

**PUBLIC WORKS AND UTILITIES
MEMORANDUM #10-69**

DATE: December 9, 2010
TO: Honorable Mayor Joyce Downing and City Council Members
FROM: William A. Simmons, City Manager *WAS*
David H. Willett, Director of Public Works *DHW*
Shawn Cordsen, Director of Finance *SC*
SUBJECT: CB 1733, Approval for Lease Purchase Financing for Water Rights Purchases

BACKGROUND

Northglenn has been negotiating a potential water rights purchase for 363 Church Ditch (CD) inches from the Parkwood Investment Group. The adjusted (based on recent purchases) Integrated Water Resource Plan has identified a potential water supply shortage of 2431 Acre-feet (AF). Northglenn's existing system can only be fed from Clear Creek through Standley Lake and this water acquisition would provide immediate and additional supply into Standley Lake. Given the market conditions and the availability of supply, opportunities of this magnitude are rare. There are total of 5710.64 CD inches of which 775 inches have been identified as available or are owned by private holders. The proposed transaction is approximately 46% of the available CD inches and would provide a firm yield of 182 AF.

BUDGET/TIME IMPLICATIONS

The financing has been structured in the form of a Lease Purchase Agreement. Northglenn will purchase Parkwood's 363 inches at a purchase price of \$30,000 per inch, or \$10,890,000 total. The most recent known purchase price for CD inches was in 2007 when Jefferson County sold 28 inches at \$27,000 per inch. The current financing proposal includes a \$3,300,000 down payment leaving \$7,590,000 to be financed over a term of 5 years at an estimated interest rate of 3.3%. The proposal calls for semi-annual payments of \$826,945 resulting in approximately \$679,444 in interest costs over the financing term. The Water Rights Acquisition Fund has an estimated 2010 ending fund balance of \$3,851,988. Sale Tax revenue restricted for Water Right Purchases are forecasted at \$1,753,000 annually and scheduled to continue until December 31, 2015. The current proposal would result in a water rights restricted fund balance of approximately \$550,000 and an estimated annual revenue stream of \$99,000 in excess of the debt service requirements. These funds would be available to procure additional water rights as opportunities arise.

RECOMMENDATION

Attached to this memorandum is an Ordinance which, if approved, would provide authorization to enter into a lease purchase agreement for funding of the purchase of Water Rights. Staff recommends approval of the proposed Ordinance.

STAFF REFERENCE

David H. Willett, P.E., Director of Public Works
Shawn Cordsen, Director of Finance
Cory Peterson, Water Resources Engineer

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SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S BILL

ORDINANCE NO.

No. CB-1733
Series of 2010

Series of 2010

A BILL FOR AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF NORTHGLENN, COLORADO OF A LEASE PURCHASE AGREEMENT BETWEEN THE CITY, AS LESSEE, AND AN INVESTOR TO BE IDENTIFIED, WITH RESPECT TO THE ACQUISITION OF CERTAIN WATER AND WATER RIGHTS BY THE CITY FOR USE IN ITS WATER SYSTEM; AUTHORIZING OFFICIALS OF THE CITY TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY; AND PROVIDING FOR RELATED MATTERS

WHEREAS, the City is a duly and regularly created, organized and existing home rule city, body corporate and politic of the State of Colorado (the "State"), existing as such under the Constitution and statutes of the State and its home rule charter (the "Charter"); and

WHEREAS, the City is authorized by its Charter and the laws of the State to purchase and hold real and personal property and to lease the same, either as lessee or lessor; and

WHEREAS, the City is authorized by Article XI of the Charter to exercise all home rule municipal powers with respect to all public utilities, including without limitation the water system (the "Water System") operated as a part of its joint water and sewer system (the "System"); and

WHEREAS, in order to finance a portion of the costs of acquiring additional sources of water for use in the Water System, the City Council (the "Council") has determined that it is necessary and in the best interest of the City and its inhabitants to acquire certain water and water rights (the "CD Inches") administered by the Church Ditch Water Authority as the successor in interest to the Church Ditch Company ("CDWA") from Parkwood East, LLC (the "Seller") pursuant to a Contract for Sale and Purchase of Water Rights (the "Purchase Contract") expected to be entered into between the City and the Seller; and

WHEREAS, the Purchase Contract contemplates that the total purchase price of the CD Inches will be paid by the City partly in cash at the closing of the Purchase Contract, with the balance of the purchase price to be paid with proceeds of financing to be obtained by the City; and

WHEREAS, the Council has determined to authorize the financing of such balance through a Lease Purchase Agreement (the "Lease") to be entered into between the City and an investor to be identified as provided herein (the "Investor"); and

WHEREAS, by purchasing a portion of the CD Inches with cash and entering into the Lease with respect to the financed portion of the CD Inches (the "Project"), the City can have the use, on a current basis, of the Inches, including that portion of the Inches (the "Leased Property")

being financed under the Lease, while paying the cost of its acquisition in installments of rent not exceeding the fair rental value of the Leased Property, taking all of the terms of the Lease into account; and

WHEREAS, pending the City's acquisition of title to the Leased Property, the Leased Property shall be in the name of the Investor;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. Ratification of Actions. All action heretofore taken, not inconsistent with the provisions of this ordinance (the "Ordinance"), by the Council or the officers of the City, directed toward the implementation of the Project, including without limitation the preparation of the form of the Lease and the Purchase Contract and related documents, are hereby ratified, approved and confirmed.

