

AFTER RECORDATION PLEASE RETURN TO:

Butler Snow LLP  
1801 California Street, Suite 5100  
Denver, Colorado 80202  
Attention: Kimberley Crawford, Esq.

Pursuant to Section 39-13-104(1)(j), Colorado Revised Statutes, this Site Lease Agreement is exempt from the documentary fee.

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**SITE LEASE AGREEMENT**

**DATED AS OF [CLOSING DATE]**

**BETWEEN**

**TOWN OF FRISCO, COLORADO  
AS LESSOR**

**AND**

**UMB BANK, N.A.,  
SOLELY IN ITS CAPACITY AS TRUSTEE UNDER THE INDENTURE,  
AS LESSEE**

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This SITE LEASE AGREEMENT, dated as of [CLOSING DATE] (this “Site Lease”), is by and between the Town of Frisco, Colorado, a home rule municipality duly organized and validly existing under the Constitution and laws of the State of Colorado (the “Town”), as lessor, and UMB Bank, n.a., Denver, Colorado, a national banking association duly organized and validly existing under the laws of the United States of America, solely in its capacity as trustee under the Indenture (the “Trustee”), as lessee.

## **PREFACE**

Unless the context otherwise requires, capitalized terms used herein shall have the meanings ascribed to them herein and in the Lease Purchase Agreement, dated as of [CLOSING DATE] (the “Lease”), between the Trustee, as lessor, and the Town, as lessee.

## **RECITALS**

1. The Town is a duly organized and existing home rule municipality of the State of Colorado, created and operating pursuant to Article XX of the Constitution of the State of Colorado and the home rule charter of the Town (the “Charter”).

2. Pursuant to Section 10-10 of the Charter, the Town Council of the Town (the “Council”) is authorized to enter into lease-purchase and installment-purchase agreements as a means of acquiring any real or personal property for public purposes.

3. The Town and the Colorado Department of Transportation pursuant to the provisions of the Intergovernmental Agreement, with an effective date of June 8, 2022, intend to jointly develop a workforce housing project on property owned by the Town at 619 Granite Street described in Exhibit A attached hereto (the “Leased Property”).

4. Because the demand for workforce housing in the Town exceeds the supply, the Council has determined that it is in the public interest and is a public purpose for the Town to finance the acquisition, construction, installation, equipping of for rent workforce housing on the Leased Property including any legally permitted costs and expenditures in connection therewith, all for public purposes, and as authorized by law (the “Project”).

5. The Town owns fee title to the Leased Property.

6. To accomplish the Project, the Town has determined to lease the Leased Property pursuant to this Site Lease to the Trustee and the Town has determined to lease back the Trustee’s interest in the Property pursuant to the terms of the Lease.

7. The Trustee and the Town intend that this Site Lease set forth their entire understanding and agreement regarding the terms and conditions upon which the Trustee is leasing the Leased Property from the Lessor.

8. Contemporaneously with the execution and delivery of this Site Lease and the Lease, the Trustee will execute and deliver an Indenture of Trust (the “Indenture”) pursuant to which there will be executed and delivered certain certificates of participation (the “Certificates”) dated as of their date of delivery that will evidence proportionate interests in the right to receive

certain Revenues (as defined in the Lease), will be payable solely from the sources therein provided, and will not directly or indirectly obligate the Town to make any payments beyond those appropriated for any fiscal year during which the Lease shall be in effect.

9. The proceeds of the Certificates will be utilized for the Project, as well as for the payment of the costs of execution and delivery of the Certificates.

10. The Town is entering into this Site Lease with the Trustee as material consideration for the Trustee's agreement to lease the Leased Property to the Town pursuant to the Lease. The Trustee will prepay in full its rental payments due under this Site Lease which rental payments shall be used by the Town to effect the Project, all pursuant to this Site Lease, the Lease and the Indenture.

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

**Section 1. Site Lease and Terms.** The Town hereby demises and leases to the Trustee and the Trustee hereby leases from the Town, on the terms and conditions hereinafter set forth, the Leased Property, subject to Permitted Encumbrances as described in **Exhibit B** hereto.

