

**SUBJECT TO CITY COUNCIL CONSIDERATION**

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**USOC HEADQUARTERS LEASE AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF COLORADO SPRINGS PUBLIC FACILITIES AUTHORITY**  
as Lessor

and

**CITY OF COLORADO SPRINGS, COLORADO,**  
as Lessee

Dated as of \_\_\_\_\_, 2009

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**USOC HEADQUARTERS LEASE AGREEMENT**

**THIS USOC HEADQUARTERS LEASE AGREEMENT** (this “Lease”) is dated as of \_\_\_\_\_ and is entered into by and between **THE CITY OF COLORADO SPRINGS PUBLIC FACILITIES AUTHORITY**, a nonprofit corporation duly organized and validly existing under the laws of the State of Colorado, as lessor (the “Corporation”), and the **CITY OF COLORADO SPRINGS, COLORADO**, as lessee (the “City”), a municipal corporation organized and operating as a home rule city under the laws of the State of Colorado (the “State”).

**WITNESSETH :**

WHEREAS, the Corporation (a) is a nonprofit corporation that is duly organized, validly existing and in good standing under the laws of the State; (b) is duly qualified to do business in the State; (c) is the owner of the Leased Property and (d) is authorized, under its articles of incorporation and bylaws, action of its board of directors and applicable law, to own and manage its properties, to conduct its affairs in the State, to lease the Leased Property to the City and to execute, deliver and perform its obligations under this Lease; and

WHEREAS, City has discussed and considered various transactions which would create incentives for the United States Olympic Committee (the “USOC”), a corporation created by an Act of Congress and exempt from taxation within the meaning of, and an organization described in, Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, to continue to maintain its national headquarters and the existing Olympic training center in Colorado Springs, the City hereby determines that the retention and maintenance of such USOC facilities in the City serves an essential public purpose and will result in substantial public benefits to the City and its inhabitants, including without limitation economic and cultural benefits; and

WHEREAS, in furtherance of the foregoing, the Corporation has determined that the lease of the Leased Property to the City pursuant to this Lease is in the best interests of the Corporation; and

WHEREAS, in furtherance of the foregoing, the City has determined that the lease of the Leased Property from the Corporation pursuant to this Lease serves an essential public purpose and will result in substantial public benefits to the City and its inhabitants, including without limitation economic and cultural benefits, and is in the best interests of the City and its residents; and

WHEREAS, in furtherance of the foregoing, the City has determined that the sublease of the Leased Property from the City to the USOC pursuant to the USOC Sublease (as defined herein) serves an essential public purpose and will result in substantial public benefits to the City and its inhabitants, including without limitation economic and cultural benefits, and is in the best interests of the City and its residents; and

WHEREAS, the Corporation desires to lease the Leased Property to the City and the City desires to lease the Leased Property from the Corporation pursuant to this Lease and thereupon sublease the Leased Property to the USOC pursuant to the USOC Sublease; and

WHEREAS, this Lease is a “triple-net” lease requiring the City to pay, among other things, all expenses, taxes, if any, fees, insurance and costs associated with the Leased Property as and to the extent provided herein; and

WHEREAS, the City is authorized by its Charter (defined herein) to lease real property, as lessee; and

WHEREAS, the Base Rentals (defined herein) are being prepaid in full on the date of execution and delivery and Additional Rentals (defined herein) payable by the City hereunder shall constitute currently appropriated expenditures of the City and shall not constitute a debt or multiple fiscal year direct or indirect obligation whatsoever of the City or a mandatory charge or requirement against the City in any Fiscal Year (defined herein) beyond the Fiscal Year for which such payments have been appropriated;

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

## **ARTICLE I**

### **DEFINITIONS**

The following capitalized terms shall have the following meanings in this Lease:

“*Additional Rentals*” means all sums payable by the City to the Corporation under this Lease with respect to the Leased Property, including without limitation all amounts required to be paid by the Corporation under the Condominium Documents as a member of the Condominium Association; provided, however, that Additional Rentals do not include the Base Rentals.

“*Base Rentals*” means the payments by the City pursuant to Section 5.01 hereof, for and in consideration of the right to use the Leased Property during the Lease Term.

“*Charter*” means the Home Rule Charter of the City, and any amendments or supplements thereto.

“*City*” means the City of Colorado Springs, Colorado or any successor thereto.

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

“*City Representative*” means any member of the City Council of the City; and any other person or persons designated to act on behalf of the City for the purposes of performing any act under this Lease by a written certificate furnished to the Corporation containing the specimen signature of such person and signed on behalf of the City by any member of the City Council of

the City. The identity of the City Representative may be changed by the City from time to time by furnishing a new certificate to the Corporation.

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

“Condominium Association” means 27 South Tejon Office Building Condominium Association, Inc., a Colorado nonprofit corporation.

“Condominium Documents” means, collectively, (a) that certain Amended and Restated Condominium Declaration for 27 South Tejon Condominiums dated \_\_\_\_\_, 2009 and recorded in the real property records of El Paso County, Colorado on \_\_\_\_\_, 2009 under Reception No. \_\_\_\_\_ (the “Condominium Declaration”), (b) that certain Condominium Map for 27 South Tejon Commercial Condominiums recorded in the real property records of El Paso County, Colorado on November 14, 2008 at Reception No.20860090, as supplemented by Condominium Map to be recorded on completion of the Building (and by such time as the term of the USOC Sublease commences) as provided in the Condominium Declaration (the “Condominium Map”), (c) the Articles of Incorporation for the Condominium Association filed with the Colorado Secretary of State on November 14, 2008, as amended by Articles of Amendment thereto filed on \_\_\_\_\_, 2009, and (d) the Amended and Restated Bylaws of the Condominium Association adopted by the Board of Directors of the Condominium Association on \_\_\_\_\_, 2009, as any of the same may be further amended, modified or restated from time to time.