Section 2. Findings; Authorizations. The Council hereby finds and determines, pursuant to the laws of the State, that the Project is necessary, convenient, and in furtherance of the purposes of the Water System and the City and in the best interests of the City and its inhabitants; and the Council hereby authorizes the Project. The City hereby elects to apply all of the provisions of the Supplemental Public Securities Act, Part 2 of Article 57, Title 11, C.R.S. (the "Supplemental Securities Act"), to the extent applicable and not inconsistent herewith, to the Lease and related transactions.

Section 3. Approval and Execution of Documents; Authorized Officers. The Lease, in substantially the form filed in the office of the City Clerk prior to the adoption of this Ordinance, are in all respects approved, authorized and confirmed, and the Mayor is hereby authorized and directed to execute and deliver, and the City Clerk of the City or any Deputy or Assistant City Clerk are hereby authorized and directed to affix the seal of the City to, and attest, the Lease, in substantially the form so filed with the City Clerk, with such changes as are not inconsistent with the intent of this Ordinance and are approved by bond counsel or the City Attorney. The Council hereby designates the City Manager and the Finance Director (and any persons authorized by law to act on their behalf in their absence) to act as "Authorized Officers" under the Lease. Prior to the execution of the Lease, the identity of the Investor, acceptance of the Investor's offer to enter into the Lease, the final Base Rentals due under the Lease and the other terms thereof, not inconsistent herewith, shall be established or approved by a certificate signed by the Finance Director (the "Final Terms Certificate").

Section 4. Additional Documents. The City Clerk is hereby authorized and directed to attest all signatures and acts of any official of the City in connection with the matters authorized by this Ordinance. The Mayor and the Authorized Officers are hereby authorized to execute and deliver for and on behalf of the City any and all additional certificates, documents and other papers and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized by this Ordinance. The appropriate officers of the City are also authorized to execute on behalf of the City agreements concerning the deposit and investment of funds in connection with the transactions contemplated by this Ordinance.

Section 5. Lease Terms. The Lease shall provide for the payment of Base Rentals consisting of an interest component and a principal component, and the schedule of Base Rentals incorporated in the Lease shall be approved by Final Terms Certificate, subject to the following limitations:

- (a) the aggregate amount of the principal component of Base Rentals shall not exceed \$8,000,000;
- (b) the interest component of Base Rentals shall accrue at a rate or rates not exceeding 4.00%;
- (c) the Lease, including all renewal terms thereof, shall terminate not later than December 1, 2016, and may also be made subject to prepayment and termination in whole or in part with or without a prepayment premium not to exceed 2.0% of the principal amount thereof;
- (d) the City shall have the right to periodic releases of portions of the Leased Property and the option to purchase the interest of the Investor in the Leased Property in the manner provided in the Lease; and
- (e) the annual Base Rentals due under the Lease shall not exceed \$2,000,000.

Section 6. No General Obligation or Other Indebtedness. The obligation of the City to make rental payments under the Lease is subject to annual appropriation by the Council and constitutes an undertaking of the City to make current expenditures. No provision of this Ordinance or the Lease shall be construed as constituting or giving rise to a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any home rule, constitutional or statutory debt limitation nor a mandatory charge or requirement against the City in any ensuing fiscal year beyond the current fiscal year. The City shall have no obligation to make any payment except in connection with the payment of the Base Rentals (as defined in the Lease) and certain other payments under the Lease, which payments shall be subject to termination and nonrenewal by the City in accordance with the provisions of the Lease.

Section 7. Findings; Expression of Need; Reasonable Rentals. The City hereby declares its current need for the Leased Property. It is hereby declared to be the present intention and expectation of the Council that the Lease will be renewed annually until title to all of the Leased Property is acquired by the City pursuant to the Lease; but this declaration shall not be construed as contractually obligating or otherwise binding the City.

The Council hereby determines and declares that, taking into account the provisions of the Lease, including without limitation the City's right to periodic releases of portions of the Leased Property thereunder, the Base Rentals due under the Lease, so long as they are within the limits provided in this Ordinance, will represent the fair value of the use of the Leased Property during the Lease Term, and that the Purchase Option Price (as defined in the Lease) will represent, as of any date upon which the City may exercise its option to purchase the Investor's interest in such Leased Property, the fair purchase price thereof. The Council further hereby determines and declares that the Base Rentals due under the Lease will not exceed a reasonable

amount so as to place the City under an economic or practical compulsion to renew the Lease or to exercise its option to purchase the Leased Property pursuant to the Lease. In making such determinations, the Council has given consideration to the uniqueness of the Leased Property, the cost of acquiring title to the Leased Property, the uses and purposes for which the Leased Property will be employed by the City, the benefits to the inhabitants of the City by reason of the acquisition of the Leased Property and the use of the Leased Property pursuant to the terms and provisions of the Lease, the City's option to purchase the Leased Property, the City's right to cause the termination of the Lease by declining to appropriate funds, and the expected eventual vesting of title to the Leased Property, free and clear of the Lease, in the City. The Council hereby determines and declares that the acquisition of the Leased Property and the leasing of the Leased Property pursuant to the Lease will result in water supplies of comparable quality and meeting the same requirements and standards as if the acquisition of the Leased Property were performed by the City other than pursuant to the Lease. The Council hereby determines and declares that, to the extent the useful life of the Leased Property is other than perpetual, after execution and delivery of the Lease, the maximum duration of the Lease, or the portion thereof allocable to any item of Leased Property separately identified in the Lease, will not exceed the weighted average useful life of such item or items of Leased Property.

