves both real property and other property, the cost of such real property is amortized over a period not exceeding its weighted average useful life, and the cost of such other property is separately amortized over a period not exceeding its weighted average useful life. The combined amortization of such costs is set forth in Exhibit B, attached hereto and made a part hereof.

Except as otherwise provided in Section 4.02 hereof, the exercise of the City's annual option to renew this Lease shall be conclusively determined by whether or not the City Council has, on or before the last day of each Fiscal Year, duly enacted an appropriation ordinance or resolution for the ensuing Fiscal Year which includes (a) by specific line item reference sufficient amounts authorized and directed to be used to pay all the Base Rentals and (b) sufficient amounts to pay such Additional Rentals as are estimated to become due, all as further provided in Section 6.06 of this Lease. The officer of the City at any time charged with the responsibility of formulating budget proposals is hereby directed to include in the annual budget proposals submitted to the City Council, items for all payments required under this Lease for the ensuing Fiscal Year, until such time (if any) as the City Council may determine not to renew this Lease; it being the intention of the City Council that any decision to renew or not to renew this Lease shall be made solely by the City Council and not by any other official of the City. Said officer shall also include in said budget proposal the total amount to be expended by

the City during the ensuing Fiscal Year for payment obligations under all lease-purchase agreements involving real property, including this Lease; the total maximum payment liability of the City under all lease-purchase agreements involving real property, including this Lease, over the entire terms of such agreements, including all optional renewal terms; the total amount to be expended by the City during the ensuing Fiscal Year for payment obligations under all lease-purchase agreements other than those involving real property, including this Lease (if applicable); and the total maximum payment liability of the City under all lease-purchase agreements other than those involving real property, including this Lease (if applicable), over the entire term of such agreements, including all optional renewal terms. Each budget required by law to be filed with the State Department of Local Affairs, Division of Local Government, shall include a supplemental schedule that contains the foregoing information. The City shall in any event, promptly furnish the Trustee with copies of its annual budget within seven days after the budget is adopted, but not later than the fourth day after the end of such Fiscal Year, provided that telephonic notice is provided by the City to the Trustee of the adoption of the budget not later than the end of the first Business Day of the next succeeding Fiscal Year. If such budget and appropriation are not adopted, the Trustee shall notify the City in writing as further provided in Section 6.06 hereof.

Section 4.02. Termination of Lease Term. The Lease Term shall terminate upon the earliest of any of the following events:

- (a) the last day of any Fiscal Year during which there has occurred an Event of Nonappropriation pursuant to Section 4.01 and Article VI of this Lease (provided that the Lease Term will be deemed to have been renewed and, therefore, not terminated if the Event of Nonappropriation is cured as provided in Section 6.06 hereof);
- (b) the conveyance of all of the Leased Property to the City upon payment of the Purchase Option Price or upon payment or prepayment of all Base Rentals and Additional Rentals as provided in Section 12.02(a) and (b) of this Lease, and discharge of the Indenture; or
- (c) an Event of Default by the City and termination of this Lease by the Trustee under Article XIV of this Lease.

An election not to renew the Lease Term shall terminate all unaccrued obligations of the City under this Lease, and shall terminate the City's rights of possession under this Lease at the end of the last day of the Fiscal Year for which this Lease shall be in effect (except to the extent of the holdover provisions of Section 14.02(d)(i) hereof, and except for any conveyance pursuant to Article XII of this Lease); but all other provisions of this Lease, including all obligations of the City accrued prior to such termination and all obligations of the Trustee with respect to the Owners and the receipt and disbursement of funds and all rights and remedies of the Trustee specifically provided herein, shall be continuing until the Indenture is discharged with respect to this Lease. Except for an event described in subparagraph (b) above, upon termination of this Lease, the City agrees to peaceful delivery of the Leased Property to the Corporation or its assigns at such reasonable location specified by the Corporation for delivery to the Trustee.

ARTICLE V

ENJOYMENT OF LEASED PROPERTY

The Corporation hereby covenants that the City shall during the Lease Term peaceably and quietly have, hold and enjoy the Leased Property without suit, trouble or hindrance from the Corporation, except as expressly required or permitted by this Lease or the Indenture. The Corporation shall, at the request of the City and at the cost of the City, join and cooperate fully in any legal action in which the City asserts its right to such possession and enjoyment, or which involves the imposition of any taxes or other governmental charges on or in connection with the Leased Property. In addition, the City may at its own expense join in any legal action affecting its possession and enjoyment of the Leased Property and shall be joined in any action affecting its liabilities hereunder.

The provisions of this Article V shall be subject to the Trustee's right (but not duty) to inspect the Leased Property. The City also hereby consents to the inspection by the Trustee of all books, accounts and records maintained by the City with respect to the Leased Property and this Lease.

ARTICLE VI

PAYMENTS BY THE CITY

Section 6.01. Payments to Be Paid From Currently Budgeted Expenditures of the City. The City and the Corporation acknowledge and agree that the Base Rentals and Additional Rentals hereunder during the Original Term and all of the Renewal Terms shall be paid from then currently budgeted expenditures of the City, using any legally available funds of the City. The City's obligations to pay Base Rentals, Additional Rentals or any other payments provided for under this Lease during the Original Term and all of the Renewal Terms, if any, shall be subject to the City's annual right to renew this Lease (as further provided in Article IV and Sections 6.02 and 6.06 hereof), and shall not constitute a mandatory charge, requirement or liability in any ensuing Fiscal Year beyond the then current Fiscal Year. No provision of this Lease shall be construed or interpreted as a delegation of governmental powers or as creating indebtedness or a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of any constitutional or statutory debt limitation, including without limitation, Article XI, Sections 1, 2 and 6, and Article X, Section 20, of the Colorado Constitution. Neither this Lease nor the execution and delivery of the Certificates shall directly or indirectly obligate the City to make any payments of Base Rentals or Additional Rentals beyond the funds legally available to the City for its then current Fiscal Year. The City shall be under no obligation whatsoever to exercise its option to purchase the Leased Property. No provision of this Lease shall be construed to pledge or to create a lien on any class or source of City moneys, nor shall any provision of this Lease restrict the future issuance of any bonds or obligations of the City payable from any class or source of moneys of the City.

Section 6.02. Base Rentals and Additional Rentals.

(a) The City shall pay all Base Rentals directly to the Trustee during the Original Term and all Renewal Terms, if any, on the Base Rental Payment Dates and in

the “Total Base Rentals” amounts set forth in Exhibit B, attached hereto and made a part hereof, as it may be amended from time to time hereunder. The amount of Base Rentals otherwise payable hereunder shall be reduced by an amount equal to (i) the portion of the proceeds of the sale of the Certificates which is deposited in the Certificate Fund as accrued interest and capitalized interest; (ii) earnings derived from the investment of the Certificate Fund during the six-month period prior to the date on which such Base Rentals are required to be paid to the Trustee; (iii) moneys deposited into the Certificate Fund as provided in the Indenture; and (iv) any moneys otherwise deposited into the Certificate Fund directed by the City to be applied toward Base Rentals.

(b) The City may, at any time during the Lease Term, pay the then applicable Purchase Option Price related to the Leased Property for the purpose of terminating this Lease and purchasing the Leased Property shown on Exhibit A, as further provided in Article XII of this Lease. Certificates will be redeemed on the first Interest Payment Date on which the Certificates may be redeemed following the payment of such Purchase Option Price. The City shall give the Trustee notice of its intention to exercise its option not less than 35 days in advance of the date of exercise and shall deposit with the Trustee on or prior to an Interest Payment Date an amount equal to the Purchase Option Price.

The City shall recalculate or shall cause its designee to recalculate the Base Rentals set forth in Exhibit B to this Lease in the event of any partial redemption of the Certificates prior to their respective principal payment dates, in order that such Base Rentals shall be paid in such amounts and at such times as will provide sufficient moneys to pay principal and interest on the Certificates which remain Outstanding.

The City shall pay Additional Rentals during the Original Term and all Renewal Terms as herein provided. All Additional Rentals shall be paid by the City on a timely basis directly to the person or entity to which such Additional Rentals are owed. If the City’s estimates of Additional Rentals for any Fiscal Year are not itemized in the budget required to be furnished to the Trustee under Section 4.01 of this Lease, the City shall furnish an itemization of such estimated Additional Rentals to the Trustee on or before the last day of such Fiscal Year.

Section 6.03. Interest Component. A portion of each payment of Base Rentals is paid as, and represents payment of, interest on the Certificates, and Exhibit B hereto, as may be amended from time to time hereunder, sets forth the interest component of each payment of Base Rentals.

Section 6.04. Manner of Payment. The Base Rentals and, if paid, the Purchase Option Price, shall be paid by the City by certified funds or other method of payment acceptable to the Trustee in lawful money of the United States of America to the Trustee at its principal operations office for deposit in accordance with the provisions of the Indenture. The obligation of the City to pay the Base Rentals and Additional Rentals, during the Original Term and each Renewal Term, shall be absolute and unconditional, payable from all legally available sources, and payment of the Base Rentals and Additional Rentals shall not be abated through accident or unforeseen circumstances, or any default under a Project Contract or default by the Corporation under this Lease or under any other agreement between the City and the Corporation, or for any

other reason, including without limitation, failure to complete the Project, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Leased Property, commercial frustration of purpose, or failure of the Corporation to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Lease, it being the intention of the parties that the payments required by this Lease will be paid in full when due without any delay or diminution whatsoever, **SUBJECT ONLY TO THE SPECIAL AND LIMITED NATURE OF THE CITY'S OBLIGATION TO MAKE PAYMENTS HEREUNDER AS SET FORTH IN SECTION 6.01 ABOVE**, and further subject to the City's rights under Section 9.04 hereof. Notwithstanding any dispute between the City and the Corporation, the Trustee or any party to a Project Contract, the City shall, during the Original Term and all Renewal Terms, if any, make all payments of Base Rentals and Additional Rentals when due and shall not withhold any Base Rentals or Additional Rentals pending final resolution of such dispute (except to the extent permitted by Sections 8.02 and 9.04 hereof with respect to certain Additional Rentals), nor shall the City assert any right of set-off or counterclaim against its obligation to make such payments required hereunder. No action or inaction on the part of the Corporation or the Trustee shall affect the City's obligation to pay all Base Rentals and Additional Rentals (except to the extent provided by Sections 8.02 and 9.04 hereof with respect to certain Additional Rentals), during the Lease Term.

Section 6.05. Expression of City's Need for the Leased Property. As of the date of this Lease, the City declares its current need for the Leased Property, that the leasing of the Leased Property is beneficial to the City, and that the Leased Property is necessary and essential to the City's purpose and operations. It is hereby declared to be the present intention and expectation of the City Council that this Lease will be renewed annually until title to the Leased Property is acquired by the City pursuant to this Lease, but this declaration shall not be construed as contractually obligating or otherwise binding the City or any City Council following the end of the Original Term.

Section 6.06. Nonappropriation. In the event that the City Council shall not specifically budget and appropriate, on or before the last day of each Fiscal Year, moneys to pay all Base Rentals and the reasonably estimated Additional Rentals coming due for the next ensuing Fiscal Year as provided in Section 4.01 hereof and this Article, an Event of Nonappropriation shall be deemed to have occurred, subject, however, to each of the following provisions:

(a) The Trustee shall declare an Event of Nonappropriation on any earlier date on which the Trustee receives specific written notice from the City that this Lease will be terminated.

(b) Absent such notice from the City, the Trustee shall give written notice to the City of any Event of Nonappropriation, on or before the fifth day of the next following Fiscal Year; but any failure of the Trustee to give such written notice shall not prevent the Trustee from declaring an Event of Nonappropriation or from taking any remedial action which would otherwise be available to the Trustee.

(c) The Trustee may waive any Event of Nonappropriation which is cured by the City within a reasonable time if in the Trustee's judgment such waiver is in the best interest of the Owners of the Certificates.

(d) The Trustee shall waive any Event of Nonappropriation which is cured by the City, within ten days of the giving of notice by the Trustee as provided in (b) above, by inclusion in a duly enacted appropriation ordinance or resolution, (i) by specific line item, amounts authorized and directed to be used to pay all Base Rentals and (ii) sufficient amounts to pay reasonably estimated Additional Rentals coming due for such Fiscal Year.

In the event that during any Fiscal Year, any Additional Rentals shall become due which were not included in a duly enacted appropriation ordinance or resolution then, in the event that moneys are not specifically budgeted and appropriated to pay such Additional Rentals within 90 days subsequent to the date upon which such Additional Rentals are due, an Event of Nonappropriation shall be deemed to have occurred, upon notice by the Trustee to the City to such effect (subject to waiver by the Trustee as hereinbefore provided).

Notwithstanding any provision to the contrary herein, if an Event of Nonappropriation occurs, the City's rights of possession of the Leased Property under this Lease shall terminate at the end of the last day of the Fiscal Year for which this Lease shall be in effect, and the City shall not be obligated to make payment of the Base Rentals, Additional Rentals or any other payments provided for herein which accrue after the end of the last day of the Fiscal Year for which this Lease shall be in effect; provided, however, that, subject to the limitations of Sections 6.01 and 14.03 hereof, the City shall continue to be liable for Base Rentals and Additional Rentals allocable to any period during which the City shall continue to occupy, use or retain possession of the Leased Property, beginning with the first day of the Fiscal Year in respect of which the Event of Nonappropriation occurs. The City shall in all events vacate or surrender possession of the Leased Property by the thirtieth day of the Fiscal Year in respect of which the Event of Nonappropriation has occurred.

The Trustee shall, upon the occurrence of an Event of Nonappropriation, be entitled to all moneys then on hand and being held in the accounts within all funds created under the Indenture (except the Rebate Fund) for the benefit of the Owners. After the thirtieth day of the Fiscal Year in respect of which an Event of Nonappropriation has occurred, the Trustee may proceed to exercise all or any Lease Remedies. All property, funds and rights acquired by the Trustee upon the termination of this Lease by reason of an Event of Nonappropriation as provided herein, less any moneys due and owing to the Trustee, shall be held by the Trustee for the benefit of the Owners as set forth in the Indenture.

Section 6.07. Disposition of Base Rentals. Upon receipt by the Trustee of each payment of Base Rentals, the Trustee, pursuant to the terms of the Indenture, is to deposit the amount of such Base Rentals in the Certificate Fund. Any payment of Base Rentals that is delinquent shall be made to the Trustee for application in accordance with the Indenture.

ARTICLE VII

THE PROJECT

Section 7.01. Agreement to Complete the Project. So long as this Lease is not terminated by an Event of Nonappropriation or an Event of Default, the City hereby agrees that it will make all contracts, take all other actions and do all things necessary to complete the Project and, in connection therewith, and in addition thereto, will comply with all applicable provisions of State and local law.

If for any reason the Project is not completed by the Completion Date there shall be no resulting liability on the part of the City or Event of Default hereunder, and there shall be no diminution in or postponement of the Base Rentals and Additional Rentals required to be paid by the City during the Lease Term.

Section 7.02. Completion of the Project. Upon the completion of the Project and the acceptance thereof by the City, an Authorized Officer of the City shall deliver to the Corporation and the Trustee a certificate stating that, to the best of the City's knowledge based upon the representations of officials of the City and parties to the Project Contracts and except for any amounts estimated by an Authorized Officer of the City to be necessary for payment of any costs of the Project not then due and payable, the Project has been completed, and all costs of the Project have been paid. Notwithstanding the foregoing, such certificate shall not, and shall state that it does not, prejudice any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

ARTICLE VIII

TITLE TO THE LEASED PROPERTY; LIMITATIONS ON ENCUMBRANCES

Section 8.01. Title to the Leased Property. Except for personal property purchased by the City at its own expense pursuant to Section 9.02 of this Lease, title to the Leased Property shall remain in the City, subject to the Site Lease and this Lease, notwithstanding (a) a termination of this Lease by the City by reason of an Event of Nonappropriation as provided in Section 6.06 of this Lease; (b) the occurrence of one or more Events of Default as defined in Section 14.01 of this Lease; (c) the occurrence of any event of damage, destruction, condemnation, or title defect, as provided in Article X of this Lease; or (d) the violation by the Corporation (or by the Trustee as assignee of the Corporation pursuant to the Indenture) of any provision of this Lease.

The City shall have no right, title or interest in the Leased Property or any additions and modifications thereto or replacements thereof, except as expressly set forth in this Lease or the Site Lease. The City shall conspicuously mark any Equipment included in the Leased Property with signs or labels declaring that such Equipment is "OWNED BY THE ALAMOSA CAPITAL LEASING CORPORATION."

Section 8.02. No Encumbrance, Mortgage or Pledge of Leased Property. Except as may be permitted by this Lease, the City shall not permit any mechanic's or other lien to remain

against the Leased Property; provided that, if the City shall first notify the Trustee of the intention of the City to do so, the City may in good faith contest any mechanic's or other lien filed or established against the Leased Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless the Trustee shall notify the City that, in the Opinion of Counsel, by nonpayment of any such items the Corporation's title to or leasehold interest in the Leased Property or the lien on the Leased Property pursuant to the Indenture or Security Documents will be materially endangered, or the Leased Property or any part thereof will be subject to loss or forfeiture, in which event the City shall promptly pay and cause to be satisfied and discharged all such unpaid items (provided, however, that such payment shall not constitute a waiver of the right to continue to contest such items). The Corporation and the Trustee will cooperate fully with the City in any such contest, upon the request and at the expense of the City. Except as may be permitted by this Lease, neither the Corporation nor the City shall directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Property, except Permitted Encumbrances. The City and the Corporation shall promptly, at their own respective expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance or claim not excepted above which each shall respectively have created, incurred, or suffered to exist.

Section 8.03. Title Insurance. The City shall lease the Leased Property to the Corporation pursuant to the Site Lease. Concurrently with the execution of the Site Lease, the Trustee shall be provided with an ALTA Mortgagee's Title Insurance Policy, or a commitment therefor, issued to the Trustee in an amount equal to the aggregate principal amount of the Certificates, insuring the Trustee's first mortgage interest in the lease of the Leased Property, subject only to Permitted Encumbrances, and the Corporation shall be provided with an ALTA Leasehold Owner's Title Insurance Policy, or a commitment therefor, issued to the Corporation in an amount equal to the aggregate principal amount of the Certificates, insuring the Corporation's leasehold interest in the Leased Property, subject only to Permitted Encumbrances.

ARTICLE IX

MAINTENANCE; TAXES; INSURANCE AND OTHER CHARGES

Section 9.01. Maintenance of the Leased Property by the City. The City agrees that at all times during the Lease Term the City will maintain, preserve and keep all portions of the Leased Property or cause the Leased Property to be maintained, preserved and kept, in good repair, working order and condition, and that the City will from time to time make or cause to be made all necessary and proper repairs, except as otherwise provided in Sections 9.03 and 10.03 of this Lease. Neither the Corporation, the Trustee nor any of the Certificate Owners shall have any responsibility for such maintenance or repairs or for the making of any additions, modifications or replacements to the Leased Property.

Section 9.02. Modification of the Leased Property; Installation of Furnishings and Machinery of the City. The City shall have the privilege of making substitutions, additions, modifications and improvements to any portion of the Leased Property, at its own cost and expense; and the same shall be leased to the Corporation, marked as required by Section 8.01 hereof subject to this Lease and the Indenture and Security Documents and shall be included

under the terms of this Lease, the Site Lease and the Indenture and Security Documents; provided, however, that such substitutions, additions, modifications and improvements shall not in any way damage the Leased Property or cause the Leased Property to be used for purposes other than lawful governmental or proprietary functions of the City (except to the extent of subleasing permitted under Section 13.02 hereof); and provided that the Leased Property, as improved or altered, upon completion of such substitutions, additions, modifications and improvements, shall be of a value not less than the value of the Leased Property immediately prior to making such substitutions, additions, modifications and improvements.

The City may also, from time to time in its sole discretion and at its own expense, install machinery, equipment, and other tangible personal property in or on any Leased Property. All such machinery, equipment, and other tangible personal property shall remain the sole property of the City in which neither the Corporation, the Trustee nor the Owners of the Certificates shall have any interests; provided, however, that title to any such machinery, equipment, and other tangible personal property which becomes permanently affixed to any Leased Property shall be leased to the Corporation, subject to this Lease, the Indenture and Security Documents, and shall be included under the terms of this Lease, the Site Lease and the Indenture and Security Documents, in the event the Trustee shall reasonably determine that such Leased Property would be materially damaged or impaired by the removal of such machinery, equipment, or other tangible personal property.

Section 9.03. Replacement and Substitution of Equipment. In any instance where the City determines any Equipment included in the Leased Property has become inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary, the City may (on behalf of the Corporation) sell, trade-in, exchange or otherwise dispose of it (as a whole or in part) without any responsibility or accountability to the Corporation or the Trustee therefor, provided that the City shall either:

(a) substitute and install (by direct payment of the costs thereof or by designating equipment, machinery or other personal property not included pursuant to Section 9.02 hereof as Leased Property) other equipment, machinery or related property having equal or greater value and utility (but not necessarily having the same function); provided, however, that such substituted equipment, machinery or related property will have a useful life of not less than the remaining useful life of the Leased Property for which it is substituted and the substituted equipment, machinery or related property will be deemed to be amortized on the date or dates set forth on Exhibit B with respect to the Leased Property for which it is substituted; or

(b) not make any such substitution and installation, provided (i) that in the case of the sale or other disposition of any such Equipment to anyone other than itself or in the case of the scrapping thereof, the City shall pay to the Trustee for deposit into the Certificate Fund Principal Account the net proceeds from such sale or other disposition, or the scrap value thereof, as the case may be, (ii) that in the case of the trade-in of such Equipment for other machinery, equipment or related property not to be included in the Leased Property subject to this Lease, the City shall pay to the Trustee, for deposit into the Certificate Fund Principal Account the amount of the credit received by it in such trade-in and (iii) that in the case of the sale or other disposition of any such Equipment to

the City, the City shall pay to the Trustee for deposit into the Certificate Fund Principal Account an amount equal to the original cost thereof less depreciation at rates calculated in accordance with generally accepted accounting practices.

The removal from the Leased Property of any portion of the Equipment pursuant to the provisions of this Section 9.03 shall not entitle the City to any postponement, abatement or diminution of the Base Rentals or other payments required to be made under Section 6.02 hereof.

The City will promptly report in writing to the Trustee each removal, substitution, sale or other disposition under subparagraphs (a) and (b) of this Section and will pay to the Trustee all amounts required by subparagraph (b) of this Section to be paid into the Certificate Fund Principal Account promptly after any subsequent sale, trade-in or other disposition requiring such payment. All substituted machinery, equipment or related property installed pursuant to this Section 9.03 shall be free of all liens and encumbrances (other than Permitted Encumbrances) and shall become a part of the Leased Property and subject to the lien of the Indenture and the Security Documents. The City will not dispose of, or permit the disposition of, any of the Equipment except in accordance with this Section 9.03 or in accordance with Article X of this Lease. The Corporation and the Trustee will cooperate with the City in implementing the City's rights to dispose of Leased Property pursuant to this Section 9.03 and will execute any and all conveyances, releases or other documents necessary or appropriate in connection therewith.

Section 9.04. Taxes, Other Governmental Charges and Utility Charges. In the event that the Leased Property or any portion thereof shall, for any reason, be deemed subject to taxation, assessments or charges lawfully made by any governmental body, the City shall pay the amount of all such taxes, assessments and governmental charges when due, as Additional Rentals. With respect to special assessments or other governmental charges which may be lawfully paid in installments over a period of years, the City shall be obligated to provide for Additional Rentals only for such installments as are required to be paid during any Fiscal Year for which this Lease is in effect. Except for Permitted Encumbrances, the City shall not allow any liens for taxes, assessments or governmental charges to exist with respect to the Leased Property or any portion thereof (including, without limitation, any taxes levied upon the Leased Property or any portion thereof which, if not paid, will become a charge on the rentals and receipts from the Leased Property or any portion thereof, or any interest therein, including the interest of the Corporation, the Trustee or the Owners), or the rentals and revenues derived therefrom or hereunder. The City shall also pay as Additional Rentals, as the same respectively become due, all utility and other charges incurred in the maintenance and upkeep of the Leased Property.

The City may, at its expense, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments, utility or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Trustee shall notify the City that, in the opinion of Counsel, by nonpayment of any such items the security afforded pursuant to the Indenture will be materially endangered or the Leased Property or any portion thereof will be subject to loss or forfeiture, or the Corporation or the Trustee will be subject to liability, in which event such taxes, assessments, utility or other charges shall be paid forthwith (provided, however, that such payment shall not

constitute a waiver of the right to continue to contest such taxes, assessments, utility or other charges).

Section 9.05. Provisions Regarding Liability, Property and Workers' Compensation

Insurance. Upon the execution and delivery of this Lease, the City shall, at its own expense, cause casualty and/or property insurance to be carried and maintained with respect to the Leased Property in an amount equal to the principal amount of the Certificates then Outstanding or the replacement cost of the Leased Property, whichever is greater. Each such insurance policy may have a deductible clause or self-insured retentions in an amount determined by the City Council. The City may, in its discretion, insure the Leased Property under blanket insurance policies which insure not only such Leased Property, but other property as well, as long as such blanket insurance policies comply with the requirements hereof. Full payment of insurance proceeds up to the policy dollar limits in connection with damage to the Leased Property shall not be contingent on the degree of damage sustained at other facilities owned or leased by the City. Any property damage insurance policy required by this Section 9.05 shall be so written or endorsed as to waive any co-insurance penalty and to show the Trustee as mortgagee/trustee and the Corporation and the Trustee as loss payees and/or additional insureds, and to make losses exceeding the deductible or self-insured retention, if any, payable to the City, the Corporation, and the Trustee as their respective interests may appear.

Upon the execution and delivery of this Lease, the City shall, at its own expense, cause public liability insurance, including blanket contractual liability or specific contractual liability insurance for this Lease and public officials' errors and omissions coverage, to be carried and maintained with respect to the activities to be undertaken by the City and its officers, officials, agents and employees in connection with the use and possession of the Leased Property, as appropriate. All such policies shall show the City and all officers and employees thereof, the Corporation and the Trustee as additional insureds. Such coverage shall be in amounts not less than the limits of liability per occurrence set by the Colorado Governmental Immunity Act as the same may from time to time be amended, to a \$1,000,000 annual aggregate, for claims to which the defense of sovereign immunity applies. Each such insurance policy may have a deductible clause or self-insured retentions in an amount determined by the City Council. The public liability insurance required by this Section 9.05 may be by blanket insurance policy or policies.

Upon the execution and delivery of this Lease, the City shall, at its own expense, cause worker's compensation insurance to be procured and maintained covering the City's employees working in or on the Leased Property. Such insurance, if issued by a private carrier, shall contain a provision that such coverage shall not be cancelled without 60 days' prior written notice to the City, the Corporation, and the Trustee. A certificate issued by the Colorado State Insurance Fund or a private carrier evidencing such coverage shall be provided by the City to the Trustee. Each such insurance policy may have a deductible clause or self-insured retentions in an amount determined by the City Council. The worker's compensation insurance required by this Section 9.05 may be by blanket insurance policy or policies.

All property and public liability insurance required by this Section 9.05 shall be provided by a commercial insurer rated at least "A" by A.M. Best or in the two highest rating categories by S&P and Moody's. If the City shall insure against similar risks by self-insurance, the City, at its election and in accordance with the standards of the State relating thereto, may in lieu of obtaining policies for casualty and/or property, public liability and workers' compensation

insurance coverage as required by this Section 9.05 provide one or more such coverages by an actuarially established self-insurance fund so long as the City provides an annual certification to the Trustee that the reserves therein are adequate as determined by, in the case of public liability and workers' compensation coverage, the City's insurance consultant or actuary, and in the case of casualty and/or property insurance, an independent insurance consultant or actuary.

Each property and liability insurance policy provided for in this Section 9.05 shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interests of the Corporation and the Trustee without first giving written notice thereof to the City, the Corporation and the Trustee at least 60 days in advance of such cancellation or modification. In the event that the City receives such notice of cancellation or modification, it shall immediately furnish to the Trustee a new insurance policy or certificate evidencing such policy replacing the cancelled or modified policy and effective on or before the effective date of such cancellation or modification.

The City annually shall provide certificates of insurance with appropriate endorsements attached evidencing that the parties have been named as mortgagee/trustee and/or loss payees and/or additional insureds and that the 60-day notice of cancellation provision is in effect, and provide a certificate to the Trustee that all insurance required by the Lease is in effect. All insurance policies issued pursuant to this Section 9.05 or certificates evidencing such policies, shall be deposited annually with the Trustee. No agent or employee of the City shall have the power to adjust or settle any loss with respect to the Leased Property, whether or not covered by insurance, without the prior written consent of the Trustee and the City Council; except that losses not exceeding \$100,000 for casualty and/or property damage, \$150,000 for public liability insurance claims, and \$300,000 for worker's compensation claims may be adjusted or settled by the City without the Trustee's consent. The consent of the Corporation shall not be required for any such adjustment or settlement.

The Trustee makes no representations as to, and shall have no responsibility for, the sufficiency of the insurance required hereunder.

Section 9.06. Reserved.

Section 9.07. Granting of Easements. As long as no Event of Nonappropriation or Event of Default shall have happened and be continuing, the Corporation and the Trustee shall at any time or times, but only upon the request of the City, grant easements, licenses, rights-of-way (including the dedication of public highways) and other rights or privileges in the nature of easements with respect to the Leased Property included in this Lease and the Indenture, free from this Lease and the Indenture and Security Documents and any security interest or other encumbrance created hereunder or thereunder, and the Corporation and the Trustee shall release existing easements, licenses, rights-of-way, and other rights and privileges with respect to the Leased Property, with or without consideration, and shall execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other grant or privilege upon receipt of: (a) a copy of the instrument of grant or release; (b) a written application signed by an Authorized Officer of the City requesting such instrument and stating that such grant or release will not impair the effective use or interfere with the operation of the Leased Property.

ARTICLE X

DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

Section 10.01. Damage, Destruction and Condemnation. If, during the Lease Term (a) the Leased Property or any portion thereof shall be destroyed (in whole or in part), or damaged by fire or other casualty; or (b) title to, or the temporary or permanent use of, the Leased Property or any portion thereof or the estate of the City, the Corporation or the Trustee in the Leased Property or any portion thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority; or (c) a breach of warranty or a material defect in the construction, manufacture or design of the Leased Property or any portion thereof shall become apparent; or (d) title to or the use of all or any portion of the Leased Property shall be lost by reason of a defect in title thereto; then the City shall be obligated to continue to pay the amounts specified in Section 6.02 of this Lease (subject to Section 6.01 hereof) regardless of whether the certificate provided for in Section 7.02 of this Lease shall have been delivered to the Trustee.

Section 10.02. Obligation of the City to Repair and Replace the Leased Property. The City and, to the extent such Net Proceeds are within their control, the Corporation and the Trustee, shall cause the Net Proceeds of any insurance policies, performance bonds or condemnation awards to be deposited in a separate trust fund held by the Trustee. All Net Proceeds so deposited shall be applied to the prompt repair, restoration, modification, improvement or replacement of the Leased Property by the City upon receipt of requisitions acceptable to the Trustee signed by an Authorized Officer of the City stating with respect to each payment to be made: (a) the requisition number; (b) the name and address of the person, firm or corporation to whom payment is due; (c) the amount to be paid; and (d) that each obligation mentioned therein has been properly incurred, is a proper charge against the separate trust fund and has not been the basis of any previous withdrawal and specifying in reasonable detail the nature of the obligation, accompanied by a bill or a statement of account for such obligation.

For the purpose of effecting the collection of Net Proceeds, the City and the Trustee agree to cooperate and use their best reasonable efforts to enforce claims which may arise in connection with material defects in the construction, manufacture or design of the Leased Property or any portion thereof or otherwise. In carrying out any of the provisions of this Section 10.02, the City shall have all power and authority granted under Article VII of this Lease; and the Trustee shall cooperate with the City in the administration of such fund and shall not unreasonably withhold its approval of requisitions under this Section 10.02. The balance of any such Net Proceeds remaining after such repair, restoration, modification, improvement or replacement has been completed shall be deposited into the Certificate Fund. Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of such Net Proceeds shall be leased to the Corporation, subject to this Lease, the Site Lease and the Indenture and shall be included as part of the Leased Property under this Lease and the Indenture and Security Documents.