“Corporation” means The City of Colorado Springs Public Facilities Authority, or any successor thereto.

“Corporation Representative” means any officer of the Corporation; and any other person or persons designated to act on behalf of the Corporation under this Lease by a written certificate furnished to the City containing the specimen signature of such person and signed on behalf of the Corporation by any officer of the Corporation. The identity of the Corporation Representative may be changed by the Corporation from time to time by furnishing a new certificate to the City.

“Economic Development Agreement” means that certain Economic Development Agreement Between the City of Colorado Springs and the United States Olympic Committee Regarding USOC Facilities in Colorado Springs, dated \_\_\_\_\_, 2009.

“Event of Default” means an event described in Section 11.01 hereof.

“Event of Nonappropriation” means an event described in Section 6.04(a) hereof.

“Fiscal Year” means the City’s fiscal year, which begins on January 1 of each year and ends on December 31 of each year.

“Force Majeure” means any event that is not within the control of the City, including without limitation, 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 affecting machinery, transmission pipes or canals.

“*Governmental Corporation*” means any federal, state, local or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“*Independent Counsel*” means an attorney duly admitted to the practice of law before the highest court in the State and who is not an employee of the Corporation or the City.

“*Lease*” means this Lease Agreement and any amendment or supplement hereto with respect to the Leased Property.

“*Lease Commencement Date*” means the date upon which the Corporation acquires fee simple title to the Leased Property, as set forth in a completed certificate in the form set forth in Exhibit A hereto.

“*Lease Term*” means the term when this Lease shall be in effect, all as provided in Section 4.01 hereof.

“*Leased Property*” means Condominium Unit Nos. 200, 300, 400, 500 and 600 pursuant to the Condominium Declaration, as further depicted on the Condominium Map.

“*Net Proceeds*” means (a) the gross proceeds received from any event referred to in Section 8.06(a) hereof, minus (b) all expenses incurred in the collection of such gross proceeds or award.

“*Permitted Encumbrances*” means, as of any particular time, (a) liens for taxes and assessments not then delinquent, or liens which may remain unpaid pursuant to Section 7.01(b) hereof; (b) this Lease; (c) the USOC Sublease; (d) the Condominium Documents; (e) the Economic Development Agreement; (f) recorded easements, licenses, rights-of-way, rights and privileges, restrictions and other exceptions as set forth in items ten (10) through fourteen (14) of the schedule of exceptions contained in title insurance commitment dated July 9, 2009 provided by Stewart Title Guaranty Company; (g) any applicable zoning requirements; and (h) 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 materially impair title to or usage of the Leased Property, except in no event shall mechanic's liens or any other monetary encumbrances be considered Permitted Encumbrances under this clause (h).

“*Person*” means any natural person, firm, corporation, partnership, limited liability company, state, political subdivision of any state, other public body or other organization or association.

“*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 Corporation relating to the ownership or operation of property, including but not limited to any of the foregoing relating to zoning, environmental, health or safety issues.

“*State*” means the State of Colorado.

“*USOC*” means the United States Olympic Committee, a corporation created by an Act of Congress and exempt from taxation within the meaning of, and an organization described in, Section 501(c)(3) of the Code.

“*USOC Sublease*” means the USOC Headquarters Sublease Agreement dated as of \_\_\_\_\_ between the City and the USOC regarding the Leased Property.

## ARTICLE II

### REPRESENTATIONS, COVENANTS AND WARRANTIES

**Section 2.01. Representations, Covenants and Warranties by Corporation.** The Corporation represents, covenants and warrants that:

(a) The Corporation (i) is a nonprofit corporation that is organized, validly existing and in good standing under the laws of the State, (ii) is duly qualified to do business in the State, (iii) is the owner of the Leased Property, and (iv) is authorized, under its articles of incorporation and bylaws, action of its board of directors and applicable law, to own the Leased Property and manage its properties, to conduct its affairs in the State, to lease the Leased Property to the City and to execute, deliver and perform its obligations hereunder.

(b) The lease of the Leased Property to the City pursuant to this Lease is in the best interests of the Corporation.

(c) The execution, delivery and performance of this Lease by the Corporation has been duly authorized by the Corporation.

(d) This Lease is enforceable against the Corporation in accordance with its terms, limited only by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors’ rights generally, by equitable principles, whether considered at law or in equity, by the exercise by the State of Colorado and its governmental bodies of the police power inherent in the sovereignty of the State of Colorado and by the exercise by the United States of America of the powers delegated to it by the Constitution of the United States of America.

(e) The execution, delivery and performance of the terms of this Lease by the Corporation does not and will not conflict with or result in a breach of the terms, conditions or 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 constitute a default

under any of the foregoing, in a manner which affects the validity or enforceability of the provisions of this Lease, or result in the creation or imposition of a lien or encumbrance whatsoever upon any of the property or assets of the Corporation.