Section 8. Repealer. All orders, bylaws, ordinances and resolutions of the City, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

Section 9. Severability. If any section, paragraph, clause or provision of this Ordinance (other than provisions as to the payment of Base Rentals by the City during the term of the Lease, provisions for the quiet enjoyment of the Leased Property by the City during the term of the Lease, and provisions for the conveyance of the Leased Property to the City under the conditions provided in the Lease) shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the intent being that the same are severable.

Section 10. Recording and Authentication. Upon adoption hereof, this Ordinance shall be numbered and recorded in the official records of the City, and its adoption and publication shall be authenticated by the signature of the Mayor, or Mayor pro-tem, and the City Clerk, and by the certificate of publication.

Section 11. Effective Date. This Ordinance shall take effect five days after publication following final passage.

INTRODUCED, READ AND ORDERED POSTED this ____ day of _____,
2010.

By _____
JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

Date of Posting After First Reading: _____, 2010.

ADOPTED ON SECOND READING, FOLLOWING A PUBLIC HEARING on
_____, 2010 and published in accordance with law on _____,
2010.

CITY OF NORTHGLENN, COLORADO

[CITY SEAL]

By _____
JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

LEASE PURCHASE AGREEMENT

between

_____,
as Lessor,

and

CITY OF NORTHGLENN, COLORADO,
as Lessee

Dated as of December 1, 2010

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EXHIBIT A DESCRIPTION OF LEASED PROPERTY

EXHIBIT B BASE RENTALS SCHEDULE

LEASE PURCHASE AGREEMENT

THIS LEASE PURCHASE AGREEMENT dated as of December 1, 2010 (this “Lease”), between _____ (the “Investor”), as lessor, and **CITY OF NORTHGLENN, COLORADO** (the “City”), a home rule city, body corporate and politic of the State of Colorado duly organized and existing under the laws of the State of Colorado (the “State”), as lessee;

WITNESSETH:

WHEREAS, the City is a duly and regularly created, organized and existing home rule city, body corporate and politic of the State of Colorado (the “State”), existing as such under the Constitution and statutes of the State; and

WHEREAS, the City is authorized by its home rule charter (the “Charter”), to purchase and hold real and personal property and to lease the same, either as lessee or lessor; and

WHEREAS, the City is authorized by Article XI of the Charter to exercise all home rule municipal powers with respect to all public utilities, including without limitation the water system (the “Water System”) operated as a part of its joint water and sewer system (the “System”); and

WHEREAS, in order to finance a portion of the costs of acquiring additional sources of water for use in the Water System, the City Council (the “Council”) has determined that it is necessary and in the best interest of the City and its inhabitants to acquire certain water and water rights (the “CD Inches”) administered by the Church Ditch Water Authority as the successor in interest to the Church Ditch Company (“CD”) from Parkwood East, LLC (the “Seller”) pursuant to a Contract for Sale and Purchase of Water Rights (the “Purchase Contract”) entered into between the City and the Seller; and

WHEREAS, the Purchase Contract contemplates that the total purchase price of the CD Inches will be paid by the City partly in cash at the closing of the Purchase Contract and partly with proceeds of financing to be obtained by the City; and

WHEREAS, the Council has determined to authorize the financing of such balance through this Lease; and

WHEREAS, by purchasing a portion of the CD Inches with cash and entering into the Lease with respect to the financed portion of the CD Inches (the “Project”), the City can have the use, on a current basis, of the Inches, including that portion of the Inches (the “Leased Property”) being financed under this Lease, while paying the cost of its acquisition in installments of rent not exceeding the fair rental value of the Leased Property, taking all of the terms of the Lease into account; and

WHEREAS, pending the City’s acquisition of title to the Leased Property, the Leased Property shall be in the name of the Investor; and

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

WHEREAS, the financing of the Leased Property, and the execution, performance and delivery of this Lease, have been authorized, approved and directed by the Council by an Ordinance duly passed and adopted by the Council;

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

ARTICLE I

DEFINITIONS

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

CD	Lease
CD Inches	Project
Council	Purchase Contract
City	Seller
Investor	State

Section 1.02. Additional Definitions. The following additional terms shall have the meanings specified below:

“Additional Rentals” means the cost of all (a) reasonable expenses and fees of the Investor related to the performance of the provisions of this Lease related to the Leased Property, or otherwise incurred at the request of the City, (b) taxes, if any, insurance premiums, utility charges, maintenance, upkeep, repair, improvement and replacement incident to the City’s use of the Leased Property, and (c) all other charges and costs which the City assumes or agrees to pay hereunder (together with all interest and penalties that may accrue thereon) in the event that the City shall fail to pay the same. Additional Rentals do not include Base Rentals.

“Authorized Officer of the City” means any person authorized by resolution of the Council to perform any act or execute any document.

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

Leased Property, such payments will be combined for purposes of Section 6.02, but may be treated as separate schedules for other purposes of this Lease.

“*Base Rental Payment Dates*” means _____ and _____ of each Fiscal Year during the Lease Term.

