

**SITE LEASE**

by and between

**ARCHULETA COUNTY, COLORADO**  
as Lessor,

and

**UMB BANK, N.A.,**  
as Lessee

Dated as of [May] 1, 2019

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**THIS SITE LEASE** dated as of [May 1], 2019 (this “Site Lease”), by and between **ARCHULETA COUNTY, COLORADO**, as lessor (the “County”), a political subdivision duly organized and existing under the laws of the State of Colorado (the “State”), and **UMB BANK, N.A.**, solely in its capacity as trustee under an Indenture of Trust dated as of the date hereof, and its successors and assigns, as lessee (in its capacity as trustee, the “Trustee”).

W I T N E S S E T H:

WHEREAS, the County is authorized by Section 30-11-104.1, Colorado Revised Statutes (“C.R.S.”), to enter into lease purchase agreements in order to provide for the financing of a courthouse, jail or other county buildings or equipment used, or to be used, for governmental purposes; and

WHEREAS, the Trustee (a) is a national banking association duly organized and existing under the laws of the United States of America, (b) is duly qualified to do business in the State, (c) is executing and delivering and will perform its obligations under this Site Lease as trustee under the Indenture of Trust dated as of the date hereof by the Trustee (the “Indenture”) pursuant to which there are being executed and delivered the “Certificates of Participation, Series 2019, evidencing assignment of interests in the right to receive certain revenues payable by Archuleta County, Colorado pursuant to a Lease between the County and UMB Bank, n.a., as trustee” (the “Series 2019 Certificates”) and (d) in its capacity as Trustee, (i) will lease the Leased Property hereunder and (ii) is authorized, under its articles of association, action of its board of directors and applicable law, to lease the Leased Property and to execute, deliver and perform its obligations under this Site Lease; and

WHEREAS, the Board of County Commissioners (the “Board”) of the County has determined that the County, as lessee, shall enter into that certain Lease Purchase Agreement dated as of [May 1], 2019 (the “Lease”), with the Trustee, as lessor, to provide funding for the construction and improvement of new County detention facilities (the “Facilities”); and

WHEREAS, the County owns the Site Leased Property (as defined in Section 2 hereof) which it intends to lease to the Trustee hereunder for the purpose of constructing and improving the Facilities and the County is authorized by Section 30-11-101(1)(c), C.R.S., to lease such real property to the Trustee when deemed by the Board to be in the best interests of the County and its inhabitants; and

WHEREAS, the County shall lease the Site Leased Property back from the Trustee as Leased Property under the Lease; and

WHEREAS, the County proposes to enter into this Site Lease with the Trustee as a material consideration for the Trustee’s agreement to lease the Leased Property to the County pursuant to the Lease and provide the proceeds of the Series 2019 Certificates for constructing and equipping the Facilities;

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 and in the Lease.

**Section 2. Site Lease and Terms.** The County hereby leases to the Trustee and the Trustee hereby leases from the County, on the terms and conditions hereinafter set forth, the real property consisting of the site or parcels described in Exhibit A attached hereto and made a part hereof (the "Site Leased Property"), subject to Permitted Encumbrances as defined in the Lease, and such Lease to the Trustee is hereby deemed to be in the best interests of the County and its inhabitants.

The term of this Site Lease shall commence on the date hereof and shall end on December 31, 20\_\_ (the "Site Lease Termination Date"), unless such term is sooner terminated as hereinafter provided. If prior to the Site Lease Termination Date, (a) all of the Leased Property has been conveyed to the County pursuant to the Lease as a result of the County's payment of (i) the related Purchase Option Price thereunder or (ii) all Base Rentals and Additional Rentals as provided in Section 12.2 of the Lease and (b) the Indenture of Trust dated as of [May 1], 2019 (the "Indenture"), by UMB Bank, n.a., as trustee (the "Trustee"), has been discharged, then the term of this Site Lease shall end immediately thereafter.

**Section 3. Rental.** During the Lease Term of the Lease, the County acknowledges receipt from the Trustee as and for rental hereunder, paid in advance, the sum of Ten Dollars (\$10.00) and other good and valuable consideration.

In the event that (a) the Lease is terminated for any reason, (b) this Site Lease is not terminated, and (c) the Trustee leases all or any portion of the Site Leased Property or sells an assignment of its interest in this Site Lease, then the rental due hereunder from the Trustee to the County shall be (i) an amount equal to a percentage, not to exceed two percent (2%), of the net proceeds (gross proceeds less any amounts which may be payable under Section 12 hereof) of any such leasing or sale received by the Trustee (such percentage to be calculated as the ratio of the estimated unimproved fair market value of such Site to the estimated improved fair market value of such Site and the Facilities and such values to be determined by an independent person engaged in the business of appraising property and acceptable to the Trustee) and (ii) payable to the County by the Trustee within thirty (30) days after the receipt of such proceeds by the Trustee.

**Section 4. Purpose.** The Trustee shall use the Site Leased Property solely for the purpose of leasing the Leased Property to the County 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 County 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 5. Owner in Fee.** The County covenants that (a) it is the owner in fee of the Site 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 Site Leased Property.

**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 Trustee may not assign its rights under this Site Lease or sublet the Site Leased Property without the written consent of the County.

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 Site 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 County and the Trustee (or any assignee or lessee of the Trustee) agree that, except as may otherwise be provided in the Lease and the Indenture, neither the County, the Trustee, nor any lessee or assignee of the Trustee will sell, mortgage or encumber the Site Lease 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, in which case it will become part of the Leased Property.