(f) There is no litigation or proceeding pending or threatened against the Corporation or any other Person affecting the right of the Corporation to execute, deliver or perform its obligations under this Lease.

(g) The Corporation acknowledges and recognizes that a failure by the City to appropriate funds in a manner that results in an Event of Nonappropriation is solely within the discretion of the City Council of the City.

**Section 2.02. Representations, Covenants and Warranties by City.** The City represents, covenants and warrants that:

(a) The City is a home rule municipality duly organized and existing under Article XX of the Constitution of the State and the Charter of the City. The City is authorized to enter into the transactions contemplated by this Lease and to execute, deliver and perform its obligations hereunder.

(b) The lease of the Leased Property from the Corporation pursuant to this Lease serves an essential public purpose and will result in substantial public benefits to the City and its inhabitants, including without limitation economic and cultural benefits, and is in the best interests of the City and its residents.

(c) The execution, delivery and performance of this Lease by the City has been duly authorized by the City.

(d) This Lease is enforceable against the City in accordance with its terms, limited only by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, by equitable principles, whether considered at law or in equity, by the exercise by the State of Colorado and its governmental bodies of the police power inherent in the sovereignty of the State of Colorado and by the exercise by the United States of America of the powers delegated to it by the Constitution of the United States of America.

(e) The execution, delivery and performance of the terms of this Lease by the City does not and will not conflict with or result 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 is bound, or constitute a default under any of the foregoing, in a manner which affects the validity or enforceability of the provisions of this Lease, or result in the creation or imposition of a lien or encumbrance whatsoever upon any of the property or assets of the City.

(f) There is no litigation or proceeding pending or threatened against the City or any other Person affecting the right of the City to execute, deliver or perform its obligations of the City under this Lease.

(g) The City will recognize economic and other benefits by leasing the Leased Property pursuant to this Lease; the Leased Property is necessary and essential to the City's purpose and operations; the City expects that the Leased Property will adequately serve the needs for which it is being leased through the Lease Term.

(h) The City considers the Leased Property to serve an important and essential public purpose.

(i) The City is not aware of any current violation of any Requirement of Law relating to the Leased Property.

### ARTICLE III

#### DEMISING CLAUSE; ENJOYMENT OF LEASED PROPERTY

**Section 3.01. Demising Clause.** The Corporation demises and leases the Leased Property to the City in accordance with the terms of this Lease, subject only to Permitted Encumbrances, to have and to hold for the Lease Term.

**Section 3.02. Enjoyment of Leased Property.** The Corporation covenants that, during the Lease Term and so long as no Event of Default shall have occurred, the City shall 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.

### ARTICLE IV

#### LEASE TERM; TERMINATION OF LEASE

**Section 4.01. Lease Term.** This Lease shall commence on the Lease Commencement Date, and shall terminate on December 31, 2039 except that this Lease shall terminate upon the purchase of the Leased Property by the City pursuant to Section 9.01 hereof or by the USOC pursuant to the USOC Sublease and the Economic Development Agreement.

**Section 4.02. Effect of Termination of Lease Term.** Upon termination of the Lease Term, all unaccrued obligations of the City hereunder shall terminate, but all obligations of the City that have accrued hereunder prior to such termination shall continue until they are discharged in full.

### ARTICLE V

#### ACQUISITION OF THE LEASED PROPERTY

**Section 5.01. Acquisition of the Leased Property.** The Corporation agrees to acquire the Leased Property, and the City shall have no obligation to pay for any costs relating to the issuance or debt service of the COPs (as defined in the Economic Development Agreement) under the terms of this Lease.

**Section 5.02. No Warranty as to Suitability.** The Corporation makes no representation as to the adequacy or suitability of the Leased Property for the City's intended use or the use thereof by any other Person.

## ARTICLE VI

### BASE RENTALS AND ADDITIONAL RENTALS; EVENT OF NONAPPROPRIATION

**Section 6.01. Payment of Base Rentals.** The City has on the date of execution and delivery hereof prepaid all Base Rentals in an amount equal to one dollar per year for the maximum term of this Lease.

**Section 6.02. Payment of Additional Rentals.** The City shall, subject only to Sections 7.01(b) and 8.02(b) hereof and the other Sections of this Article, pay Additional Rentals directly to the Persons to which they are owed on the dates on which they are due.

**Section 6.03. Unconditional Obligations.**

(a) Notwithstanding any dispute between the City and the Corporation or between the City or the Corporation and any other Person relating to the Leased Property, the City shall, during the Lease Term, make all payments of Additional Rentals when due; payments of Additional Rentals (together with the prepayment of Base Rentals) are deemed to be "triple-net" and the City shall not withhold any Additional Rentals payable during the Lease Term pending final resolution of any dispute and shall not assert any right of set-off or counter-claim against its obligation to pay Additional Rentals, provided, however, that the making of any Additional Rental payment shall not constitute a waiver by the City of any rights, claims or defenses which the City may assert; and no action or inaction on the part of the Corporation shall affect the City's obligation to pay Additional Rentals during the Lease Term.