“*Business Day*” means any day other than a Saturday, a Sunday or a day on which banks in New York, New York or Denver, Colorado are authorized by law to remain closed.

“*Code*” means the Internal Revenue Code of 1986, as amended.

“*Counsel*” means an attorney at law or law firm (who may be counsel for the Investor or the City) who is satisfactory to both the City and the Investor.

“*City*” means City of Northglenn, Colorado.

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

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

“*Financed Project*” means the acquisition of the Leased Property by the City.

“*Fiscal Year*” means the fiscal or budget year of the City.

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

“*Insurance Consultant*” means an independent person or firm acceptable to the City experienced in providing the specific type of insurance in question and capable of making an evaluation of the actuarial risk of loss from the types of events customarily covered by such insurance policies.

“*Lease Remedy*” or “*Lease Remedies*” means any or all remedial steps provided in Section 13.02 of this Lease whenever an Event of Default hereunder has happened and is continuing.

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

“*Leased Property*” means the property described in Exhibit A attached hereto.

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

“*Original Term*” means the portion of the Lease Term that terminates on December 31, 2007.

“*Opinion of Counsel*” means a written opinion of legal counsel.

“*Permitted Encumbrances*” means, as of any particular time: (a) any financing statements filed to perfect security interests pursuant to this Lease; (b) existing easements, covenants, restrictions, liens and encumbrances (if any) to which title to the Leased Property was subject when conveyed to the Investor, and which do not interfere in any material way with the Leased Property; and (c) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to property of the general character of the Leased Property and as do not render title unmarketable.

“*Purchase Option Price*” means the amount payable, at the option of the City, for the purpose of terminating this Lease with respect to the Leased Property and purchasing the interest of the Lessor in the Leased Property pursuant to Article XI of this Lease. The Purchase Option Price shall consist of the Remaining Lease Balance shown in Exhibit B hereto as of the last Base Rental Payment Date preceding the termination of this Lease, plus the interest component of Base Rentals accrued through the date of such termination.

“*Release Schedule*” means the schedule of Inches Released contained in Exhibit B hereto.

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

“*Revenues*” means (a) all amounts payable by or on behalf of the City with respect to the Leased Property pursuant to this Lease including, but not limited to, all Base Rentals, Purchase Option Prices and Net Proceeds, but not including Additional Rentals; and (b) all other revenues derived from this Lease, excluding Additional Rentals.

“*Tax Compliance Certificate*” means the certificate delivered by the City as of the date of execution and delivery of this Lease, containing statements as to facts and expectations which

are material for purposes of the exclusion of the interest component of Base Rentals from gross income under the Code.

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

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

(a) The City is a home rule city and a body corporate and politic of the State, duly organized and existing under the laws of the State. The City is authorized to enter into the transactions contemplated by this Lease and to carry out its obligations under this Lease. The City has duly authorized and approved the execution and delivery of this Lease.

(b) The Financed Project is necessary, convenient, in furtherance of and will at all times be used in connection with the City's governmental and proprietary purposes and functions and is in the best interests of the citizens of the City, and no portion of the Financed Project will be used directly or indirectly in any trade or business carried on by any person other than a political subdivision or governmental unit of the State.

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

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

(e) The City has experienced no material adverse change in its financial condition since December 31, 2009.

(f) The City has never declined to appropriate for or defaulted under any of its payment or performance obligations or covenants, either under any municipal lease of the same general nature as this Lease, or under any of its bonds, notes or other obligations of indebtedness for which its revenues or general credit are pledged.

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

(a) The Investor has all requisite power to acquire legal interests in the Leased Property and to execute, deliver, enter into and perform the transactions contemplated by this Lease and to carry out its obligations under this Lease, and has duly executed and delivered this Lease and all other documents related to this Lease.

(b) Except as expressly provided in this Lease, the Investor will not pledge or assign its right, title and interest in and to any of its rights under this Lease or assign, pledge, mortgage, encumber or grant a security interest in its right, title and interest in, to or under this Lease or the Leased Property. The Investor represents that neither the Lease nor any interest therein will be transferred or resold except in compliance with Section 14.05 hereof.

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

(d) Except as expressly permitted by this Lease, the Investor will not assign its duties or obligations under this Lease to any other person, firm or Investor, so as to impair or violate the representations, covenants and warranties contained in this Section 2.02.

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

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

ARTICLE III

LEASE OF LEASED PROPERTY

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

ARTICLE IV

LEASE TERM

Section 4.01. Duration of Lease Term; City's Annual Right to Renew Lease. The Lease Term shall commence as of the date hereof and continue through the last day of the current Fiscal Year of the City. Subject to the provisions of Section 4.02 hereof, the Lease Term may be renewed at the end of the Original Term and at the end of each renewal term thereafter for a term of twelve months coinciding with the next succeeding Fiscal Year of the City. The City shall have the right to annually renew the Lease Term unless (a) the City gives written notice to the Investor not less than 30 days prior to the end of the Original Term or the then current Renewal Term of the City's intention not to renew this Lease at the end of the Original Term or the then current Renewal Term, or (b) an Event of Nonappropriation shall have occurred with respect to a Renewal Term occurring after the Original Term or any then current Renewal Term. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except for the amount of Base Rentals and Additional Rentals to be paid during such Renewal Term. The Lease Term, including the Original Term and all Renewal Terms, does not exceed the weighted average useful life of the Leased Property or the Financed Project.