Section 10.03. Insufficiency of Net Proceeds. If the Net Proceeds (plus any amounts withheld from such Net Proceeds by reason of any deductible clause) shall be insufficient to pay

in full the cost of any repair, restoration, modification, improvement or replacement of the Leased Property (or any portion thereof) required under Section 10.02 of this Lease, the City may elect to:

(a) complete the work or replace such Leased Property (or portion thereof) with similar property of a value equal to or in excess of such Leased Property or portion thereof and pay as Additional Rentals, to the extent amounts for Additional Rentals which have been specifically appropriated by the City are available for payment of such cost, any cost in excess of the amount of the Net Proceeds, and the City agrees that, if by reason of any such insufficiency of the Net Proceeds, the City shall make any payments pursuant to the provisions of this Section 10.03(a), the City shall not be entitled to any reimbursement therefor from the Corporation, the Trustee or the Owners, nor shall the City be entitled to any diminution of the Base Rentals and Additional Rentals payable under Section 6.02 of this Lease;

(b) apply the Net Proceeds to the payment of the Purchase Option Price in accordance with Article XII of this Lease. In the event of an insufficiency of the Net Proceeds for such purpose, the City shall, subject to the limitations of Sections 6.01 and 6.06 hereof, pay such amounts as may be necessary to equal the Purchase Option Price; and in the event the Net Proceeds shall exceed the Purchase Option Price, such excess shall be retained by the City; or

(c) if the City does not timely budget and appropriate sufficient funds to proceed under either (a) or (b) above, an Event of Nonappropriation will be deemed to have occurred and, subject to the City's right to cure, the Trustee may pursue remedies available to it following an Event of Nonappropriation.

The above referenced election shall be made by the City within 90 days of the occurrence of an event specified in Section 10.01 of this Lease.

Section 10.04. Cooperation of the Corporation. At the expense of the City, the Corporation shall cooperate fully with the City and the Trustee in filing any proof of loss with respect to any insurance policy or performance bond covering the events described in Section 10.01 of this Lease and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Leased Property or any portion thereof and the enforcement of all warranties relating to the Leased Property. The Corporation hereby assigns to the Trustee its interests in all such policies, bonds and actions for such purposes. In no event shall the Corporation voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim, performance or payment bond claim, prospective or pending condemnation proceeding without the written consent of the City and the Trustee.

ARTICLE XI

DISCLAIMER OF WARRANTIES; OTHER COVENANTS

Section 11.01. Disclaimer of Warranties. NEITHER THE CORPORATION, THE TRUSTEE NOR THE OWNERS OF THE CERTIFICATES MAKE ANY WARRANTY OR

REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR USE OF THE LEASED PROPERTY OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LEASED PROPERTY. THE CITY HEREBY ACKNOWLEDGES AND DECLARES THAT THE CITY IS SOLELY RESPONSIBLE FOR THE USE, MAINTENANCE AND OPERATION OF THE LEASED PROPERTY DURING THE LEASE TERM, AND THAT NEITHER THE CORPORATION, THE TRUSTEE NOR ANY OF THE OWNERS OF THE CERTIFICATES HAVE ANY RESPONSIBILITY THEREFOR. For the purpose of enabling the City to discharge such responsibility, the Corporation constitutes and appoints the City as its attorney in fact for the purpose of maintaining and operating the Leased Property, and asserting and enforcing, at the sole cost and expense of the City, all manufacturer's, supplier's or contractor's warranties and guaranties, express or implied, with respect to the Leased Property, as well as any claims or rights the Corporation, or the Trustee may have in respect of the Leased Property against any manufacturer, supplier, contractor or other person. In no event shall the Corporation, the Trustee or any of the Owners be liable for any direct or indirect, incidental, special or consequential damage in connection with or arising out of this Lease or the existence, furnishing, functioning or use by the City of any item, product or service provided for herein.

Section 11.02. Further Assurances and Corrective Instruments. The Corporation and the City agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Leased Property hereby leased or intended so to be, or for otherwise carrying out the intention hereof.

Section 11.03. Compliance with Requirements. During the Lease Term, the City, the Corporation and the Trustee shall observe and comply promptly to the extent possible with all current and future orders of all courts having jurisdiction over the Leased Property or any portion thereof, provided that the City, the Corporation or the Trustee may contest or appeal such orders so long as they are in compliance with such orders during the contest or appeal period, and all current and future requirements of all insurance companies writing policies covering the Leased Property or any portion thereof.

During the Lease Term, the City shall use the Leased Property in a manner such that (a) the Leased Property at all times is operated in compliance with all Requirements of Law; (b) all permits required by Requirements of Law in respect of the City's use of the Leased Property are obtained, maintained in full force and effect and complied with; (c) there shall be no hazardous substance, pollutant or contaminant (as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9601, et seq., any applicable State law or regulations promulgated thereunder), solid or hazardous waste (as defined in the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq., any applicable State law or regulations promulgated thereunder), special waste, petroleum or petroleum derived substance, radioactive material or waste, polychlorinated biphenyls, asbestos or any constituent of any of the foregoing located on, in or under the Leased Property in such manner as would constitute a violation of any Requirement of Law; (d) there shall be no disposal of any of the items referred to in clause (c) on, from, into or out of the Leased Property

in violation of any Requirement of Law; and (e) there shall be no spillage, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, disposing, depositing or dispersing of any of the items referred to in clause (c) into the indoor or outdoor environment from, into or out of the Leased Property including but not limited to the movement of any such items through or in the air, soil, surface water, ground water from, into or out of the Leased Property or the abandonment or discard of barrels, containers or other open or closed receptacles containing any such items from, into or out of the Leased Property in violation of any Requirement of Law.

Section 11.04. City Acknowledgment of the Indenture. The City acknowledges and agrees to the assignment by the Corporation to the Trustee, pursuant to the Indenture, of all rights, title, and interests of the Corporation, in, to and under this Lease (except the Corporation's rights under Sections 9.05, 11.06, 14.06 and 15.02 hereof); and to the delegation by the Corporation to the Trustee, of all duties of the Corporation under this Lease.

Section 11.05. Covenant to Comply with Internal Revenue Code. The City acknowledges that moneys in funds and accounts created under the Indenture will be invested or deposited by the Trustee at the written direction of the City. The City certifies and covenants that it will not knowingly direct or otherwise cause the investment or use of any moneys in any fund or account created under the Indenture (including any moneys reasonably expected to be used to pay the Certificates or interest thereon, whether or not held by the Trustee pursuant to the Indenture and regardless of whether any such moneys were derived from the proceeds of the Certificates or from any other source), in a manner which will cause the Certificates to be classified as "arbitrage bonds" within the meaning of the Code.

The City further covenants that it will perform all acts within its power which are or may be necessary to insure that the interest portion of the Base Rentals will at all times not become includible in federal income taxation under the laws and regulations of the United States of America as presently enacted and construed or as hereafter amended.

In particular, but without limitation, the City further covenants to comply with the following restrictions of the Code, unless the City receives an opinion of nationally recognized bond counsel substantially to the effect that noncompliance with such requirements will not adversely affect the exclusion from gross income for purposes of federal income taxation of interest on the Certificates.

(a) The Project and the Leased Property and gross proceeds of the Certificates shall not be used in a manner which will cause the Certificates to be considered "private activity bonds" within the meaning of the Code.

(b) The Certificates are not and shall not become directly or indirectly "federally guaranteed." The Certificates will be considered to be "federally guaranteed" if the payment of principal or interest with respect to the Certificates is guaranteed (in whole or in part) by the United States of America (or any agency or instrumentality thereof) or if 5% or more of the proceeds of the Certificates are used in making loans the payment of principal or interest with respect to which is guaranteed or invested (directly or indirectly) in federally insured deposits or accounts.

(c) The City shall timely file Internal Revenue Form 8038-G pursuant to Section 149(e) of the Code.

(d) The City shall not sell any obligations within fifteen (15) days of the sale of the Certificates pursuant to a common plan of financing with the Certificates and payable from the same source of funds or having substantially the same claim to the same source of funds used to pay the Certificates.

Section 11.06. Immunity and Indemnification. In the exercise of the powers of the Corporation by its directors, members, officers, employees and agents under this Lease and the Indenture, including (without limiting the foregoing) the application of moneys and the investment of funds, the Corporation shall not be accountable to the City for any action taken or omitted with respect to this Lease by it or its directors, members, officers, employees and agents reasonably believed by it or them to be authorized or within the discretion or rights or powers conferred under this Lease. The Corporation and its directors, members, officers, employees and agents shall be protected in its or their actions taken in reliance upon any paper or documents believed by it or them to be genuine and consistent with their rights or powers under this Lease, and it or they may conclusively rely upon the advice of Counsel and may (but need not) require further evidence of any fact or matter before taking any action. No recourse shall be had by the City for any claims based on the Indenture or this Lease against any director, member, officer, employee or agent of the Corporation alleging personal liability on the part of such person.

Subject to the limitations of Section 6.01 hereof and to the fullest extent permitted by law, the City shall indemnify the Trustee and the Corporation and any of their directors, members, officers, employees or agents and save them harmless against any liability resulting from acts or omissions of the City or from acts or omissions of the Corporation, or any of its directors, members, officers, employees or agents in connection with any acts taken pursuant to this Lease as it relates to the City and the Leased Property or the Project. The City shall also indemnify the Trustee and the Corporation and their directors, members, officers, employees or agents against all claims arising from: (a) the conduct, management, operation or use of, or from any work or thing done on, the Leased Property or the Project during the Lease Term; (b) any condition of the Leased Property or the Project; and (c) any act of negligence of the City or of any of its agents, contractors or employees or any violation of law by the City or breach of any covenant or warranty by the City hereunder. The City shall indemnify and save the Trustee and the Corporation and their directors, members, officers, employees and agents harmless from any such claim arising as aforesaid or in connection with any action or proceeding brought thereon and, upon notice from the Trustee or the Corporation or any of their directors, members, officers, employees or agents, shall defend the Trustee and the Corporation and their directors, members, officers, employees and agents in any such action or proceeding.

Section 11.07. Access To Leased Property. The City agrees that the Corporation and the Trustee, and any authorized representative of such parties, shall have the right at all reasonable times to examine and inspect the Leased Property and all of the City's books and records with respect thereto. The City further agrees that the Corporation and the Trustee, and any such representative shall have such rights of access to the Leased Property as may be reasonably necessary to cause the proper maintenance of the Leased Property in the event of failure by the City to perform its obligations under this Lease.

Section 11.08. Environmental Covenant. The City shall not store, locate, generate, produce, process, treat, transport, incorporate, discharge, emit, release, deposit or dispose of any Hazardous Substance in, upon, under, over or from the Leased Property in violation of any Environmental Regulation, shall not permit any Hazardous Substance to be stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited, disposed of or to escape therein, thereupon, thereunder, thereover or therefrom in violation of any Environmental Regulation, shall cause all Hazardous Substances to be properly removed therefrom and properly disposed of in accordance with all applicable Environmental Regulations, shall not install or permit to be installed any underground storage tank therein or thereunder in violation of any Environmental Regulation and shall comply with all other Environmental Regulations which are applicable to the Leased Property.

Subject to the limitations of Section 6.01 hereof, in the event any Hazardous Substance is found upon, under, over or from the Leased Property in violation of any Environmental Regulation or if any lien or claim for lien in favor of any governmental entity or agency as a result of any release of any Hazardous Substance is threatened, the City, at its sole cost and expense, shall, within ten days of such finding, deliver written notice thereof to the Corporation and the Trustee and shall promptly remove such Hazardous Substance and prevent the imposition of any liens against the Leased Property for the cleanup of any Hazardous Materials. Such removal shall be conducted and completed in compliance with all applicable federal, state and local laws, regulations, rules, ordinances and policies in accordance with the orders and directives of all federal, state and local governmental authorities. In the event the City has not removed such Hazardous Substance within a time period deemed reasonable by the Trustee, the City shall, at the written direction of the Trustee, take such remedial action as the Trustee shall direct. In the event the City shall not comply with the written directions of the Trustee within the time frame established within its written directions, the City hereby grants to the Trustee an irrevocable license to remove such Hazardous Substance from, repair, cleanup, and detoxify the Leased Property and the City agrees, subject to the limitations of Section 6.01 hereof and to the fullest extent permitted by law, to reimburse the Trustee for all of its costs therefor.

Subject to the limitations of Section 6.01 hereof and to the fullest extent permitted by law, the City further agrees to reimburse the Corporation and the Trustee for any and all claims, demands, judgments, penalties, liabilities, costs, damages and expenses, including court costs and attorneys' fees directly or indirectly incurred by the Corporation and the Trustee in any action against or involving the Corporation and the Trustee, resulting from any breach of the foregoing covenants or the covenant in Section 2.01(e) hereof, or from the discovery of any Hazardous Substance, in, upon, under or over, or emanating from, the Leased Property.

The representations and warranties in Section 2.01(e) hereof and the covenants of this Section 11.09 shall be deemed to be for the benefit of the Corporation and the Trustee and any successors and assigns of the Corporation and the Trustee.

ARTICLE XII

PURCHASE AND CONVEYANCE OF THE LEASED PROPERTY

Section 12.01. Purchase Option. The City shall have the option to purchase the Leased Property and terminate this Lease, but only if it is not then in default under this Lease. The City

may exercise its option on any date by complying with one of the conditions set forth in Section 12.02. Such purchase price shall be deposited by the Trustee in the Certificate Fund to be applied to the payment or redemption of the Certificates as provided therein. The City shall give the Trustee notice of its intention to exercise its option not less than 35 days in advance of the date of exercise and, if such payment will result in the redemption of the Certificates, shall deposit the required moneys with the Trustee on or before the redemption date. If the City shall have given notice to the Trustee of its intention to purchase the Leased Property, but shall not have deposited the amounts with the Trustee on the date specified in such notice, the City shall continue to pay Base Rentals and Additional Rentals as if no such notice had been given.

Section 12.02. Conveyance of the Leased Property. The Corporation shall transfer and convey the Leased Property to the City in the manner provided for in Section 12.03 of this Lease; provided, however, that prior to such transfer and conveyance, either:

- (a) the City shall have paid the then applicable Purchase Option Price;
- (b) an Event of Default shall not have occurred and be continuing, and the City shall have paid all Base Rentals set forth in Exhibit B hereto and all then current Additional Rentals required to be paid hereunder, in which case the Corporation shall transfer and convey the Leased Property to the City; or
- (c) the Indenture shall have been discharged with respect to this Lease as provided in Article VI of the Indenture.

The City is hereby granted the option to terminate this Lease and to purchase the Leased Property upon payment by the City of the then applicable Purchase Option Price. It is the intent of this Section to provide for and allow the release of the Leased Property shown on Exhibit A subject to this Lease if the City has fulfilled all payment obligations with respect hereto and is not then in default hereunder.

Section 12.03. Manner of Conveyance. At the closing of any purchase or other conveyance of the Leased Property pursuant to Section 12.02 of this Lease, the Corporation and the Trustee shall execute and deliver to the City such deeds, bills of sale and other necessary documents assigning, transferring and conveying good and marketable title to the Leased Property, as it then exists, subject to the following: (a) Permitted Encumbrances, other than this Lease, the Site Lease and the Indenture and Security Documents; (b) all liens, encumbrances and restrictions created or suffered to exist by the Corporation or the Trustee as required or permitted by this Lease or the Indenture and Security Documents or arising as a result of any action taken or omitted to be taken by the Corporation or the Trustee as required or permitted by this Lease or the Indenture; and (c) any lien or encumbrance created by action of the City.

ARTICLE XIII

ASSIGNMENT AND SUBLEASING

Section 13.01. Assignment by the Corporation; Replacement of the Corporation. The Corporation's rights under this Lease, including rights to receive and enforce payments

hereunder (except the Corporation's rights under Sections 9.05, 11.06, 14.06 and 15.02 hereof), have been assigned to the Trustee pursuant to the Indenture.

In the event of any bankruptcy, insolvency, or other similar proceeding as to the Corporation, or in any other event which in the judgment of the Trustee materially impairs the ability of the Corporation to serve as lessor and sublessor under this Lease or as grantor under the Indenture and the Security Documents, the Trustee may replace the Corporation with such other entity as it deems appropriate with the Approval of Bond Counsel. In any such event the Corporation shall cooperate with the Trustee in conveying its right, title and interest in the Leased Property and any and all other right, title and interest of the Corporation in, to and under this Lease, the Site Lease, and the Indenture to such successor entity as the Trustee may designate.

Section 13.02. Assignment and Subleasing by the City. This Lease may not be assigned by the City for any reason other than to a successor by operation of law. However, the Leased Property may be sub-subleased, as a whole or in part, by the City, without the necessity of obtaining the consent of the Corporation, the Trustee or any Owner of the Certificates, subject, however, to each of the following conditions:

- (a) the Leased Property may be sub-subleased, in whole or in part, only to an agency or department or political subdivision of the State, or to another entity or entities if, in the opinion of nationally recognized bond counsel acceptable to the Trustee, such sublease will not impair the exclusion from gross income for purposes of federal income taxation of the interest on the Certificates;
- (b) this Lease, and the obligations of the City hereunder, shall, at all times during the Lease Term remain obligations of the City subject to Section 6.01 of this Lease, and the City shall maintain its obligations to the Corporation and the Trustee, notwithstanding any sublease and sub-sublease;
- (c) the City shall furnish or cause to be furnished to the Trustee a copy of any sub-sublease agreement; and
- (d) no sub-sublease by the City shall cause the Leased Property to be used for any purpose which would adversely affect the exclusion from gross income for purposes of federal income taxation of any interest on the Certificates, or which would violate the Constitution or laws of the State.

The City may sub-sublease all or any portion of the Leased Property for use as pasture regardless of subparagraph (a) above, but any such sub-sublease shall be subordinate to the Site Lease and this Lease.

ARTICLE XIV

EVENTS OF DEFAULT AND REMEDIES

Section 14.01. Events of Default Defined. Any one of the following shall be an "Event of Default" under this Lease:

(a) failure by the City to pay any Base Rentals or Additional Rentals during the Lease Term within five days after the same become due;

(b) failure by the City to vacate or surrender possession of the Leased Property by the thirtieth day of the Fiscal Year in respect of which an Event of Nonappropriation has occurred;

(c) failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, under the Site Lease or under any certificate executed and delivered by the City in connection with the execution and delivery of this Lease, other than as referred to in (a) or (b), for a period of 30 days after written notice, specifying such failure and requesting that it be remedied shall be given to the City by the Trustee, unless the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in the notice cannot be corrected within the applicable period, the Trustee shall not withhold its consent to an extension of such time if corrective action is instituted by the City within the applicable period and diligently pursued until the default is corrected. Such consent by the Trustee shall not be unreasonably withheld; or

(d) the City (i) files a petition or application seeking reorganization, arrangement under federal bankruptcy law, or other debtor relief under the laws of the State or (ii) is the subject of such a petition or application which is not contested by the City, or otherwise dismissed or discharged, within 60 days.

The foregoing provisions of this Section 14.01 are subject to the following limitations: (a) the City shall be obligated to pay the Base Rentals and Additional Rentals only during the Original Term or current Renewal Term, except as otherwise expressly provided in this Lease; and (b) if, by reason of Force Majeure, the City shall be unable in whole or in part to carry out any agreement on its part herein contained, other than the obligations on the part of the City contained in Article VI of this Lease, the City shall not be deemed in default during the continuance of such inability. The City agrees, however, to remedy, as promptly as legally and reasonably possible, the cause or causes preventing the City from carrying out its agreement; provided that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the City.

Section 14.02. Remedies on Default. Whenever any Event of Default referred to in Section 14.01 of this Lease shall have happened and be continuing, the Trustee, on behalf of the Corporation, may, without any further demand or notice, take one or any combination of the following remedial steps:

(a) The Trustee, on behalf of the Corporation, may terminate the Lease Term and give notice to the City to vacate and surrender possession of the Leased Property within 30 days of such notice.

(b) The Trustee may proceed to foreclose through the courts on or otherwise sell, trade-in, repossess or liquidate its interest in the Leased Property, or any part thereof, in any lawful manner and may exercise all the rights and remedies of a secured party under the Colorado Uniform Commercial Code with respect to the Equipment included in

the Leased Property and in accordance with the remedies in any Security Document; provided, however, that the Trustee may not recover from the City any deficiency which may exist following the liquidation of its interest in the Leased Property in excess of Base Rentals and Additional Rentals for the then current Fiscal Year and in excess of amounts payable under subparagraph (d) of this Section 14.02.

(c) In the event that the Trustee deems such action to be in the best interests of the Owners of the Certificates, the Trustee, on behalf of the Corporation, may lease and sublease the Leased Property or any portion thereof or sell an assignment of any interest the Trustee or the Corporation has in the Leased Property for the benefit of such Owners.

(d) The Trustee, on behalf of the Corporation, may recover from the City:

(i) the portion of Base Rentals and Additional Rentals which would otherwise have been payable hereunder, during any period in which the City continues to occupy, use or possess the Leased Property; and

(ii) Base Rentals and Additional Rentals which would otherwise have been payable by the City hereunder during the remainder, after the City vacates and surrenders possession of the Leased Property, of the Fiscal Year in which such Event of Default occurs.

(e) The Trustee, on behalf of the Corporation may take whatever action at law or in equity may appear necessary or desirable to enforce its rights in and to the Leased Property under this Lease and the Indenture and Security Documents.

Section 14.03. Limitations on Remedies. A judgment requiring a payment of money may be entered against the City by reason of an Event of Default only as to the City's liabilities described in paragraph (d) of Section 14.02 of this Lease. A judgment requiring a payment of money may be entered against the City by reason of an Event of Nonappropriation only to the extent that the City fails to vacate and surrender possession of the Leased Property as required by Section 6.06 of this Lease, and only as to the liabilities described in paragraph (d)(i) of Section 14.02 of this Lease. The remedy described in paragraph (d)(ii) of Section 14.02 of this Lease is not available for an Event of Default consisting of failure by the City to vacate and surrender possession of the Leased Property within 30 days following notice of an Event of Nonappropriation.

Section 14.04. No Remedy Exclusive. Subject to Section 14.03 hereof, no remedy herein conferred upon or reserved to the Trustee, on behalf of the Corporation, is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Trustee, on behalf of the Corporation to exercise any remedy reserved in this Article XIV, it shall not be necessary to give any notice, other than such notice as may be required in this Article XIV.

Section 14.05. Waivers. The Trustee may waive any Event of Default under this Lease and its consequences, as the Trustee deems to be in the best interest of the Owners of the Certificates. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

In view of the assignment of the Corporation's rights under this Lease to the Trustee pursuant to the Indenture, the Corporation shall have no right to waive any Event of Default hereunder without the consent of the Trustee; and the waiver of any Event of Default hereunder by the Trustee shall constitute a waiver of such Event of Default by the Corporation, without the necessity of any action of or consent by the Corporation. A waiver of an Event of Default under the Indenture shall constitute a waiver of the corresponding Event of Default under this Lease; provided, that no such waiver shall extend to or affect any subsequent or other Event of Default under this Lease or impair any right consequent thereon.

Section 14.06. Agreement to Pay Attorneys' Fees and Expenses. To the extent permitted by law and subject to the provisions of Section 6.01 hereof, in the event that the City shall default under any of the provisions hereof and the Corporation shall employ attorneys or incur other expenses for the collection of Base Rentals and Additional Rentals or the enforcement of performance or observance of any obligation or agreement on the part of the City herein contained, the City agrees that it shall on demand therefor pay to the Corporation the fees of such attorneys and such other expenses so incurred by the Corporation, to the extent that such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction.

Section 14.07. Waiver of Appraisement, Valuation, Stay, Extension and Redemption Laws. The Corporation and the City agree, to the extent permitted by law, that in the case of an Event of Nonappropriation or an Event of Default neither the Corporation nor the City nor any one claiming through or under any of them shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension or redemption laws now or hereafter in force in order to prevent or hinder the enforcement of the Indenture; and the Corporation and the City, for themselves and all who may at any time claim through or under either of them, each hereby waives, to the full extent that it may lawfully do so, the benefit of all such laws.

ARTICLE XV

MISCELLANEOUS

Section 15.01. Sovereign Powers of Corporation and City. Nothing in this Lease shall be construed as diminishing, delegating, or otherwise restricting any of the sovereign powers of the Corporation or the City. Nothing in this Lease shall be construed to require the City to occupy and operate the Leased Property other than as sublessee, or to require the City to exercise its right to purchase the Leased Property as provided in Article XII hereof.

Section 15.02. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered via electronic mail or mailed by certified or registered mail, postage prepaid, addressed as follows: if to the City, City

of Alamosa, 300 Hunt Avenue, P.O. Box 419, Alamosa, Colorado 81101, Attention: City Manager; if to the Corporation, Alamosa Capital Leasing Corporation, 300 Hunt Avenue, P.O. Box 419, Alamosa, Colorado 81101, Attention: President; if to the Trustee, UMB Bank, n.a., 1670 Broadway, Denver, Colorado 80202, Attention: Corporate Trust Department. The City, the Corporation and the Trustee may, by written notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 15.03. Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the Corporation and the City and their respective successors and assigns, subject, however, to the limitations contained in Article XIII of this Lease.

Section 15.04. Amendments, Changes and Modifications. Except as otherwise provided in this Lease or the Indenture, this Lease may not be effectively amended, changed, modified or altered without the prior written consent of the Trustee as provided in the Indenture.

Section 15.05. Amounts Remaining in Funds. It is agreed by the parties hereto that any amounts remaining in any of the funds or accounts created under the Indenture, upon termination of the Lease Term, and after payment in full of the Certificates (or provision for payment thereof having been made in accordance with the provisions of this Lease and the Indenture) and fees and expenses of the Trustee in accordance with this Lease and the Indenture, shall belong to and be paid to the City by the Trustee as an overpayment of Base Rentals.

Section 15.06. Net Lease. This Lease shall be deemed and construed to be a “triple net lease,” and the City shall, subject to Section 6.01 hereof, pay absolutely net during the Lease Term, the Base Rentals, Additional Rentals and all other payments required hereunder, free of any deductions, and without abatement, deduction or setoff (other than credits against Base Rentals expressly provided for in this Lease).

Section 15.07. Payments Due on Holidays. If the date for making any payment or the last day for performance of any act or the exercising of any right, as provided in this Lease, shall be a day other than a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in this Lease.

Section 15.08. Severability. In the event that any provision of this Lease, other than the requirement of the City to pay Base Rentals in accordance with Section 6.01 and the requirement of the Corporation to provide quiet enjoyment of the Leased Property and to convey the Leased Property to the City under the conditions set forth in Article XII of this Lease, and the requirement that the obligation of the City to pay Base Rentals, Additional Rentals and other amounts under this Lease are subject to the limitations of Section 6.01 hereof, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 15.09. No Merger. The Corporation and the City intend that the legal doctrine of merger shall have no application to this Lease and that neither the execution and delivery of the Site Lease by the City and the Corporation nor the exercise of any remedies under the Site

Lease or this Lease shall operate to terminate or extinguish the Site Lease or this Lease, except as specifically provided therein and herein.

Section 15.10. Execution in Counterparts. This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 15.11. Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the State, without regard to conflict of laws principles.

Section 15.12. Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

WITNESS the due execution hereof as of the day and the year first mentioned above.

ALAMOSA CAPITAL LEASING
CORPORATION, as Corporation, and
Sublessor

Attest:

Secretary

By _____
President

[SEAL]

CITY OF ALAMOSA, COLORADO as City,
and Sublessee

Attest:

City Clerk

By _____
Mayor

[illegible]

This instrument was acknowledged before me this ____ day of April 2017, by _____, as President of the Alamosa Capital Leasing Corporation, and by _____, as Secretary of the Alamosa Capital Leasing Corporation.

Witness my hand and official seal.

[SEAL]

Notary Public

My Commission Expires:

[illegible]

This instrument was acknowledged before me this ____ day of April 2017, by Josef Lucero, as Mayor of the City of Alamosa, Colorado, and by Holly Martinez, as City Clerk of the City of Alamosa, Colorado.

Witness my hand and official seal.