(b) So long as this Lease is in effect, the officer of the City who is responsible for formulating budget proposals with respect to payments of Additional Rentals is hereby directed (i) to estimate the Additional Rentals payable in the next ensuing Fiscal Year prior to the submission of each annual budget proposal to the City Council during the Lease Term; and (ii) to include in each annual budget proposal submitted to the City Council during the Lease Term the entire amount of Additional Rentals estimated to be payable during the next ensuing Fiscal Year; it being the intention of the City that any decision to appropriate Additional Rentals shall be made solely by the City Council, in its sole discretion, and not by any other department, agency or official of the City. Notwithstanding the foregoing, if the USOC shall, pursuant to the USOC Sublease, pay to the City an amount equal to Additional Rentals, then such amounts shall, without regard to the other provisions of this Article V, be applied to payment of Additional Rentals and Additional Rentals to such extent shall be deemed to have been appropriated for all purposes of this Lease.

**Section 6.04. Event of Nonappropriation.**

(a) An Event of Nonappropriation shall be deemed to have occurred: if on December 31 of any Fiscal Year if the City has, by such date, failed, for any reason, to appropriate sufficient amounts authorized and directed to be used to pay all Additional Rentals estimated to be payable in the next ensuing Fiscal Year.

(b) Notwithstanding subsection (a) of this Section, the Corporation may waive any such failure to appropriate and renew under subsection (a) of this Section which is cured by the City within a reasonable period of time and, so long as the payment of Additional Rentals is not delinquent, shall waive any such failure to appropriate so long as Additional Rentals are paid to the Corporation, by the City or by the USOC pursuant to the USOC Sublease.

**Section 6.05. Limitations on Obligations of City.**

(a) No provision of this Lease shall be construed or interpreted (i) to directly or indirectly obligate the City to make any payment in any Fiscal Year in excess of amounts appropriated for such Fiscal Year unless such payments are being made by a third party, including without limitation, the USOC; (ii) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of Article XI, Section 6 or Article X, Section 20 of the Colorado Constitution, the Charter or any other constitutional or statutory limitation or provision; (iii) as a delegation of governmental powers by the City; (iv) as a loan or pledge of the credit or faith of the City or as creating any responsibility by the City for any debt or liability of any person, company or corporation within the meaning of Article XI, Section 1 of the Colorado Constitution; or (v) as a donation or grant by the City to, or in aid of, any person, company or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution.

(b) The City shall be under no obligation whatsoever to exercise its option to purchase the Leased Property.

**ARTICLE VII**

**OPERATION AND MAINTENANCE OF LEASED PROPERTY**

**Section 7.01. Taxes, Utilities, Insurance and Condominium Association Fees and Charges.**

(a) The City shall pay, or cause to be paid, as a portion of Additional Rentals as defined herein, all of the following expenses with respect to the Leased Property, unless otherwise paid by the USOC pursuant to Article 3 of the USOC Sublease, or any other provision therefor:

(i) All taxes, if any, assessments and other charges lawfully made by any governmental body, provided that any such taxes, assessments or other charges that may lawfully be paid in installments may be paid in installments as such installments are due;

(ii) All gas, water, steam, electricity, heat, power and other utility charges incurred in connection with the Leased Property;

(iii) Casualty and property damage insurance with respect to the Leased Property in an amount equal to the full replacement value of the Leased Property subject to Section 7.01(e) below;

(iv) Public liability insurance, through one or more private or public insurance companies, with respect to the activities to be undertaken by the City in connection with the Leased Property, and this Lease: (A) to the extent such activities result in injuries for which immunity is available under Section 24-10-114, C.R.S. or any successor statute, in an amount not less than the amounts for which the City may be liable to third parties thereunder and (B) for all other activities, in an amount not less than \$600,000 per occurrence; provided, however, that if the Leased Property is subleased and any sublessee is responsible for payment of Additional Rentals, the provisions of clause (A) above shall be inapplicable; and

(v) All fees, charges and other amounts due from or on behalf of the Corporation to the Condominium Association under the Condominium Declaration or bylaws, rules or regulations in connection therewith

(b) The City shall not allow any liens for taxes, assessments, other governmental charges or utility charges to exist with respect to any portion of the Leased Property. If the City shall first notify the Corporation of the intention of the City to do so, the City may, however, in good faith contest any such tax, assessment, other governmental charge or utility charge and, in the event of any such contest, may permit the tax, assessment, other governmental charge or utility charge so contested to remain unpaid during the period of such contest and any appeal therefrom; provided, however, that such payment shall not constitute a waiver of the right to continue to contest such tax, assessment, other governmental charge or utility charge. At the request of the City, the Corporation will cooperate fully with the City in any such contest.

(c) The insurance policies provided pursuant to subsection (a) of this Section may be provided by one or more private or public insurance companies or organizations, or may be provided through a self-insurance program, subject to the following conditions:

(i) If the insurance is provided by a private or public insurance company or organization:

(A) the insurance policy (1) shall have a deductible clause in an amount not in excess of the amounts reasonably expected to be available to the City to pay such deductible in the event of an insured event, (2) shall name the City and the Corporation as insureds, (3) shall be so written or endorsed as to make losses, if any, payable to the City and the Corporation, as their respective interests may appear, (4) shall explicitly

waive any co-insurance penalty and (5) shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interest of the City or the Corporation without first giving written notice thereof to the City or the Corporation at least 45 days in advance of such cancellation or modification;

(B) a copy of each such insurance policy, or of each certificate evidencing such policy, and a certificate evidencing the continuation of such insurance shall be provided to the Corporation annually and copies of new insurance policies shall be provided to the Corporation within 30 days of purchase or renewal;