Except as otherwise provided in Section 4.02 hereof, the exercise of the City's annual option to renew this Lease shall be conclusively determined by whether or not the Council has, on or before the last day of each Fiscal Year, duly enacted an appropriation ordinance for the ensuing Fiscal Year which includes (a) sufficient amounts (based upon the City's detailed budget document as it then exists) authorized and directed to be used to pay all the Base Rentals and (b) sufficient amounts (based upon such budget document) to pay such Additional Rentals as are estimated to become due, all as further provided in Section 6.02 of this Lease. The officer of the City at any time charged with the responsibility of formulating budget proposals is hereby directed to include in the annual budget proposals submitted to the Council, items for all payments required under this Lease for the ensuing Fiscal Year, until such time (if any) as the Council may determine to renew or not to renew this Lease; it being the intention of the Council that any decision to renew or not to renew this Lease shall be made solely by the Council and not by any other official of the City. Said officer shall also include in said budget proposal the total amount to be expended by the City during the ensuing Fiscal Year for payment obligations under all lease-purchase agreements involving real property, including this Lease; the total maximum payment liability of the City under all lease-purchase agreements involving real property, including this Lease, over the entire terms of such agreements, including all optional renewal terms; the total amount to be expended by the City during the ensuing Fiscal Year for payment

obligations under all lease-purchase agreements other than those involving real property; and the total maximum payment liability of the City under all lease-purchase agreements other than those involving real property, over the entire term of such agreements, including all optional renewal terms. The City shall, in any event, promptly furnish the Investor with copies of its appropriation ordinance within seven days after passage and its final annual budget within seven days after the final budget is adopted. If such appropriation measure is not adopted, the Investor shall notify the City in writing as provided in Section 6.06 hereof.

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

- (a) the last day of any Fiscal Year during which there has occurred an Event of Nonappropriation pursuant to Section 4.01 and Article VI of this Lease (provided that the Lease Term will be deemed to have been renewed and, therefore, not terminated if the Event of Nonappropriation is cured as provided in Section 6.06 hereof); or
- (b) the conveyance or release of all of the Leased Property to the City upon payment of the Purchase Option Price or all Base Rentals and Additional Rentals as provided in Section 11.02(a) and (b) of this Lease; or
- (c) an Event of Default and termination of this Lease under Article XIII of this Lease.

An election not to renew the Lease Term shall terminate all unaccrued obligations of the City under this Lease, and shall terminate the City's rights of possession under this Lease at the end of the last day of the Fiscal Year for which this Lease shall be in effect (except to the extent of the holdover provisions of Section 13.02(d)(i) hereof, and except for any conveyance pursuant to Article XI of this Lease). Except for an event described in subparagraph (b) above, upon termination of this Lease, the City agrees to peaceful delivery of the Leased Property to the Investor or its assigns at such reasonable location specified by the Investor for delivery to the Investor.

ARTICLE V

ENJOYMENT OF LEASED PROPERTY

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

ARTICLE VI

PAYMENTS BY THE CITY

Section 6.01. Payments to Be Paid From Currently Budgeted Expenditures of the City. The City and the Investor acknowledge and agree that the Base Rentals and Additional Rentals hereunder during the Original Term and all Renewal Terms, if any, shall be paid from then currently budgeted expenditures of the City, using any legally available funds of the City. The City's obligations to pay Base Rentals, Additional Rentals or any other payments provided for under this Lease during the Original Term and all of the Renewal Terms, if any, shall be subject to the City's annual right to renew this Lease (as further provided in Article IV and Sections 6.02 and 6.06 hereof), and shall not constitute a mandatory charge, requirement or liability in any ensuing Fiscal Year beyond the then current Fiscal Year. No provision of this Lease shall be construed or interpreted as a delegation of governmental powers or as creating indebtedness or a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of any constitutional or statutory debt limitation, including without limitation, Article XI, Sections 1, 2 and 6, and Article X, Section 20, of the Colorado Constitution. This Lease shall not directly or indirectly obligate the City to make any payments of Base Rentals or Additional Rental or any other amounts provided for under this Lease beyond the funds legally available to the City and budgeted and appropriated for its then current Fiscal Year. The City shall be under no obligation whatsoever to exercise its option to purchase the Investor's interest in the Leased Property. No provision of this Lease shall be construed to pledge or to create a lien on any class or source of City moneys, nor shall any provision of this Lease restrict the future issuance of any bonds or obligations of the City payable from any class or source of moneys of the City.

Section 6.02. Base Rentals and Additional Rentals.

(a) The City shall pay all Base Rentals directly to the Investor during the Original Term and all Renewal Terms, on the Base Rental Payment Dates and in the "Total Base Rentals" amounts set forth in Exhibit B, attached hereto and made a part hereof, as it may be amended from time to time hereunder.

(b) The City may, at any time during the Lease Term, pay the then applicable Purchase Option Price related to the Leased Property for the purpose of terminating this Lease and purchasing the Investor's interest in the Leased Property, as further provided in Article XI of this Lease. The City shall give the Investor notice of its intention to exercise its option not less than 15 days in advance of the date of exercise and shall deposit with the Investor on or prior to a Base Rental Payment Date an amount equal to the Purchase Option Price.

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

shall furnish an itemization of such estimated Additional Rentals to the Investor on or before the last day of such Fiscal Year.