The term of this Site Lease shall commence on the date hereof and shall end on December 1, 205[ ] (the "Site Lease Termination Date"), unless such term is sooner terminated as hereinafter provided. If, prior to the Site Lease Termination Date, the Trustee has transferred and conveyed the Trustee's leasehold interest in all of the Leased Property pursuant to Article 12 of the Lease as a result of the Town's payment of (a) the applicable Purchase Option Price thereunder; or (b) all Base Rentals and Additional Rentals, all as further provided in Section 12.2 of the Lease, then the term of this Site Lease shall end in connection with such transfer and conveyance.

The term of any sublease of the Leased Property or any portion thereof, or any assignment of the Trustee's interest in this Site Lease, pursuant to Section 5 hereof, the Lease and the Indenture, shall not extend beyond December 31, 205[ ]. At the end of the term of this Site Lease, all right, title and interest of the Trustee, or any sublessee or assignee, in and to the Leased Property, shall terminate. Upon such termination, the Trustee and any sublessee or assignee shall execute and deliver to the Town any necessary documents releasing, assigning, transferring and conveying the Trustee's, sublessee's or assignee's respective interests in the Leased Property.

**Section 2. Rental.** The Town acknowledges that there has been deposited to the (1) Construction Fund (created pursuant to the Indenture) \$[ ] in order to finance the Project, which will be leased, together with the Leased Property, to the Town pursuant to the Lease and (2) Costs of Execution and Delivery Fund (created pursuant to the Indenture) the amount of \$[ ] to pay the Costs of Execution and Delivery (as defined in the Indenture) and that such deposits constitute full and adequate consideration for conveyance of the leasehold interest in the Leased Property conveyed to the Trustee pursuant to this Site Lease. The estimated useful life of the Project exceeds the maximum term of this Site Lease.

**Section 3. Purpose.** The Trustee shall use the Leased Property solely for the purpose of leasing the Leased Property back to the Town 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 Lease Default and the termination of the Lease, the Town shall vacate the Leased Property, as provided in the Lease, and the Trustee may exercise the remedies provided in this Site Lease, the Lease and the Indenture.

**Section 4. Owner in Fee.** The Town represents that (a) the Town is the owner in fee of the Leased Property, subject only to Permitted Encumbrances as described in **Exhibit B** hereto, and (b) the Permitted Encumbrances do not and shall not interfere in any material way with the Leased Property. The Trustee acknowledges that it is only obtaining a leasehold interest in the Leased Property and pursuant to this Site Lease.

**Section 5. Sales, Assignments and Subleases.** Unless an Event of Nonappropriation or an Event of Lease Default shall have occurred and except as may otherwise be provided in the Lease, the Trustee may not sell or assign its rights and interests under this Site Lease or sublet all or any portion of the Leased Property, without the written consent of the Town.

In the event that (a) the Lease is terminated for any reason and (b) this Site Lease is not terminated, the Trustee may sublease the Leased Property or any portion thereof, or sell or assign the Trustee's leasehold interests in this Site Lease, pursuant to the terms of the Lease and the Indenture, and any purchasers from or sublessees or assignees of the Trustee may sell or assign its respective interests in the Leased Property, subject to the terms of this Site Lease, the Lease and the Indenture. The Town and the Trustee (or any purchasers from or assignees or sublessees of the Trustee) agree that, except as permitted by this Site Lease, the Lease and the Indenture and except for Permitted Encumbrances (including purchase options under the Lease), none of the Town, the Trustee, or any purchasers from or sublessees or assignees of the Trustee will sell, mortgage or encumber the Leased Property or any portion thereof during the term of this Site Lease.

The Trustee and any other person who has the right to use the Leased Property under this Site Lease, at its own expense, may install equipment and other personal property in or on any portion of the Leased Property unless it is permanently affixed to the Leased Property or removal of it would materially damage the Leased Property, in which case it will become part of the Leased Property.

**Section 6. Right of Entry.** To the extent that the Lease is terminated and this Site Lease is still in effect, the Town reserves the right for any of their 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 7. Termination.** The Trustee agrees, upon the termination of this Site Lease, to quit and surrender all of the Leased Property, and agrees that any permanent improvements and structures existing upon the Leased Property at the time of the termination of this Site Lease shall remain thereon.