(C) full payment of insurance proceeds under any casualty or property damage insurance policy up to the dollar limit required by subsection (a)(iii) of this Section in connection with damage to the Leased Property shall, under no circumstance, be contingent on the degree of damage sustained at other property owned or leased by the City or the Corporation;

(D) each casualty or property damage insurance policy shall explicitly waive any co-insurance penalty;

(E) each insurance policy shall be provided by an insurer rated "A" or better by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.; and

(F) the City may insure the Leased Property under blanket insurance policies which insure not only the Leased Property, but other properties as well, as long as such blanket insurance policies comply with the requirements hereof; and

(ii) If the insurance is provided through a self-insurance program maintained by the City,

(A) an independent insurance consultant acceptable to the Corporation shall initially and annually certify to the Corporation that (1) the reserves supporting such self-insurance program are held by an independent custodian or trustee and are adequate for the purposes of such program and (2) such self-insurance program is maintained on an actuarially sound basis; and

(B) in the event the self-insurance program is discontinued, the actuarial soundness of the program shall be maintained.

(d) The City shall cause an insurance consultant, which may be the person providing the insurance including without limitation officials of the Colorado Intergovernmental Risk Sharing Agency, to annually review the coverage of the policies

of insurance maintained pursuant to this Section and to make recommendations thereon, and shall comply with such recommendations.

(e) Any insurance policy required by this Section 7.01 may, at the option of the City, be provided by the Condominium Association pursuant to the Condominium Declarations.

**Section 7.02. Maintenance and Operation of Leased Property.** The City shall maintain, preserve and keep the Leased Property, or cause the Leased Property to be maintained, preserved and kept, in good repair, working order and condition, subject to normal wear and tear, if any; and shall make or cause to be made all necessary and proper repairs, if any, except as otherwise provided in Section 8.05 and Section 8.06 hereof.

## ARTICLE VIII

### TITLE, ENCUMBRANCES, MODIFICATIONS OR ADDITIONS TO LEASED PROPERTY OR CONDEMNATION OF LEASED PROPERTY

**Section 8.01. Title to Leased Property.** Title to the Leased Property, and any and all additions and modifications thereto and replacements thereof shall be held in the name of the Corporation, subject to Permitted Encumbrances, until liquidated, conveyed or otherwise disposed of as provided in Articles IX and XII of this Lease, notwithstanding (a) an Event of Nonappropriation as provided in Section 6.04 of this Lease; (b) the occurrence of one or more Events of Default as defined in Section 12.01 of this Lease; (c) the occurrence of any event of damage, destruction, condemnation, or, construction, manufacturing or design defect or title defect, as provided in Section 8.06 of this Lease; or (d) the violation by the Corporation of any provision of this Lease.

The City shall have no right, title or interest in the Leased Property or any additions, modifications and improvements thereto, except as expressly set forth in this Lease.

**Section 8.02. Limitations on Disposition of and Encumbrances on Leased Property.**

(a) Except as otherwise permitted in this Article or Articles IX or XII hereof and except for Permitted Encumbrances, (i) neither the Corporation nor the City shall sell, assign, transfer or convey any portion of or any interest in the Leased Property or directly or indirectly create, incur or assume any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Property; and (ii) the City shall promptly take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance or claim thereon as a result of City action.

(b) Notwithstanding subsection (a) of this Section, if the City shall first notify the Corporation of the intention of the City to do so, the City may in good faith contest any such mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Property, and in the event of any such contest, may permit the item so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Corporation shall notify the City that, in the opinion of Independent Counsel, whose fees shall be paid by the City as Additional Rentals, by failing to

discharge or satisfy such item the interest of the Corporation in the Leased Property will be materially interfered with or endangered, or the Leased Property or any part thereof will be subject to loss or forfeiture, in which event such item shall be satisfied and discharged forthwith; provided, however, that such satisfaction and discharge shall not constitute a waiver by the City of the right to continue to contest such item. At the request of the City, the Corporation will cooperate fully with the City in any such contest.

**Section 8.03. Granting of Easements and Release of Certain Property.** As long as no Event of Nonappropriation or Event of Default shall have happened and be continuing, the Corporation shall, at the request of the City:

(a) Consent to the grant of 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 real property included in the Leased Property, free from this Lease and any security interest or other encumbrance created hereunder;

(b) Release existing easements, licenses, rights-of-way and other rights and privileges with respect to the Leased Property, free from this Lease and any security interest or other encumbrance created hereunder or thereunder, with or without consideration; and

(c) Execute and deliver any instrument necessary or appropriate to confirm and grant or release any easement, license, right-of-way or other grant or privilege under subsection (a) or (b) of this Section, upon receipt of: (i) a copy of the instrument of grant or release; and (ii) a written application signed by the City Representative requesting such instrument and stating that such grant or release will not materially adversely affect the value, or interfere with the effective use or operation, of the Leased Property.

**Section 8.04. Subleasing by City.** All or any part of the Leased Property may, subject to Section 10.05 hereof, be subleased by the City upon satisfaction of the following conditions:

(a) This Lease, and the obligations of the City hereunder, shall remain obligations of the City, and the City shall maintain its direct relationship with the Corporation, notwithstanding any sublease;

(b) Any sublessee shall be a State or local governmental entity or an organization described in Section 501(c)(3) which will be using the Leased Property in furtherance of its 501(c)(3) purpose and meets any other requirements of the USOC Sublease and the Economic Development Agreement; and

(c) The Corporation consents to such sublease, which consent shall not be unreasonably withheld (and which consent shall not be required for the USOC Sublease) if the conditions to an Assignment of Interest as defined in the USOC Sublease may not be unreasonably withheld by the City under the provisions of Section 12.01 of the USOC Sublease.