[SEAL]

Notary Public for the State of Colorado

My Commission Expires:

EXHIBIT A
DESCRIPTION OF LEASED PROPERTY

Description of the Site:

Description of the Building:

Description of Equipment:

Description of Water Rights:

EXHIBIT B

BASE RENTALS SCHEDULE

Base Rental Payment Date	Base Rentals Principal Component	Base Rentals Interest Component	Total Base Rentals
06/01/2017	\$	\$	\$
12/01/2017			
06/01/2018			
12/01/2018			
06/01/2019			
12/01/2019			
06/01/2020			
12/01/2020			
06/01/2021			
12/01/2021			
06/01/2022			
12/01/2022			
06/01/2023			
12/01/2023			
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12/01/2026			
06/01/2027			
12/01/2027			
06/01/2028			
12/01/2028			
06/01/2029			
12/01/2029			
06/01/2030			
12/01/2030			
06/01/2031			
12/01/2021			
06/01/2032			
12/01/2032			
Total	\$ _____	\$ _____	\$ _____

EXHIBIT C
PERMITTED ENCUMBRANCES

\$4,300,000.00

City of Alamosa, Colorado

2017 Lease Purchase Financing

Parameters - 15yr year final maturity

Base Rental Schedule

Date	Principal	Coupon	Interest	Total P+I
12/01/2017	-	-	166,027.78	166,027.78
12/01/2018	200,000.00	5.000%	215,000.00	415,000.00
12/01/2019	210,000.00	5.000%	205,000.00	415,000.00
12/01/2020	220,000.00	5.000%	194,500.00	414,500.00
12/01/2021	230,000.00	5.000%	183,500.00	413,500.00
12/01/2022	240,000.00	5.000%	172,000.00	412,000.00
12/01/2023	255,000.00	5.000%	160,000.00	415,000.00
12/01/2024	265,000.00	5.000%	147,250.00	412,250.00
12/01/2025	280,000.00	5.000%	134,000.00	414,000.00
12/01/2026	295,000.00	5.000%	120,000.00	415,000.00
12/01/2027	310,000.00	5.000%	105,250.00	415,250.00
12/01/2028	325,000.00	5.000%	89,750.00	414,750.00
12/01/2029	340,000.00	5.000%	73,500.00	413,500.00
12/01/2030	360,000.00	5.000%	56,500.00	416,500.00
12/01/2031	375,000.00	5.000%	38,500.00	413,500.00
12/01/2032	395,000.00	5.000%	19,750.00	414,750.00
Total	\$4,300,000.00	-	\$2,080,527.78	\$6,380,527.78

Yield Statistics

Bond Year Dollars	\$41,610.56
Average Life	9.677 Years
Average Coupon	5.0000000%
Net Interest Cost (NIC)	5.0000000%
True Interest Cost (TIC)	4.9965587%
Bond Yield for Arbitrage Purposes	4.9965587%
All Inclusive Cost (AIC)	5.3440833%

IRS Form 8038

Net Interest Cost	5.0000000%
Weighted Average Maturity	9.677 Years

2/22/2017 | 6:00 PM

\$4,300,000.00

City of Alamosa, Colorado

2017 Lease Purchase Financing

Parameters - 20yr year final maturity

Base Rental Schedule

Date	Principal	Coupon	Interest	Total P+I
12/01/2017	-	-	166,027.78	166,027.78
12/01/2018	130,000.00	5.000%	215,000.00	345,000.00
12/01/2019	135,000.00	5.000%	208,500.00	343,500.00
12/01/2020	145,000.00	5.000%	201,750.00	346,750.00
12/01/2021	150,000.00	5.000%	194,500.00	344,500.00
12/01/2022	160,000.00	5.000%	187,000.00	347,000.00
12/01/2023	165,000.00	5.000%	179,000.00	344,000.00
12/01/2024	175,000.00	5.000%	170,750.00	345,750.00
12/01/2025	185,000.00	5.000%	162,000.00	347,000.00
12/01/2026	190,000.00	5.000%	152,750.00	342,750.00
12/01/2027	200,000.00	5.000%	143,250.00	343,250.00
12/01/2028	210,000.00	5.000%	133,250.00	343,250.00
12/01/2029	220,000.00	5.000%	122,750.00	342,750.00
12/01/2030	235,000.00	5.000%	111,750.00	346,750.00
12/01/2031	245,000.00	5.000%	100,000.00	345,000.00
12/01/2032	255,000.00	5.000%	87,750.00	342,750.00
12/01/2033	270,000.00	5.000%	75,000.00	345,000.00
12/01/2034	285,000.00	5.000%	61,500.00	346,500.00
12/01/2035	300,000.00	5.000%	47,250.00	347,250.00
12/01/2036	315,000.00	5.000%	32,250.00	347,250.00
12/01/2037	330,000.00	5.000%	16,500.00	346,500.00
Total	\$4,300,000.00	-	\$2,768,527.78	\$7,068,527.78

Yield Statistics

Bond Year Dollars	\$55,370.56
Average Life	12.877 Years
Average Coupon	5.0000000%
Net Interest Cost (NIC)	5.0000000%
True Interest Cost (TIC)	4.9971967%
Bond Yield for Arbitrage Purposes	4.9971967%
All Inclusive Cost (AIC)	5.2804279%

IRS Form 8038

Net Interest Cost	5.0000000%
Weighted Average Maturity	12.877 Years

MORTGAGE AND INDENTURE OF TRUST

by and between

ALAMOSA CAPITAL LEASING CORPORATION,
as Sublessor,

and

UMB BANK, n.a.,
as Trustee

Securing

\$ _____
Certificates of Participation, Series 2017
Evidencing Assignments of Interests in
Payments to be made by
the City of Alamosa, Colorado
As Sublessee Under a Lease Purchase Agreement

Dated April __, 2017

TABLE OF CONTENTS

Page

ARTICLE I DEFINITIONS AND CONSTRUCTION

Section 1.01.	Definitions.....	4
Section 1.02.	Construction.....	6

ARTICLE II AUTHORIZATION, TERMS, EXECUTION AND DELIVERY OF CERTIFICATES

Section 2.01.	Authorized Amount of Certificates.....	6
Section 2.02.	Terms of the Certificates.....	7
Section 2.03.	Limited Obligation.....	8
Section 2.04.	Execution of the Certificates.....	9
Section 2.05.	[Reserved].....	9
Section 2.06.	Form of Certificates.....	9
Section 2.07.	Delivery of the Certificates.....	9
Section 2.08.	Mutilated, Lost, Stolen or Destroyed Certificates.....	9
Section 2.09.	Registration of Certificates; Persons Treated as Registered Owners; Transfer and Exchange of Certificates.....	10
Section 2.10.	Cancellation of Certificates.....	11
Section 2.11.	Execution and Delivery of Additional Certificates.....	11

ARTICLE III REVENUES AND FUNDS

Section 3.01.	Source of Payment of Certificates.....	12
Section 3.02.	Creation of the Certificate Fund.....	12
Section 3.03.	Payments Into the Interest Account of the Certificate Fund.....	13
Section 3.04.	Payments Into the Principal Account of the Certificate Fund.....	13
Section 3.05.	Use of Moneys in the Certificate Fund.....	13
Section 3.06.	Custody of the Funds.....	13
Section 3.07.	Reserved.....	13
Section 3.08.	Reserved.....	13
Section 3.09.	Acquisition Fund.....	13
Section 3.10.	[Reserved].....	14
Section 3.11.	[Reserved].....	14
Section 3.12.	Nonpresentment of Certificates.....	14
Section 3.13.	Reports to City.....	14
Section 3.14.	Repayment to the City From the Trustee.....	15
Section 3.15.	Creation of the Rebate Fund.....	15
Section 3.16.	Rebate Deposits.....	15
Section 3.17.	Rebate Disbursements.....	15

ARTICLE IV REDEMPTION OF CERTIFICATES

Section 4.01.	Redemption Dates and Prices.....	16
---------------	----------------------------------	----

Section 4.02.	Redemption Upon Termination of the Lease Term by Reason of Certain Events	16
Section 4.03.	Mandatory Sinking Fund Redemption.....	17
Section 4.04.	Notice of Redemption	18
Section 4.05.	Redemption Payments	19
Section 4.06.	Cancellation	19
Section 4.07.	Delivery of New Certificates Upon Partial Redemption of Certificates.....	19

ARTICLE V INVESTMENTS

Section 5.01.	Investment of Moneys.....	20
Section 5.02.	Arbitrage Covenant.....	21

ARTICLE VI

DISCHARGE OF INDENTURE.....	21
-----------------------------	----

ARTICLE VII DEFAULTS AND REMEDIES

Section 7.01.	Events of Default	22
Section 7.02.	Remedies on Default.....	22
Section 7.03.	Majority of Certificate Owners May Control Proceedings.....	23
Section 7.04.	Rights and Remedies of Certificate Owners	23
Section 7.05.	Purchase of Leased Property by Certificate Owners or Trustee; Application of Certificates Toward Purchase Price.....	24
Section 7.06.	Waiver of Appraisalment, Valuation, Stay, Execution and Redemption Laws	24
Section 7.07.	Trustee May Enforce Rights Without Certificates.....	25
Section 7.08.	Delay or Omission No Waiver.....	25
Section 7.09.	No Waiver of One Default to Affect Another	25
Section 7.10.	Discontinuance of Proceedings on Default; Position of Parties Restored	25
Section 7.11.	Waivers of Events of Default.....	25
Section 7.12.	Application of Moneys in Event of Default.....	26

ARTICLE VIII CONCERNING THE TRUSTEE

Section 8.01.	Duties of the Trustee	26
Section 8.02.	Fees and Expenses of Trustee	29
Section 8.03.	Resignation or Replacement of Trustee	29
Section 8.04.	Conversion, Consolidation or Merger of Trustee	30
Section 8.05.	Intervention by Trustee	30
Section 8.06.	List of Certificate Owners.....	30

ARTICLE IX SUPPLEMENTAL INDENTURES AND AMENDMENTS OF THE LEASE

Section 9.01.	Supplemental Indentures Not Requiring Consent of Certificate Owners	31
Section 9.02.	Supplemental Indentures Requiring Certain Consents	31

Section 9.03.	Execution of Supplemental Indenture.....	32
Section 9.04.	Amendments, etc., of the Lease Not Requiring Consent of Certificate Owners	32
Section 9.05.	Amendments, etc., of the Lease Requiring Consent of Certificate Owners	33

ARTICLE X MISCELLANEOUS

Section 10.01.	Evidence of Signature of Certificate Owners and Ownership of Certificates	33
Section 10.02.	Representations, Warranties and Covenants of Corporation	34
Section 10.03.	Inspection of the Leased Property.....	34
Section 10.04.	Parties Interested Herein	35
Section 10.05.	Titles, Headings, Captions, Etc.....	35
Section 10.06.	Severability	35
Section 10.07.	Governing Law	35
Section 10.08.	Execution in Counterparts.....	35
Section 10.09.	Notices	35
Section 10.10.	Payments Due on Holidays; Delayed Transfer of Funds.....	35
Section 10.11.	Corporation, City and Trustee Representatives	35
EXHIBIT A	FORM OF CERTIFICATE.....	1
EXHIBIT B	DESCRIPTION OF THE LEASED PROPERTY	1

MORTGAGE AND INDENTURE OF TRUST

THIS MORTGAGE AND INDENTURE OF TRUST dated April __, 2017 (together with any amendments, supplements or other modifications hereto, made in accordance herewith, collectively referred to as this “Indenture”), by and between **ALAMOSA CAPITAL LEASING CORPORATION** (the “Corporation”), a nonprofit corporation duly organized and existing under the laws of the State of Colorado, and **UMB BANK, n.a.**, as trustee (the “Trustee”), having an office in Denver, Colorado, duly organized, existing and authorized to accept and execute trusts of the character herein set out under and by virtue of the laws of the United States of America,

WITNESSETH:

WHEREAS, the City of Alamosa, Colorado (the “City”) needs to (i) acquire certain water rights and water storage rights in connection with (a) an independent augmentation plan and sustainability plan, or (b) as an asset to be used in contracting for coverage with a subdistrict of the Rio Grande Water Conservation District, in order that the City’s municipal wells comply with new groundwater pumping rules, (ii) relocate and construct a new discharge point for its wastewater treatment plant, and (iii) pay the legal and engineering costs of implementing such plans and construction (collectively, the “Project”); and

WHEREAS, the City owns certain real property known as the Alamosa Ranch and associated farm buildings and structures located thereon and water rights that are currently only authorized to be used on the Alamosa Ranch (collectively, the “Alamosa Ranch Property”); and

WHEREAS, the City owns the portion of the Alamosa Ranch Property described in Exhibit B hereto (the “Leased Property”), and the Corporation has acquired a leasehold interest in the Leased Property pursuant to the Site Lease dated April __, 2017 (the “Site Lease”), between the City, as lessor, and the Corporation, as lessee; and

WHEREAS, for purposes of financing the Project, the City has entered into an annually renewable Lease Purchase Agreement of even date herewith (the “Lease”), between the Corporation, as sublessor, and the City as sublessee, for the sublease by the City from the Corporation of the Leased Property; and

WHEREAS, the Corporation is a nonprofit corporation, duly organized, existing and in good standing under the laws of the State, and is duly qualified to do business in the State, and under its articles of incorporation, the Corporation is authorized to own and hold real and personal property and to lease the same as lessor or sublessor and to act in the manner contemplated herein; and

WHEREAS, pursuant to the Lease, and subject to the right of the City to terminate the Lease and other limitations as therein provided, the City will pay certain Base Rentals and Additional Rentals (as such terms are defined in the Lease) in consideration for the right of the City to use the Leased Property; and

WHEREAS, pursuant to this Indenture, the right of the Corporation to receive the Base Rentals, and rights to receive certain other payments as provided herein and in the Lease (with certain exceptions as provided herein and in the Lease), have been assigned to the Trustee; and

WHEREAS, pursuant to this Indenture, the Corporation has also granted to the Trustee a first mortgage on and a security interest in the Leased Property, subject only to Permitted Encumbrances; and

WHEREAS, there will be executed and delivered pursuant to this Indenture \$_____ aggregate principal amount of Certificates of Participation, Series 2017 (the "Certificates"), evidencing assignments of proportionate interests in rights to receive Base Rentals and certain other payments, which rights have been assigned to the Trustee by the Corporation; and

WHEREAS, the net proceeds from the sale of the Certificates will be paid as rent to the City under the Site Lease and be used by the City for the Project; and

WHEREAS, the Trustee has entered into this Indenture for and on behalf of the registered owners of the Certificates (the "Certificate Owners"), and will hold its rights hereunder, including its rights with respect to the Leased Property, except as otherwise specifically provided herein, for the equal and proportionate benefit of the Certificate Owners, and will disburse moneys received by the Trustee in accordance with this Indenture; and

WHEREAS, the Certificates are to be in substantially the form set forth in Exhibit A to this Indenture, with such necessary or appropriate variations, omissions and insertions as permitted or required by this Indenture; and

WHEREAS, all things necessary to make the Certificates, when executed and delivered by the Trustee as in this Indenture provided, legal, valid and binding assignments of proportionate interests in rights to receive certain Revenues and certain other payments, as herein provided, and to constitute this Indenture a valid, binding and legal instrument for the security of the Certificates, in accordance with its terms, have been done and performed;

NOW, THEREFORE, THIS MORTGAGE AND INDENTURE OF TRUST WITNESSETH:

That the Corporation, in consideration of the premises and the mutual covenants herein contained and for the benefit of the Certificate Owners and the sum of One Dollar (\$1.00) to it duly paid by the Trustee at or before the execution of these presents, and for other good and valuable consideration, the receipt of which is hereby acknowledged, in order to secure the payment of the principal of, premium, if any, and interest on all Certificates at any time Outstanding under this Indenture, according to their tenor and effect, and to secure the performance and observance of all the covenants and conditions in the Certificates and herein contained, and to declare the terms and conditions upon and subject to which the Certificates are executed and delivered and secured, has executed and delivered this Indenture and has granted, bargained, sold, warranted, mortgaged, aliened, remised, released, conveyed, assigned, pledged, set over and confirmed, and by these presents does grant, bargain, sell, warrant, mortgage, alien, remise, release, convey, assign, pledge, set over and confirm unto UMB Bank, n.a., as trustee,

and to its successors and assigns forever, all and singular the following described property, franchises and income:

(a) all right, title and interest of the Corporation in, to and under the Site Lease;

(b) all rights, title and interest of the Corporation in and to the Leased Property described in Exhibit B hereto, and all other buildings, additions and real property improvements now or hereafter located thereon and the tenements, hereditaments, appurtenances, rights, privileges and immunities thereto belonging or appertaining, subject only to Permitted Encumbrances, as defined in the Lease;

(c) all right, title and interest of the Corporation in the Equipment, as defined in the Lease and described in Exhibit A attached hereto, subject only to Permitted Encumbrances;

(d) all right, title and interest of the Corporation in, to and under the Lease (except the rights of the Corporation under Sections 9.05, 11.06, 14.06 and 15.02 of the Lease);

(e) all Revenues and any other receipts received by or on behalf of the Corporation pursuant to the Lease, including, without limitation, (i) all Base Rentals (as defined in the Lease) to be received from the City pursuant to the Lease and pursuant to the terms of which Base Rentals are to be paid directly to the Trustee; (ii) all Net Proceeds received pursuant to the Lease; and (iii) all rights to enforce payments under the Lease when due or to otherwise enforce rights under the Lease for the benefit of the Certificate Owners (but excluding the rights of the Corporation under Sections 9.05, 11.06, 14.06 and 15.02 of the Lease); and

(f) all moneys and securities from time to time held by the Trustee under this Indenture (except in the Rebate Fund) and any and all other real or personal property of every name and nature from time to time hereafter by delivery or by writing of any kind specially mortgaged, pledged or hypothecated, as and for additional security hereunder, by the Corporation, or by anyone on its behalf, in favor of the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended to be, to the Trustee and its successors in said trust and assigns forever;

IN TRUST, NEVERTHELESS, upon the terms herein set forth for the equal and proportionate benefit, security and protection of all Certificate Owners, without privilege, priority or distinction as to the lien or otherwise of any of the Certificates over any other of the Certificates;

PROVIDED, HOWEVER, that if the principal of the Certificates and the premium, if any, and the interest due or to become due thereon, shall be paid at the times and in the manner

mentioned in the Certificates according to the true intent and meaning thereof, and if there are paid to the Trustee all sums of money due or to become due to the Trustee in accordance with the terms and provisions hereof, then upon such final payment this Indenture and the rights hereby granted shall cease, determine and be void; otherwise this Indenture to be and remain in full force and effect.

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

ARTICLE I

DEFINITIONS AND CONSTRUCTION

Section 1.01. Definitions. All words and phrases defined in Article I of the Lease shall have the same meaning in this Indenture. In addition, the following terms, except where the context indicates otherwise, shall have the respective meanings set forth below.

“Additional Certificates” means the Additional Certificates executed and delivered pursuant to Section 2.11 hereof.

“Approval of Bond Counsel” means an opinion of Bond Counsel to the effect that the matter proposed will not adversely affect the exclusion from gross income, for federal income tax purposes, of interest on the Certificates.

“Bond Counsel” means Kutak Rock LLP, or any other attorney or firm of attorneys of nationally recognized standing on the subject of municipal bonds and acceptable to the City and the Trustee.

“Business Day” means any day other than a Saturday, Sunday or legal holiday or day on which banking institutions in the city in which the Trustee has its principal operations office are authorized or required by law to close.

“Certificate Fund” means the fund created under Section 3.02 hereof.

“Certificates” means the Certificates of Participation, Series 2017, which have been executed and delivered pursuant to this Indenture.

“Costs of Issuance” means the costs of executing and delivering the Certificates, including any fees and expenses of the Trustee, any fees and expenses of any underwriter, financial advisor or placement agent in connection with the execution and delivery of the Certificates, legal fees and expenses, costs incurred by the City or the Corporation, costs of immediately available funds, costs of publication, printing and engraving, accountants’ fees and recording and filing fees.

“*Costs of Issuance Account*” means the account of the Acquisition Fund created by and designated as such in Section 3.09(a) hereof.

“*Defeasance Securities*” means any one or more of the investments described in subparagraphs (a), (b), (c) or (d) under the definition of Permitted Investments herein if and to the extent that such investments are permitted under the laws of the State for funds of the City.

“*Event of Default*” means those defaults specified in Section 7.01 of this Indenture.

“*Investment Instructions*” means (a) the Investment Instructions delivered to the Trustee upon the original delivery of the Certificates and (b) any subsequent Investment Instructions, amending or superseding such Investment Instructions, accompanied by an opinion of Bond Counsel addressed to the City and the Trustee, substantially to the effect that such amendments or modifications of the original Investment Instructions will not cause the interest paid or to be paid on the Certificates to be or become includible in gross income for purposes of federal or State of Colorado income taxation.

“*Opinion of Counsel*” means an opinion in writing of Counsel.

“*Outstanding*” or “*Certificates Outstanding*” means all Certificates which have been executed and delivered under this Indenture, except:

- (a) Certificates canceled or which shall have been surrendered to the Trustee for cancellation;
- (b) Certificates in lieu of which other Certificates have been executed and delivered under Section 2.08 or 2.09 of this Indenture;
- (c) Certificates which shall have been redeemed as provided in Article IV of this Indenture (including Certificates redeemed on a partial payment as provided in Section 4.02 of this Indenture); and
- (d) Certificates for the payment or redemption of which provision has been made in accordance with Article VI hereof.

“*Permitted Investments*” means any one or more of the following if and to the extent that such investments are permitted under the laws of the State for funds of the City:

- (a) cash (fully insured by the Federal Deposit Insurance Corporation),
- (b) direct obligations (other than an obligation subject to variation in principal repayment) of the United States of America (“U.S. Treasury Obligations”),
- (c) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by the United States of America, or
- (d) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by any agency or instrumentality of the United States of America when such obligations are backed by the full faith and credit of the United States of America.

“*Person*” means natural persons, firms, associations, corporations and public bodies.

“*Regular Record Date*” means the fifteenth day of the month (whether or not a Business Day) immediately preceding a month during which an Interest Payment Date for the Certificates occurs (other than a Special Record Date).

“*Special Record Date*” means a special date fixed to determine the names and addresses of registered owners of the Certificates for purposes of paying interest on a special interest payment date for the payment of defaulted interest, all as further provided in Section 2.02 hereof.

“*Tax Compliance Certificate*” means the certificate signed by the City relating to the application of the requirements of Sections 103 and 141-150 of the Code to the Certificates.

“*Trust Estate*” means the property mortgaged, pledged and assigned to the Trustee pursuant to the granting clauses hereof.

Section 1.02. Construction. In this Indenture, unless the context otherwise requires:

(a) Articles and Sections referred to by number shall mean the corresponding Articles and Sections of this Indenture.

(b) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms refer to this Indenture, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of execution and delivery of this Indenture.

(c) Words of the masculine gender shall mean and include correlative words of the female and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa.

(d) Words importing the redemption of a Certificate or the calling of a Certificate for redemption do not include or connote the payment of such Certificate at its stated maturity or the purchase of such Certificate.

(e) References in this Indenture to particular sections of the Code or any other legislation shall be deemed to refer also to any successor sections thereto or other redesignations for codification purposes and shall be deemed to include any related Regulations.

(f) The terms “receipt,” “received,” “recovery,” “recovered” and any similar terms, when used in this Indenture with respect to moneys or payments due, shall be deemed to refer to the passage of physical possession and control of such moneys and payments to the Trustee.

ARTICLE II

AUTHORIZATION, TERMS, EXECUTION AND DELIVERY OF CERTIFICATES

Section 2.01. Authorized Amount of Certificates. No Certificates may be executed and delivered hereunder except in accordance with this Article II. The aggregate principal

amount of Certificates that may be executed and delivered shall be \$ _____, except as provided in Section 2.11 of this Indenture.

Section 2.02. Terms of the Certificates.

(a) In order to provide funds for the Project, the Certificates shall be executed and delivered in substantially the form attached hereto as Exhibit A and shall constitute assignments of proportionate undivided interests in the right to receive the Base Rentals and shall be additionally payable from certain other Revenues under the Lease.

The Certificates shall be executed and delivered solely as fully registered Certificates without coupons in the denomination of \$5,000 and any integral multiple thereof. The Certificates shall be known as Series 2017 and shall be lettered "R-" and shall be numbered separately from 1 upward.

The Certificates shall be dated as of the date of their execution by the Trustee. The Certificates shall bear interest from April __, 2017, if executed prior to December 1, 2017, or if executed on any later date, the Certificates shall bear interest from the June 1 or December 1 next preceding their date of execution, or if executed on a June 1 or December 1, the Certificates shall bear interest from such date; provided, however, that if interest on the Certificates shall be in default, Certificates issued in exchange for Certificates surrendered for transfer or exchange shall bear interest from the date to which interest has been paid in full on the Certificates so surrendered. Interest on the Certificates shall be payable on the first day of each June and December, commencing December 1, 2017, until such Certificates are paid pursuant to the provisions of this Indenture. Interest on the Certificates shall be calculated on the basis of a year of 360 days, consisting of twelve 30-day months.

The Certificates shall mature on December 1, 2032, and shall bear interest at the rate of ____% per annum until the principal amount thereof is paid.

(b) The final payment of the principal of and premium, if any, on the Certificates shall be payable to the registered owners thereof, as shown on the registration books kept by the Trustee, upon presentation and surrender thereof at the principal operations office of the Trustee, or its successor. Payment of any sinking fund redemption payment or interest on any Certificate shall be made to the registered owner thereof by check or draft mailed by the Trustee, on such sinking fund redemption date or each Interest Payment Date, as applicable, (or, if such sinking fund redemption date or Interest Payment Date is not a Business Day, on the next succeeding Business Day), to the registered owner thereof at his or her address as shown on the registration books kept by the Trustee at the close of business on the Regular Record Date for such Interest Payment Date; but any such interest not so timely paid or duly provided for shall cease to be payable to the person who is the registered owner thereof at the close of business on the Regular Record Date and shall be payable to the person who is the registered owner thereof at the close of business on a Special Record Date for the payment of any such defaulted interest. Such Special Record Date shall be fixed by the Trustee whenever moneys become available for payment of the defaulted interest, and notice of the Special

Record Date shall be given to the registered owners of the Certificates not less than ten days prior thereto by first-class mail to each such registered owner as shown on the registration books on a date selected by the Trustee, stating the date of the Special Record Date and the date fixed for the payment of such defaulted interest. The Trustee may make payments of the amount of any sinking fund redemption or of interest on any Certificate by such alternative means as may be mutually agreed to between the registered owner of such Certificate and the Trustee including payment through the Federal Reserve System by wire transfer in same day funds with any cost or expense to be paid by the registered owner. All such payments shall be made in lawful money of the United States of America without deduction for the services of the Trustee.

(c) The Certificates initially shall be delivered only in physical form registered in the name of the registered owner of the Certificates, and delivered to the registered owner.

Section 2.03. Limited Obligation. Each Certificate shall evidence the assignment of a proportionate undivided interest in the right to receive Base Rentals and certain other Revenues under the Lease. The Certificates are payable solely from Revenues under the Lease as, when and if the same are received by the Trustee. The Revenues are to be held in trust by the Trustee for such purposes in the manner and to the extent provided herein.

NEITHER THE LEASE NOR THE CERTIFICATES CONSTITUTES A GENERAL OBLIGATION OR A MULTIPLE-FISCAL YEAR DIRECT OR INDIRECT DEBT OR OTHER FINANCIAL OBLIGATION WHATSOEVER OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION. NEITHER THE LEASE, THE INDENTURE NOR THE CERTIFICATES HAVE DIRECTLY OR INDIRECTLY OBLIGATED THE CITY TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED FOR ANY FISCAL YEAR IN WHICH THE LEASE SHALL BE IN EFFECT. EXCEPT TO THE EXTENT PAYABLE FROM THE PROCEEDS OF THE SALE OF THE CERTIFICATES AND INCOME FROM THE INVESTMENT THEREOF, FROM NET PROCEEDS OF CERTAIN INSURANCE POLICIES AND CONDEMNATION AWARDS, FROM NET PROCEEDS FROM THE SUBLEASING OR LIQUIDATION OF THE TRUSTEE'S INTEREST IN THE LEASED PROPERTY OR FROM OTHER AMOUNTS MADE AVAILABLE UNDER THE INDENTURE, THE CERTIFICATES WILL BE PAYABLE DURING THE LEASE TERM SOLELY FROM BASE RENTALS TO BE PAID BY THE CITY UNDER THE LEASE. ALL PAYMENT OBLIGATIONS OF THE CITY UNDER THE LEASE, INCLUDING, WITHOUT LIMITATION, THE OBLIGATION OF THE CITY TO PAY BASE RENTALS, ARE FROM YEAR TO YEAR ONLY AND DO NOT CONSTITUTE A MANDATORY PAYMENT OBLIGATION OF THE CITY IN ANY FISCAL YEAR BEYOND A FISCAL YEAR IN WHICH THE LEASE SHALL BE IN EFFECT. THE LEASE IS SUBJECT TO ANNUAL RENEWAL AT THE OPTION OF THE CITY AND WILL BE TERMINATED UPON THE OCCURRENCE OF AN EVENT OF NONAPPROPRIATION OR EVENT OF DEFAULT. IN SUCH EVENT, ALL PAYMENTS FROM THE CITY UNDER THE LEASE WILL TERMINATE, AND THE CERTIFICATES AND THE INTEREST THEREON WILL BE PAYABLE FROM CERTAIN MONEYS, IF ANY, HELD BY THE TRUSTEE UNDER THE INDENTURE, AND ANY MONEYS MADE AVAILABLE BY ACTION OF THE TRUSTEE REGARDING THE LEASED PROPERTY.

THE CORPORATION HAS NO OBLIGATION TO MAKE ANY PAYMENTS ON THE CERTIFICATES.

Section 2.04. Execution of the Certificates. Each Certificate shall be executed by the manual or facsimile signature of an Authorized Officer of the Trustee. In case any official of the Trustee whose signature shall appear on the Certificates shall cease to be such official before delivery of the Certificates, such signature shall nevertheless be valid and sufficient for all purposes, the same as if he or she had remained in office until delivery. No Certificate shall be valid or obligatory for any purpose or entitled to any security or benefit hereunder unless and until executed in the manner prescribed by this Section 2.04, and such execution of any Certificate shall be conclusive evidence that such Certificate has been properly executed and delivered hereunder.

Section 2.05. [Reserved].

Section 2.06. Form of Certificates. The Certificates shall be substantially in the form set forth in Exhibit A to this Indenture, with such appropriate variations, omissions and insertions as permitted or required hereby.

Section 2.07. Delivery of the Certificates. Upon the execution and delivery of this Indenture, the Trustee shall execute and deliver the Certificates in the aggregate principal amount of \$_____ to the registered owner, as hereinafter in this Section 2.07 provided.

(a) Prior to the delivery by the Trustee of any of the Certificates, there shall be filed with the Trustee (i) originally executed counterparts of the Site Lease, the Lease, and this Indenture; (ii) an executed copy of the ordinance adopted by the City Council approving the Site Lease and the Lease; (iii) a copy of a resolution adopted by the Board of Directors of the Corporation authorizing the execution and delivery by the Corporation of the Site Lease, the Lease, and this Indenture; and (iv) a commitment for the title insurance policies required by Section 8.03 of the Lease.

(b) Thereupon, the Trustee shall deliver the Certificates to the registered owner, upon payment to the Trustee of the sum of \$_____, constituting the proceeds of the Certificates, without accrued interest, on the Certificates to the date of delivery.

(c) The proceeds of the Certificates shall be applied for the following purposes:

(i) an amount equal to \$_____, representing the costs of executing and delivering the Certificates, shall be deposited into the Costs of Issuance Account of the Acquisition Fund established under this Indenture; and

(ii) an amount equal to \$_____ shall be deposited into the Project Account of the Acquisition Fund established under this Indenture.

Section 2.08. Mutilated, Lost, Stolen or Destroyed Certificates. In the event that any Certificate is mutilated, lost, stolen or destroyed, a new Certificate may be executed and delivered by the Trustee, of like date, series, maturity and denomination as that mutilated, lost,

stolen or destroyed; provided that the Trustee shall have received indemnity from the registered owner of the Certificate satisfactory to it and provided further, in case of any mutilated Certificate, that such mutilated Certificate shall first be surrendered at the principal operations office of the Trustee or its successor, and in the case of any lost, stolen or destroyed Certificate, that there shall be first furnished to the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee. In the event that any such Certificate shall have matured, instead of executing and delivering a duplicate Certificate, the Trustee may pay the same without surrender thereof upon receiving satisfactory indemnity to it. The Trustee may charge the registered owner of the Certificate with its reasonable fees and expenses for this service.

Section 2.09. Registration of Certificates; Persons Treated as Registered Owners; Transfer and Exchange of Certificates. Books for the registration and for the transfer of Certificates shall be kept by the Trustee, which is hereby appointed the registrar. Upon surrender for transfer of a Certificate at the principal operations office of the Trustee or its successor, the Trustee shall execute and deliver in the name of the transferee or transferees a new fully registered Certificate or Certificates of a like aggregate principal amount and of the same series and maturity. The Certificates shall only be transferred upon receipt by the Trustee from each proposed transferee of an Investment Letter substantially in the form received from the original registered owner of the Certificates.

Certificates may be exchanged at the principal operations office of the Trustee for an equal aggregate principal amount of Certificates of the same series and maturity and of other authorized denominations. The Trustee shall execute and deliver Certificates which the registered owner making the exchange is entitled to receive, bearing numbers not contemporaneously Outstanding.

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

The Trustee shall not be required to transfer the Certificates during the period beginning on a Regular Record Date and ending on the next Interest Payment Date of the Certificates nor to transfer or exchange any Certificate after the mailing of notice calling such Certificate for redemption has been given as herein provided, nor during the period of 15 days next preceding the giving of such notice of redemption.

New Certificates delivered upon any transfer or exchange shall evidence the same obligations as the Certificates surrendered, shall be secured by this Indenture and entitled to all of the security and benefits hereof to the same extent as the Certificates surrendered. As to any Certificate, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of the principal, premium, if any, and interest on the Certificate shall be made only to or upon the written order of the registered owner thereof or his or her legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge such Certificate to the extent of the sum or sums paid.

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

Section 2.10. Cancellation of Certificates. Whenever any Outstanding Certificates shall be delivered to the Trustee for cancellation pursuant to this Indenture, upon payment thereof or for or after replacement pursuant to Section 2.08 or 2.09 of this Indenture, such Certificates shall be promptly canceled or otherwise destroyed by the Trustee, and counterparts of a certificate of destruction evidencing such destruction shall be furnished by the Trustee to the City.

Section 2.11. Execution and Delivery of Additional Certificates. So long as the Lease Term shall remain in effect and no Event of Nonappropriation or Event of Default shall have occurred, one or more issues of Additional Certificates (the "Additional Certificates") may be issued upon the terms and conditions provided herein.

Additional Certificates may be executed and delivered to provide funds for any one or more of the following: (i) refunding all or any of the Outstanding Certificates and Additional Certificates; (ii) completing the Project in excess of the amount available therefor in the Project Account of the Acquisition Fund pursuant to Section 3.09 of this Indenture, (iii) at any time or from time to time, making such modifications and improvements in, on or to the Leased Property as the City may deem necessary or desirable; and (iv) paying costs incurred in connection with the execution and delivery of the Additional Certificates. In the case of (ii) or (iii) above, the prior written consent of the registered owner or owners of the Certificates shall be required.

Additional Certificates may be issued only upon there being filed with the Trustee:

(a) Originally executed counterparts of a supplemental Indenture and an amendment to the Lease and, if necessary, an amendment to the Site Lease, adopted in accordance with the requirements of Article IX hereof, including requirements regarding approval of the Certificate Owners, if applicable, expressly providing that, for all the purposes hereof, the Leased Property shall, in the case of (iii) above, include any property, buildings or equipment being financed by the Additional Certificates and further providing for an increase in the Base Rentals required to be paid to the Trustee under Exhibit B to the Lease in such amount as shall be necessary to pay (assuming that no Event of Nonappropriation or Event of Default shall occur), the principal of and interest on the Certificates and any Additional Certificates theretofore executed and delivered and Outstanding as well as the Additional Certificates proposed to be executed and delivered.