**Section 8. Default.** In the event the Trustee 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 Trustee, the Town may exercise any and all remedies granted by law, except that 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 Certificates are Outstanding and unpaid under the Indenture, the Base Rentals due under the Lease shall continue to be paid to the Trustee except as otherwise 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 1 hereof.

**Section 9. Quiet Enjoyment and Acknowledgment of Ownership.** The Trustee at all times during the term of this Site Lease shall peaceably and quietly have, hold and enjoy the Leased Property, subject to the provisions of the Lease and the Indenture, and the Town hereby acknowledges that the Trustee shall have a leasehold interest in all improvements or additions to be built on the Leased Property subject to this Site Lease, the Lease and the Indenture.

**Section 10. Trustee's Disclaimer.** It is expressly understood and agreed that (a) this Site Lease is executed by UMB Bank, n.a., solely in its capacity as Trustee under the Indenture, and (b) nothing herein shall be construed as creating any liability on UMB Bank, n.a., other than in its capacity as Trustee under the Indenture. All financial obligations of the Trustee under this Site Lease, except those resulting from its willful misconduct or negligence, are limited to the Trust Estate.

**Section 11. Taxes; Maintenance; Insurance.** During the Lease Term of the Lease and in accordance with the provisions of the Lease, including Sections 9.1 and 9.3 thereof, the Town covenants and agrees to pay any and all taxes, assessments or governmental charges due in respect of the Leased Property and all maintenance costs and utility charges in connection with the Leased Property. 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 or assigns its interests in this Site Lease, the Trustee, or any purchaser, sublessee or assignee of the Leased Property (including the leasehold interests of the Trustee resulting from this Site Lease) shall pay or cause to be paid when due, all such taxes, assessments or governmental charges and maintain the Leased Property in good condition and working order. Any such payments that are to be made by the Trustee shall be made solely from (a) the proceeds of such sale, subleasing or assignment, (b) from the Trust Estate, or (c) from other moneys furnished to the Trustee under Section 8.02(m) of the Indenture, and in the absence of available moneys identified in the preceding clauses (a) through (c), the Trustee shall be under no obligation to pay or cause to be paid when due, all such taxes, assessments or governmental charges and maintain the Leased Property in good condition and 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, and (b) this Site Lease is not terminated, the Trustee, or any sublessee, purchaser or assignee of the Leased Property shall obtain and keep in force, (i) commercial general liability insurance against claims for personal injury, death or damage to property of others occurring on or in the Leased Property in an amount not less than the limitations provided in the Colorado Governmental Immunity Act (Article 10, Title 24, Colorado Revised Statutes, as heretofore or hereafter amended), and (ii) property insurance in an amount not less than the full replacement value of the Leased Property. Any such insurance that is to be obtained by the Trustee shall be paid for solely from (a) the proceeds of such sale, subleasing or assignment, (b) from the Trust Estate, including without limitation moneys (including any amounts under a Qualified Surety

Bond) on deposit in the Reserve Fund, or (c) from other moneys furnished to the Trustee under Section 8.02(m) of the Indenture, and in the absence of available moneys identified in the preceding clauses (a) through (c), the Trustee shall be under no obligation to obtain or keep in force such insurance coverages. All such insurance shall name the Trustee, any sublessee, purchaser or assignee and the Town as insured. The Trustee shall be named loss payee. The Town and the Trustee shall waive any rights of subrogation with respect to the Trustee, any sublessee, purchaser or assignee, and the Town, 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.

Nothing in the preceding paragraphs or in this Site Lease shall be interpreted or construed to require the Trustee to sublease all or any portion of the Leased Property or sell or assign its interests in this Site Lease, in the event that the Lease is terminated for any reason and this Site Lease is not terminated.

**Section 12. Damage, Destruction or Condemnation.** The provisions of the Lease shall govern with respect to any damage, destruction or condemnation of 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 or any portion thereof is damaged or destroyed, in whole or in part, by fire or other casualty, or (ii) title to or use of the Leased Property or any part thereof shall be taken under the exercise of the power of eminent domain, the Town and the Trustee, or any sublessee, purchaser or assignee of the Leased Property from the Trustee shall cause the Net Proceeds of any insurance claim or condemnation award to be applied in accordance with the provisions of Article 10 of the Lease.