The USOC Sublease shall be subordinate to this Lease, except with respect to its rights under Section 1.04 thereof.

**Section 8.05. Modification of Leased Property.** The City, at its own expense, may make additions, modifications or improvements to, the Leased Property, provided that (i) such additions, modifications and improvements (A) shall not in any way damage the Leased Property as it existed prior thereto and (B) shall become part of the Leased Property; (ii) the value of the Leased Property after such additions, modifications and improvements shall be at least as great as the value of the Leased Property prior thereto; and (iii) the Leased Property, after such additions, modifications and improvements, shall continue to be used as provided in and shall otherwise be subject to the terms of this Lease. No such addition, modification or improvements may be made by the City after the Sublease Commencement Date (as defined in the USOC Sublease) so long as the USOC Sublease continues in effect.

**Section 8.06. Damage, Condemnation of or Loss of Title to Leased Property.**

(a) If (i) the Leased Property (or any portion thereof) is destroyed or damaged by fire or other casualty, (ii) title to, or the temporary or permanent use of, the Leased Property (or any portion thereof) or the estate of the City or the Corporation in the Leased Property (or any portion thereof), is taken under the exercise of the power of eminent domain by any governmental body or by any Person acting under governmental authority, (iii) a breach of warranty or any material defect with respect to the Leased Property (or any portion thereof) becomes apparent or (iv) title to or the use of the Leased Property (or any portion thereof) is lost by reason of a defect in the title thereto, then, the Net Proceeds of any insurance, performance bond or condemnation award or the Net Proceeds received as a consequence of any default or breach of warranty under any contract or pursuant of remedies with respect thereto relating to the Leased Property shall be deposited into a special trust fund held by the Corporation or as otherwise provided in the Condominium Documents.

(b) Upon the occurrence of any of the events set forth in (a) above, the Net Proceeds shall be used and applied as provided for in the Condominium Documents, and the City and the Corporation agree to cooperate in connection with the implementation of said provisions.

**ARTICLE IX**

**CITY'S PURCHASE OPTION**

**Section 9.01. City's Purchase Option.** The City is hereby granted the option to purchase the Leased Property, in the aggregate, but not in part, if (a) the USOC Sublease shall have been terminated without the USOC exercising its Lease Purchase Buyout (as defined in the Economic Development Agreement) or (b) the USOC Sublease shall have expired on its final Expiration Date of December 31, 2039 and the USOC shall not have elected to purchase the Leased Property upon the Expiration Date. To exercise such option, the City shall, on the date of

purchase, pay to the PFA the sum of one dollar. So long as the USOC Sublease is in effect and no event of default has occurred and is continuing thereunder, the City's option to purchase the Leased Property shall be subordinate and subject to the USOC's purchase options contained in Section 1.04 of the USOC Sublease and in the Economic Development Agreement.

**Section 9.02. Exercise of City's Purchase Option.**

(a) The City may exercise its option to purchase the Leased Property pursuant to Section 9.01 hereof by (i) giving written notice to the Corporation (A) stating that the City intends to purchase the Leased Property pursuant to Section 9.01 hereof, (B) specifying a closing date for such purpose which is at least 30 and no more than 90 days after the delivery of such notice, (ii) paying the purchase option price set forth above to the Corporation on the closing date.

(b) At the closing of any purchase of the Leased Property pursuant to this Section, the Corporation shall execute and deliver to the City or its designee, all necessary documents assigning, transferring and conveying title to the City or its designee in the Leased Property, as it then exists, subject to the following: (i) Permitted Encumbrances, other than this Lease; (ii) all liens, encumbrances and restrictions created or suffered to exist by the Corporation as required or permitted by this Lease or arising as a result of any action taken or omitted to be taken by the Corporation as required or permitted by this Lease; (iii) any lien or encumbrance created or suffered to exist by action of the City; and (iv) those liens and encumbrances (if any) to which title to the Leased Property was subject when acquired by the Corporation.

**Section 9.03. Conveyance of Leased Property to USOC.** If the USOC exercises its rights or options to purchase the Leased Property pursuant to the USOC Sublease and the Economic Development Agreement, the Corporation shall execute and deliver to the USOC all necessary documents assigning, transferring and conveying title to the USOC in the Leased Property, as it then exists, subject to the following: (i) Permitted Encumbrances, other than this Lease and the USOC Sublease; (ii) all liens, encumbrances and restrictions created or suffered to exist by the USOC or arising as a result of any action taken or omitted to be taken by the USOC as required or permitted by the USOC Sublease; and (iii) those liens and encumbrances (if any) to which title to the Leased Property was subject when acquired by the Corporation (except as provided in clause (i) above).

**ARTICLE X**

**GENERAL COVENANTS**

**Section 10.01. Further Assurances and Corrective Instruments.** So long as this Lease is in full force and effect and no Event of Nonappropriation or Event of Default shall have occurred, the Corporation and the City shall have full power to carry out the acts and agreements provided herein and the Corporation and the City shall 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 leased or intended to be leased hereunder, or for otherwise carrying out the intention of or facilitating the performance of this Lease.