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

Section 6.04. Manner of Payment. The Base Rentals and, if paid, the Purchase Option Price, shall be paid by the City by certified funds or other method of payment acceptable to the Investor in lawful money of the United States of America to the Investor at its principal corporate trust office for deposit. The obligation of the City to pay the Base Rentals and Additional Rentals, during the Original Term and each Renewal Term, shall be absolute and unconditional, payable from all legally available sources, and payment of the Base Rentals and Additional Rentals shall not be abated through accident or unforeseen circumstances, or for any other reason, including without limitation, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Leased Property, commercial frustration of purpose, or failure of the Investor to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Lease, it being the intention of the parties that the payments required by this Lease will be paid in full when due without any delay or diminution whatsoever, subject only to the special and limited nature of the City's obligation to make payments hereunder as set forth in Section 6.01 above, and further subject to the City's rights under Section 8.04 hereof. Notwithstanding any dispute between the City and Investor, the City shall, during the Original Term and all Renewal Terms, make all payments of Base Rentals and Additional Rentals when due and shall not withhold any Base Rentals or Additional Rentals pending final resolution of such dispute (except to the extent permitted by Sections 7.02 and 8.04 hereof with respect to certain Additional Rentals), nor shall the City assert any right of set-off or counterclaim against its obligation to make such payments required hereunder. No action or inaction on the part of the Investor shall affect the City's obligation to pay all Base Rentals and Additional Rentals (except to the extent provided by Sections 7.02 and 8.04 hereof with respect to certain Additional Rentals), during the Lease Term.

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

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

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

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

(c) The Investor shall waive any Event of Nonappropriation which is cured by the City within a reasonable time.

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

In the event that during any Fiscal Year, any Additional Rentals shall become due which were not included in a duly enacted appropriation resolution then, in the event that moneys are not specifically budgeted and appropriated to pay such Additional Rentals within 45 days subsequent to the date upon which such Additional Rentals are due, an Event of Nonappropriation shall be deemed to have occurred, upon notice by the Investor to the City to such effect (subject to waiver by the Investor as hereinbefore provided).

Notwithstanding any provision to the contrary herein, if an Event of Nonappropriation occurs, the City's rights of possession of the Leased Property under this Lease shall terminate at the end of the last day of the Fiscal Year for which this Lease shall be in effect, and the City shall not be obligated to make payment of the Base Rentals, Additional Rentals or any other payments provided for herein which accrue after the end of the last day of the Fiscal Year for which this Lease shall be in effect; provided, however, that, subject to the limitations of Sections 6.01 and 13.03 hereof, the City shall continue to be liable for Base Rentals and Additional Rentals allocable to any period during which the City shall continue to occupy, use or retain possession of the Leased Property, beginning with the first day of the Fiscal Year in respect of which the Event of Nonappropriation occurs. The City shall in all events surrender possession of the Leased Property by the tenth Business Day of the Fiscal Year in respect of which the Event of Nonappropriation has occurred.

After the tenth Business Day of the Fiscal Year with respect to which an Event of Nonappropriation has occurred, the Investor may proceed to exercise all or any Lease Remedies. All property, funds and rights acquired by the Investor upon the termination of this Lease by reason of an Event of Nonappropriation as provided herein, less any moneys due and owing to the Investor, shall be held by the Investor.

ARTICLE VII

TITLE TO THE LEASED PROPERTY; LIMITATIONS ON ENCUMBRANCES

Section 7.01. Title to the Leased Property. Title to the Leased Property shall remain in the City, subject to this Lease.

Except as expressly set forth in this Lease, the City shall have no right or interest in the Leased Property or any additions and modifications thereto or replacements thereof.

Section 7.02. No Encumbrance, Mortgage or Pledge of Leased Property. Except as may be permitted by this Lease, the City shall not permit any mechanic's or other lien to remain against the Leased Property; provided that, if the City shall first notify the Investor of the intention of the City to do so, the City may in good faith contest any mechanic's or other lien filed or established against the Leased Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless the Investor shall notify the City that, in the Opinion of Counsel, by nonpayment of any such items the Investor's title to or interest in the Leased Property will be materially endangered, or the Leased Property or any part thereof will be subject to loss or forfeiture, in which event the City shall promptly pay and cause to be satisfied and discharged all such unpaid items (provided, however, that such payment shall not constitute a waiver of the right to continue to contest such items). The Investor will cooperate fully with the City in any such contest, upon the request and at the expense of the City. Except as may be permitted by this Lease, the Investor shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Property, except Permitted Encumbrances. The City and the Investor shall promptly, at their own respective expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance or claim not excepted above which each shall respectively have created, incurred, or suffered to exist.

ARTICLE VIII

MAINTENANCE; TAXES; INSURANCE AND OTHER CHARGES

Section 8.01. Maintenance of the Leased Property by the City. The City agrees that at all times during the Lease Term the City will maintain, preserve and keep all portions of the Leased Property or cause the Leased Property to be maintained, preserved and kept, in good order and condition, and that the City will from time to time make or cause to be made all necessary and proper repairs, except as otherwise provided in Sections 9.02 and 10.03 of this Lease. The Investor shall not have any responsibility for such maintenance or repairs or for the making of any additions, modifications or replacements to the Leased Property.