**Section 13. Hazardous Substances.** Except for customary materials necessary for operation, cleaning and maintenance of the Leased Property, none of the Town, the Trustee or any sublessee, purchaser or assignee of the Leased Property from the Trustee shall cause or permit any Hazardous Substance to be brought upon, generated at, stored or kept or used in or about the Leased Property without prior written notice to the Town and the Trustee and all Hazardous Substances, including customary materials necessary for construction, operation, cleaning and maintenance of the Leased Property, will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Substance so brought upon or used or kept on or about the Leased Property, provided unless the Trustee has exercised its right to take possession of the Leased Property after the occurrence and continuance of an Event of Lease Default, the Trustee shall have no responsibility under this Section to monitor or investigate whether the Leased Property complies with environmental laws or is subject to any Hazardous Substance. If the presence of Hazardous Substance on the Leased Property caused or permitted by the Town, the Trustee or any sublessee, purchaser or assignee of the Leased Property from the Trustee, as the case may be, results in contamination of the Leased Property, or if contamination of the Leased Property by Hazardous Substance otherwise occurs for which the Town, the Trustee or any sublessee or assignee of the Leased Property, as the case may be, is legally liable for damage resulting therefrom (provided that the Trustee shall have no liability under this section unless it is in possession of the Leased Property and unless the presence of such Hazardous Substances is due to the Trustee's negligence or willful misconduct), then the Town, the Trustee or any sublessee, purchaser or assignee of the Leased Property from the Trustee, as the case may be, shall reimburse the other party for its reasonable and necessary legal expenses to defend the parties hereto or

assignees hereof that have not caused or permitted such contamination and are not so legally liable with respect to this Site Lease from claims for damages, penalties, fines, costs, liabilities or losses; provided that the cost of such defense, (a) in the case of the Trustee, shall be payable solely from the Trust Estate, or (b) in the case of the Town, shall be payable only if the cost of such defense has been annually appropriated by the Town. This duty to reimburse legal expenses is not an indemnification. It is expressly understood that none of the Town, the Trustee or any sublessee, purchaser or assignee is indemnifying any other person with respect to this Site Lease. Without limiting the foregoing, if the presence of any Hazardous Substance on the Leased Property caused or permitted by:

(a) the Trustee after the Trustee has exercised its right to take possession of the Leased Property after the occurrence and continuance of an Event of Lease Default, or any sublessee, purchaser or assignee of the Leased Property from the Trustee, as the case may be, results in any contamination of the Leased Property, the Trustee or any sublessee, purchaser or assignee of the Leased Property from the Trustee, as the case may be, shall provide prior written notice to the Town and the Trustee and promptly take all actions, solely at the expense of the Trust Estate as are necessary to effect remediation of the contamination in accordance with legal requirements; or

(b) the Town, results in any contamination of the Leased Property, the Town shall provide prior written notice to the Trustee and promptly take all actions, solely at the expense of the Town, which expenses shall constitute Additional Rentals, as are necessary to effect remediation of the contamination in accordance with legal requirements.

**Section 14. Third Party Beneficiaries.** It is expressly understood and agreed that the Owners of the outstanding Certificates are third party beneficiaries to this Site Lease and enforcement of the terms and conditions of this Site Lease, and all rights of action relating to such enforcement, shall be strictly reserved to the Town, as Lessor, and the Trustee, as Lessee, and their respective successors and assigns, and to the Owners of the Certificates. Except as hereinafter provided, nothing contained in this Site Lease shall give or allow any such claim or right of action by any other or third person on this Site Lease. It is the express intention of the Town and the Trustee that any person other than the Town, the Trustee or the Owners of the Certificates receiving services or benefits under this Site Lease shall be deemed to be an incidental beneficiary only.

**Section 15. 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 16. No Merger.** The Town 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 Trustee and the Town 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. Amendments.** This Site Lease may only be amended, changed, modified or altered as provided in the Indenture including in connection with any release of all or any portion of the Leased Property as permitted in Section 11.4 of the Lease.