**Section 10.02. Compliance With Requirements of Law.** The Corporation and the City shall comply with all Requirements of Law in performing their respective obligations with respect to the Leased Property hereunder. Without limiting the generality of the preceding sentence, the City, in particular, 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; and (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.

**Section 10.03. Participation in Legal Actions.**

(a) At the request of, and at the cost of the City, the Corporation shall join and cooperate fully in any legal action in which the City asserts its right to the enjoyment of the Leased Property; that involves the imposition of any charges, costs or other obligations or liabilities on or with respect to the Leased Property or the City's enjoyment of the Leased Property for which the City is responsible hereunder; or that involves the imposition of any charges, costs or other obligations with respect to the City's execution, delivery and performance of its obligations hereunder.

(b) At the request of the Corporation, the City shall, at the cost of the City, join and cooperate fully in any legal action in which the Corporation asserts its ownership of or interest in the Leased Property; that involves the imposition of any charges, costs or other obligations on or with respect to the Leased Property for which the Corporation is responsible hereunder; or that involves the imposition of any charges, costs or other obligations with respect to the execution and delivery of this Lease by the Corporation or the performance of its obligations hereunder.

**Section 10.04. Payment of Expenses of the Corporation.** The City shall pay the reasonable expenses of the Corporation in connection with the Leased Property, this Lease, or any matter related thereto, including, but not limited to, costs of defending any claim or action brought against the Corporation or its directors or officers relating to the foregoing, excepting, however, any liability for any action constituting willful or wanton misconduct.

**ARTICLE XI**

**LIMITS ON OBLIGATIONS OF CORPORATION**

**Section 11.01. Disclaimer of Warranties.** THE CORPORATION MAKES NO 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 OR ANY PORTION THEREOF. In no event shall the Corporation 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..

ARTICLE XII

EVENTS OF DEFAULT AND REMEDIES

**Section 12.01. Events of Default Defined.**

(a) Any of the following shall constitute an “Event of Default” under this Lease:

(i) failure by the City to pay any Additional Rental for which funds have been specifically appropriated when due or provided by the USOC pursuant to the USOC Sublease or if an Event of Nonappropriation has occurred with respect thereto;

(ii) any sublease, assignment, encumbrance, conveyance or other transfer of the interest of the City in all or any portion of the Lease or the Leased Property or any succession to all or any portion of the interest of the City in the Leased Property in violation of Section 8.04 or 13.02 hereof;

(iii) an “Event of Default” as defined under the Lease Agreement of even date herewith between the Corporation and the City relating to the NGB Building as defined in the USOC Sublease, or an “Event of Default” as defined in the Sublease Agreement between the City and the USOC with respect to the NGB Building; or

(iv) failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in clause (i), (ii) or (iii) above, 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 Corporation, unless the Corporation shall agree in writing, prior to the expiration of the 60-day period, to an extension of no more than 60 days; provided, however, that if the failure stated in the notice cannot be corrected within the original 30-day period, the Corporation shall not withhold its consent to an extension of up to 60 days if corrective action shall be instituted by the City within such time period and diligently pursued until the default is corrected.

(b) The provisions of subsection (a) of this Section are subject to the following limitations: 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 its obligation to pay Additional Rentals hereunder, the City shall not be deemed in default during the continuance of such inability; provided, however, that the City shall, as promptly as legally and reasonably possible, remedy the cause or causes preventing the City from carrying out such agreement, except that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the City.

(c) Notwithstanding the foregoing, the events described in (a)(i), (ii) and (iv) above shall not constitute an Event of Default unless and until the Corporation shall have

first given written notice of the default to the USOC and the USOC shall have failed to cure or remedy such default to the satisfaction of the Corporation within 30 days from the date such notice is received by the USOC.

**Section 12.02. Remedies on Default.** Whenever any Event of Default shall have happened and be continuing, the Corporation may, without any further demand or notice take one or any combination of the following remedial steps:

(a) Subject to the USOC's right to cure any default by the City under this Lease, terminate this Lease and give notice to the City and any sublessee to immediately vacate the real property included in the Leased Property;

(b) Subject to the USOC's right to consent, to terminate this Lease and give notice to the City and any sublessee to immediately vacate the real property included in the Leased Property;

(c) Recover from the City the portion of Additional Rentals accrued and payable;

(d) Enforce any provision of this Lease by equitable remedy, including, but not limited to, enforcement of the restrictions on assignment, encumbrance, conveyance, transfer or succession under Article XIII hereof by specific performance, writ of mandamus or other injunctive relief; and

(e) 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, subject, however, to the limitations on the obligations of the City set forth in Sections 6.05 and 12.03 hereof and the limitations on the obligations of the Corporation set forth in Article X hereof.

**Section 12.03. 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 Section 12.02(c) hereof and for the costs, expenses and fees of the Corporation. A judgment requiring a payment of money may be entered against the City by reason of an Event of Nonappropriation only to the extent provided in Section 12.02(c) hereof.

**Section 12.04. No Remedy Exclusive.** Subject to Section 12.03 hereof, no remedy herein conferred upon or reserved to 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 be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Corporation to exercise any remedy reserved in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article.

**Section 12.05. Waivers.** The Corporation may waive any Event of Default under this Lease and its consequences. 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..