(b) A written opinion or opinions of Bond Counsel, mutually acceptable to the City and the Trustee, to the effect that the amendment to the Lease and the execution and delivery of the Additional Certificates have been duly authorized, that the amendment to the Lease is valid and enforceable against the City, that the exclusion from federal income taxation of the interest on the Certificates and any Additional Certificates theretofore executed and delivered with the expectation that the interest thereon will not be includible in federal income taxation will not be adversely affected by the execution

and delivery of the Additional Certificates proposed to be executed and delivered, and that the execution and delivery of the Additional Certificates will not constitute a default under the Lease or this Indenture nor cause any violation of the covenants, agreements or representations in the Lease or this Indenture.

(c) Evidence that the amount of the title insurance policies required by Section 8.03 of the Lease has been increased, if necessary, to reflect the amount of the Certificates and Additional Certificates theretofore executed and delivered plus the Additional Certificates, (or such lesser amount as shall be the maximum insurable value of the Leased Property that is to be insured by such policies).

(d) A written order to the Trustee by the City to deliver the Additional Certificates to the purchaser or purchasers therein identified upon payment to the Trustee of a specified sum plus accrued interest, if any.

Additional Certificates shall, in all cases, bear interest at fixed interest rates and, except for Additional Certificates that are executed and delivered for the purpose of refunding all of the Outstanding Certificates and Additional Certificates and for paying the costs in connection with such refunding, shall mature, including sinking fund redemption dates, if any, on December 1 of each year, shall pay interest on June 1 and December 1 of each year and shall not be subject to redemption earlier than the Certificates. Each of the Additional Certificates executed and delivered pursuant to this Section 2.11 shall evidence an assignment of a proportionate interest in rights to receive Revenues under the Lease, as amended, proportionately and ratably secured with the Certificates originally executed and delivered that have not been refunded and all other issues of Additional Certificates, if any, executed and delivered pursuant to this Section 2.11 that have not been refunded, without preference, priority or distinction of any Outstanding Certificates or Additional Certificates over any other.

ARTICLE III

REVENUES AND FUNDS

Section 3.01. Source of Payment of Certificates. The Certificates shall be payable solely from Revenues received by the Trustee and do not constitute a general obligation indebtedness or a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of any constitutional or statutory debt limitation. Revenues, when, as and if received by the Trustee, shall be held hereunder for payment of the principal of, premium, if any, and interest on the Certificates as provided in this Indenture.

Section 3.02. Creation of the Certificate Fund. A special fund is hereby created and established with the Trustee, to be designated the "Certificate of Participation Fund" (the "Certificate Fund"), which shall be used to pay the principal of, premium, if any, and interest on the Certificates. Within the Certificate Fund there are hereby created and ordered established an Interest Account and a Principal Account, which shall be used as set forth in Section 3.05 of this Indenture.

Section 3.03. Payments Into the Interest Account of the Certificate Fund. There shall be deposited into the Interest Account of the Certificate Fund (a) all accrued interest received at the time of the execution and delivery of the Certificates; (b) the amount constituting capitalized interest on the Certificates; (c) that portion of each payment of Base Rentals made by the City which is designated and paid as interest in the amounts determined in accordance with Section 2.02 hereof and paid at the times specified in Exhibit B to the Lease; and (d) all other moneys received by the Trustee under this Indenture to be used for the purpose of paying interest on the Certificates.

Section 3.04. Payments Into the Principal Account of the Certificate Fund. There shall be deposited into the Principal Account of the Certificate Fund (a) that portion of each payment of Base Rentals made by the City which is designated and paid as principal under Exhibit B to the Lease; and (b) all other moneys received by the Trustee under this Indenture to be used for the purpose of paying the principal of the Certificates.

Section 3.05. Use of Moneys in the Certificate Fund. Moneys in the Interest Account of the Certificate Fund shall be used solely for the payment of the interest on the Certificates. Moneys in the Principal Account of the Certificate Fund shall be used solely for the payment of the principal of the Certificates. In the event the Certificates are to be redeemed in whole, any moneys remaining in the Certificate Fund shall be applied to such redemption along with other moneys held by the Trustee for such purpose.

Amounts deposited into the Certificate Fund shall be depleted at least once a year except for an amount not to exceed the greater of one year's earnings on the Certificate Fund or 1/12th of the annual scheduled Base Rentals on the Certificates.

Section 3.06. Custody of the Funds. All Funds created under this Indenture shall be in the custody of the Trustee, subject to the provisions of this Indenture.

Section 3.07. Reserved.

Section 3.08. Reserved.

Section 3.09. Acquisition Fund.

(a) **Creation of the Acquisition Fund.** A special fund is hereby created and established with the Trustee to be designated the Acquisition Fund (the "Acquisition Fund"), and, within such fund, the Costs of Issuance Account and the Project Account. The Trustee may establish such additional accounts within the Acquisition Fund or such subaccounts within any of the existing or any future accounts of the Acquisition Fund as may be necessary or desirable.

(b) **Deposits into the Acquisition Fund.** There shall be deposited into the Costs of Issuance Account proceeds of the sale of Certificates or other legally available moneys in the amount of \$_____, and there shall be deposited into the Project Account proceeds of the sale of the Certificates in the amount of \$_____, in connection with the execution and delivery of the Certificates.

(c) **Use of Moneys in the Costs of Issuance Account.** Moneys held in the Costs of Issuance Account shall be used to pay Costs of Issuance as directed by the City. The Trustee shall transfer to the Project Account any amounts held in the Costs of Issuance Account that are not required to pay Costs of Issuance.

(d) **Use of Moneys in the Project Account.** Moneys held in the Project Account shall be disbursed to the City (i) upon the execution and delivery by the City of the Site Lease and the Lease for the lump-sum payment of the rent due to the City by the Trustee for a leasehold interest in the Leased Property pursuant to the terms of the Site Lease and shall be used by the City to pay for the Project, and (ii) at any later date prior to the Completion Date, upon direction of the City, in the event that moneys are transferred to the Project Account pursuant to subparagraph (c) of this Section; provided, however, that no such disbursement shall be made unless and until a title insurance policy in respect of the Leased Property, or a binding commitment therefor, is provided to the Trustee as set forth in Section 8.03 of the Lease. If an Event of Default or Event of Nonappropriation shall have occurred, the Trustee shall transfer any moneys in the Project Account to the Principal Account of the Certificate Fund. After the Completion Date, any moneys remaining in the Project Account and any earnings thereon, minus any amount estimated by an Authorized Officer of the City to be necessary for the Project, shall be transferred by the Trustee (i) to the Principal Account of the Certificate Fund or (ii) with the consent of the City to make improvements or additions to the Leased Property.

Section 3.10. [Reserved].

Section 3.11. [Reserved].

Section 3.12. Nonpresentment of Certificates. In the event any Certificate shall not be presented for payment when due, if funds sufficient to pay such Certificate shall have been made available to the Trustee for the benefit of the registered owner thereof, it shall be the duty of the Trustee to hold such funds for a period of five years, without liability for interest thereon, for the benefit of the registered owner of such Certificate, who shall be restricted exclusively to such funds for any claim of whatever nature on his or her part under the Lease or this Indenture or on or with respect to such Certificate.

Funds (including proceeds of Defeasance Securities as provided in Article VI hereof) so deposited with the Trustee which remain unclaimed five years after the date payment thereof becomes due, whether at maturity or upon redemption, shall, if, to the knowledge of the Trustee, there has been no Event of Nonappropriation or Event of Default, be paid to the City, and the registered owners of the Certificates for which the deposit was made shall thereafter be limited to a claim against the City.

Section 3.13. Reports to City. Not less than once each calendar year, the Trustee shall provide the City with an accounting for all receipts to and disbursements from the Funds or Accounts created hereunder.

Section 3.14. Repayment to the City From the Trustee. Upon a discharge and a defeasance of this Indenture pursuant to Article VI of this Indenture, any amounts remaining in the Certificate Fund, the Acquisition Fund, or otherwise held by the Trustee pursuant thereto and not needed for the payment of the Certificates or the fees and expenses of the Trustee shall be paid to the City as a return of an overpayment of Base Rentals.

Section 3.15. Creation of the Rebate Fund. A special fund is hereby created and established with the Trustee to be designated the “Rebate Fund” (the “Rebate Fund”). The Rebate Fund shall be expended in accordance with the provisions hereof and the Investment Instructions. The City shall make or cause to be made all requisite rebate calculations and remit the resulting rebate amount to the Trustee for further deposit into the Rebate Fund. The Trustee shall make deposits to and disbursements from the Rebate Fund, on behalf of and at the direction of the City, in accordance with the Investment Instructions and the Tax Compliance Certificate. The Trustee shall invest the Rebate Fund pursuant to said Investment Instructions and shall deposit income from said investments immediately upon receipt thereof in the Rebate Fund, all as set forth in the Investment Instructions. The Investment Instructions may be superseded or amended by new Investment Instructions drafted by, and accompanied by an opinion of, Bond Counsel addressed to the City and the Trustee to the effect that the use of said new Investment Instructions will not cause the interest on the Certificates to be includible in the gross income of the recipients thereof for purposes of federal income taxation. The City may employ, at its expense, a designated agent to calculate the amount of deposits to and disbursements from the Rebate Fund based upon information furnished by the City and the Trustee. The Trustee may rely conclusively upon and shall be fully protected from all liability in relying upon the City’s or its agent’s determinations, calculations, instructions and certifications required by this Section and the Trustee shall have no responsibility to independently make any calculations or determination or to review the City’s or its agent’s determinations, calculations, instructions and certifications required by this Section.

Section 3.16. Rebate Deposits. The City shall remit to the Trustee the rebate deposit described in the Investment Instructions. If a withdrawal from the Rebate Fund is permitted as a result of the computation described in the Investment Instructions, the amount withdrawn shall be deposited in the Certificate Fund. Record of the determinations required by this Section 3.16 and the Investment Instructions must be retained by the City and the Trustee until six years after the final retirement of the Certificates.

Section 3.17. Rebate Disbursements. Not later than 60 days after April __, 2022 and every five years thereafter, the Trustee, on behalf of and at the direction of the City, shall pay to the United States of America 90% of the amount required to be on deposit in the Rebate Fund as of such payment date. No later than 60 days after the final retirement of the Certificates, the Trustee, on behalf of and at the direction of the City, shall pay to the United States of America 100% of the amount required to be on deposit in the Rebate Fund which shall remain in effect for such period of time as is necessary for such final payment to be made. Each payment required to be paid to the United States of America pursuant to this Section 3.17 shall be filed with the Internal Revenue Service Center, Ogden, Utah 84201. Each payment shall be accompanied by a copy of the Internal Revenue Form 8038-T and a statement summarizing the determination of the amount to be paid to the United States of America. The City reserves the right, in all events, to

pursue such remedies and procedures as are available to it in order to assert any claim of overpayment of any rebated amounts.

ARTICLE IV

REDEMPTION OF CERTIFICATES

Section 4.01. Redemption Dates and Prices. The Certificates are subject to redemption as set forth below:

(a) The Certificates shall be callable for redemption prior to maturity, at the option of the City, in whole or in part, and if in part by lot in such manner as the Trustee shall determine, on December 1, 20__ and on any date thereafter at the redemption price (expressed as a percentage of principal amount) of 100%, plus accrued interest to the redemption date.

(b) The Certificates shall be called for redemption, in whole, at a redemption price (expressed as a percentage of principal amount) of 100%, plus accrued interest to the redemption date, on any Interest Payment Date in the event of the exercise by the City of its option to purchase the Leased Property, as provided in the Lease, upon payment of the then applicable Purchase Option Price from moneys of the City not borrowed by the City or derived from any installment purchase or lease purchase financing by the City.

(c) The Certificates shall also be called for redemption as set forth in Section 4.02 of this Indenture.

(d) The Certificates shall also be called for redemption as set forth in Section 4.03 of this Indenture.

Section 4.02. Redemption Upon Termination of the Lease Term by Reason of Certain Events. The Certificates are callable for redemption, in whole, at any time upon the occurrence of an Event of Nonappropriation or an Event of Default, by the Trustee, in its discretion or at the direction of the registered owners of a majority in aggregate principal amount of the Certificates Outstanding. If the Certificates are to be redeemed by reason of any such event, the Certificate Owners shall have no right to payment from the City, the Corporation or the Trustee, in redemption of their Certificates or otherwise, except as expressly set forth in this Section 4.02.

If the Lease is terminated by reason of the occurrence of an Event of Nonappropriation or an Event of Default, the Trustee shall immediately notify the registered owners of the Certificates of such termination and, if moneys available under this Indenture are insufficient to provide for the payment in full of all Outstanding Certificates and the interest thereon when due, shall notify the registered owners of the Certificates of such termination and, if moneys available under this Indenture are insufficient to provide for the payment in full of all Outstanding Certificates and the interest thereon when due, may, in its discretion or shall, at the direction of the registered owners of a majority in aggregate principal amount of the Certificates then Outstanding, notify the registered owners of the Certificates of the related redemption. If moneys on hand, including any Net Proceeds and other moneys then available under this

Indenture, are insufficient to redeem all Outstanding Certificates at a redemption price (expressed as a percentage of principal amount) of 100% plus accrued interest to the redemption date, the Trustee may, or at the request of the registered owners of a majority in aggregate principal amount of the Certificates then Outstanding, and upon indemnification as to costs and expenses as provided in this Indenture, shall, without any further demand or notice, exercise all or any combination of Lease Remedies as provided in the Lease, and the Outstanding Certificates shall be redeemed by the Trustee from the Net Proceeds resulting from the exercise of such Lease Remedies and all other moneys, if any, then on hand and being held by the Trustee for the registered owners of the Outstanding Certificates. If the Net Proceeds resulting from the exercise of such Lease Remedies and other moneys, including moneys then available under this Indenture, shall be insufficient to redeem the Outstanding Certificates at a redemption price (expressed as a percentage of principal amount) of 100% plus accrued interest to the redemption date, then such Net Proceeds resulting from the exercise of such Lease Remedies and other moneys, including moneys then available under the Indenture, shall be allocated proportionately among the Certificates, according to the principal amount thereof Outstanding. In the event that such Net Proceeds resulting from the exercise of such Lease Remedies and other moneys are in excess of the amount required to redeem the Outstanding Certificates at a redemption price (expressed as a percentage of principal amount) of 100% plus accrued interest to the redemption date, then such excess moneys shall be paid to the City. Prior to any distribution of the Net Proceeds resulting from the exercise of any of such remedies in redemption of the Certificates pursuant to this Section 4.02, the Trustee shall be entitled to payment of its reasonable and customary fees for all services rendered in connection with such disposition, as well as reimbursement for all reasonable costs and expenses, including attorneys' fees, incurred thereby, from proceeds resulting from the exercise of such Lease Remedies and other moneys. If the Outstanding Certificates are to be redeemed for an amount less than the aggregate principal amount thereof plus interest accrued to the redemption date, such partial payment shall be deemed to constitute a redemption in full of the Outstanding Certificates, and upon such a partial payment no registered owner of such Outstanding Certificates shall have any further claim for payment against the Corporation, the Trustee or the City.

Section 4.03. Mandatory Sinking Fund Redemption. The Certificates are subject to mandatory sinking fund redemption, prior to maturity, in part, by lot in such manner as the Trustee shall determine, at a price (expressed as a percentage of principal amount) of 100%, plus accrued interest to the date of redemption, on the following dates and in the following amounts:

Sinking Fund Redemption Date (December 1)	Principal Amount
2018	\$
2019	
2020	
2021	
2022	
2023	
2024	
2025	
2026	
2027	
2028	
2029	
2030	
2031	
2032*	

*Final Maturity

On or before the thirtieth day prior to each such sinking fund redemption date, the Trustee shall proceed to select by lot the Certificates for redemption from such sinking fund on the next December 1, and on the thirtieth day prior to each sinking fund redemption date give notice of such call. At its option, to be exercised on or before the sixtieth day next preceding any such sinking fund redemption date, the City may (a) deliver to the Trustee for cancellation Certificates subject to mandatory sinking fund redemption as herein provided in any aggregate principal amount desired, and (b) receive a credit in respect of its sinking fund redemption obligation for any such Certificates which prior to said date have been redeemed (otherwise than through the operation of the sinking fund) and canceled by the Trustee and not theretofore applied as a credit against any sinking fund redemption obligation. Each such Certificate so delivered or previously redeemed shall be credited by the Trustee at the principal amount thereof on the obligation of the City on such sinking fund redemption date, and, to the extent of any excess, to the next annual sinking fund redemption date or dates, and the principal amount of Certificates to be redeemed by operation of such sinking fund on such date or dates shall be accordingly reduced.

In the event that the Certificates are called for optional redemption in part, the principal amount so redeemed shall be immediately credited against the obligation to call the Certificates for mandatory sinking fund redemption in the same proportion (rounding to the nearest \$5,000) as the principal amount of Certificates that are required to be called for mandatory sinking fund redemption on each mandatory sinking fund redemption date bears to the principal amount of Certificates that are Outstanding prior to such optional redemption.

Section 4.04. Notice of Redemption. Notice of the call for any redemption, identifying the Certificates or portions thereof to be redeemed and specifying the terms of such redemption,

shall be given by the Trustee, upon being satisfactorily indemnified as to expenses, by transmitting via electronic mail or mailing a copy of the redemption notice by first-class mail at least 30 days and not more than 60 days prior to the date fixed for redemption, to the registered owner of each Certificate to be redeemed at the address shown on the registration books; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings for the redemption of Certificates as to which no such failure has occurred.

Any notice mailed as provided in this Section shall be conclusively presumed to have been duly given, whether or not the registered owner receives the notice.

If at the time of transmitting or mailing of notice of redemption there shall not have been deposited with the Trustee moneys sufficient to redeem all the Certificates called for redemption, which moneys are or will be available for redemption of Certificates, such notice will state that it is conditional upon the deposit of the redemption moneys with the Trustee not later than the opening of business on the redemption date, and such notice shall be of no effect unless such moneys are so deposited.

Section 4.05. Redemption Payments. On or prior to the date fixed for redemption, funds shall be deposited with the Trustee to pay, and the Trustee is hereby authorized and directed to apply such funds to the payment of, the Certificates called for redemption, together with accrued interest thereon to the redemption date, and any required premium. Upon the giving of notice and the deposit of such funds as may be available for redemption pursuant to this Indenture (which, in the case of redemption pursuant to Section 4.02 above, may be less than the full principal amount of the Outstanding Certificates and accrued interest thereon to the redemption date), interest on the Certificates or portions thereof thus called for redemption shall no longer accrue after the date fixed for redemption.

The Trustee shall pay to the registered owners of Certificates so redeemed, the amounts due on their respective Certificates, at the principal operations office of the Trustee or its successor, upon presentation and surrender of the Certificates. Redemption payments shall be accompanied by a written designation prepared by the Trustee stating the portion of the payment representing the unpaid principal amount of the Certificate immediately prior to the payment, the portion of the payment representing interest, and the remaining portion, if any, which shall be designated and paid as a redemption premium.

Section 4.06. Cancellation. All Certificates which have been redeemed shall not be reissued but shall be canceled or otherwise destroyed by the Trustee in accordance with Section 2.10 hereof.

Section 4.07. Delivery of New Certificates Upon Partial Redemption of Certificates. Upon surrender and cancellation of a Certificate for redemption in part only, a new Certificate or Certificates of the same series and maturity and of authorized denomination in an aggregate principal amount equal to the unredeemed portion thereof, shall be executed on behalf of and delivered by the Trustee. The expenses of such execution, delivery and exchange shall be paid by the City as Additional Rentals under the Lease.

ARTICLE V

INVESTMENTS

Section 5.01. Investment of Moneys. All moneys held as part of the Certificate Fund, the Acquisition Fund or any other Fund or Account created hereunder or under the Lease shall be deposited or invested and reinvested by the Trustee, at the written direction of the City, in Permitted Investments; provided, however, that the Trustee shall make no deposits or investments of any Fund or Account created hereunder which shall interfere with or prevent withdrawals for payment of the Project or for payment of the Certificates at or before maturity or of interest thereon as required hereunder. All investments and reinvestments of any amounts pursuant to this Indenture or the Lease shall be made in accordance with the provisions of this Indenture; and all investments and reinvestments of any amounts deemed to be, for purposes of the Code, proceeds of the Certificates, shall be in accordance with the requirements of the Tax Compliance Certificate executed by the City in connection with the execution and delivery of the Certificates, unless the Trustee shall receive an opinion of Bond Counsel acceptable to the City and the Trustee to the effect that an alternate investment or reinvestment shall not adversely affect the exclusion from federal income taxation of interest on the Certificates, in which case such investment or reinvestment may be made in accordance with such opinion. The Trustee shall be entitled to assume that any investment, which at the time of purchase is a Permitted Investment, remains a Permitted Investment thereafter absent a receipt of written notice or information to the contrary. Any and all such deposits or investments shall be held by or under the control of the Trustee.

The Trustee may make any and all such deposits or investments through its own investment department or the investment department of any bank or trust company under common control with the Trustee. The Trustee shall have no liability or responsibility for any loss or for failure to maximize earnings resulting from any investment made in accordance with the provisions of this Section 5.01. The Trustee is specifically authorized to enter into agreements with itself or any other person, which agreements guarantee the repurchase of specific securities enumerated in the definition of Permitted Investments contained in Article I of this Indenture at specific prices. Income from deposits or investments of moneys held in the Rebate Fund shall be deposited as provided in Section 3.15 of this Indenture; otherwise income from deposits or investments of moneys held in the Funds and Accounts under this Indenture shall be deposited as follows: income derived from the investment of moneys held in the Acquisition Fund shall be deposited as provided in Section 3.09 hereof; otherwise, deposits or investments of moneys held in the Funds and Accounts under this Indenture shall at all times be a part of the Fund or Account from which the moneys used to acquire such deposits or investments shall have come and the income therefrom shall be deposited to, and all losses thereon shall be charged against, such Fund or Account. The Trustee shall sell and reduce to cash a sufficient amount of such deposits or investments whenever the cash balance in any Fund or Account created hereunder is insufficient to satisfy the purposes of such Fund or Account.

The City acknowledges that regulations of the Comptroller of the Currency grant the City the right to receive brokerage confirmations of the security transactions as they occur. The City specifically waives such notification to the extent permitted by law and will receive periodic cash transaction statements from the Trustee which will detail all investment transactions.

Section 5.02. Arbitrage Covenant. In reliance on the written direction of investments by the City as provided in Section 5.01 of this Indenture, and in reliance on the covenant of the City in Section 11.05 of the Lease, the Trustee covenants to and for the benefit of the Certificate Owners that so long as any of the Certificates remain Outstanding, moneys, constituting proceeds of the Certificates for purposes of the Code, in any Fund or Account held by the Trustee under this Indenture, whether or not such moneys were derived from the proceeds of the sale of the Certificates or from any other source, will not be knowingly deposited or invested in a manner which will cause the Certificates to be classified as “arbitrage bonds” within the meaning of Section 148 of the Code.

ARTICLE VI

DISCHARGE OF INDENTURE

If, when the Certificates secured hereby shall become due and payable in accordance with their terms or otherwise as provided in this Indenture, the whole amount of the principal of, premium, if any, and interest due and payable upon all of the Certificates shall be paid (or, in the case of redemption of the Certificates pursuant to Section 4.01(c) of this Indenture, if full or partial payment of the Certificates and interest thereon is made as provided in Section 4.02 of this Indenture), or provision shall have been made for the payment of the same, together with all other sums payable hereunder, then the right, title and interest of the Trustee in and to the Trust Estate and all covenants, agreements and other obligations of the Corporation and the City to the Trustee and the Certificate Owners shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, the Trustee shall transfer and convey to the City all remaining property assigned, pledged or mortgaged to the Trustee by the Corporation pursuant to this Indenture, and the Corporation and the Trustee shall execute such documents as may be reasonably required by the City and shall turn over to the City any surplus in any Fund and Account (except the Rebate Fund) created under this Indenture.

An Outstanding Certificate shall, prior to the maturity or redemption date thereof, be deemed to have been paid within the meaning and with the effect expressed in this Article VI if (a) in case said Certificate is to be redeemed on any day prior to its maturity, the City shall have given to the Trustee in form satisfactory to the Trustee irrevocable written instructions to give, on a date in accordance with the provisions of Section 4.04 hereof, notice of redemption of such Certificate on said redemption date, such notice to be given in accordance with the provisions of Section 4.04 hereof, (b) there shall have been deposited with the Trustee either cash in an amount which shall be sufficient, or Defeasance Securities which shall not contain provisions permitting the redemption thereof at the option of the issuer, the principal of and the interest on which when due, and without any reinvestment thereof, will provide moneys which, together with the cash, if any, deposited with or held by the Trustee at the same time, shall be sufficient to pay when due the principal of, premium, if any, and interest due and to become due on said Certificate on and prior to the redemption date or maturity date thereof, as the case may be, and (c) in the event said Certificate is not by its terms subject to redemption within the next 60 days, the City shall have given the Trustee, in form satisfactory to it, irrevocable written instructions to give, as soon as practicable in the same manner as the notice of redemption is given pursuant to Section 4.04 hereof, a notice to the registered owner of such Certificate that the deposit required by (b) above has been made with the Trustee and that said Certificate is deemed to have been paid in

accordance with this Article and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal of, premium, if any, and interest on said Certificate. Neither the Defeasance Securities nor moneys deposited with the Trustee pursuant to this Article VI or principal or interest payments on any such Defeasance Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of, premium, if any, and interest on said Certificate; provided any cash received from such principal or interest payments on such Defeasance Securities deposited with the Trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in Defeasance Securities of the type described in clause (b) of this paragraph maturing at the times and in amounts sufficient to pay when due the principal of, premium, if any, and interest to become due on said Certificate on or prior to such redemption date or maturity date thereof, as the case may be. At such time as any Certificate shall be deemed paid as aforesaid, such Certificate shall no longer be secured by or entitled to the benefits of this Indenture or the Lease, except for the purpose of exchange and transfer and any payment from such cash or Defeasance Securities deposited with the Trustee.

ARTICLE VII

DEFAULTS AND REMEDIES

Section 7.01. Events of Default. If any of the following events occur it is hereby defined as and shall be deemed an “Event of Default” under this Indenture:

- (a) default in the payment of the principal of or premium, if any, on any Certificate when the same shall become due and payable, whether at the stated maturity thereof or upon redemption;
- (b) default in the payment of any installment of interest on any Certificate when the same shall become due and payable; or
- (c) the occurrence of an Event of Nonappropriation or an Event of Default by the City under the Lease.

Upon the occurrence of an Event of Default hereunder, the Trustee shall immediately give notice of such occurrence to the registered owners of the Certificates, to the placement agent, and the Corporation.

Section 7.02. Remedies on Default. If any Event of Default occurs and is continuing, the Trustee may enforce, for the benefit of the registered owners of the Outstanding Certificates, each and every right granted to it as the assignee or grantee of the Lease, the Site Lease and Security Documents. In exercising such rights and the rights given the Trustee under this Article VII, the Trustee shall take such action as, in the judgment of the Trustee, would best serve the interests of the registered owners of the Outstanding Certificates, including calling the Outstanding Certificates for redemption prior to their maturity in the manner and subject to the provisions of Section 4.01(c) hereof and exercising the Lease Remedies provided in the Lease.

If any Event of Default has occurred and is continuing, the Trustee, in its discretion may, and upon the written request of the registered owners of a majority in aggregate principal amount of all Outstanding Certificates and receipt of indemnity to its satisfaction, shall, in its own name:

(a) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the registered owners of the Outstanding Certificates, including enforcing any rights under the Lease or the Security Documents, and enforce the provisions of this Indenture and any collateral rights hereunder for the benefit of the registered owners of the Outstanding Certificates; or

(b) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the registered owners of the Outstanding Certificates.

No right or remedy is intended to be exclusive of any other rights or remedies, but each and every such right or remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute. However, notwithstanding any other provision of the Lease or this Indenture, any and all remedies against the City under the Lease or this Indenture shall be limited as provided in Section 14.03 of the Lease.

Section 7.03. Majority of Certificate Owners May Control Proceedings. Anything in this Indenture to the contrary notwithstanding, the registered owners of a majority in aggregate principal amount of the Certificates then Outstanding, shall have the right, at any time, to the extent permitted by law, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver, and any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions hereof. The Trustee shall not be required to act on any direction given to it pursuant to this Section until the indemnity described in Section 8.01(m) of this Indenture is furnished to it by such Certificate Owners.

Section 7.04. Rights and Remedies of Certificate Owners. No Certificate Owner shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder, unless (a) a default has occurred of which the Trustee has been notified as provided in Section 8.01(h) hereof, or of which by said Section it is deemed to have notice; (b) such default shall have become an Event of Default as defined in Section 7.01 of this Indenture; (c) the registered owners of not less than a majority in aggregate principal amount of the Certificates then Outstanding shall have made written request to the Trustee and shall have offered reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (d) such registered owners of the Certificates shall have offered to the Trustee indemnity as provided in Section 8.01(m) hereof; and (e) the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name. The foregoing conditions are hereby declared in every case to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended

that no one or more Certificate Owners shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by any action or to enforce any right hereunder except in the manner herein provided and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the registered owners of all Certificates then Outstanding. Nothing contained in this Indenture shall, however, affect or impair the right of any Certificate Owner to enforce the payment of the principal of, premium, if any, and interest on any Certificate at and after the maturity thereof.

Section 7.05. Purchase of Leased Property by Certificate Owners or Trustee; Application of Certificates Toward Purchase Price. Upon the occurrence of an Event of Default under this Indenture, the lien on the Leased Property created and vested in the Trustee hereunder may be foreclosed either by sale at public auction or by proceedings in equity. Upon any such sale, any Certificate Owner or the Trustee may bid for and purchase the Leased Property or any portion thereof and, subject to the terms of the Site Lease, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in their own absolute right without further accountability; and any purchaser at any such sale may, if permitted by law, after allowing for the proportion of the total purchase price required to be paid in cash for the costs and expenses of the sale, compensation and other charges, in paying purchase money, turn in Certificates then Outstanding in lieu of cash, to the amount which shall, upon distribution of the Net Proceeds of such sale, be payable thereon. If the Trustee shall acquire an interest in the Leased Property as a result of any such foreclosure sale, or any proceeding or transaction in lieu of foreclosure, the Trustee shall thereafter lease or sell its interest in the Leased Property; and may take any further lawful action with respect to the Leased Property which it, being advised by Counsel, shall deem to be in the best interest of the Certificate Owners, including but not limited to the enforcement of all rights and remedies set forth in the Lease and this Indenture and the taking of all other courses of action permitted therein or herein. Notwithstanding anything in this Section to the contrary, the Trustee shall not be required to foreclose on the Leased Property or to bid at any foreclosure sale if, in the Trustee's reasonable judgment, such action would subject it to personal liability, expense, or loss, including the cost of investigation, removal, or other remedial action with respect to the environmental condition of the Leased Property; the Trustee shall not be required to take any action with respect to the Leased Property which could cause it to be considered an "owner" or "operator" within the meaning of the CERCLA, as amended, or any other statute dealing with hazardous substances; and the Trustee shall have no authority to manage or operate the Leased Property, except as necessary to exercise remedies upon default.

Section 7.06. Waiver of Appraisalment, Valuation, Stay, Execution and Redemption Laws. In consideration for the Trustee acting as assignee of the Corporation under the Lease, the Corporation agrees, to the extent permitted by law, that in case of the occurrence of an Event of Default, neither the Corporation nor anyone claiming through or under the Corporation shall or will set up, claim or seek to take advantage of any appraisalment, valuation, stay, extension or redemption laws now or hereafter in force in order to prevent or hinder the enforcement or foreclosure of this Indenture, or the sale of the Trust Estate and the final and absolute possession thereof, immediately after such sale, of the purchasers thereof; and the Corporation, for itself and all who may at any time claim through or under the Corporation, hereby waives, to the full extent that it may lawfully do so, the benefit of all such laws, and any and all right to marshalling of the estates comprised in the security intended to be hereby created upon any foreclosure of the lien

hereof and agrees that the Trustee or any court having jurisdiction to foreclose such lien may sell its interest in the Leased Property as an entirety.