Section 8.02. Modification of the Leased Property, Installation of Furnishings and Machinery of the City. The City shall have the privilege of making substitutions, additions, modifications and improvements to any portion of the Leased Property, at its own cost and expense; and the same shall be the property of the Investor, subject to this Lease and shall be

Section 8.03. Taxes, Other Governmental Charges and Utility Charges. In the event that the Leased Property or any portion thereof shall, for any reason, be deemed subject to taxation, assessments or charges lawfully made by any governmental body, the City shall pay the amount of all such taxes, assessments and governmental charges when due, as Additional Rentals. With respect to special assessments or other governmental charges which may be lawfully paid in installments over a period of years, the City shall be obligated to provide for Additional Rentals only for such installments as are required to be paid during the ensuing Fiscal Year. Except for Permitted Encumbrances, the City shall not allow any liens for taxes, assessments or governmental charges to exist with respect to the Leased Property or any portion thereof (including, without limitation, any taxes levied upon the Leased Property or any portion thereof which, if not paid, will become a charge on the rentals and receipts from the Leased Property or any portion thereof, or any interest therein, including the interest of the Investor), or the rentals and revenues derived therefrom or hereunder. The City shall also pay as Additional Rentals, as the same respectively become due, all utility and other charges incurred in the maintenance and upkeep of the Leased Property.

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

Section 9.01. Damage, Destruction and Condemnation. If, during the Lease Term (a) the Leased Property or any portion thereof, including incidental structures or equipment included in the CD Inches and necessary to the City's use of the Leased Property, shall be destroyed (in whole or in part), or damaged by casualty; or (b) title to, or the temporary or permanent use of, the Leased Property or any portion thereof or the interest or estate of the City or the Investor in the Leased Property or any portion thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority; or (c) title to or the use of all or any portion of the Leased Property shall be lost by reason of a defect in title thereto; then the City shall be obligated to continue to pay the amounts specified in Section 6.02 of this Lease (subject to Section 6.01 hereof).

Section 9.02. Insufficiency of Net Proceeds. If the Net Proceeds (plus any amounts withheld from such Net Proceeds by reason of any deductible clause) shall be insufficient to pay in full the cost of any repair, restoration, modification, improvement or replacement of the Leased Property required under Section 9.02 of this Lease, the City may elect to:

(a) complete the work or replace such Leased Property (or portion thereof) with similar property of a value equal to or in excess of such Leased Property or portion thereof and pay as Additional Rentals, to the extent amounts for Additional Rentals which have been specifically appropriated by the City are available for payment of such cost, any cost in excess of the amount of the Net Proceeds, and the City agrees that, if by reason of any such insufficiency of the Net Proceeds, the City shall make any payments pursuant to the provisions of this Section 9.03(a), the City shall not be entitled to any reimbursement therefor from the Investor, nor shall the City be entitled to any diminution of the Base Rentals and Additional Rentals payable under Section 6.02 of this Lease; or

(b) apply the Net Proceeds to the payment of the Purchase Option Price in accordance with Article XI of this Lease. In the event of an insufficiency of the Net Proceeds for such purpose, the City shall, subject to the limitations of Section 6.01 hereof, pay such amounts as may be necessary to equal that portion of the Purchase Option Price which is attributed to the Leased Property for which the Net Proceeds have been received (as certified to the Investor by the City); and in the event the Net Proceeds shall exceed such portion of the Purchase Option Price, such excess shall be retained by the City; or

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

The above referenced election shall be made by the City within 90 days of the occurrence of an event specified in Section 9.01 of this Lease.

If the City elects to replace the Leased Property with similar property pursuant to subparagraph (a) above, the City shall give notice thereof to Investor prior to such substitution.

Section 9.03. Cooperation of the Investor. At the expense of the City, the Investor shall cooperate fully with the Investor in filing any proof of loss with respect to any insurance policy or performance bond covering the events described in Section 9.01 of this Lease and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Leased Property or any portion thereof and in the enforcement of all warranties relating to the Leased Property. In no event shall the Investor voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim, performance or payment bond claim, prospective or pending condemnation proceeding, or any portion thereof without the written consent of the City.

Section 9.04. Condemnation by the City. The City agrees that, to the extent permitted by law, in the event it brings an eminent domain or condemnation proceeding with respect to all or any portion of the Leased Property, the fair market value of the condemned portion of the Leased Property shall be not less than the Purchase Option Price.

ARTICLE X

DISCLAIMER OF WARRANTIES; OTHER COVENANTS

Section 10.01. Disclaimer of Warranties. THE INVESTOR DOES NOT MAKE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR USE OF THE LEASED PROPERTY OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LEASED PROPERTY. THE CITY HEREBY ACKNOWLEDGES AND DECLARES THAT THE CITY IS SOLELY RESPONSIBLE FOR THE USE, IMPROVEMENT, EQUIPPING, MAINTENANCE AND OPERATION OF THE LEASED PROPERTY, AND THAT THE INVESTOR DOES NOT HAVE ANY RESPONSIBILITY THEREFOR. For the purpose of enabling the City to discharge such responsibility, the Investor constitutes and appoints the City as its attorney in fact for the purpose of constructing, improving, equipping, maintaining and operating the Leased Property, and asserting and enforcing, at the sole cost and expense of the City, all warranties and guaranties, express or implied, with respect to the Leased Property, as well as any claims or rights the Investor may have in respect of the Leased Property. In no event shall the Investor be liable for any direct or indirect, incidental, special or consequential damage in connection with or arising out of this Lease or the existence, furnishing, functioning or use by the City of any item, product or service provided for herein.