## ARTICLE XIII

### MISCELLANEOUS

**Section 13.01. Assignment by Corporation.** The Corporation shall not, except as provided in this Section or as otherwise provided elsewhere in this Lease, assign, convey or otherwise transfer to any Person any of the Corporation's interest in the Leased Property or the Corporation's rights, title or interest in, to or under this Lease.

**Section 13.02. Transfer of City's Interest in Lease and Leased Property Prohibited.** Except for (i) any conveyance to the City pursuant to Article IX hereof upon purchase of the Leased Property or any conveyance to the USOC pursuant to Section 1.04 of the USOC Sublease and the Economic Development Agreement, (ii) the City's rights to sublease under Section 8.04 hereof, (iii) the granting of easements pursuant to Section 8.03 hereof, or (iv) any modifications to the Leased Property under Section 8.05 hereof, the City shall not sublease, assign, encumber, convey or otherwise transfer all or any portion of its interest in this Lease or the Leased Property to any Person, whether now in existence or organized hereafter.

**Section 13.03. 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 set forth in Sections 13.01 and 13.02 hereof. This Lease and the covenants set forth herein are expressly intended to be covenants, conditions and restrictions running with the Leased Property and the leasehold estate in the Leased Property under this Lease.

**Section 13.04. Corporation and City Representatives.** Whenever under the provisions hereof the approval of the Corporation or the City is required, or the City or the Corporation 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 by the Corporation Representative and for the City by the City Representative, and the Corporation and the City shall be authorized to act on any such approval or request.

**Section 13.05. Manner of Giving Notices.** All notices, certificates or other communications hereunder shall be in writing and shall be deemed given when mailed by certified or registered mail, postage prepaid, addressed as follows: if to the City, to City of Colorado Springs, 30 South Nevada Avenue, Suite 202, Colorado Springs, Colorado 80903, Attention: Director of Finance; and if to the Corporation, to The City of Colorado Springs Public Facilities Authority, PO Box 1025/MC510, Colorado Springs, 80901-1575, with a copy 30 South Nevada Avenue, Suite 202, Colorado Springs, Colorado 80903, Attention: City Attorney. The entities listed above may, by written notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**Section 13.06. No Individual Liability.** All covenants, stipulations, promises, agreements and obligations of the City or the Corporation, as the case may be, contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City or the

Corporation, as the case may be, and not of any member, director, officer, employee, servant or other agent of the City or the Corporation in his or her individual capacity, and no recourse shall be had on account of any such covenant, stipulation, promise, agreement or obligation, or for any claim based thereon or hereunder, against any member, director, officer, employee, servant or other agent of the City or the Corporation or any natural person executing this Lease or any related document or instrument.

**Section 13.07. Amendments, Changes and Modifications.** Except as otherwise provided herein, this Lease may not be effectively amended, changed, modified or altered other than by the execution of a subsequent document in the same manner as this Lease is executed. In addition, so long as the USOC Sublease shall be in effect, no amendment, change, modification or alteration to this Lease shall be made unless consented to by the USOC in accordance with Section 1.02(a) of the USOC Sublease.

**Section 13.08. Severability.** In the event that any provision of this Lease, other than the obligation of the City to pay Additional Rentals hereunder and the obligation of the Corporation to provide quiet enjoyment of the Leased Property and to convey the Leased Property to the City pursuant to Article IX hereof or to the USOC pursuant to the USOC Sublease and Economic Development Agreement, 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 13.09. 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.

**Section 13.10. Applicable Law.** The laws of the State, including the Charter of the City of Colorado Springs and the City Code of the City of Colorado Springs, 2001, as amended, shall be applied in the interpretation, execution and enforcement of this Lease and the exclusive venue for any litigation concerning this Lease shall lie only in El Paso County, Colorado.

**Section 13.11. 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 13.12. No Merger.** The City and the Corporation intend that the legal doctrine of merger shall have no application to this 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 Lease shall operate to terminate or extinguish this the Lease, except as specifically provided herein and therein.

**Section 13.13. Conflict.** In the event of any conflict between the terms and provisions of this Lease and the terms and provisions of the Economic Development Agreement, the terms and provisions of the Economic Development Agreement shall control.

IN WITNESS WHEREOF, the Corporation and the City have executed this Lease as of the date first above written.

**THE CITY OF COLORADO SPRINGS  
PUBLIC FACILITIES AUTHORITY, as Lessor**

By \_\_\_\_\_  
President

Attest:

By \_\_\_\_\_  
Secretary

**CITY OF COLORADO SPRINGS,  
COLORADO, as Lessee**

By \_\_\_\_\_  
Mayor

Attest:

By \_\_\_\_\_  
City Clerk

[Signature Page to Lease Agreement]

**EXHIBIT A**

**FORM OF LEASE COMMENCEMENT DATE CERTIFICATE**

The undersigned, a Corporation Representative as defined in the Lease Agreement dated \_\_\_\_\_, 2009 (the "Lease") between The City of Colorado Springs Public Facilities Authority (the "Authority") and the City of Colorado Springs, Colorado (the "City"), hereby certifies that on this date the Authority has acquired fee simple title in the Leased Property as defined in the Lease, and that accordingly the Lease Commencement Date as defined in the Lease is the date set forth below.

Dated \_\_\_\_\_, \_\_\_\_\_ which shall be the Lease Commencement Date.

THE CITY OF COLORADO SPRINGS  
PUBLIC FACILITIES AUTHORITY

By \_\_\_\_\_  
Corporation Representative