Section 7.07. Trustee May Enforce Rights Without Certificates. All rights of action and claims under this Indenture or any of the Certificates Outstanding hereunder may be enforced by the Trustee without the possession of any of the Certificates or the production thereof in any trial or proceedings relative thereto; and any suit or proceeding instituted by the Trustee shall be brought in its name as the Trustee, without the necessity of joining as plaintiffs or defendants any registered owners of the Certificates, and any recovery of judgment shall be for the ratable benefit of the registered owners of the Certificates, subject to the provisions of this Indenture.

Section 7.08. Delay or Omission No Waiver. No delay or omission of the Trustee or any Certificate Owner to exercise any right or power accruing upon any default shall exhaust or impair any such right or power or shall be construed to be a waiver of any such default, or acquiescence therein; and every power and remedy given by this Indenture may be exercised from time to time and as often as may be deemed expedient.

Section 7.09. No Waiver of One Default to Affect Another. No waiver of any default hereunder, whether by the Trustee or the Certificate Owners, shall extend to or affect any subsequent or any other then existing default or shall impair any rights or remedies consequent thereon.

Section 7.10. Discontinuance of Proceedings on Default; Position of Parties Restored. In case the Trustee or the Certificate Owners shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee or the Certificate Owners, then and in every such case the Corporation, the City, the Trustee, and the Certificate Owners shall be restored to their former positions and rights hereunder with respect to the Trust Estate, and all rights, remedies and powers of the Trustee and the Certificate Owners shall continue as if no such proceedings had been taken.

Section 7.11. Waivers of Events of Default. The Trustee may, in its discretion, waive any Event of Default hereunder and its consequences and shall do so upon the written request of the registered owners of a majority in aggregate principal amount of all the Certificates then Outstanding; provided, however, that there shall be no waiver without the consent of the registered owners of 100% of the Certificates then Outstanding if the Event of Default relates to (a) any default in the payment when due of the principal of any Outstanding Certificates at the date of maturity specified therein or (b) any default in the payment when due of the interest on any such Certificates, unless prior to such waiver or rescission, all arrears of interest and all arrears of payments of principal then due, as the case may be (both with interest at the rate borne by the respective Certificates on all such overdue installments), and all expenses of the Trustee in connection with such default shall have been paid or provided for. In case of any such waiver, or in case any proceedings taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely to the Trustee, then and in every such case the Corporation, the City, the Trustee, and the Certificate Owners shall be restored to their

former positions and rights hereunder respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

Section 7.12. Application of Moneys in Event of Default. Unless otherwise provided in the Lease or this Indenture, any moneys received by the Trustee under this Article VII shall be applied in the following order:

- (a) to the payment of the expenses of the Trustee, including Counsel fees, and disbursements of the Trustee, and the payment of its reasonable compensation;
- (b) to the payment of interest then owing on the Certificates, and in case such moneys shall be insufficient to pay the same in full, then to the payment of interest ratably without preference or priority of one Certificate over another or of any installment of interest over any other installment of interest;
- (c) to the payment of principal or redemption price (as the case may be) then owing on the Outstanding Certificates, and in case such moneys shall be insufficient to pay the same in full, then to the payment of principal or redemption price ratably, without preference or priority of one Outstanding Certificate over another; and
- (d) to the payment of costs and expenses of the Corporation, including Counsel fees, incurred in connection with the Event of Default.

The surplus, if any, shall be paid to the City, or to the person lawfully entitled to receive the same as a court of competent jurisdiction may direct.

ARTICLE VIII

CONCERNING THE TRUSTEE

Section 8.01. Duties of the Trustee. The Trustee hereby accepts the trusts imposed upon it by this Indenture and agrees to perform said trusts (including, the assignment and delegation to the Trustee by the Corporation of all duties of the Corporation under the Lease), but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Indenture against the Trustee:

- (a) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured or waived) the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise as a reasonable and prudent person would exercise or use under the circumstances in the conduct of his or her own affairs. Nothing in this Indenture shall be construed to relieve the Trustee from liability for its own negligence or its own willful misconduct, except that the Trustee shall not be liable for any error or judgment made in the exercise of the degree of care and skill referred to elsewhere in this Indenture unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts.

(b) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees but shall not be answerable for the conduct of the same if such attorneys, agents, receivers or employees were selected with reasonable care, and shall be entitled to act upon an Opinion of Counsel concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon an Opinion of Counsel and shall not be responsible for any loss or damage resulting from any action or nonaction taken by or omitted to be taken in good faith in reliance upon such Opinion of Counsel.

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

(d) The Trustee shall not be accountable for the use of any Certificates executed and delivered hereunder. The Trustee may become the registered owner of the Certificates with the same rights which it would have if not the Trustee.

(e) The Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who, at the time of making such request or giving such authority or consent, is the registered owner of any Certificate shall be conclusive and binding upon all future registered owners of the same Certificate and upon any Certificates issued in place thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed on behalf of the Corporation or on behalf of the City by their respective Authorized Officers or such other person as may be designated for such purpose by a certified resolution, as sufficient evidence of the facts therein contained,

and, prior to the occurrence of a default of which the Trustee has been notified as provided in subsection (h) of this Section or of which by said subsection it is deemed to have notice, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but shall in no case be bound to secure the same.

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

(h) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except failure by the City to cause to be made any of the payments to the Trustee required to be made by Article III hereof, unless the Trustee shall be specifically notified in writing of such default by the City or by the registered owners of at least 25% in aggregate principal amount of Certificates then Outstanding, and all notices or other instruments required by this Indenture to be delivered to the Trustee, must, in order to be effective, be delivered at the principal operations office of the Trustee, and in the absence of such notice so delivered, the Trustee may conclusively assume there is no default except as aforesaid.

(i) All moneys received by the Trustee shall, until used or applied or invested as herein provided, be held in trust in the manner and for the purposes for which they were received but need not be segregated from other funds except to the extent required by this Indenture or law. The Trustee shall not be under any liability to pay interest on any moneys received hereunder except such as may be agreed upon.

(j) At any and all reasonable times, the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right, but shall not be required, to inspect any and all of the property pledged herein, including all books, papers and records of the City pertaining to the Leased Property.

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

(l) The Trustee shall have no obligation to lend the Trustee's funds or credit to the City, or otherwise for the benefit or protection of the Leased Property or the Revenues.

(m) Before taking any action hereunder, the Trustee may require that satisfactory indemnity be furnished to it by the Certificate Owners for the reimbursement of all expenses which it may incur and to protect it against all liability, except liability which may result from its negligence or willful default, by reason of any action so taken.

(n) The Trustee's rights to immunities and protection from liability hereunder and under the Lease for the time it served as Trustee and its rights to payment of its fees and expenses for the time it served as Trustee shall survive its resignation or removal and the final payment or the defeasance of the Certificates (or the discharge of the Certificates or the defeasance of the lien of this Indenture).

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

Section 8.02. Fees and Expenses of Trustee. The Trustee shall be entitled to payment and reimbursement for its reasonable fees for its services rendered hereunder, all expenses reasonably and necessarily made or incurred by the Trustee in connection with such services and the reasonable fees and expenses of attorneys employed by the Trustee in connection with its duties and responsibilities as Trustee, as and when the same become due, as Additional Rentals provided in Section 6.02 of the Lease.

Section 8.03. Resignation or Replacement of Trustee. The present or any future Trustee may resign by giving written notice to the City and the Corporation not less than 60 days before such resignation is to take effect. Such resignation shall take effect only upon the appointment of a successor qualified as provided in the third paragraph of this Section 8.03 and such successor shall have accepted the duties of Trustee. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 90 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee. After payment of all outstanding fees and expenses, the present or any future Trustee may be removed at any time by an instrument in writing, executed by the registered owners of a majority in aggregate principal amount of the Certificates then Outstanding and delivered to the Trustee, for any breach of the trust set forth herein.

In case the present or any future Trustee shall at any time resign or be removed or otherwise become incapable of acting, a successor may be appointed, by the registered owners of a majority in aggregate principal amount of the Outstanding Certificates by an instrument or concurrent instruments signed by such Certificate Owners, or their attorneys-in-fact duly appointed; provided that the City may, by an instrument executed by order of the City, appoint a successor until a new successor shall be appointed by the Certificate Owners as herein authorized. The City upon making such appointment shall forthwith give notice thereof to each Certificate Owner, and the Corporation, which notice may be given concurrently with the notice of resignation given by any resigning Trustee. Any successor so appointed by the City shall immediately and without further act be superseded by a successor appointed in the manner above provided by the registered owners of a majority in aggregate principal amount of the Certificates Outstanding.

Every successor shall always be a bank or trust company (a) in good standing and located in or organized under the laws of a state of the United States, (b) qualified to act hereunder and duly authorized to exercise trust powers, (c) subject to examination by a federal or state authority, and (d) having a reported capital and surplus of not less than \$75,000,000. Any successor appointed hereunder shall execute, acknowledge and deliver to the City and to the Corporation an instrument accepting such appointment hereunder, and thereupon such successor shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of its predecessor in the trust hereunder with like effect as if originally named as Trustee herein; but the Trustee retiring shall, nevertheless, on the written demand of its successor, execute and deliver an instrument conveying and transferring to such successor, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the

predecessor, which shall duly assign, transfer and deliver to the successor all properties and moneys held by it under this Indenture. Should any instrument in writing from the City or the Corporation be required by any successor for more certainly vesting in and confirming to it the said estates, properties, rights, powers and trusts of its predecessor, such instrument or instruments, in writing, shall be made, executed, acknowledged and delivered by the City or the Corporation on request of such successor.

The instruments evidencing the resignation or removal of the Trustee and the appointment of a successor hereunder, together with all other instruments provided for in this Section shall be filed and/or recorded by the successor Trustee in each recording office, if any, where this Indenture shall have been filed and/or recorded.

Notwithstanding any other provision of this Indenture, no removal, resignation or termination of the Trustee shall take effect until a successor shall be appointed.

Section 8.04. Conversion, Consolidation or Merger of Trustee. Any bank or trust company into which the Trustee or its successor may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business as a whole shall be the successor of the Trustee under this Indenture with the same rights, powers, duties and obligations and subject to the same restrictions, limitations and liabilities as its predecessor, all without the execution or filing of any papers or any further act on the part of any of the parties hereto or thereto, anything herein or therein to the contrary notwithstanding. In case any of the Certificates to be executed and delivered hereunder shall have been executed, but not delivered, any successor Trustee may adopt the certificate of any predecessor Trustee, and deliver the same as executed; and, in case any of such Certificates shall not have been executed, any successor Trustee may execute such Certificates in its own name.

Section 8.05. Intervention by Trustee. In any judicial proceeding to which the Corporation or the City is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of the registered owners of the Certificates, the Trustee may intervene on behalf of registered owners of the Certificates, and shall do so if requested in writing by the registered owners of at least 25% in aggregate principal amount of the Certificates then Outstanding.

Section 8.06. List of Certificate Owners. At reasonable times and under reasonable regulations established by the Trustee, the registration books, kept by the Trustee pursuant to Section 2.09 of this Indenture, may be inspected and copied, by the City or by registered owners (or a designated representative thereof) of 15% or more in aggregate principal amount of the Certificates then Outstanding, such ownership and the authority of such designated representative to be evidenced to the satisfaction of the Trustee.

ARTICLE IX

SUPPLEMENTAL INDENTURES AND AMENDMENTS OF THE LEASE

Section 9.01. Supplemental Indentures Not Requiring Consent of Certificate Owners. The Trustee and the Corporation may, with the written consent of the City, but without

the consent of, or notice to, the Certificate Owners, enter into such indentures or agreements supplemental hereto for any one or more or all of the following purposes:

- (a) to grant additional powers or rights to the Trustee;
- (b) to cure any ambiguity, or to cure, correct or supplement any defect or omission or inconsistent provision contained in this Indenture, or to make any provisions with respect to matters arising under this Indenture or for any other purpose if such provisions are necessary or desirable and do not materially adversely affect the interests of the Certificate Owners;
- (c) to subject to this Indenture additional revenues, properties or collateral;
- (d) to amend or modify the description of the real property and improvements described in Exhibit B; provided, however, that such amendment or modification shall not materially adversely affect the interests of the Certificate Owners;
- (e) to set forth the terms and conditions and other matters in connection with the execution and delivery of Additional Certificates pursuant to Section 2.11 of this Indenture;
- (f) to preserve or protect the exclusion from gross income, for federal income tax purposes, of interest on the Certificates;
- (g) as may be required by the provisions of the Lease or this Indenture; or
- (h) in order to more precisely identify the Leased Property or to add additional improvements or properties acquired in accordance with the Lease or this Indenture.

Section 9.02. Supplemental Indentures Requiring Certain Consents. Exclusive of supplemental indentures covered by Section 9.01 hereof, the written consent of the City and the consent of the registered owners of a majority in aggregate principal amount of the Certificates then Outstanding shall be required for the execution by the Corporation and the Trustee of any indenture or indentures supplemental hereto; provided, however, that without the consent of the registered owners of all the Certificates at the time Outstanding nothing herein contained shall permit, or be construed as permitting:

- (a) a change in the maturity, terms of redemption or the method of calculating the interest on any Outstanding Certificate, or a reduction in the principal amount of or premium payable upon any redemption of any Outstanding Certificate without the consent of the registered owner of such Certificate;
- (b) the deprivation of the registered owner of any Certificate then Outstanding of the lien created by this Indenture (other than as originally permitted hereby);
- (c) a privilege or priority of any Certificate or Certificates over any other Certificate or Certificates; or

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

If at any time the City or the Corporation shall request the Trustee to enter into such supplemental indenture for any of the purposes of this Section, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental indenture to be sent via electronic mail or mailed by registered or certified mail to the registered owners of the Certificates then Outstanding at the address of each such Certificate Owner shown on the registration books maintained by the Trustee. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the principal operations office of the Trustee for inspection by all Certificate Owners.

If, within 60 days or such longer period as shall be prescribed by the City following the giving of such notice, the registered owners of all or of a majority in aggregate principal amount of the Certificates then Outstanding, as the case may be, at the time of the execution of any such supplemental indenture, shall have consented to and approved the execution thereof as herein provided, no Certificate Owner shall have any right to object to any of the terms and provisions contained therein, or in the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Corporation from executing the same or from taking any action pursuant to the provisions thereof.

Section 9.03. Execution of Supplemental Indenture. The Trustee may execute any such supplemental indenture as provided herein and make further agreements and stipulations which may be contained therein, but the Trustee shall not be obligated to enter into any such supplemental indenture which affects its rights, duties or immunities under this Indenture, except as provided under this Indenture. Any supplemental indenture executed in accordance with the provisions of this Article shall thereafter form a part of this Indenture; and all the terms and conditions contained in any such supplemental indenture as to any provision authorized to be contained therein shall be deemed to be part of this Indenture for any and all purposes. In case of the execution and delivery of any supplemental indenture, express reference may be made thereto in the text of the Certificates executed and delivered thereafter, if any, if deemed necessary or desirable by the Trustee.

Section 9.04. Amendments, etc., of the Lease Not Requiring Consent of Certificate Owners. The Corporation and the Trustee may, without the consent of or notice to the Certificate Owners, consent to any amendment, change or modification of the Lease as may be required (a) by the provisions of the Lease or this Indenture, (b) for the purpose of curing any ambiguity, or curing, correcting or supplementing any defect or omission or inconsistent provision contained therein, or to make any provisions with respect to matters arising under the Lease or for any other purpose if such provisions are necessary or desirable and do not materially adversely affect the interests of the Certificate Owners, (c) in order to more precisely identify the Leased Property or to add additional improvements or properties acquired in accordance with the Lease or this Indenture; (d) in connection with the execution and delivery of Additional Certificates, (e) to add covenants of the City, (f) in order to preserve or protect the exclusion from gross income, for federal income tax purposes, of interest on the Certificates, or (g) to amend or modify the description of the real property and improvements constituting the Leased

Property; provided, however, that such amendment or modification shall not materially adversely affect the interests of the Certificate Owners.

Section 9.05. Amendments, etc., of the Lease Requiring Consent of Certificate Owners. Except for the amendments, changes or modifications permitted by Section 9.04 hereof, neither the Corporation nor the Trustee shall consent to any other amendment, change or modification of the Lease without the giving of notice by the Trustee and the written approval or consent of the registered owners of not less than a majority in aggregate principal amount of the Certificates at the time Outstanding given and procured as provided in Section 9.02 hereof. If at any time the City shall request the consent of the Trustee to any such proposed amendment, change or modification of the Lease, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of such proposed amendment, change or modification to be given in the same manner as provided in Section 9.02 hereof. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the principal operations office of the Trustee for inspection by all Certificate Owners.

ARTICLE X

MISCELLANEOUS

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

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

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

ownership. In lieu of the foregoing the Trustee may accept other proofs of the foregoing as it shall deem appropriate.

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

Section 10.02. Representations, Warranties and Covenants of Corporation.

(a) The Corporation hereby covenants to the Trustee for the benefit of the Certificate Owners that the Corporation will observe and comply with the covenants of quiet enjoyment contained in Article V of the Lease, with its covenant to cooperate with the Trustee in the enforcement of the Lease (as provided in Section 10.04 of the Lease) and with all of its representations and warranties under the Lease. The Corporation agrees that wherever in the Lease it is stated that the Corporation will notify the Trustee, or whenever the Lease gives the Trustee some right or privilege or in any way attempts to confer upon the Trustee the ability to protect the security for payment of the Certificates, that such part of the Lease shall be as if it were set forth in full in this Indenture. The Corporation agrees that the Trustee as assignee of the Corporation under the Lease may enforce, in its name or in the name of the Corporation, all rights of the Corporation and all obligations of the City under the Lease, for and on behalf of the Certificate Owners, whether or not the Corporation is in default under this Indenture. The Trustee and the Corporation hereby agree that the Corporation shall not be obligated to make any payments or to take any other action with respect to the Leased Property under the Lease.

(b) The Indenture creates a valid and binding pledge and assignment of the Trust Estate in favor of the Trustee as security for payment of the Certificates, enforceable by the Trustee in accordance with the terms hereof.

(c) The Corporation has not heretofore made a pledge of, granted a lien on or security interest in, or made an assignment or sale of such collateral that ranks on a parity with or prior to the pledge and assignment of the Trust Estate granted by this Indenture. The Corporation shall not hereafter make or suffer to exist any pledge or assignment of, lien on, or security interest in such Trust Estate that ranks prior to or on a parity with the pledge and assignment of the Trust Estate granted by this Indenture, or file any financing statement describing any such pledge, assignment, lien or security interest, except as expressly permitted hereby.

Section 10.03. Inspection of the Leased Property. The Trustee and its duly authorized agents shall have the right, but not the duty, on reasonable notice to the City, at all reasonable times, to examine and inspect the Leased Property. The Trustee and its duly authorized agents shall also be permitted, at all reasonable times, to examine the books, records, reports and other papers of the City with respect to the Leased Property.

Section 10.04. Parties Interested Herein. Nothing in this Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity other than, the City, the Corporation, the Trustee, and the registered owners of the Certificates, any right, remedy or claim under or by reason of this Indenture or any covenant, condition or stipulation hereof; and all the covenants, stipulations, promises and agreements in this Indenture contained by and on behalf of the Corporation or the Trustee shall be for the sole and exclusive benefit of the City, the Corporation, the Trustee, and the registered owners of the Certificates.

Section 10.05. Titles, Headings, Captions, Etc. The titles, captions and headings of the articles, sections and subdivisions of this Indenture have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms or provisions hereof.

Section 10.06. Severability. In the event any provision of this Indenture shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 10.07. Governing Law. This Indenture shall be governed and construed in accordance with the laws of the State of Colorado without regard to conflict of laws principles.

Section 10.08. Execution in Counterparts. This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.09. Notices. All notices, certificates or other communications shall be sufficiently given and shall be deemed given when delivered via electronic mail or mailed by certified or registered mail, postage prepaid, as follows: if to the City, City of Alamosa, 300 Hunt Avenue, PO Box 419, Alamosa, Colorado 81101, Attention: City Manager; if to the Corporation, Alamosa Capital Leasing Corporation, 300 Hunt Avenue, PO Box 419, Alamosa, Colorado 81101, Attention: President; if to the Trustee, UMB Bank, n.a., 1670 Broadway, Denver, Colorado 80202, Attention: Corporate Trust Department. The City, the Corporation and the Trustee, may, by written notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 10.10. Payments Due on Holidays; Delayed Transfer of Funds. If the date for making any payment or the last day for performance of any act or the exercising of any right, as provided in this Indenture, shall not be a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Indenture.

Section 10.11. Corporation, City and Trustee Representatives. Whenever under the provisions hereof the approval of the Corporation, the City or the Trustee is required, or the City, the Corporation or the Trustee is required to take some action at the request of the other, unless otherwise provided, such approval or such request shall be given for the Corporation, for the City, and for the Trustee by their respective Authorized Officers, and the Corporation, the City and the Trustee shall be authorized to act on any such approval or request.

IN WITNESS WHEREOF, the Corporation and the Trustee have caused this Indenture to be executed in their respective corporate names and their respective corporate seals to be hereto affixed by their duly authorized officials or officers, all as of the date first above written.

ALAMOSA CAPITAL LEASING
CORPORATION, as Sublessor

By _____
President

Attest:

By _____
Secretary

UMB BANK, n.a., as Trustee

By _____
Authorized Representative

[illegible]

The foregoing instrument was acknowledged before me as of the ____ day of April, 2017, by _____, as President, and _____, as Secretary, of the Alamosa Capital Leasing Corporation, a Colorado nonprofit corporation.

WITNESS my hand and official seal.

[SEAL]

Notary Public

My commission expires:

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

The foregoing instrument was acknowledged before me as of the ____ day of April, 2017,
by _____, as Vice President of UMB Bank, n.a., as Trustee.

WITNESS my hand and official seal.

[SEAL]

Notary Public

My commission expires:

EXHIBIT A

FORM OF CERTIFICATE

THIS CERTIFICATE IS SUBJECT TO CERTAIN RESTRICTIONS REGARDING TRANSFER AND ASSIGNMENT AS PROVIDED IN THE HEREINAFTER DEFINED INDENTURE. A TRANSFEREE IS REQUIRED TO EXECUTE AN INVESTMENT LETTER, THE FORM OF WHICH MAY BE OBTAINED FROM THE TRUSTEE, AND TRANSFER OF THIS CERTIFICATE MAY NOT BE MADE UNLESS THE TRANSFEREE COMPLIES WITH THE PROVISIONS OF THE INDENTURE REQUIRING SUCH TRANSFEREE TO EXECUTE AN INVESTMENT LETTER SUBSTANTIALLY IN THE FORM EXECUTED BY THE ORIGINAL PURCHASER THEREOF.

THE STATED PRINCIPAL AMOUNT OF THIS CERTIFICATE MAY HAVE BEEN REDUCED PURSUANT TO MANDATORY SINKING FUND REDEMPTIONS AS PROVIDED IN THE HEREINAFTER DEFINED INDENTURE. CONSEQUENTLY, THE OUTSTANDING PRINCIPAL AMOUNT OF THIS CERTIFICATE AT ANY TIME MAY BE LESS THAN THE PRINCIPAL AMOUNT SHOWN ON THE FACE HEREOF. THE OUTSTANDING PRINCIPAL AMOUNT OF THIS CERTIFICATE MAY BE ASCERTAINED BY CONTACTING THE TRUSTEE.

**CERTIFICATE OF PARTICIPATION
SERIES 2017**

**Evidencing Assignment of a
Proportionate Undivided Interest in
Rights to Receive Certain
Revenues Pursuant to the
Lease Purchase Agreement
Between**

**ALAMOSA CAPITAL LEASING CORPORATION,
as Sublessor, and
CITY OF ALAMOSA, COLORADO, as Sublessee**

No. R-_____ \$ _____

Interest Rate

Maturity Date

Original Issue Date

%

December 1, 2032

April __, 2017

REGISTERED OWNER:

PRINCIPAL SUM:

THIS CERTIFIES THAT THE REGISTERED OWNER (named above), or registered assigns, has a proportionate undivided interest in rights to receive certain revenues, as described

below, pursuant to an annually renewable Lease Purchase Agreement dated April __, 2017 (which Agreement as from time to time amended is referred to herein as the “Lease”), between ALAMOSA CAPITAL LEASING CORPORATION, a Colorado nonprofit corporation, as sublessor (the “Corporation”), and the CITY OF ALAMOSA, COLORADO, as sublessee (the “City”). The interest of the Registered Owner of this Certificate of Participation, Series 2017 (this “Certificate”) is secured as provided in the Lease and in the Mortgage and Indenture of Trust dated April __, 2017 (which Indenture as from time to time amended is herein referred to as the “Indenture”), between the Corporation and UMB Bank, n.a., as trustee, or its successor (the “Trustee”) for the registered owners of the Certificates (the “Certificate Owners”), whereby the rights (with certain exceptions) of the Corporation under the Lease, and the interest of the Corporation under the Site Lease dated April __, 2017 (the “Site Lease”), between the City, as the Corporation, as lessee, have been assigned by the Corporation to the Trustee for the benefit of the Certificate Owners. Under the Indenture, the Corporation has also granted to the Trustee, for the benefit of the Certificate Owners, a mortgage on and a security interest in the Leased Property (as hereinafter defined). Pursuant to the Lease and the Indenture, the Registered Owner hereof is entitled to receive, solely out of and to the extent available from the sources hereinafter identified, on the Maturity Date (stated above) (or earlier as hereinafter provided), the Principal Sum (stated above), and interest thereon as described in the Indenture at the Interest Rate (stated above) and payable semiannually on June 1 and December 1 of each year, commencing December 1, 2017. The final payment of the principal of and any premium on this Certificate are payable in lawful money of the United States of America upon presentation and surrender of this Certificate at the principal operations office of the Trustee, or its successor; and any sinking fund redemption payment or interest on this Certificate is payable to the Registered Owner hereof by check or draft of the Trustee to be mailed to such Registered Owner, on such sinking fund redemption date or each interest payment date, as applicable, (or, if such sinking fund redemption date or interest payment date is not a Business Day, as defined in the Indenture, on the next succeeding Business Day), at the address of such Registered Owner as it last appears in the registration books kept by the Trustee; provided, however, the Trustee may make such payments on this Certificate by such alternate means as may be mutually agreed upon by the Registered Owner hereof and the Trustee with any cost or expense to be paid by the Registered Owner.

This Certificate is one of a series of Certificates of Participation, Series 2017, evidencing assignments of proportionate undivided interests in rights to receive certain revenues, as described below, pursuant to the Lease and the Indenture, executed and delivered in an aggregate principal amount of \$_____, pursuant to the Indenture. The Certificates are being executed and delivered for the purpose, among others, of providing funds to finance (i) the acquisition of certain water rights and water storage rights by the City, (ii) the relocation and construction of a new discharge point for the City’s wastewater treatment plant, and (iii) the legal and engineering costs of such acquisition and construction projects. A portion of the Alamosa Ranch and associated farm buildings and structures located thereon and the water rights associated with such portion of the Ranch (collectively the “Leased Property”) have been leased to the Corporation by the City pursuant to the Site Lease, and the Leased Property has been subleased by the Corporation to the City pursuant to the Lease. Under the Lease, the City has agreed to pay directly to the Trustee semiannual rental payments (the “Base Rentals”) in consideration for its right to use the Leased Property, the proceeds of which are required by the Indenture to be distributed by the Trustee to the payment of the principal of, premium, if any,

and interest on the Certificates. In addition to the Base Rentals, the City has agreed to make certain other payments (the "Additional Rentals") sufficient to pay the fees and expenses of the Trustee, certain insurance premiums, taxes, utility charges, costs of maintenance and repair and other expenses expressly required to be paid by the City under the Lease.

The Lease is subject to annual renewal at the option of the City. The obligation of the City to pay Base Rentals and Additional Rentals under the Lease will terminate in the event that the City, for any reason, fails to budget and appropriate, specifically with respect to the Lease, moneys to pay all Base Rentals and reasonably estimated Additional Rentals during the next occurring renewal term of the Lease. In the event that the Lease Term (as defined in the Lease) is terminated by the City as set forth above (herein referred to as an "Event of Nonappropriation") or is terminated by reason of an Event of Default (as defined in the Lease), the principal amount of this Certificate and interest hereon will be payable from such moneys, if any, as may be available for such purpose, including any moneys received by the Trustee from the liquidation or subleasing of the Leased Property. Under certain circumstances, this Certificate and the interest hereon may also be payable from the Net Proceeds (as defined in the Lease) of title or casualty insurance policies, or condemnation awards. The Lease Term may also be terminated in the event that the City shall exercise its option to purchase the Leased Property from the Corporation by making payment of the Purchase Option Price (as defined in the Lease). In the event that the City shall pay the Purchase Option Price, the proceeds thereof are required to be used to pay the principal of and interest on the Certificates and on any Additional Certificates (as defined below).

It is provided in the Indenture that there may hereafter be executed and delivered Additional Certificates ("Additional Certificates") from time to time under certain terms and conditions, and if executed and delivered, such Additional Certificates will be equally and proportionately secured under and entitled to the protection given by the Indenture with the Certificates. Reference is hereby made to the Lease and the Indenture for a description of the rights, duties and obligations of the City, the Corporation, the Trustee and the registered owners of the Certificates, the terms upon which Additional Certificates may be executed and delivered, the terms upon which the Certificates and any Additional Certificates are secured, the terms and conditions upon which the Certificates will be deemed to be paid at or prior to maturity or redemption of the Certificates upon the making of provision for the full or partial payment thereof, and the rights of the registered owners of the Certificates upon the occurrence of an Event of Default or an Event of Nonappropriation.

NEITHER THE LEASE NOR THE CERTIFICATES CONSTITUTE A GENERAL OBLIGATION OR A MULTIPLE-FISCAL YEAR DIRECT OR INDIRECT DEBT OR OTHER FINANCIAL OBLIGATION WHATSOEVER OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION. NEITHER THE LEASE, THE INDENTURE NOR THE CERTIFICATES HAVE DIRECTLY OR INDIRECTLY OBLIGATED THE CITY TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED FOR ANY FISCAL YEAR IN WHICH THE LEASE SHALL BE IN EFFECT. EXCEPT TO THE EXTENT PAYABLE FROM THE PROCEEDS OF THE SALE OF THE CERTIFICATES AND INCOME FROM THE INVESTMENT THEREOF, FROM NET PROCEEDS OF CERTAIN INSURANCE POLICIES AND CONDEMNATION AWARDS, FROM NET PROCEEDS FROM THE SUBLEASING OR LIQUIDATION OF

THE TRUSTEE'S INTEREST IN THE LEASED PROPERTY OR FROM OTHER AMOUNTS MADE AVAILABLE UNDER THE INDENTURE, THE CERTIFICATES WILL BE PAYABLE DURING THE LEASE TERM SOLELY FROM BASE RENTALS TO BE PAID BY THE CITY UNDER THE LEASE. ALL PAYMENT OBLIGATIONS OF THE CITY UNDER THE LEASE, INCLUDING, WITHOUT LIMITATION, THE OBLIGATION OF THE CITY TO PAY BASE RENTALS, ARE FROM YEAR TO YEAR ONLY AND DO NOT CONSTITUTE A MANDATORY PAYMENT OBLIGATION OF THE CITY IN ANY FISCAL YEAR BEYOND A FISCAL YEAR IN WHICH THE LEASE SHALL BE IN EFFECT. THE LEASE IS SUBJECT TO ANNUAL RENEWAL AT THE OPTION OF THE CITY AND WILL BE TERMINATED UPON THE OCCURRENCE OF AN EVENT OF NONAPPROPRIATION OR EVENT OF DEFAULT. IN SUCH EVENT, ALL PAYMENTS FROM THE CITY UNDER THE LEASE WILL TERMINATE, AND THE CERTIFICATES AND THE INTEREST THEREON WILL BE PAYABLE FROM CERTAIN MONEYS, IF ANY, HELD BY THE TRUSTEE UNDER THE INDENTURE, AND ANY MONEYS MADE AVAILABLE BY ACTION OF THE TRUSTEE REGARDING THE LEASED PROPERTY. THE CORPORATION HAS NO OBLIGATION TO MAKE ANY PAYMENTS ON THE CERTIFICATES.