**Section 18. Notices.** All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests or other communications hereunder by any party to the other parties shall be in writing and shall be sufficiently given and served upon the other parties if (i) delivered personally or (ii) if mailed by certified or registered mail, postage prepaid, or (iii) by private courier service which provides evidence of delivery, or (iv) sent by electronic transmission which produces evidence of transmission, and in each case will be deemed to have been given on the date evidenced by the postal or courier receipt or other written evidence of delivery or electronic transmission. All such communications will be addressed as follows:

If to the Trustee:

UMB Bank, n.a.  
1670 Broadway  
Denver, Colorado 80202  
Attention: Corporate Trust and Escrow Services  
Email: John.Wahl@umb.com  
Phone: (303) 839-2258

If to the Town:

Town of Frisco, Colorado  
1 Main Street  
P. O. Box 4100  
Frisco, Colorado 80443  
Attention: Finance Director  
Email: lesliee@townoffrisco.com  
Phone: (970) 668-9138

Any party may, by written notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**Section 19. Recitals.** The Recitals set forth in this Site Lease are hereby incorporated by reference and made a part of this Site Lease.

**Section 20. 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 21. 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.

**Section 22. Governing Law.** This Site Lease shall be governed by and construed in accordance with the State of Colorado without regard to choice of law analysis.



**Section 23. No Waiver of Governmental Immunity.** No provision of this Site Lease shall act or be deemed to be a waiver by the Town of the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et seq.*

**Section 24. Electronic Transactions.** The parties hereto agree that the transactions described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[Remainder of Page Intentionally Left Blank]

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

TOWN OF FRISCO, COLORADO,  
as Lessor

By: \_\_\_\_\_  
Hunter Mortensen, Mayor

(SEAL)

Attest:

By: \_\_\_\_\_  
Stacey Nell, Town Clerk

UMB BANK, n.a., solely in its capacity of Trustee  
under the Indenture, as Lessee

By: \_\_\_\_\_  
John M. Wahl, Senior Vice President

[Signature Page of Site Lease Agreement]

STATE OF COLORADO )  
 ) ss.  
COUNTY OF SUMMIT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by Hunter Mortensen and Stacey Nell, as Mayor and Town Clerk, respectively, of the Town of Frisco, Colorado.

WITNESS my hand and official seal.

Notary Public

(SEAL)

\* \* \* \* \*

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by John M. Wahl, as Senior Vice President of UMB Bank, n.a., as Trustee.

WITNESS my hand and official seal.

Notary Public

(SEAL)

[Notary Page of Site Lease Agreement]

## **EXHIBIT A**

### **DESCRIPTION OF THE LEASED PROPERTY**

The Leased Property consists of the real property and the buildings and improvements located thereon as set forth below, as amended from time to time.

LOTS 18, 19, 20, 21, 22. 23 AND 24, TOWN OF FRISCO, COUNTY OF SUMMIT, STATE OF COLORADO.

## EXHIBIT B

### PERMITTED ENCUMBRANCES

*“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 the Lease; (b) this Site Lease, the Lease, the Indenture and any related fixture filing and any liens arising or granted pursuant to the Lease or the Indenture; (c) utility, access and other easements and rights of way, licenses, permits, party wall and other agreements, restrictions and exceptions which pursuant to the Indenture the Mayor or the Town Representative certifies will not materially interfere with or materially impair the Leased Property, including rights or privileges in the nature of easements, licenses, permits and agreements as provided in the Lease; and (d) the easements, covenants, restrictions, liens and encumbrances (if any) to which title to the Leased Property was subject when leased to the Trustee pursuant to this Site Lease, as shown below and which do not interfere in any material way with the Leased Property.

The easements, covenants, restrictions, liens and encumbrances (if any) to which title to the Leased Property was subject when leased to the Trustee pursuant to this Site Lease are as follows:

- 1) Liens for ad valorem taxes and special assessments not then delinquent, if applicable.
- 2) This Site Lease.
- 3) The Lease.
- 4) All other encumbrances appearing of record on the date hereof.