**Section 7. Right of Entry.** To the extent that the Lease is terminated and this Site Lease is still in effect, the County reserves the right, so long as no Event of Nonappropriation or Event of Default shall have occurred under the Lease, for any of its duly authorized representatives to enter upon the Site 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 Trustee agrees, upon the termination of this Site Lease, to quit and surrender the Site Leased Property to the County, and agrees that any fixtures, permanent improvements and structures existing upon the Site Leased Property at the time of the termination of this Site Lease shall remain thereon and title thereto shall vest in the County. The Trustee and any sublessee or assignee shall execute and deliver, upon request by the County, any instrument of transfer, conveyance or release necessary or appropriate to confirm the vesting of such right, title and interest in the County.

**Section 9. 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 written notice and demand for correction thereof to the Trustee, the County 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 of the Series 2019 Certificates are outstanding and unpaid in accordance with the terms thereof, the Base Rentals due to the Trustee under the Indenture shall continue to be paid to the Trustee except as provided in the Lease. The liability of the Trustee under this Site Lease shall be limited as provided in Section 11 herein. In addition, so long as any of the Series 2019 Certificates are outstanding, this Site Lease shall not be terminated except as described in Section 2 hereof.

**Section 10. Quiet Enjoyment and Acknowledgment of Interest.** The Trustee at all times during the term of this Site Lease shall peaceably and quietly have, hold and enjoy the Site Leased Property, subject to the provisions of the Lease and the Indenture, and the County hereby

acknowledges that the Trustee shall have a leasehold interest in the Site Leased Property, subject to the Lease.

**Section 11. Trustee 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 12. Taxes; Maintenance; Insurance.** During the Lease Term of the Lease and in accordance with the provisions of the Lease, the County 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 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 Site Leased Property or sells an assignment of its interest in this Site Lease, the Trustee or any sublessee or assignee of the Site Leased Property shall pay or cause to be paid when due, solely from the proceeds of such subleasing or sale, all taxes and assessments imposed thereon and maintain the Site Leased Property and all fixtures, improvements and structures built thereon in good condition and in good 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 the Indenture.

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 Site Leased Property or sells an assignment of its interest in this Site Lease, the Trustee or any sublessee or assignee of the Site Leased Property shall obtain and keep in force, 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 Site Leased Property or any improvements and structures built on the Site Leased Property in an amount not less than \$1,000,000 and (ii) property insurance in an amount not less than the full replacement value of any improvements and structures built on the Site Leased Property. All such insurance shall name the Trustee, any sublessee or assignee and the County as insureds. The County and the Trustee shall waive any rights of subrogation with respect to the Trustee, the County 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 thereon 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 Site Leased Property, any improvements and structures built thereon 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 Site Leased Property, any improvements and structures built thereon or any part thereof shall be

taken under the exercise of the power of eminent domain, the County 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 Site Leased Property, any improvements and structures built thereon 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 County agrees that, to the extent permitted by law, in the event it brings an eminent domain or condemnation proceeding with respect to the Site Leased Property or any part thereof, the appraised value of the condemned property shall not be less than (a) if the Series 2019 Certificates are then subject to redemption under the Indenture, the redemption price of the Series 2019 Certificates, or (b) if the Series 2019 Certificates are not then subject to redemption, the amount necessary to pay the principal of and interest on the Series 2019 Certificates to the first date on which the Series 2019 Certificates are subject to redemption under the Indenture.

**Section 14. Hazardous Substances.** Except for customary materials necessary for operation, cleaning and maintenance of the Leased Property, none of the County, 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 County 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. If the presence of Hazardous Substance on the Leased Property caused or permitted by the County, 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 County, the Trustee or any sublessee or assignee of the Leased Property, as the case may be, is legally liable for damage resulting therefrom, then the County, 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 County, shall be payable only if the cost of such defense has been annually appropriated by the County. This duty to reimburse legal expenses is not an indemnification. It is expressly understood that none of the County, 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 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 County 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 County results in any contamination of the Leased Property, the County shall provide prior written notice to the Trustee and promptly take all actions, solely at the expense of the County, which expenses shall constitute Additional Rentals, as are necessary to effect remediation of the contamination in accordance with legal requirements.

**Section 15. Electronic Storage.** The parties hereto agree that the transaction 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.

**Section 16. Severability.** 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 17. Amendments.** This Site Lease may not be amended, changed or modified without the prior written consent of the Trustee and the Insurer.

**Section 18. No Merger.** The County 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 County 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 19. 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 shall be made 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 20. Governing Law.** This Site Lease shall be governed by and construed in accordance with the law of the State of Colorado without regard to choice of law analysis.

**Section 21. 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 22. 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.

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DRAFT



IN WITNESS WHEREOF, the County and the Trustee have caused this Site Lease to be executed by their respective officers thereunto duly authorized, and the County has affixed its corporate seal hereto all as of the day and year first above written.

[SEAL]

ARCHULETA COUNTY, COLORADO, as Lessor

By \_\_\_\_\_  
Chairman, Board of County Commissioners

Attest:

By \_\_\_\_\_  
County Clerk and Recorder

UMB BANK, N.A., as Lessee

By \_\_\_\_\_  
Authorized Signatory

DRAFT

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF ARCHULETA        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of [May], 2019, by Ronnie Maez, as Chairman of the Board of County Commissioners of Archuleta County, Colorado, and by Kristy Archuleta, as County Clerk and Recorder of Archuleta County, Colorado.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

[SEAL]

My Commission Expires:

\_\_\_\_\_

DRAFT

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of [May], 2019  
by \_\_\_\_\_, as authorized signatory of UMB Bank, n.a.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

[SEAL]

My Commission Expires:

\_\_\_\_\_

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**EXHIBIT A**

**DESCRIPTION OF THE SITE LEASED PROPERTY**

[To be inserted]

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**EXHIBIT B**  
**PERMITTED ENCUMBRANCES**

[To be inserted]

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