The Certificates are issuable solely as fully registered Certificates without coupons in denominations of \$5,000 and any integral multiple thereof.

This Certificate is transferable by the Registered Owner hereof in person or by his or her attorney duly authorized in writing on the registration books kept at the principal operations office of the Trustee, or its successor, but only in the manner, subject to the limitations provided in the Indenture, and upon surrender of this Certificate together with a duly executed written instrument of transfer satisfactory to the Trustee. Upon such transfer, a new fully registered Certificate or Certificates without coupons and of the same maturity, of authorized denomination or denominations, for the same aggregate principal amount, will be executed and delivered to the transferee in exchange herefor, all upon payment of the charges and subject to the terms and conditions set forth in the Indenture. The Trustee may deem and treat the person in whose name this Certificate is registered as the absolute owner hereof, whether or not this Certificate shall be overdue, for the purpose of receiving payment and for all other purposes, and neither the City nor the Trustee shall be affected by any notice to the contrary.

The Certificates are subject to redemption as follows:

(a) The Certificates shall be callable for redemption prior to maturity, at the option of the City, in whole or in part, and if in part by lot in such manner as the Trustee shall determine, on December 1, 20__ and on any date thereafter at the redemption price (expressed as a percentage of principal amount) of 100%, plus accrued interest to the redemption date.

(b) The Certificates shall be called for redemption, in whole, at a redemption price (expressed as a percentage of principal amount) of 100%, plus accrued interest to the redemption date, on any Interest Payment Date in the event of the exercise by the City of its option to purchase the Leased Property, as provided in the Lease, upon payment of the then

applicable Purchase Option Price from moneys of the City not borrowed by the City or derived from any installment purchase or lease purchase financing by the City.

(c) The Certificates are subject to mandatory sinking fund redemption, prior to maturity, in part, by lot in such manner as the Trustee shall determine, at a price (expressed as a percentage of principal amount) of 100%, plus accrued interest to the date of redemption, on the following dates and in the following amounts:

Sinking Fund Redemption Date (December 1)	Principal Amount
2018	\$
2019	
2020	
2021	
2022	
2023	
2024	
2025	
2026	
2027	
2028	
2029	
2030	
2031	
2032*	

*Final Maturity

In the event that the Certificates are called for optional redemption in part, the principal amount so redeemed shall be immediately credited against the obligation to call the Certificates for mandatory sinking fund redemption in the same proportion (rounding to the nearest \$5,000) as the principal amount of Certificates that are required to be called for mandatory sinking fund redemption on each mandatory sinking fund redemption date bears to the principal amount of Certificates that are Outstanding prior to such optional redemption.

(d) The Certificates shall also be called for redemption at any time as set forth below upon the occurrence of an Event of Nonappropriation or an Event of Default.

If the Lease is terminated by reason of the occurrence of an Event of Nonappropriation or an Event of Default, the Trustee is required under the Indenture to immediately notify the registered owners of the Certificates of such termination and, if moneys available under the Indenture are insufficient to provide for the payment in full of the Outstanding Certificates and the interest thereon when due, shall notify the registered owners of the Certificates of such termination and, if moneys available under the Indenture are insufficient to provide for the

payment in full of all Outstanding Certificates and the interest thereon when due, may, in its discretion or shall, at the direction of the registered owners of a majority in aggregate principal amount of the Certificates then Outstanding, notify the registered owners of the Certificates of the related redemption. If the Net Proceeds (as defined under the Indenture), if any, and other moneys then available under the Indenture are insufficient to redeem all Outstanding Certificates at a redemption price (expressed as a percentage of principal amount) of 100% plus accrued interest to the redemption date, the Trustee may, or at the request of the registered owners of a majority in aggregate principal amount of the Certificates then Outstanding, and upon indemnification as to costs and expenses as provided in the Indenture, is required to, without any further demand or notice, exercise all or any combination of Lease Remedies as provided in the Lease, and the Outstanding Certificates are to be redeemed by the Trustee from the Net Proceeds resulting from the exercise of such Lease Remedies and all other moneys, if any, then on hand and being held by the Trustee for the registered owners of the Outstanding Certificates. If the Net Proceeds resulting from the exercise of such Lease Remedies and other moneys are insufficient to redeem the Outstanding Certificates at a redemption price (expressed as a percentage of principal amount) of 100% plus accrued interest to the redemption date, then such Net Proceeds resulting from the exercise of such Lease Remedies and other moneys, including moneys then available under the Indenture, are to be allocated proportionately among the Certificates, according to the principal amount thereof Outstanding. In the event that such Net Proceeds resulting from the exercise of such Lease Remedies and other moneys are in excess of the amount required to redeem the Outstanding Certificates at a redemption price (expressed as a percentage of principal amount) of 100% plus accrued interest to the redemption date, then such excess moneys are to be paid to the City. Prior to any distribution of the Net Proceeds resulting from the exercise of any of such remedies, the Trustee is entitled to payment of its reasonable and customary fees for all services rendered in connection with such disposition, as well as reimbursement for all reasonable costs and expenses, including attorneys' fees, incurred thereby, from proceeds resulting from the exercise of such Lease Remedies and other moneys. IF THE OUTSTANDING CERTIFICATES ARE REDEEMED FOR AN AMOUNT LESS THAN THE AGGREGATE PRINCIPAL AMOUNT THEREOF PLUS INTEREST ACCRUED TO THE REDEMPTION DATE, SUCH PARTIAL PAYMENT SHALL BE DEEMED TO CONSTITUTE A REDEMPTION IN FULL OF THE OUTSTANDING CERTIFICATES, AND UPON SUCH A PARTIAL PAYMENT NO REGISTERED OWNER OF SUCH OUTSTANDING CERTIFICATES SHALL HAVE ANY FURTHER CLAIM FOR PAYMENT AGAINST THE CORPORATION, THE TRUSTEE OR THE CITY.

In the event any of the Certificates are called for redemption as aforesaid, the Trustee shall cause notice of the call for redemption, identifying the Certificates or portions thereof to be redeemed, to be given by mailing, at least 30 days and not more than 60 days prior to the redemption date, as provided in the Indenture. All Certificates so called for redemption shall cease to bear interest after the specified redemption date, provided that such funds as may be available for their redemption (which, in the case of a redemption resulting from an Event of Nonappropriation or Event of Default may be less than the full principal amount of the outstanding Certificates and accrued interest thereon to the redemption date) are on deposit at the place of payment at that time.

The Trustee may waive an Event of Nonappropriation or an Event of Default under certain circumstances as provided in the Lease and the Indenture.

The Indenture permits amendments thereto and to the Lease, upon the agreement of the City and the Trustee and compliance with the other requirements of the Indenture, including but not limited to, in certain cases the approval of the registered owners of not less than a majority or, for certain amendments, 100% in aggregate principal amount of the Certificates at the time outstanding. The Indenture also contains provisions permitting amendments to the Indenture and the Lease without the consent of the registered owners of the Certificates for certain purposes, including, without limitation, the execution and delivery of Additional Certificates for certain purposes. The Indenture requires the written consent of the Trustee to any amendment of the Indenture or the Lease which modifies the rights, duties or immunities of the Trustee.

Any consent or request by the Registered Owner of this Certificate shall be conclusive and binding upon such owner and upon all future registered owners of this Certificate and of any Certificate issued upon the transfer of this Certificate whether or not notation of such consent or request is made upon this Certificate.

This Certificate is executed and delivered with the intent that the laws of the State of Colorado shall govern its legality, validity, enforceability and construction.

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

IN WITNESS WHEREOF, this Certificate has been executed with the manual or facsimile signature of an authorized representative of the Trustee, all as of the date set forth below.

Dated: _____

UMB BANK, n.a.,
as Trustee

By _____
Authorized Representative

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

(please print or typewrite name and address of transferee)
(Tax Identification or Social Security No. _____) the within Certificate and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Certificate on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

NOTICE: The signature to this Assignment must correspond with the name as it appears upon the face of the within Certificate in every particular without alteration or enlargement or any change whatever.

TRANSFER FEE MAY BE REQUIRED

(End of Form of Certificate)

EXHIBIT B

DESCRIPTION OF THE LEASED PROPERTY

Description of the Site:

Description of the Building:

Description of Equipment:

Description of Water Rights:

ALAMOSA CITY COUNCIL COUNCIL COMMUNICATION

Subject/Title:

First Reading, Ordinance 5-2017, an ordinance repealing and replacing chapter 3 of the *Alamosa Code of Ordinances*, governing animals, to introduce a spay, neuter, return program for feral cats, allow for burial of pets in yards, revise terms under which animal impoundments take place, and make other clarifying changes to the chapter

Recommended Action:

Approve Ordinance 5-2017 on first reading and set for public hearing on March 15, 2017.

Background:

Over the last several years, the City has received calls regarding the feral cat population. Beyond volunteer efforts, there has not been an organized approach for managing the cat population. In order to address the concerns of property owners and approach the reduction of the feral cat population in a humane way staff looked at the entire animal ordinance to determine how best to accomplish these goals. In doing so, other issues were brought to light. Accordingly, the proposed ordinance addresses those as well, and undertakes the following:

1. Add a section for feral cats, and allow impoundment of stray cats
2. Allow pet burial on owners property
3. Clear up questions about dealing with nuisance animals that we don't have shelter space for
4. Better align our ordinances on rabbits and poultry with the general animal ordinance
5. Remove the ability to allow the keeping of juvenile wild animals as pets
6. Make other housekeeping changes to clarify and streamline the ordinance.

A redlined version of Chapter 3 is attached in the materials showing the changes to the existing ordinance.

Issue Before the Council:

Does Council wish to approve the ordinance on first reading and set it for public hearing to be held on March 15, 2017.

Alternatives:

- 1) Approve the ordinance
- 2) Approve the ordinance with changes, such as to the provisions establishing the TNR program, allowing for yard burials, and removing the juvenile wildlife permitting provisions.
- 3) Decline to approve the ordinance in whole or in part, and give staff further direction.

Fiscal Impact:

Minimal. Staff proposes initially around \$2,000 per year to go towards the spay/neuter/vaccination of feral cats.

Legal Opinion:

The City Attorney will be present for questions.

Conclusion:

This ordinance addresses the feral cat issue that have become of greater concern recently, and cleans up other issues with the animal section of our ordinances.

ATTACHMENTS:

Description	Type
▣ Ordinance 5-2017 Amending the Animals Chapter	Ordinance
▣ Redline of existing Chapter 3	Backup Material

ORDINANCE NO. 5-2017

AN ORDINANCE REPEALING AND REPLACING CHAPTER 3 OF THE *ALAMOSA CODE OF ORDINANCES*, GOVERNING ANIMALS, TO INTRODUCE A SPAY, NEUTER, RETURN PROGRAM FOR FERAL CATS, ALLOW FOR BURIAL OF PETS IN YARDS, REVISE TERMS UNDER WHICH ANIMAL IMPOUNDMENTS TAKE PLACE, AND MAKE OTHER CLARIFYING CHANGES TO THE CHAPTER

WHEREAS, the existing ordinance governing animals, Chapter 3 of the *Alamosa Code of Ordinances*, makes it unlawful to harbor or feed more than 4 animals (poultry and rabbits excepted); and

WHEREAS, Over the last several years, the City has received calls regarding the feral cat population; and there have been established a number of feral cat colonies that are typically cared for by one or more individuals; and

WHEREAS, Beyond volunteer efforts, there has not been an organized approach for managing the cat population; and

WHEREAS, the existing ordinance requires pets to be buried in a sanitary landfill, and common practice has been to otherwise dispose of pets, including burial in yards, which practice Council does not find to be detrimental to the health of the citizens of Alamosa so long as carried out consistent with depth requirements; and

WHEREAS, the existing ordinance does not adequately address impoundment and disposition of nuisance animals; and

WHEREAS, the existing ordinance sets up a system for permitting of the keeping of juvenile wild animals as pets, which Council finds has not been implemented, and is counter to the health and well-being of the citizens of Alamosa; and

WHEREAS, other sections of the existing ordinance require clarification and streamlining,

NOW, THEREFORE, BE IT HEREBY ORDAINED by the City Council of the City of Alamosa, Colorado:

Section 1. Chapter 3 of the *Alamosa Code of Ordinances* is hereby repealed and replaced in its entirety to read as follows:

Chapter 3 – ANIMALS

ARTICLE I. - IN GENERAL

Sec. 3-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Animal shall mean any live vertebrate creature, whether domestic or wild.

Animal control officer shall mean any person commissioned by the state, county or municipal government to perform duties under the laws, regulations or ordinances of the state, county or municipality pertaining to animals.

Animal shelter shall mean any facility operated by a humane society, governmental agency or its authorized agents for the purpose of impounding or caring for animals held under the authority of this chapter or state law. Any such facility shall provide proper and humane care for animals held in it.

At large shall mean the time when an animal is off or away from the premises of the owner, possessor or keeper thereof, and not under the control of such owner, possessor or keeper, or his agent or a member of his immediate family by a leash or lead capable of restraining the Animal. Animals tethered to a stationary object within range of a public street, sidewalk, alley or common path are deemed to be at large.

Dwelling unit shall mean one (1) or more rooms designed for or occupied as a unit by one (1) family for living and cooking purposes.

Ear tipping shall mean straight-line cutting of the tip of the left ear of a cat while the cat is anesthetized.

Feral cat shall mean a free-roaming cat that is partially socialized or unsocialized to humans and tends to resist contact with humans.

Owner shall mean any person, partnership or corporation in possession of, harboring, or who shall allow any animal to remain about their premises for a period of three (3) consecutive days or more, excluding sponsors of feral cats as addressed in this article. The person named on the registration record of any animal as the owner shall be deemed, prima facie, the owner thereof, but the term owner shall also include, but shall not be limited to, the occupant of the premises where the animal is usually kept, if such premises are other than the premises of the owner as shown on the registration record; or any person having control or purporting to have control over any animal which is running at large. The parent or guardian of an owner under eighteen (18) years of age shall be deemed the owner, as defined in this section.

Potbelly pig shall mean a miniature porcine which shall not exceed eighteen (18) inches in height at the shoulder and one hundred fifteen (115) pounds in weight, and shall include, but not be limited to, the North American potbelly pig, the Vietnamese potbelly pig, and the Chinese potbelly pig.

Public nuisance shall mean any animal which:

- (1) Molests passersby or passing vehicles;
- (2) Attacks other animals;
- (3) Is at large;

- (4) Damages private or public property;
- (5) Barks, whines, howls, or makes any other noise in a loud and persistent or habitual fashion so as to disturb any person or neighborhood;
- (6) Is diseased.

Restraint shall mean securing an animal by a leash or lead so that it is under the physical control of a responsible person, or tethered to a stationary object not within range of a public street, sidewalk, alley or common path, or keeping an animal within a fence or other enclosure which restrains the animal to a particular premises.

Trap shall mean any device used to contain or capture an animal. There are two (2) types of traps:

- (1) *Humane trap* is a device designed to capture or contain an animal without causing any injury to the animal;
- (2) *Inhumane trap* is a device designed to capture or contain an animal which causes injury to the animal as the result of the trap's operation.

Trap, Neuter & Return (TNR) shall mean a non-lethal approach to feral cat population control where feral cats are humanely trapped, sterilized, vaccinated, ear-tipped, and then returned to the location where they were originally trapped

Veterinary hospital shall mean any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis and treatment of diseases and injuries of animals.

Vicious animal includes, but is not limited to, dogs and means:

- (1) Any animal with a known propensity, tendency or disposition to attack unprovoked, to cause injury to, or otherwise threaten the safety of human beings or domestic animals; or
- (3) Any animal which, without provocation, attacks or bites, or has attacked or bitten, a human being or domestic animal; or
- (4) Any animal owned or harbored primarily or in part for the purpose of animal fighting or any animal trained for animal fighting.

Wild animal shall mean any live ferret, fox, leopard, lion, lynx, monkey (nonhuman primate), panther, poisonous snake, raccoon, skunk, tiger or any other warm-blooded animal which can normally be found in the wild state.

Sec. 3-2. - Declaration of city as wild bird refuge.

The area within the limits of the city is hereby made and constituted a bird sanctuary for the refuge of wild birds, and all persons are urged to protect the wild birds and encourage their propagation and refuge within such sanctuary.

Sec. 3-3. - Abuse of wild birds prohibited.

It shall be unlawful for any person at any time within the city to frighten, shoot at, wound, kill, capture, ensnare, net, trap or in any other manner to molest or injure any wild bird, or in any manner, to molest or injure the nest, eggs or young of any such birds, provided that this section shall not be construed to apply to

English or European house sparrows or to starlings, and provided further that the chief of police shall have authority to grant a permit for the killing or the capture of pigeons or other birds when it is shown that the same are or have become a nuisance or health hazard in any particular location.

Sec. 3-4. - Keeping of bees prohibited.

The keeping of hives within the city is a menace to the public health and safety of the inhabitants of the city, and is hereby declared a nuisance and is prohibited.

Sec. 3-5. - Quantity of animals, prohibition on keeping livestock, feral cat colonies.

- (a) Except as set forth below concerning feral cat colonies, and below and in section 21-150 concerning poultry and rabbits, it shall be unlawful to keep any animal in quantities of more than four (4) adult animals per dwelling unit, regardless of whether the animal is an indoor or an outdoor pet.
- (b) No person shall keep within the city limits any livestock, whether as a pet or otherwise, including, but not limited to, horses, mules, burros, cows, sheep, goats, swine (excepting potbelly pigs) or any other animal typically raised for consumption such as rabbits or poultry, except as allowed below:
 - (1) Livestock may be kept in agricultural zones.
 - (2) Any person may keep rabbits or poultry (except for mature roosters, pea fowl, and guinea fowl, which may not be kept for any purpose whatsoever) solely for purposes of sale as livestock so long as the following conditions are met:
 - a. All animals are kept indoors or under adequate outdoor shelter;
 - b. Animals are kept and offered for sale for a limited period of time not to exceed seven (7) consecutive weeks and no more than twenty-six (26) weeks in any given year;
 - c. The person has a valid retail sales tax license and is otherwise in compliance with the licensing and taxation provisions of the Code of Ordinances Alamosa, Colorado;
 - d. Any person keeping rabbits or poultry for sale shall possess all necessary federal and state licenses relating to the keeping and sale of such livestock.
 - (3) Other than for purposes of sale, as outlined above, poultry and rabbits may only be kept in accordance with the restrictions and limitations set out in section 21-150 of this Code.
 - (4) A person with a disability may keep a trained service animal used by the person with a disability as a service animal to assist with specific needs or perform work as recognized in the Americans With Disabilities Act.
- (c) Feral cat colonies
 - (1) It shall be unlawful for any person to feed stray or feral cats unless such person participates in the Trap, Neuter & Return (“TNR”) program designed to reduce the population of feral cats within the City, and managed by the City as set forth below.
 - (2) Persons may make application to the Alamosa Police Department to serve as a sponsor of a TNR program. The Police Department shall have discretion to refuse the application on the grounds that it would not be in the public interest for any reason including, but not limited to, reasons based on

the location of the colony or the character, reputation, or suitability of the applicant. TNR program sponsors shall have the following responsibilities:

- i. Register each feral cat colony they are managing with the Alamosa Police Department, including the general location, number of cats in the colony, and number of caretakers working with the colony;
- ii. Trap and spay, neuter, vaccinate, and ear tip (so that spayed, neutered, and vaccinated cats can be readily identified) feral cats that are members of the colony, working with the City's TNR program. The sponsor shall keep records sufficient to identify each vaccinated cat and the date of vaccination so that the vaccination schedule for such cat may be appropriately monitored.
- iii. Record and report to the Alamosa Police Department, on an annual basis, the total number of members and the number of sterilized members of each feral cat colony for which they have implemented a TNR program;
- iv. Record and report to the Alamosa Police Department, on an annual basis, the number of kittens born into each feral cat colony for which they have implemented a TNR program;
- v. Take all reasonable steps to (1) remove kittens from the colony after they have been weaned, (2) place the kittens in homes or foster homes for the purpose of subsequent permanent placement, and (3) capture and spay the mother cat.
- vi. Monitor each member of the colony for rabies or other disease, and take appropriate steps to address any such disease.
- vii. Address complaints received by the Alamosa Police Department regarding any feral cat colony they sponsor, and remediate any problems with the colony

(3) It shall be unlawful for any person to continue to feed stray or feral cats in a registered feral cat colony where such feeding causes a nuisance to neighbors or creates a condition contrary to the health, safety, and welfare of the community. Any member cat of a feral cat colony that has become a nuisance, or the entire colony if it has become a nuisance, may be impounded and disposed of pursuant to the provisions of this Article.

Sec. 3-6. - Confiscation of unauthorized traps.

- (a) The use of unauthorized or inhumane traps within the city shall be prohibited.
- (b) Unauthorized or inhumane traps which are reported or discovered to be in use within the city shall be confiscated and destroyed.

Sec. 3-7. - Unprovoked biting of humans.

- (a) If any animal is involved in the unprovoked biting of a human being for the first time, the animal may be barred from this city or destroyed as directed by the municipal court.
- (b) If any animal is involved in the unprovoked biting of a human being for the second time, the animal shall be barred from this city or destroyed as directed by the municipal court.

Sec. 3-8. - Enforcement personnel.

The provisions of this chapter shall be enforced by the animal control officer and such other persons or agencies as may be designated by the city council.

Sec. 3-9. - Interference with enforcement; right of entry.

- (a) It shall be a violation of this chapter to interfere with an animal control officer or a police officer, or to fail to obey the lawful order of an animal control officer or police officer.
- (b) The animal control officers and police officers are hereby authorized to enter upon any premises within the municipality for the purpose of impounding animals which the officer is authorized under this chapter to impound or for any other purpose authorized in this chapter.

Sec. 3-10. - Cruelty to animals.

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
 - (1) *Abandon* means and includes the leaving of an animal by its owner or other person responsible for its care or custody without making effective provisions for its proper care;
 - (2) *Mistreatment* means and includes every act or omission which causes, or unreasonably permits the continuation of, unnecessary or unjustifiable pain or suffering;
 - (3) *Neglect* means and includes failure to provide food, water, protection from the elements, opportunity for exercise or other care normal, usual and proper for an animal's health and well-being.
- (b) It is unlawful for any person, except as authorized by law, to knowingly or with criminal negligence overdrive, overload, overwork, torture, torment, deprive of necessary sustenance, unnecessarily or cruelly beat, needlessly mutilate, needlessly kill, carry in or upon any vehicle in a cruel manner or otherwise mistreat or neglect any animal, or cause it to be done, or, having the charge and custody of any animal, to fail to provide it with proper food, drink, or protection from the weather, or abandon it.
- (c) In the case of any person incurring a second or subsequent conviction under the provisions of subsection (b) above, a sentence of imprisonment within the minimum and maximum terms shall be mandatory and shall not be subject to suspension, nor shall such person be eligible for probation or parole for any part of such period. A plea of nolo contendere accepted by the court shall be considered a conviction for the purposes of this section.
- (d) Nothing in this section shall be construed to amend or in any manner change the authority of the wildlife commission, as established in C.R.S. title 33, or to prohibit any conduct therein authorized or permitted.

Sec. 3-11. - Riding or driving animals on sidewalks.

It shall be unlawful for any person to ride or drive any animal upon any sidewalk or levee within the city.

Sec. 3-12. - Riding or driving animals.

It shall be unlawful for any person to ride or drive any animal through any street, alley or other public place in such a manner as to endanger the life or limb of any person or in such a manner as to create terror in the mind of any person.

Sec. 3-13. - Violations; fines; penalties.

- (a) The violation of any of the provisions of this chapter not involving the biting of a person, except section 3-69, shall be deemed a public nuisance. A violation of section 3-69, whether or not involving the biting of a person, shall be deemed an aggravated public nuisance as provided in said section 3-69.
- (b) The violation of the provisions of this chapter involving the biting of a person shall be deemed an aggravated public nuisance.
- (c) The owner of an animal found to be a public nuisance shall be assessed a fine not less than that designated, from time to time by resolutions adopted by the city council, which fines may not exceed the general penalty authorized for violations of this Code, and which shall be minimum and mandatory, and the court shall neither suspend, abate, nor defer all or any portion of such fines.
- (d) The owner of an animal found to be an aggravated nuisance shall be assessed a fine not less than that designated, from time to time by resolution adopted by city council, which fines may not exceed the general penalty authorized for violations of this code, and which shall be minimum and mandatory, and the court shall neither suspend, abate, nor defer all or any portion of such fines.
- (e) In lieu of any of the above fines, the owner may elect to euthanize the animal which caused the violation at the owner's expense.

Secs. 3-14—3-30. - Reserved.

Sec. 3-31. - Running at large.

It shall be unlawful for the owner, possessor or keeper of any animal to permit it to run at large within the city. If an animal is found to be running at large within the city, the owner, possessor or keeper shall be presumed to have violated this article, except that this subsection shall not apply during the controlled environment of a city-operated or a city-approved obedience school.

Sec. 3-32. - Male potbelly pigs to be neutered; breeding prohibited.

Every male potbelly pig four (4) months of age or older shall be neutered. It shall be unlawful to breed potbelly pigs within the city limits of the City of Alamosa.

Secs. 3-33—3-45. - Reserved.

ARTICLE II. - LICENSING OF DOGS AND POTBELLY PIGS

Sec. 3-46. - Required; application.

- (a) Any person owning, keeping, harboring or having custody of any dog or potbelly pig over three (3) months of age within the city must obtain a license as provided in this article.
- (b) Application for a license must be made within thirty (30) days after obtaining a dog or potbelly pig over three (3) months of age, within thirty (30) days after such dog or potbelly pig is brought into the city or within thirty (30) days after such dog or potbelly pig reaches three (3) months of age, except that this requirement will not apply to a nonresident keeping a dog or potbelly pig within the city for no longer than sixty (60) days.

Sec. 3-47. - Contents of application.

Written application for licenses shall be made to the police department. Such application shall include the following information:

- (1) The name, address, and telephone number of the owner;
- (2) The call-name, breed, age, color and sex of the dog or potbelly pig;
- (3) The appropriate fee;
- (4) A valid rabies vaccination certificate issued by a licensed veterinarian which shall include the following information:
 - a. The name, address and telephone number of the owner of the vaccinated dog or potbelly pig;
 - b. The date of vaccination;
 - c. The date of expiration of the vaccination;
 - d. The type of rabies vaccine used;
 - e. The year and number of the rabies tag;
 - f. The breed, age, color and sex of the vaccinated dog or potbelly pig; and
 - g. The signature of the veterinarian administering the vaccine.

Sec. 3-48. - License tags; duplicate tags; transfer.

- (a) Upon acceptance of the license application and fee, the police department shall issue a durable tag stamped with an identifying number and year of issuance. Tags should be designed so that they may be conveniently fastened or riveted to the animal's collar or harness.
- (b) Dogs and potbelly pigs must wear license tags on collars or harnesses at all times, provided that, dogs which have been properly tattooed in the right groin area with an identification number approved by the city clerk at the time the required license tag is issued, shall not be required to wear a license tag on a collar only when such dogs are restrained on the owner's premises.
- (c) A duplicate license may be obtained upon payment of a one dollar (\$1.00) replacement fee.
- (d) No person may use any license for any animal other than the animal for which it was issued.

Sec. 3-49. - Records.

The police department shall maintain a record of the identifying numbers of all tags and tattoos issued and shall make this record available to the public.

Sec. 3-50. - Licensing period; expiration.

- (a) The licensing period shall begin with the calendar year and shall run for one (1) year. Application for a license may be made thirty (30) days prior to, and up to thirty (30) days after, the start of the calendar year, except that for those animals which are acquired or brought into the city or reach the age of three (3) months the application for license shall be made within thirty (30) days after such event.
- (b) If not revoked, licenses for the keeping of dogs and potbelly pigs shall be for a period of up to one (1) year expiring on the thirty-first day of December of the year of issuance.

Sec. 3-51. - License fees.

(a) A license shall be issued after payment of the applicable fee:

- (1) Each dog or potbelly pig, under one (1) year of age, per year \$ 2.00
- (2) Each neutered/spayed dog or potbelly pig, per year 2.00
- (3) All other dogs or potbelly pigs, each, per year 10.00

(b) Seeing-eye dogs, hearing dogs or governmental police dogs shall be licensed without fee.

Secs. 3-52—3-65. - Reserved.

ARTICLE III. - CONTROL, CARE AND TREATMENT

Sec. 3-66. - Required.

No person shall fail to exercise proper care and control of his animals or of any animals within his care and custody, thereby allowing them to become a public nuisance.

Sec. 3-67. - Disturbance of peace and quiet.

No owner, possessor, or keeper of an animal within the city shall permit such animal to disturb the peace and quiet of any person or neighborhood by barking, whining, howling or making any other noise in a loud, persistent or habitual fashion. If any animal does so disturb the peace and quiet, the owner, possessor, or keeper shall be deemed guilty of a violation of this article, provided that no such owner, possessor, or keeper shall be charged in municipal court with a violation of this subsection unless he/she or a member of his/her household over the age of eighteen (18) years has received a written warning from the city of a previous complaint once within the preceding twelve (12) months. It shall not be necessary for the purposes of this section to identify and describe the particular animal which is making such noise, but shall only be necessary to show who has possession, care, custody or control of the animal.

Sec. 3-68. - Dogs in heat.

Every female dog in heat shall be confined in a building or secured enclosure in such a manner that such female dog cannot come into contact with another animal, except for planned breeding.

Sec. 3-69. - Vicious animals.

(a) The owner of a vicious animal shall not suffer or permit the animal to go unconfined. A vicious animal is unconfined within the provisions of this chapter if the animal is not securely confined indoors or confined in a securely enclosed and locked pen or structure upon the premises of the owner of the animal, with such pen or structure having at least those structural qualifications as follows:

- (1) The pen or structure must have secured sides and a secured top attached to the sides;
- (2) If the pen or structure has no bottom secured to the sides, the sides must be embedded into the ground no less than two (2) feet;
- (3) All such pens or structures shall be adequately lighted and kept in a clean and sanitary condition.

- (b) The owner of a vicious animal shall not suffer or permit the animal to go beyond the premises of the owner unless the animal is securely muzzled and restrained by a chain or leash and under the physical restraint of a person. The muzzle shall be made in a manner that will not cause injury to the animal or interfere with its vision or respiration, but shall prevent it from biting any human or animal.
- (c) The owner of a vicious animal shall display in a prominent place on his premises a clearly visible warning sign indicating that there is a vicious animal on the premises. A similar sign is required to be posted on the pen or structure in which the animal is kept.
- (d) Owners of vicious animals must, upon licensing of such animal, provide proof to the city clerk of liability insurance for the benefit of the public at large in the amount of at least fifty thousand dollars (\$50,000.00), insuring the owner against liability for any personal injuries inflicted by his vicious animal.
- (e) No person shall possess or harbor or maintain care or custody of any animal for the purpose of animal fighting, or train, torment, badger, bait or use any animal for the purpose of causing or encouraging the animal to attack human beings or domestic animals.
- (f) A violation of this section shall be deemed an aggravated public nuisance and, upon conviction thereof, the violator shall be fined as provided in section 3-13.
- (g) Upon an animal first being found or declared to be vicious by the municipal court, in addition to any other penalties provided in this chapter, said court may enter an order either barring said vicious animal from the city or ordering the destruction of the same.
- (h) Upon the violation of this section 3-69 for a second time with respect to any animal, the court shall order the destruction of said animal in a humane way and shall add to any fine imposed hereunder the reasonable costs of said destruction which shall be assessed as court costs.

Sec. 3-70. - Treatment of animals; cruelty; abandonment.

- (a) No owner shall fail to provide his/her animals with sufficiently good and wholesome food and water, proper shelter and protection from the weather, veterinary care when needed to prevent suffering, and humane care and treatment.
- (b) No person shall beat, cruelly ill-treat, torment, overload, overwork or otherwise abuse or kill an animal, nor cause, instigate or permit any dogfight, cockfight, bullfight or other combat between animals or between animals and humans.
- (c) No owner of an animal shall abandon such animal.

Sec. 3-71. - Vehicular accidents with animals.

Any person who, as the operator of a vehicle, strikes a domestic animal shall stop at once and shall immediately report such injury or death to the animal's owner. If the owner cannot be ascertained and located, the operator shall at once report the accident to the animal control officer or the local police department.

Sec. 3-72. - Poisoning prohibited.

No person shall expose any known poisonous substance, whether fixed with food or not, so that the same shall be liable to be eaten by any animal, provided that it shall not be unlawful for a person to expose for exterminating rats on his own property common rat poison mixed only with vegetable substances.

Sec. 3-73. - Removal of dead animals required.

If any animal shall die in the possession of any person in this city, it shall be the duty of such owner to cause the animal to be appropriately disposed of. Such disposal may include burial on property within the city limits only if all parts of the dead animal are covered by at least four feet of earth. In case the owner of any such animal shall neglect or refuse to properly dispose of the animal within ten (10) hours after its death, the police department shall cause the dead animal to be removed at the expense of the owner. Whenever the owner of any dead animal cannot be found or ascertained, it shall be the duty of the animal control officer to dispose of the animal.

Sec. 3-74. - Trapping of animals.

No person shall set, or cause to be set, an unauthorized or inhumane trap within the city, except that rodent snap-traps baited with vegetable or dairy products may be used on private property.

Sec. 3-75. - Removal of animal waste required.

The owner or person having control or purporting to have control over any animal shall remove any feces deposited by his animal on public walks, recreation areas or private property.

Sec. 3-76. Reserved

Sec. 3-78. - Wild animals as pets or for display.

- (a) No person shall keep or permit to be kept any wild animal as a pet.
- (b) No person shall keep or permit to be kept on his premises any wild or vicious animal for display or for exhibition purposes, whether gratuitously or for a fee. This section shall not be construed to apply to zoological parks, performing animal exhibitions or circuses.

Sec. 3-79. - Maltreatment of performing animals prohibited.

- (a) No performing animal exhibition or circus shall be permitted in which animals are induced or encouraged to perform through the use of chemical, mechanical, electrical or manual devices in a manner which will cause or is likely to cause physical injury or suffering.
- (b) All equipment used on a performing animal shall fit properly and be in good working condition.

Secs. 3-80—3-95. - Reserved.

ARTICLE IV. - RABIES CONTROL

Sec. 3-96. - Vaccination required.

All dogs and potbelly pigs three (3) months of age or older shall be vaccinated against rabies. All dogs and potbelly pigs vaccinated at three (3) months of age or older shall be revaccinated at one (1) year of age and thereafter at intervals recommended in the current *Compendium of Animal Rabies Vaccines*. If any dog or potbelly pig is found within the city without a current rabies vaccination tag or current license tag affixed to its collar or harness, the owner of such dog or potbelly pig shall be presumed to have violated the provision of this article.

Sec. 3-97. - Reporting animal bites.

- (a) Any person having knowledge that an animal, other than a rodent, rabbit, bird or reptile, has bitten a human being shall immediately report the incident to the animal control office or police department.
- (b) If any animal is suspected of having rabies or if any animal has bitten a person and such animal has not had a current vaccination, such animal shall be confined for a period of at least ten (10) days by a leash, chain or cage at the animal shelter or a veterinary hospital of the owner's choice, all at the expense of the owner of the animal. During the ten-day observation period, no rabies vaccine shall be administered to the animal.
- (c) No animal held for observation on suspicion of rabies shall be released until the observation period is over, except that if the owner shows proof of current rabies vaccination, the animal may be released into quarantine at the owner's residence, at the discretion of the animal control officer.
- (d) If any animal has been bitten by another animal suspected of having rabies, the owner of such animal so exposed to rabies shall report such fact to the animal control officer, local humane society officer or police department. If either animal has not been vaccinated against rabies, the animal control officer shall have the power, in his discretion, to have such animal removed from the owner's premises to a veterinary hospital, and there placed under observation for a period of up to six (6) months at the expense of the owner, provided that the owner may elect in lieu thereof to have such animal destroyed.
- (e) If a standard incubation period has not been established by the state department of health for the particular species of animal, it shall be summarily destroyed and if involved with another animal or human, a necropsy shall be performed by a certified laboratory to determine rabies contamination.

Sec. 3-98. - Animals with rabies.

If rabies has been ascertained in any animal, such animal shall be summarily destroyed.

Secs. 3-99—3-115. - Reserved.

ARTICLE V. - IMPOUNDMENT

Sec. 3-116. - Conditions and authority.

Unrestrained dogs and potbelly pigs, maltreated animals and nuisance animals, including cats running at large who are not ear tipped as members of a registered feral cat colony, may be taken by police officers, animal control officers or humane officers and impounded in an animal shelter, or other appropriate location, and there confined in a humane manner.

Sec. 3-117. - Unclaimed animals.

Unclaimed animals shall be kept for not less than five (5) days. If the City does not have access to facilities to house the animal, and no owner can reasonably be identified, the City shall have the option to dispose of the animal in whatever manner deemed appropriate, including destroying the animal in a humane manner.

Sec. 3-118. - Notice.

Immediately upon impoundment, the animal control officer or humane society officer shall notify the owner of such impounded animal, if the owner can be identified, that such animal has been impounded. Such notice shall be by telephone if possible, otherwise by mail, and a description of the animal shall be posted at city hall and at the animal shelter.

Sec. 3-119. - Release of animals.

- (a) An owner reclaiming an impounded animal for the first time within a twelve-month period shall pay a fee of ten dollars (\$10.00), plus a daily boarding fee as established by the operator of the animal shelter, subject to approval of the city manager.
- (b) An owner reclaiming an impounded animal for each subsequent time within a twelve-month period shall pay a fee of twenty dollars (\$20.00), plus a daily boarding fee as established by the operator of the animal shelter, subject to approval by the city manager.
- (c) An owner reclaiming an impounded dog or potbelly pig which is not validly licensed must license the dog or potbelly pig and present evidence thereof to the person in charge of the animal shelter. If the dog or potbelly pig does not have a current rabies tag, the owner shall present a current rabies vaccination certificate for such dog or potbelly pig duly issued by a licensed veterinarian, or, in lieu thereof, the owner may place a cash deposit of fifty dollars (\$50.00) with the city to be refunded to the owner upon presenting, within five (5) days thereafter, proof of vaccination and license.

Sec. 3-120. - Animal holding periods; disposition of unclaimed animals.

- (a) Any pet animal not reclaimed by its owner shall be held, except as provided in sub-part (b) of this section, by the city for a minimum of five (5) days before it may become available for adoption or otherwise disposed of at the discretion of the animal control officer. For purposes of this section "days" means days during which the shelter at which the animal is being held is open to the public.
- (b) No unclaimed dog, cat, or potbelly pig shall be released for adoption without being sterilized,
- (c) Pet animals which, in the opinion of a veterinarian, are experiencing extreme pain or suffering may be disposed of immediately by the city through euthanasia after the animal control officer, or her designee, has made reasonable efforts to contact the owner. For pet animals with identification, reasonable efforts to contact the owner shall continue for a minimum of twenty-four (24) hours.

Section 2. General Repealer

All acts, orders, ordinances, resolutions, or portions thereof in conflict herewith, are hereby repealed to the extent of such conflict.

Section 3. Recording and Authentication

This ordinance, immediately upon its passage, shall be authenticated by the signatures of the Mayor and City Clerk, recorded in the City Book of Ordinances kept for that purposes, and published according to law.

Section 4. Publication and Effective Date

This ordinance shall take effect thirty (30) days after publication following final passage. Publication both before and after final passage shall be by the title of this ordinance, which Council determines constitutes a sufficient summary of the ordinance, together with the statement that the full text of the ordinance is available for public inspection and acquisition on the City's website and in the office of the City Clerk.

Section 7. Declaration of Public Interest

This ordinance is necessary to preserve the peace, health, safety, welfare, and to serve the best interest of the citizens of the City of Alamosa, Colorado.

INTRODUCED, READ AND ORDERED published the 1st day of March, 2017, and a public hearing hereon fixed for the 15th day of March, 2017, at 7:00 p.m., or as soon thereafter as the matter may be heard.

APPROVED, AND ADOPTED after public hearing the 15th day of March, 2017.

CITY OF ALAMOSA

By _____
Josef P. Lucero, Mayor

ATTEST:

Holly C. Martinez, City Clerk

Chapter 3 - ANIMALS^[1]

Footnotes:

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Cross reference— Damage to public or private trees by animals prohibited, § 11-97; animal control in mobile home parks, § 12-34; nuisances, Ch. 14; streets, sidewalks and other public places, Ch. 16; zoning, Ch. 21.

State Law reference— Estrays, C.R.S. 35-44-101 et seq.; cruelty, C.R.S. 18-9-201 et seq.; rabies control, C.R.S. 25-4-601 et seq.

ARTICLE I. - IN GENERAL

Sec. 3-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Animal shall mean any live vertebrate creature, whether domestic or wild.

Animal control officer shall mean any person commissioned by the state, county or municipal government to perform duties under the laws, regulations or ordinances of the state, county or municipality pertaining to animals.

Animal shelter shall mean any facility operated by a humane society, ~~municipal~~ governmental agency or its authorized agents for the purpose of impounding or caring for animals held under the authority of this chapter or state law. Any such facility shall provide proper and humane care for animals held in it.

At large shall mean the time when ~~a dog or potbelly pig~~ an animal is off or away from the premises of the owner, possessor or keeper thereof, and not under the control of such owner, possessor or keeper, or his agent or a member of his immediate family by a leash or lead capable of restraining the ~~dog or potbelly pig~~ Animal. ~~Dogs or potbelly pigs~~ Animals tethered to a stationary object within range of a public street, sidewalk, alley or common path are deemed to be at large.

~~*Circus* shall mean a commercial variety show featuring animal acts for public entertainment.~~

~~*Commercial animal establishment* shall mean any pet shop, grooming shop, auction, riding school or stable, zoological park, circus, performing animal exhibition or kennel.~~

Dwelling unit shall mean one (1) or more rooms ~~and a single kitchen~~ designed for or occupied as a unit by one (1) family for living and cooking purposes.

~~*Grooming shop* shall mean a commercial establishment where animals are bathed, clipped, plucked or otherwise groomed.~~

~~*Humane officer* shall mean any person designated by the state, a municipal government or a humane society as a law enforcement officer who is qualified to perform such duties under the laws of this state.~~

~~*Leash/lead* shall mean a thong, cord, rope, chain or similar device which holds an animal in restraint and which is not more than six (6) feet in length.~~

Ear tipping shall mean straight-line cutting of the tip of the left ear of a cat while the cat is anesthetized.

Feral cat shall mean a free-roaming cat that is partially socialized or unsocialized to humans and tends to resist contact with humans.

Owner shall mean any person, partnership or corporation in possession of, harboring, or who shall allow any animal to remain about their premises for a period of three (3) consecutive days or more, excluding sponsors of feral cats as addressed in this article. The person named on the registration record of any animal as the owner shall be deemed, prima facie, the owner thereof, but the term owner shall also include, but shall not be limited to, the occupant of the premises where the animal is usually kept, if such premises are other than the premises of the owner as shown on the registration record; or any person having control or purporting to have control over any animal which is running at large. The parent or guardian of an owner under eighteen (18) years of age shall be deemed the owner, as defined in this section.

~~Performing animal exhibition shall mean any spectacle, display, act or event other than circuses in which performing animals are used.~~

~~Pet shop shall mean any person, partnership or corporation, whether operated separately or in connection with another business enterprise except for a licensed kennel, that buys, sells or boards any species of animal.~~

Potbelly pig shall mean a miniature porcine which shall not exceed eighteen (18) inches in height at the shoulder and one hundred fifteen (115) pounds in weight, and shall include, but not be limited to, the North American potbelly pig, the Vietnamese potbelly pig, and the Chinese potbelly pig.

Public nuisance shall mean any animal which:

- (1) Molests passersby or passing vehicles;
- (2) Attacks other animals;
- (3) Is at large;
- (4) Damages private or public property;
- (5) Barks, whines, howls, or makes any other noise in a loud and persistent or habitual fashion so as to disturb any person or neighborhood;
- (6) Is diseased.

Restraint shall mean securing an animal by a leash or lead so that it is under the physical control of a responsible person, or tethered to a stationary object not within range of a public street, sidewalk, alley or common path, or keeping an animal within a fence or other enclosure which restrains the animal to a particular premises.

Trap shall mean any device used to contain or capture an animal. There are two (2) types of traps:

- (1) *Humane trap* is a device designed to capture or contain an animal without causing any injury to the animal;
- (2) *Inhumane trap* is a device designed to capture or contain an animal which causes injury to the animal as the result of the trap's operation.

Trap, Neuter & Return (TNR) shall mean a non-lethal approach to feral cat population control where feral cats are humanely trapped, sterilized, vaccinated, ear-tipped, and then returned to the location where they were originally trapped

Veterinary hospital shall mean any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis and treatment of diseases and injuries of animals.

Vicious animal includes, but is not limited to, dogs and means:

- (1) Any animal with a known propensity, tendency or disposition to attack unprovoked, to cause injury to, or otherwise threaten the safety of human beings or domestic animals; or

~~(2) Any animal which, because of its size, physical nature, or vicious propensity is capable of inflicting serious physical harm or death to humans and which would constitute a danger to human life or property if not kept in the manner required by this chapter; or~~

- (3) Any animal which, without provocation, attacks or bites, or has attacked or bitten, a human being or domestic animal; or

- (4) Any animal owned or harbored primarily or in part for the purpose of animal fighting or any animal trained for animal fighting.

Wild animals shall mean any live ferret, fox, leopard, lion, lynx, monkey (nonhuman primate), panther, poisonous snake, raccoon, skunk, tiger or any other warm-blooded animal which can normally be found in the wild state.

(Code 1964, § 4-1; Ord. No. 2-1988, § 1, 3-16-88; Ord. No. 18-1995, § 1, 10-4-95)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 3-2. - Declaration of city as wild bird refuge.

The area within the limits of the city is hereby made and constituted a bird sanctuary for the refuge of wild birds, and all persons are urged to protect the wild birds and encourage their propagation and refuge within such sanctuary.

(Code 1964, § 4-34)

Sec. 3-3. - Abuse of wild birds prohibited.

It shall be unlawful for any person at any time within the city to frighten, shoot at, wound, kill, capture, ensnare, net, trap or in any other manner to molest or injure any wild bird, or in any manner, to molest or injure the nest, eggs or young of any such birds, provided that this section shall not be construed to apply to English or European house sparrows or to starlings, and provided further that the chief of police shall have authority to grant a permit for the killing or the capture of pigeons or other birds when it is shown that the same are or have become a nuisance or health hazard in any particular location.

(Code 1964, § 4-35)

Sec. 3-4. - Keeping of bees prohibited.

The keeping of hives within the city is a menace to the public health and safety of the inhabitants of the city, and is hereby declared a nuisance and is prohibited.

(Code 1964, § 4-33)

Sec. 3-5. - Quantity of animals, prohibition on keeping livestock, [feral cat colonies](#).

- (a) ~~Pets, such as dogs, cats, and potbelly pigs, which may generally be kept within a dwelling, are not permitted~~ Except as set forth below concerning feral cat colonies, and in section 21-150 concerning poultry and rabbits, it shall be unlawful to keep any animal in quantities of more than four (4) adult animals per dwelling unit, regardless of whether the ~~animal~~pet is an indoor or an outdoor pet.

- (b) No person shall keep within the city limits any livestock, whether as a pet or otherwise, including, but not limited to, horses, mules, burros, cows, sheep, goats, swine (excepting potbelly pigs) or any other animal typically raised for consumption such as rabbits or poultry, except as allowed below:
- (1) Livestock may be kept in agricultural zones.
 - (2) Any person may keep rabbits or poultry (except for mature roosters, pea fowl, and guinea fowl, which may not be kept for any purpose whatsoever) solely for purposes of sale as livestock so long as the following conditions are met:
 - a. All animals are kept indoors or under adequate outdoor shelter;
 - b. Animals are kept and offered for sale for a limited period of time not to exceed seven (7) consecutive weeks and no more than twenty-six (26) weeks in any given year;
 - c. The person has a valid retail sales tax license and is otherwise in compliance with the licensing and taxation provisions of the Code of Ordinances Alamosa, Colorado;
 - d. Any person keeping rabbits or poultry for sale shall possess all necessary federal and state licenses relating to the keeping and sale of such livestock.
 - (3) Other than for purposes of sale, as outlined above, poultry and rabbits may only be kept in accordance with the restrictions and limitations set out in section 21-150 of this Code.
 - (4) A person with a disability may keep a trained service animal used by the person with a disability as a service animal to assist with specific needs or perform work as recognized in the Americans With Disabilities Act.

(c) Feral cat colonies

- (1) It shall be unlawful for any person to feed stray or feral cats unless such person participates in the Trap, Neuter & Return ("TNR") program designed to reduce the population of feral cats within the City, and managed by the City as set forth below.
- (2) Persons may make application to the Alamosa Police Department to serve as a sponsor of a TNR program. The Police Department shall have discretion to refuse the application on the grounds that it would not be in the public interest for any reason including, but not limited to, reasons based on the location of the colony or the character, reputation, or suitability of the applicant. TNR program sponsors shall have the following responsibilities:
 - i. Register each feral cat colony they are managing with the Alamosa Police Department, including the general location, number of cats in the colony, and number of caretakers working with the colony;
 - ii. Trap and spay, neuter, vaccinate, and ear tip (so that spayed, neutered, and vaccinated cats can be readily identified) feral cats that are members of the colony, working with the City's TNR program. The sponsor shall keep records sufficient to identify each vaccinated cat and the date of vaccination so that the vaccination schedule for such cat may be appropriately monitored.
 - iii. Record and report to the Alamosa Police Department, on an annual basis, the total number of members and the number of sterilized members of each feral cat colony for which they have implemented a TNR program;
 - iv. Record and report to the Alamosa Police Department, on an annual basis, the number of kittens born into each feral cat colony for which they have implemented a TNR program;
 - v. Take all reasonable steps to (1) remove kittens from the colony after they have been weaned, (2) place the kittens in homes or foster homes for the purpose of subsequent permanent placement, and (3) capture and spay the mother cat.
 - vi. Monitor each member of the colony for rabies or other disease, and take appropriate steps to address any such disease.

vii. Address complaints received by the Alamosa Police Department regarding any feral cat colony they sponsor, and remediate any problems with the colony

(3) It shall be unlawful for any person to continue to feed stray or feral cats in a registered feral cat colony where such feeding causes a nuisance to neighbors or creates a condition contrary to the health, safety, and welfare of the community. Any member cat of a feral cat colony that has become a nuisance, or the entire colony if it has become a nuisance, may be impounded and disposed of pursuant to the provisions of this Article.

(Code 1964, § 4-8; Ord. No. 18-1995, § 2, 10-4-95; Ord. No. 5-2011, § 1, 3-16-11; Ord. No. 06-2011, § 1, 5-4-11)

Cross reference— Zoning, Ch. 21.

Sec. 3-6. - Confiscation of unauthorized traps.

- (a) The use of unauthorized or inhumane traps within the city shall be prohibited.
- (b) Unauthorized or inhumane traps which are reported or discovered to be in use within the city shall be confiscated and destroyed.

(Code 1964, § 4-39)

Sec. 3-7. - Unprovoked biting of humans.

- (a) If any animal is involved in the unprovoked biting of a human being for the first time, the animal may be barred from this city or destroyed as directed by the municipal court.
- (b) If any animal is involved in the unprovoked biting of a human being for the second time, the animal shall be barred from this city or destroyed as directed by the municipal court.

(Code 1964, § 4-40; Ord. No. 2-1988, § 3, 3-16-88)

Sec. 3-8. - Enforcement personnel.

The provisions of this chapter shall be enforced by the animal control officer and such other persons or agencies as may be designated by the city council.

(Code 1964, § 4-37)

Cross reference— Officers and employees, § 2-36 et seq.; personnel, Ch. 15.

Sec. 3-9. - Interference with enforcement; right of entry.

- (a) It shall be a violation of this chapter to interfere with an animal control officer or a police officer, or to fail to obey the lawful order of an animal control officer or police officer.
- (b) The animal control officers and police officers are hereby authorized to enter upon any premises, ~~excluding a dwelling unit,~~ within the municipality for the purpose of impounding animals which ~~he~~the officer ~~is~~ authorized under this chapter to impound or for any other purpose authorized in this chapter.

(Code 1964, § 4-38)

Sec. 3-10. - Cruelty to animals.

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
- (1) *Abandon* means and includes the leaving of an animal by its owner or other person responsible for its care or custody without making effective provisions for its proper care;
 - ~~(2) *Animal* means any living dumb creature;~~
 - ~~(23) *Mistreatment* means and includes every act or omission which causes, or unreasonably permits the continuation of, unnecessary or unjustifiable pain or suffering;~~
 - ~~(34) *Neglect* means and includes failure to provide food, water, protection from the elements, opportunity for exercise or other care normal, usual and proper for an animal's health and well-being.~~
- (b) It is unlawful for any person, except as authorized by law, to knowingly or with criminal negligence overdrive, overload, overwork, torture, torment, deprive of necessary sustenance, unnecessarily or cruelly beat, needlessly mutilate, needlessly kill, carry in or upon any vehicle in a cruel manner or otherwise mistreat or neglect any animal, or cause ~~or procure~~ it to be done, or having the charge and custody of any animal, to fail to provide it with proper food, drink, or protection from the weather, or abandon it.
- (c) In the case of any person incurring a second or subsequent conviction under the provisions of subsection (b) above, a sentence of imprisonment within the minimum and maximum terms shall be mandatory and shall not be subject to suspension, nor shall such person be eligible for probation or parole for any part of such period. A plea of nolo contendere accepted by the court shall be considered a conviction for the purposes of this section.
- (d) Nothing in this section shall be construed to amend or in any manner change the authority of the wildlife commission, as established in C.R.S. title 33, or to prohibit any conduct therein authorized or permitted.

(Code 1964, § 17-2)

State Law reference— Similar provision, C.R.S. 18-9-201, 18-9-202; authority to adopt ordinances on cruelty to animals, C.R.S. 31-15-401.

Sec. 3-11. - Riding or driving animals on sidewalks.

It shall be unlawful for any person to ride or drive any animal upon any sidewalk or levee within the city.

(Code 1964, § 17-3; Ord. No. 6-2002, § 1, 3-6-02)

Cross reference— Sidewalks, § 16-21.

Sec. 3-12. - Riding or driving animals.

It shall be unlawful for any person to ride or drive any animal through any street, alley or other public place in such a manner as to endanger the life or limb of any person or in such a manner as to create terror in the mind of any person.

(Code 1964, § 17-4)

Sec. 3-13. - Violations; fines; penalties.

- (a) The violation of any of the provisions of this chapter not involving the biting of a person, except section 3-69, shall be deemed a public nuisance. A violation of section 3-69, whether or not involving the biting of a person, shall be deemed an aggravated public nuisance as provided in said section 3-69.
- (b) The violation of the provisions of this chapter involving the biting of a person shall be deemed an aggravated public nuisance.
- (c) The owner of an animal found to be a public nuisance shall be assessed a fine not less than that designated, from time to time by resolutions adopted by the city council, which fines may not exceed the general penalty authorized for violations of this Code, and which shall be minimum and mandatory, and the court shall neither suspend, abate, nor defer all or any portion of such fines.
- (d) The owner of an animal found to be an aggravated nuisance shall be assessed a fine not less than that designated, from time to time by resolution adopted by city council, which fines may not exceed the general penalty authorized for violations of this code, and which shall be minimum and mandatory, and the court shall neither suspend, abate, nor defer all or any portion of such fines.
- (e) In lieu of any of the above fines, the owner may elect to euthanize the animal which caused the violation at the owner's expense.

(Code 1964, §§ 4-36, 4-41; Ord. No. 2-1988, § 4, 3-16-88; Ord. No. 10-1997, § 1, 6-18-97)

Cross reference— Nuisances, Ch. 14.

Secs. 3-14—3-30. - Reserved.

~~ARTICLE II. — DOGS AND POTBELLY PIGS~~

~~DIVISION 1. — GENERALLY~~

Sec. 3-31. - Running at large.

It shall be unlawful for the owner, possessor or keeper, of any ~~dog or potbelly pig~~ animal to permit it to run at large within the city. If an animal ~~dog or potbelly pig~~ is found to be running at large within the city, the owner, possessor or keeper shall be presumed to have violated this article, except that this subsection shall not apply during the controlled environment of a city-operated or a city-approved obedience school.

(Code 1964, § 4-12; Ord. No. 18-1995, § 4, 10-4-95)

Sec. 3-32. - Male potbelly pigs to be neutered; breeding prohibited.

Every male potbelly pig four (4) months of age or older shall be neutered. It shall be unlawful to breed potbelly pigs within the city limits of the City of Alamosa.

Secs. 3-33—3-45. - Reserved.

ARTICLE II ~~DIVISION 2~~. - LICENSE^[2]ING OF DOGS AND POTBELLY PIGS

Footnotes:

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Cross reference— Licenses and business regulations, Ch. 10.

Sec. 3-46. - Required; application.

- (a) Any person owning, keeping, harboring or having custody of any dog or potbelly pig over three (3) months of age within the city must obtain a license as provided in this article.
- (b) Application for a license must be made within thirty (30) days after obtaining a dog or potbelly pig over three (3) months of age, within thirty (30) days after such dog or potbelly pig is brought into the city or within thirty (30) days after such dog or potbelly pig reaches three (3) months of age, except that this requirement will not apply to a nonresident keeping a dog or potbelly pig within the city for no longer than sixty (60) days.

(Code 1964, § 4-2; Ord. No. 18-1995, § 5, 10-4-95)

Sec. 3-47. - Contents of application.

Written application for licenses shall be made to the ~~city clerk~~ police department. Such application shall include the following information:

- (1) The name, address, and telephone number of the owner;
- (2) The call-name, breed, age, color and sex of the dog or potbelly pig;
- (3) The appropriate fee;
- (4) A valid rabies vaccination certificate issued by a licensed veterinarian which shall include the following information:
 - a. The name, address and telephone number of the owner of the vaccinated dog or potbelly pig;
 - b. The date of vaccination;
 - c. The date of expiration of the vaccination;
 - d. The type of rabies vaccine used;
 - e. The year and number of the rabies tag;
 - f. The breed, age, color and sex of the vaccinated dog or potbelly pig; and
 - g. The signature of the veterinarian administering the vaccine.

(Code 1964, § 4-3; Ord. No. 18-1995, § 6, 10-4-95)

Sec. 3-48. - License tags; duplicate tags; transfer.

- (a) Upon acceptance of the license application and fee, the ~~city clerk~~ police department shall issue a durable tag stamped with an identifying number and year of issuance. Tags should be designed so that they may be conveniently fastened or riveted to the animal's collar or harness.
- (b) Dogs and potbelly pigs must wear license tags on collars or harnesses at all times, provided that, dogs which have been properly tattooed in the right groin area with an identification number approved by the city clerk at the time the required license tag is issued, shall not be required to wear a license tag on a collar only when such dogs are restrained on the owner's premises.
- (c) A duplicate license may be obtained upon payment of a one dollar (\$1.00) replacement fee.
- (d) No person may use any license for any animal other than the animal for which it was issued.

(Code 1964, § 4-4; Ord. No. 18-1995, § 7, 10-4-95)

Sec. 3-49. - Records.

The ~~city clerk~~ police department shall maintain a record of the identifying numbers of all tags and tattoos issued and shall make this record available to the public.

(Code 1964, § 4-5)

Sec. 3-50. - Licensing period; expiration.

- (a) The licensing period shall begin with the calendar year and shall run for one (1) year. Application for a license may be made thirty (30) days prior to, and up to thirty (30) days after, the start of the calendar year, except that for those animals which are acquired or brought into the city or reach the age of three (3) months the application for license shall be made within thirty (30) days after such event.
- (b) If not revoked, licenses for the keeping of dogs and potbelly pigs shall be for a period of up to one (1) year expiring on the thirty-first day of December of the year of issuance.

(Code 1964, § 4-6; Ord. No. 18-1995, § 8, 10-4-95)

Sec. 3-51. - License fees.

- (a) A license shall be issued after payment of the applicable fee:
 - (1) Each dog or potbelly pig, under one (1) year of age, per year \$ 2.00
 - (2) Each neutered/spayed dog or potbelly pig, per year 2.00
 - (3) All other dogs or potbelly pigs, each, per year 10.00
- (b) Seeing-eye dogs, hearing dogs or governmental police dogs shall be licensed without fee.

(Code 1964, § 4-7; Ord. No. 18-1995, § 9, 10-4-95)

Secs. 3-52—3-65. - Reserved.

ARTICLE III. - CONTROL, CARE AND TREATMENT

Sec. 3-66. - Required.

No person shall fail to exercise proper care and control of his animals or of any animals within his care and custody, thereby allowing them to become a public nuisance.

(Code 1964, § 4-14)

Sec. 3-67. - Disturbance of peace and quiet.

No owner, possessor, or keeper of an animal within the city shall permit such animal to disturb the peace and quiet of any ~~person~~~~family, individual~~ or neighborhood by barking, whining, howling or making any other noise in a loud, persistent or habitual fashion. If any animal does so disturb the peace and quiet, ~~the owner~~, possessor, or keeper shall be deemed guilty of a violation of this article, provided that no such owner, possessor, or keeper shall be charged in municipal court with a violation of this subsection unless he/she or a member of his/her household over the age of eighteen (18) years has received a written warning from the city of a previous complaint once within the preceding twelve (12) months. It shall not be necessary for the purposes of this section to identify and describe the particular animal which is making such noise, but shall only be necessary to show who has possession, care, custody or control of the animal.

(Code 1964, § 4-13)

Sec. 3-68. - Dogs in heat.

Every female dog in heat shall be confined in a building or secured enclosure in such a manner that such female dog cannot come into contact with another animal, except for planned breeding.

(Code 1964, § 4-15)

Sec. 3-69. - Vicious animals.

- (a) The owner of a vicious animal shall not suffer or permit the animal to go unconfined. A vicious animal is unconfined within the provisions of this chapter if the animal is not securely confined indoors or confined in a securely enclosed and locked pen or structure upon the premises of the owner of the animal, with such pen or structure having at least those structural qualifications as follows:
 - (1) The pen or structure must have secured sides and a secured top attached to the sides;
 - (2) If the pen or structure has no bottom secured to the sides, the sides must be embedded into the ground no less than two (2) feet;
 - (3) All such pens or structures shall be adequately lighted and kept in a clean and sanitary condition.
- (b) The owner of a vicious animal shall not suffer or permit the animal to go beyond the premises of the owner unless the animal is securely muzzled and restrained by a chain or leash and under the physical restraint of a person. The muzzle shall be made in a manner that will not cause injury to the animal or interfere with its vision or respiration, but shall prevent it from biting any human or animal.

- (c) The owner of a vicious animal shall display in a prominent place on his premises a clearly visible warning sign indicating that there is a vicious animal on the premises. A similar sign is required to be posted on the pen or structure in which the animal is kept.
- (d) Owners of vicious animals must, ~~within thirty (30) days after the effective date of the ordinance from which this section was derived~~upon licensing of such animal, provide proof to the city clerk of liability insurance for the benefit of the public at large in the amount of at least fifty thousand dollars (\$50,000.00), insuring the owner against liability for any personal injuries inflicted by his vicious animal.
- (e) No person shall possess or harbor or maintain care or custody of any animal for the purpose of animal fighting, or train, torment, badger, bait or use any animal for the purpose of causing or encouraging the animal to attack human beings or domestic animals.
- (f) A violation of this section shall be deemed an aggravated public nuisance and, upon conviction thereof, the violator shall be fined as provided in section 3-13.
- (g) Upon an animal first being found or declared to be vicious by the municipal court, in addition to any other penalties provided in this chapter, said court may enter an order either barring said vicious animal from the city or ordering the destruction of the same.
- (h) Upon the violation of this section 3-69 for a second time with respect to any animal, the court shall order the destruction of said animal in a humane way and shall add to any fine imposed hereunder the reasonable costs of said destruction which shall be assessed as court costs.

(Code 1964, § 4-16; Ord. No. 2-1988, § 2, 3-16-88; Ord. No. 7-1994, § 1, 6-15-94)

Sec. 3-70. - Treatment of animals; cruelty; abandonment.

- (a) No owner shall fail to provide his/her animals with sufficiently good and wholesome food and water, proper shelter and protection from the weather, veterinary care when needed to prevent suffering, and humane care and treatment.
- (b) No person shall beat, cruelly ill-treat, torment, overload, overwork or otherwise abuse or kill an animal, nor cause, instigate or permit any dogfight, cockfight, bullfight or other combat between animals or between animals and humans.
- (c) No owner of an animal shall abandon such animal.

(Code 1964, § 4-22)

Sec. 3-71. - Vehicular accidents with animals.

Any person who, as the operator of a vehicle, strikes a domestic animal shall stop at once and shall immediately report such injury or death to the animal's owner. If the owner cannot be ascertained and located, the operator shall at once report the accident to the animal control officer or the local police department.

(Code 1964, § 4-23)

Sec. 3-72. - Poisoning prohibited.

No person shall expose any known poisonous substance, whether fixed with food or not, so that the same shall be liable to be eaten by any animal, provided that it shall not be unlawful for a person to expose for exterminating rats on his own property common rat poison mixed only with vegetable substances.

(Code 1964, § 4-24)

Sec. 3-73. - Removal of dead animals required.

If any animal shall die in the possession of any person in this city, it shall be the duty of such personowner to cause the ~~same to be at once removed without the limits of the city and buried at a sanitary landfill~~animal to be appropriately disposed of. Such disposal may include burial on property within the city limits only if all parts of the dead animal are covered by at least four feet of earth. In case the owner ~~or person having charge~~ of any such animal shall neglect or refuse to ~~remove the same properly dispose of the animal~~ within ten (10) hours after its death, the police department shall cause the ~~samedead animal~~ to be removed at the expense of ~~the such~~ owner, ~~or other person having charge of the same, such expense to be recovered by civil action.~~ Whenever the owner ~~or other person having charge~~ of any dead animal cannot be found or ascertained, it shall be the duty of the animal control officer to ~~remove and have such animal buried.~~dispose of the animal.

(Code 1964, § 4-25)

Sec. 3-74. - Trapping of animals.

No person shall set, or cause to be set, an unauthorized or inhumane trap within the city, except that rodent snap-traps baited with vegetable or dairy products may be used on private property.

(Code 1964, § 4-26)

Sec. 3-75. - Removal of animal waste required.

The owner or person having control or purporting to have control over any animal shall remove any feces deposited by his animal on public walks, recreation areas or private property.

(Code 1964, § 4-27)

Cross reference— Sidewalks, § 16-21 et seq.

Sec. 3-76. ~~-Reserved~~ Sterilization of adopted animals.

~~No unclaimed dog, cat, or male potbelly pig shall be released for adoption without being sterilized, or without a written agreement from the adopter guaranteeing that such animal will be sterilized.~~

(Code 1964, § 4-28; Ord. No. 18-1995, § 10, 10-4-95)

~~Sec. 3-77. -Permits for infant native animals; release.~~

- ~~(a) The animal control officer may issue a temporary permit for the keeping, care and protection of an infant animal native to this area which had been deemed to be homeless.~~
- ~~(b) The animal control officer shall have the power to release or order the release of any infant wild animal kept under temporary permit which is deemed capable of survival in the wild.~~

(Code 1964, § 4-30)

Sec. 3-78. - Wild animals as pets or for display.

- (a) No person shall keep or permit to be kept any wild animal as a pet.
- (b) No person shall keep or permit to be kept on his premises any wild or vicious animal for display or for exhibition purposes, whether gratuitously or for a fee. This section shall not be construed to apply to zoological parks, performing animal exhibitions or circuses.

(Code 1964, § 4-29)

Sec. 3-79. - Maltreatment of performing animals prohibited.

- (a) No performing animal exhibition or circus shall be permitted in which animals are induced or encouraged to perform through the use of chemical, mechanical, electrical or manual devices in a manner which will cause or is likely to cause physical injury or suffering.
- (b) All equipment used on a performing animal shall fit properly and be in good working condition.

(Code 1964, §§ 4-31, 4-32)

Secs. 3-80—3-95. - Reserved.

ARTICLE IV. - RABIES CONTROL

Sec. 3-96. - Vaccination required.

All dogs and potbelly pigs three (3) months of age or older shall be vaccinated against rabies. All dogs and potbelly pigs vaccinated at three (3) months of age or older shall be revaccinated at one (1) year of age and thereafter at intervals recommended in the current *Compendium of Animal Rabies Vaccines*. If any dog or potbelly pig is found within the city without a current rabies vaccination tag or current license tag affixed to its collar or harness, the owner of such dog or potbelly pig shall be presumed to have violated the provision of this article.

(Code 1964, § 4-9; Ord. No. 18-1995, § 11, 10-4-95)

Sec. 3-97. - Reporting animal bites.

- (a) Any person having knowledge that an animal, other than a rodent, rabbit, bird or reptile, has bitten a human being shall immediately report the incident to the animal control office or police department.
- (b) If any animal is suspected of having rabies or if any animal has bitten a person and such animal has not had a current vaccination, such animal shall be confined for a period of at least ten (10) days by a leash, chain or cage at the animal shelter or a veterinary hospital of the owner's choice, all at the expense of the owner of the animal. During the ten-day observation period, no rabies vaccine shall be administered to the animal.
- (c) No animal held for observation on suspicion of rabies shall be released until the observation period is over, except that if the owner shows proof of current rabies vaccination, the animal may be released into quarantine at the owner's residence, at the discretion of the animal control officer.
- (d) If any animal has been bitten by another animal suspected of having rabies, the owner of such animal so exposed to rabies shall report such fact to the animal control officer, local humane society

officer or police department. If either animal has not been vaccinated against rabies, the animal control officer shall have the power, in his discretion, to have such animal removed from the owner's premises to a veterinary hospital, and there placed under observation for a period of up to six (6) months at the expense of the owner, provided that the owner may elect in lieu thereof to have such animal destroyed.

- (e) If a standard incubation period has not been established by the state department of health for the particular species of animal, it shall be summarily destroyed and if involved with another animal or human, a necropsy shall be performed by a certified laboratory to determine rabies contamination.

(Code 1964, § 4-10)

Sec. 3-98. - Animals with rabies.

If rabies has been ascertained in any animal, such animal shall be summarily destroyed.

(Code 1964, § 4-11)

Secs. 3-99—3-115. - Reserved.

ARTICLE V. - IMPOUNDMENT

Sec. 3-116. - Conditions and authority.

Unrestrained dogs and potbelly pigs, maltreated animals and nuisance animals, including cats running at large who are not ear tipped as members of a registered feral cat colony, may be taken by police officers, animal control officers or humane officers and impounded in an animal shelter, or other appropriate location, and there confined in a humane manner.

(Code 1964, § 4-17; Ord. No. 18-1995, § 12, 10-4-95)

Sec. 3-117. - Unclaimed animals.

Unclaimed animals shall be kept for not less than five (5) days. If the City does not have access to facilities to house the animal, and no owner can reasonably be identified, the City shall have the option to dispose of the animal in whatever manner deemed appropriate, including destroying the animal in a humane manner.

(Code 1964, § 4-18; Ord. No. 15-2008, § 1, 12-3-08)

Sec. 3-118. - Notice.

Immediately upon ~~the~~ impoundment, the animal control officer or humane society officer shall notify the owner of such impounded animal, if the owner can be identified, that such animal has been impounded. Such notice shall be by telephone if possible, otherwise by mail, and a description of the animal shall be posted at city hall and at the animal shelter.

(Code 1964, § 4-19)

Sec. 3-119. - Release of animals.

- (a) An owner reclaiming an impounded animal for the first time within a twelve-month period shall pay a fee of ten dollars (\$10.00), plus a daily boarding fee as established by the operator of the animal shelter, subject to approval of the city manager.
- (b) An owner reclaiming an impounded animal for each subsequent time within a twelve-month period shall pay a fee of twenty dollars (\$20.00), plus a daily boarding fee as established by the operator of the animal shelter, subject to approval by the city manager.
- (c) An owner reclaiming an impounded dog or potbelly pig which is not validly licensed must license the dog or potbelly pig and present evidence thereof to the person in charge of the animal shelter. If the dog or potbelly pig does not have a current rabies tag, the owner shall present a current rabies vaccination certificate for such dog or potbelly pig duly issued by a licensed veterinarian, or, in lieu thereof, the owner may place a cash deposit of fifty dollars (\$50.00) with the city to be refunded to the owner upon presenting, within five (5) days thereafter, proof of vaccination and license.

(Code 1964, § 4-20; Ord. No. 18-1995, § 13, 10-14-95)

Sec. 3-120. - Animal holding periods; disposition of unclaimed animals.

- (a) Any pet animal not reclaimed by its owner shall be held, except as provided in sub-part (b) of this section, by the city for a minimum of five (5) days before it may become available for adoption or otherwise disposed of at the discretion of the animal control officer. For purposes of this section "days" means days during which the shelter at which the animal is being held is open to the public.
- (b) No unclaimed dog, cat, or potbelly pig shall be released for adoption without being sterilized.
- ~~(c)~~ Pet animals which, in the opinion of a veterinarian, are experiencing extreme pain or suffering may be disposed of immediately by the city through euthanasia after the animal control officer, or her designee, has made reasonable efforts to contact the owner. For pet animals with identification, reasonable efforts to contact the owner shall continue for a minimum of twenty-four (24) hours.

(Code 1964, § 4-21; Ord. No. 16-1999, § 1, 9-1-99)

ALAMOSA CITY COUNCIL COUNCIL COMMUNICATION

Subject/Title:

Award of Bid – AFRC Treadmills

Recommended Action:

That Council approves the selection of HealthStyles Exercise Equipment for the purchase of four treadmills in the amount of \$22,433.

Background:

Community Recreation Department released an Invitation for Bids (IFB) to replace all four treadmills at the Recreation Center. Staff researched various commercial-grade models available and took into account design specifications to encourage patron usage. The research resulted in staff approving three models for vendors to bid on with the specifications to purchase four identical units.

The City received six bids from three vendors.

1. HealthStyles Exercise Equipment (Denver)	Matrix T5x	\$22,443.00
2. Push-Pedal-Pull (Denver)	Precor TRM 835	\$27,755.29
3. Push-Pedal-Pull (Denver)	Precor TRM 781 /731	\$27,618.03
4. Push-Pedal-Pull (Denver)	Precor TRM 761/731	\$25,922.59
5. Advanced Exercise (Littleton)	Spirit CT850	Incomplete
6. Advanced Exercise (Littleton)	Life Fitness Integrity	Incomplete

Upon review of the bids, bid numbers 3, 4, 5, and 6 were removed from consideration.

- Number 3 did not bid on the one of the three approved models staff was looking for. Also, the vendor's bid consisted of two different models instead of four identical ones.
- Number 4 did not bid on the one of the three approved models staff was looking for. Also, the vendor's bid consisted of two different models instead of four identical ones.
- Number 5 did not bid on the one of the three approved models staff was looking for. Also, the vendor did not submit a complete bid showing all costs as required by the IFB.
- Number 6 did not bid on the one of the three approved models staff was looking for. Also, the vendor did not submit a complete bid showing all costs as required by the IFB.

Issue Before the Council:

Does Council wish to award the treadmill purchases to the lowest responsive and responsible bidder?

Alternatives:

While Council is free to select or develop any number of alternatives, those listed below are examples.

- Award the bid to HealthStyles Exercise Equipment for the purchase of four treadmills in the amount of \$22,433 using remaining 2017 budgeted funds (\$17,615) supplemented with unused 2016 funds (\$4,818) that will require a future budget amendment.
- Award the bid to one of the other vendors.
- Not award the bid and provide staff with further direction.

Fiscal Impact:

The 2017 budget included \$32,000 for new cardio equipment (ellipticals and treadmills). In addition, \$7,000 was budgeted in 2016 for one treadmill, but that unit was not purchased and the funds were not spent on other capital items. With the previous agenda item of \$14,385 on new ellipticals, there is \$17,615 left in 2017 funds to apply towards the \$22,433 treadmill bid. Staff requests using \$4,818 in unused 2016 funds to make up the difference. If approved, a budget amendment will be brought forward in the future.

Legal Opinion:

City Attorney will be present if there are any legal questions regarding this action.

Conclusion:

In addition to replacing well used equipment, the new treadmills come with additional features for our patrons to enjoy during their workouts, such as audio access to all three televisions.

ATTACHMENTS:

Description	Type
Matrix Treadmill Info Sheet	Cover Memo

T5x Treadmill



- LED console display offers intuitive operation
- Compatible with xID single-point user sign-in for a seamless personal experience
- RFID compatible to provide touch-free login
- Integrated 3-speed personal fan
- Ultimate Deck System for superior performance and durability
- Matrix 5.0 Hp AC motor with Dynamic Response Drive System fine-tunes response based on footfall pattern for a smooth, consistent, natural workout
- WiFi connectivity accommodates optional Matrix Asset Management system and Workout Tracking Network
- Sprint 8 High Intensity Interval Training program
- USB port offers charging for most smartphones and tablets
- Crossbar speed and incline controls make adjustments quick and easy
- 56 cm / 22" wide belt offers sense of security and freedom on hard runs

CONSOLE

Display Type	Dot-matrix LED with profile display
Display Feedback	Clock, Time Elapsed, Time Remaining, Total Program Time, Distance (Kilometers or Miles), Calories, Speed, Incline, Pace, Average Pace, Heart Rate, METs, Watts, Workout Profile
Secondary Data Display	No
User-defined Multi-language Display	English, German, French, Italian, Spanish, Dutch, Portuguese, Japanese, Swedish, Finnish, Turkish, Polish, Russian, Danish
Workouts	Manual, Rolling Hills, Fat Burn, Sprint 8, 5k, Target HR, Gerkin Protocol, Army PFT, Navy PRT, Marine PFT, Air Force PRT, Physical Efficiency Battery (PEB), WFI Protocol
CSAFE Ready-FitLinxx™ Certified	Yes
IPTV Compatible	No
Pro:Idiom Compatible	Optional - add-on TV
FitTouch™ Technology	No
One-button Start	Yes
On-the-fly Program Change	Yes
Integrated Vista Clear™ Television Technology	No
FITCONNEXION™ Ready	Yes
WiFi Enabled	Optional
Bluetooth Enabled	No
iPod® / iPhone® / iPad® Compatible	Charging only
Multimedia Playback	No
Personal Fan	Yes
Personal Trainer Portal Compatible	No
USB Port	Yes

Virtual Active™ Compatible	No
Asset Management Compatible	Yes
Workout Tracking Network Compatible	Yes
Web Connectivity	No
Facility Communication Portal/Calendar	No
RFID Compatible	Yes
Pause Function	Yes
Reading Rack	No

DRIVE SYSTEM

Drive System	Matrix 5.0 hp AC Dynamic Response Drive System
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FEATURES

Deck Type	Ultimate hard-wax reversible 1" deck
Belt Type	Habasit, 2-ply commercial grade
Running Area	152 x 56 cm / 60" x 22"
Step-on Height	24 cm / 9.5"
Cushion System	Ultimate Deck™ cushioning system
Incline Range	0-15% (590-kg / 1,300-lb. thrust elevation motor)
Speed Range	0.8 - 24.1 km/h / 0.5 - 15 mph
Contact & Telemetric HR	Yes
Crossbar Controls	Go, stop, cool down, speed and incline control
Tread Sense	Yes

NOTE

Speed Rating	24.1 km/h / 15 mph rating good for users up to 159 kg / 350 lbs.
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TECH SPECS

Power Requirements	20-amp dedicated circuit required, non-looped grounded
Electrical Receptacle & Plug	NEMA 5-20R 120v
Assembled Dimensions	215 x 93 x 161 cm / 84.6" x 36.5" x 63.5"
Max User Weight	182 kg / 400 lbs.
Assembled Weight	179 kg / 394 lbs.
Shipping Weight	197 kg / 433 lbs.

ALAMOSA CITY COUNCIL COUNCIL COMMUNICATION

Subject/Title:

SLV Code of Ethics

Recommended Action:

Staff recommends that City Council adopt the SLV Code of Ethics.

Background:

Last year, local government members of the Upper Rio Grande Economic Development group signed a shared Code of Ethics. This year, URGED would like to broaden that Code of Ethics to include the entire San Luis Valley. This idea was presented at the Economic Summit in Monte Vista January 13th and was well received by all those in attendance.

Issue Before the Council:

Does Council wish to adopt the SLV Code of Ethics?

Alternatives:

Council can decide to adopt the SLV Code of Ethics or provide further direction to staff.

Fiscal Impact:

none

Legal Opinion:

The City Attorney will be present for any questions.

Conclusion:

The SLV Code of Ethics falls in line with recent efforts to bring the San Luis Valley together in efforts of marketing, economic development, and general collaboration.

ATTACHMENTS:

Description	Type
▣ SLV Code of Ethics	Backup Material
▣ Code of Ethics Entity Listing	Backup Material

SLV CODE OF ETHICS

INTRODUCTION

The municipalities, counties, institutions of higher education, and economic development offices in the San Luis Valley (SLV) region are committed to the economic development and growth of the SLV. This brings together the interests of a broad range of public, private, and public/private groups to promote the San Luis Valley as a single economic entity. The collaboration of such a variety of groups and interests requires that certain standards of conduct must be developed and adhered to for the SLV to meet its ultimate Economic Development objectives and build a culture of strong community collaboration. This Code of Ethics represents the standards that each partner of SLV supports and practices in its daily conduct of business.

PREAMBLE

We, the below-signed partners of SLV, set forth the following principles of behavior and standards of conduct to guide efforts in promoting the long-term economic health of the San Luis Valley. We fully realize that no Code of Ethics is of value without an inherent level of trust in the integrity of one another and a commitment from each of our communities to conduct ourselves at the highest level of professional conduct. In that spirit, we set forth this Code of Ethics.

- We are committed to the promotion of the San Luis Valley as a desirable business location for new and expanding companies. When representing the SLV, we shall endeavor to sell the “San Luis Valley First” and our individual communities, entities and projects second.

- We shall honor the confidentiality requested by both our fellow SLV partners and our prospects. Information shared with our fellow partners in confidence shall remain in confidence. Transactions are to be driven by the individual town, city, county or EDO. In the event a company chooses to relocate from one community to another, every effort will be made to contact the affected community to let them know of the potential move. Violation of this commitment shall be viewed as the single most serious breach of our Code of Ethics.

- We are committed to the concept of competition for locations and expansions among our individual communities and

projects, provided that the prospect has asked for specific proposals or has settled on a specific San Luis Valley location.

- At no time shall any SLV entity solicit a fellow partner's prospects.

- We are committed to working together with the real estate community and are in no way in direct competition with them. Economic development organizations are a resource and facilitator in the site selection process.

- We are committed to sharing among our partners as much information as is necessary and prudent on any activity undertaken by or in the name of the SLV. Our guiding principle shall be that "more information is better than less."

- At no time shall any partner of the SLV advertise or promote its respective area to companies within another partner's geographic area in a manner that is derogatory or insulting to the other geographic area. "Selling against" another SLV partner or direct solicitation of intra-valley relocations, is forbidden.

- We are committed to locating prospects in the San Luis Valley. In the event that our local jurisdictions cannot meet the needs of a particular prospect we shall communicate with our fellow partners in an effort to meet the company's needs elsewhere in the San Luis Valley.

- Economic development organizations shall hold all site and building information provided to SLV by partner real estate brokerage firms in the strictest confidence. Said information shall not be printed, copied, and shown in any manner to any entity other than prospects or their direct representatives.

CONFIDENTIALITY OF PROSPECTS

In all instances partners of this agreement shall honor the confidentiality of individual prospects. Whenever possible, specific information on particular transactions shall be shared within the realm of the SLV and the Governor's Office of Economic Development and International Trade. In those instances where prospects are dealing with individual communities, information will only be shared by applicable staff and the local representatives involved.

In instances, where a prospect wishes to remain completely confidential with an individual community, the remaining partners of the SLV shall honor that confidentiality and shall in no way attempt to intervene in the relationship. The prospect will remain confidential until the prospect chooses to announce.

Mayor, City of Alamosa, Colorado

Date of Adoption

Mayor, City of Alamosa, CO	Date of Adoption
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Mayor, Town of Hooper, CO	Date of Adoption
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Chairman, BOCC, Alamosa County, CO /	Adopted
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Mayor, Town of Manassa, CO	Date of Adoption
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Mayor, Town of La Jara, CO	Date of Adoption
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Mayor, Town of Antonio, CO	Date of Adoption
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Mayor, Town of Sanford, CO	Date of Adoption
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Mayor, Town of Romeo, CO	Date of Adoption
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Chairman, BOCC, Conejos County, CO /	Adopted
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Mayor, Town of San Luis, CO	Date of Adoption
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Mayor, Town of Blanca, CO	Date of Adoption
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Chairman, BOCC, Costilla County, CO	Adopted
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Mayor, Town of Creede, CO	Date of Adoption
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Chairman, BOCC, Mineral County, CO /	Adopted
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Mayor, Town of Saguache, CO	Date of Adoption
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Mayor, Town of Center, CO	Date of Adoption
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Mayor, Town of Crestone, CO	Date of Adoption
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Mayor, Town of Moffat, CO	Date of Adoption
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Mayor, Town of Bonanza, CO	Date of Adoption
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Chairman, BOCC, Saguache County, CO /	Adopted
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Mayor, City of Monte Vista, CO	Date of Adoption
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Mayor, Town of Del Norte, CO	Date of Adoption
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Mayor, Town of South Fork, CO	Date of Adoption
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Chairman, BOCC, Rio Grande Cty, CO /	Adopted
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President, URGED	Date of Adoption
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President, ACEDC	Date of Adoption
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Chairman, SLVDRG	Date of Adoption
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Chairman, ScSEED	Date of Adoption
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President, CCEDC	Date of Adoption
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ALAMOSA CITY COUNCIL COUNCIL COMMUNICATION

Subject/Title:

First Reading, Ordinance No. 6-2017, An ordinance establishing a temporary moratorium on the establishment of marijuana consumption clubs through September 30, 2017

Recommended Action:

Approve temporary moratorium ordinance on first reading and set for public hearing on March 15, 2017, at 7:00 p.m., or as soon thereafter as the matter may be heard.

Background:

Marijuana consumption clubs are places where one of the purposes is to provide a forum for smoking marijuana, similar to a cigar bar, or a hookah lounge for tobacco. Of course, one of the major differences is that marijuana is illegal under federal law, and commercial marijuana facilities, other than marijuana testing facilities, are not permitted in Alamosa, pursuant to Council's earlier ordinances on those subjects.

Neither state statute nor the Alamosa *Code of Ordinances* addresses marijuana consumption clubs. At this point, staff does not have enough information to make a recommendation to Council concerning the issues surrounding marijuana consumption clubs, whether they should be permitted, and if so under what sorts of licensing, zoning, land use, and other kinds of restrictions. Although the City is unaware of any pending application for such clubs, one such club made an inadequate sales tax license application, and spoke during citizen comment concerning a desire to operate in Alamosa. Other municipalities do have such clubs. A six-month moratorium would give staff an opportunity to research the issue and bring information to Council for consideration of whether and how to allow marijuana consumption clubs in Alamosa.

Issue Before the Council:

Does Council wish to approve the Ordinance instituting a temporary moratorium on first reading and set it for public hearing to be held on March 15, 2017?

Alternatives:

- 1) Approve the Ordinance on first reading and set for public hearing
- 2) Approve the Ordinance with changes to the length of the moratorium
- 3) Decline to approve the Ordinance in whole or in part, and give staff further direction.

Fiscal Impact:

None.

Legal Opinion:

City Attorney will be available for comment if necessary.

Conclusion:

Approval of this Ordinance would give staff an opportunity to research the issue and bring information to Council for consideration of whether and how to allow marijuana consumption clubs in Alamosa.

ATTACHMENTS:

	Description	Type
▣	Ordinance 6-2017 Temporary Moratorium on marijuana consumption clubs	Ordinance

ORDINANCE NO. 6 , 2017

AN ORDINANCE ESTABLISHING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OF MARIJUANA CONSUMPTION CLUBS THROUGH SEPTEMBER 30, 2017

WHEREAS, Article XIV, Section 4 of the *Charter* of the City of Alamosa empowers the City Council to zone the City and to make appropriate regulations and restrictions concerning land uses within the City of Alamosa; and

WHEREAS, the City of Alamosa has received a limited number of inquiries concerning the establishment of marijuana consumption clubs; and

WHEREAS, the Alamosa *Code of Ordinances* prohibits the establishment of any commercial marijuana facilities, as those facilities are defined in the Colorado Medical Marijuana Code (C.R.S. § 12-43.3-101 et seq.) and the Colorado Retail Marijuana Code (C.R.S. § 12-43.4-101 et seq.), other than marijuana testing facilities; and

WHEREAS, the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code, and the Alamosa *Code of Ordinances* all do not address marijuana consumption clubs; and

WHEREAS, marijuana consumption clubs differ from the Private, Civic, Social, or Fraternal Membership Clubs or Associations addressed in use group C-11 in Section 21-97 of the Alamosa *Code of Ordinances*, which is the category they most closely resemble, in many ways, not least of which is their illegality under federal law; and

WHEREAS, the City desires to further study the issues surrounding marijuana consumption clubs concerning questions of their effect on public health and safety, and proper zoning and regulation of such clubs were they to be permitted within city limits; and

WHEREAS, nothing in this section is meant to inhibit any individual's personal use or possession of marijuana pursuant to article XVIII, section 16(3)(a) - (e) of the Colorado Constitution;

NOW, THEREFORE, BE IT HEREBY ORDAINED by the City Council of the City of Alamosa, Colorado, as follows:

Section 1. Moratorium on the Establishment of Marijuana Consumption Clubs. A moratorium is hereby established through September 30, 2017, unless sooner lifted by action of Council or made moot by the adoption of regulations governing standards for such clubs, on the establishment of marijuana consumption clubs within the City of Alamosa

Section 2. Definitions: For purposes of this moratorium, a "marijuana

consumption club” shall be defined as an establishment, organization, association, club, tea pad, or other similar entity or place where a purpose is to allow the consumption of marijuana, medical marijuana or marijuana product on the premises owned or operated by the club.

Section 3. Staff Direction. City staff and the City Planning Commission shall investigate issues surrounding marijuana consumption clubs within the City of Alamosa and prepare a proposed ordinance concerning the standards applicable to marijuana consumption clubs for further consideration by the City Council during the moratorium period.

Section 4. General Repealer. All other acts, orders, ordinances, resolutions, or portions thereof in conflict with the sections adopted in this Ordinance, are hereby repealed to the extent of such conflict.

Section 5. Recording and Authentication. This ordinance, immediately upon its passage, shall be authenticated by the signatures of the Mayor and City Clerk, recorded in the City book of Ordinances kept for that purposes, and published according to law.

Section 6. Publication and Effective Date. This ordinance shall take effect ten (10) days after publication following final passage. Publication both before and after final passage shall be by the title of this ordinance, which Council determines constitutes a sufficient summary of the ordinance, together with the statement that the full text of the ordinance is available for public inspection and acquisition on the City’s website and in the office of the City Clerk.

Section 7. Declaration of Public Interest. This ordinance is necessary to preserve the peace, health, safety, welfare, and to serve the best interest of the citizens of the City of Alamosa, Colorado.

INTRODUCED, READ AND APPROVED on first reading the 1st day of March, 2017, and ordered published by title and reference as provided by law with notice of a public hearing to be held for consideration of the adoption of said ordinance on the 15th day of March 2017, at 7:00 p.m., or as soon thereafter as the matter may be heard, or on such subsequent date to which the public hearing or Council consideration may be continued.

APPROVED, AND ADOPTED after public hearing the 15h day of March, 2017.

CITY OF ALAMOSA

By _____
Josef P. Lucero, Mayor

ATTEST:

Holly C. Martinez, City Clerk

ALAMOSA CITY COUNCIL COUNCIL COMMUNICATION

Subject/Title:

Resolution No. 6-2017 Amending the ex officio directors of the Alamosa Capital Leasing Company

Recommended Action:

Approve Resolution 6-2017.

Background:

The City established the Alamosa Capital Leasing Company ("ACLC") in 2002 to facilitate acquisition of the Alamosa Family Recreation Center. It has since been used to facilitate other lease purchase arrangements such as the Golf Course and City Hall. It serves as the intermediary in lease purchase or certificate of purchase financing.

The bylaws of the ACLC set forth the composition of the board of directors as consisting of certain ex-officio positions. The ACLC is needed for the upcoming lease purchase arrangement for acquisition of water rights. In reviewing the composition of the board, it came to the City's attention that it has been difficult to get the named board together. Staff suggests replacing the School District representative with a representative from another entity, and both SLV Health and Alamosa County have expressed interest when approached. Staff believes adding another ex-officio position, bringing the number to 7, will assist in achieving a quorum. Staff is appreciative of the willingness of other governmental and non-governmental organizations to assist by serving in this capacity. If the composition is changed, staff would recommend to the ACLC that it amend its bylaws, which amendment must be approved by Council. The Resolution gives that approval in advance.

Issue Before the Council:

Does Council wish to change the ex-officio composition of the board of directors of the ACLC?

Alternatives:

- 1) Change the composition of the board of directors of the ACLC as indicated in the resolution;
- 2) Change the composition of the board of directors of the ACLC in some other manner;
- 3) Decline to change the composition of the board of directors of the ACLC.

Fiscal Impact:

None

Legal Opinion:

City Attorney will be present at the meeting if necessary.

Conclusion:

This resolution amends the composition of the Board of Directors of the ACLC in a manner that will enable easier achievement of a quorum and provide the board with financial expertise.

ATTACHMENTS:

	Description	Type
▣	Resolution 6-2017 Alamosa Capital Leasing Company board composition	Resolution Letter

RESOLUTION NO. 6 , 2017

A RESOLUTION CHANGING THE EX-OFFICIO POSITIONS SUBJECT TO APPOINTMENT AS DIRECTORS OF THE ALAMOSA CAPITAL LEASING COMPANY

WHEREAS, the City of Alamosa has established the Alamosa Capital Leasing Company ("ACLC") for the following purposes:

a) To acquire by purchase, lease, or otherwise, interests in real and personal property, to acquire, construct, and install improvements and facilities of every character, and to lease or otherwise convey all or any part of said interests in real and personal property and facilities and improvements to the City;

b) To borrow money, to become indebted, and to execute and deliver bonds, notes, debentures, or other securities, instruments, or obligations for the purposes of a acquiring such interests in real and personal property, acquiring, constructing, and installing such facilities and improvements, and for such other purpose or purposes as may be necessary or desirable to accomplish the objectives of the company. Such indebtedness may be unsecured or may be unsecured or may be secured by any mortgage, trust deed, or other lien upon the property to be acquired or any other property of the company;

c) To conduct the business of the company in such a manner that upon full payment of any indebtedness of the company, the title and ownership of the property securing such indebtedness or acquired with the proceeds thereof, or to which such indebtedness otherwise relates, will be vested in the City; and

WHEREAS, the Bylaws of the ACLC provide that the directorship shall be filled by certain defined ex-officio positions, and that the ex-officio designations may be modified, from time to time, by resolution of Council; and

WHEREAS, Council has determined that the City and the ACLC would be better served if the position designated to be filled by the Superintendent of Alamosa School District RE-11J or by his or her designee were instead filled by the Alamosa County Administrator or by his or her designee, and if a new ex-officio position were added to be filled by the Chief Executive Officer of SLV Health or his or her designee.

NOW, THEREFORE, BE IT HEREBY RESOLVED, by the City Council of the City of Alamosa, Colorado:

The Alamosa Capital Leasing Company director position designated by the Company's bylaws to be filled by the Superintendent of Alamosa School District RE-11J or by his or her designee shall instead be filled by the Alamosa County Administrator or by his or her designee, and a new ex-officio director's position is added to be filled by the Chief Operating Officer of the San Luis Valley Regional Medical Center or his or her designee. Council gives its approval for the Company to enact an amendment to its bylaws consistent with this change.

This Resolution shall become effective immediately upon its adoption.

APPROVED, PASSED AND ADOPTED this 1st day of March, 2017.

CITY OF ALAMOSA

By _____
Josef P. Lucero, Mayor

ATTEST:

Holly C. Martinez, City Clerk