Section 10.02. Further Assurances and Corrective Instruments. The Investor and the City agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Leased Property hereby leased or intended so to be, or for otherwise carrying out the intention hereof.

Section 10.03. Compliance With Requirements. During the Lease Term, the City and the Investor shall observe and comply promptly to the extent possible with all current and future orders of all courts having jurisdiction over the Leased Property or any portion thereof, provided that the City or the Investor may contest or appeal such orders so long as they are in compliance with such orders, and all current and future requirements of all insurance companies writing policies covering the Leased Property or any portion thereof, during the contest or appeal period.

Section 10.04. Tax Covenant of City. The City shall not take or omit to take any action with respect to the Base Rentals or any other funds or property of the City, or use or permit others to use the Leased Property in any manner that would cause the interest component of Base Rentals to be included in gross income for federal income tax purposes or to be an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations (except, with respect to corporations, as such interest is required to be taken into account in determining “adjusted net book income” for the purpose of computing the alternative minimum tax imposed on such corporations). In furtherance of this covenant, the City agrees to comply with the procedures and requirements set forth in the Tax Compliance Certificate. The covenants in this Section shall survive the termination of this Lease and remain in full force and effect, notwithstanding termination of the Lease, until such covenants have been performed.

Section 10.05. Acquisition of Title to the Leased Property. The City has assigned, or agrees that it will assign the Purchase Contract to the Investor in such manner that the Investor shall receive the conveyance of title to the Leased Property directly from the Seller in return for the Investor's payment of the purchase price thereof.

Section 10.06. Immunities of Investor, its Employees and Agents. In the exercise of the rights of the Investor by its employees and agents under this Lease, including (without limiting the foregoing) the application of moneys and the investment of funds, the Investor shall not be accountable to the City for any action taken or omitted with respect to this Lease by it or its employees and agents reasonably believed by it or them to be authorized or within the discretion or rights or powers conferred under this Lease. The Investor and its employees and agents shall be protected in its or their actions taken in reliance upon any paper or documents believed by it or them to be genuine and consistent with their rights or powers under this Lease, and it or they may conclusively rely upon the advice of Counsel and may (but need not) require further evidence of any fact or matter before taking any action. No recourse shall be had by the City for any claims based on the provisions of this Lease against any employee or agent of the Investor alleging personal liability on the part of such person.

Section 10.07. Audited Financial Statements. The City shall provide its audited financial statements to the Investor, annually, within 20 days of their acceptance by the Council. The City shall use its best efforts to provide such audited financial statements to be delivered to the Investor no later than seven months after the close of the City's Fiscal Year. Also, during the Lease Term, the City covenants and agrees to provide the Investor, as soon as practicable when they are available (i) a copy of the City's final annual budget for each fiscal year; (ii) a copy of the City's most recent financial statements; and (iii) in the event of default, any other financial information maintained in the ordinary course of business the Investor may reasonably request from time to time.

ARTICLE XI

PURCHASE AND CONVEYANCE OF THE LEASED PROPERTY

Section 11.01. Purchase Option. The City shall have the option to purchase the Leased Property and terminate this Lease, but only if it is not then in default under this Lease. The City may exercise its option on any date by complying with one of the conditions set forth in Section 11.02. The City shall give the Investor notice of its intention to exercise its option not less than 15 days in advance of the date of exercise. If the City shall have given notice to the Investor of its intention to purchase the Leased Property, but shall not have deposited the amounts with the Investor on the date specified in such notice, the City shall continue to pay Base Rentals as if no such notice had been given.

Section 11.02. Conveyance or Release of the Leased Property. The Investor shall transfer and convey or release the Leased Property to the City in the manner provided for in Section 11.03 of this Lease; provided, however, that prior to such transfer and conveyance, either:

- (a) the City shall have paid the then applicable Purchase Option Price;

(b) in the case of automatic releases of portions of the Leased Property pursuant to the Release Schedule, the City shall be current in the payment of Base Rentals through and including the date of release; or

(c) no Event of Default shall have occurred and be continuing, and the City shall have paid all Base Rentals set forth in Exhibit B hereto and all then current Additional Rentals required to be paid hereunder, in which case the Investor shall transfer and convey the Leased Property to the City.

The City is hereby granted the right to automatic releases of portions of the Leased Property as provided in the Release Schedule and the option to terminate this Lease and to purchase the interest of the Investor in the Leased Property upon payment by the City of the then applicable Purchase Option Price. It is the intent of this Section to provide for and allow the release of the Leased Property shown on Exhibit A subject to this Lease if the City has fulfilled its payment obligations with respect hereto as to all or specific portions of the Leased Property and is not then in default hereunder.

Section 11.03. Manner of Conveyance. At the closing of any purchase or other conveyance of the Leased Property pursuant to Section 11.02 of this Lease, the Investor shall execute and deliver to the City such deeds, releases, bills of sale and other necessary documents assigning, transferring and conveying the Investor's interest in the Leased Property, as it then exists, subject to the following: (a) Permitted Encumbrances, other than this Lease; and (b) any lien or encumbrance created by action of the City.

ARTICLE XII

ASSIGNMENT, SUBLEASING AND USE BY CITY

Section 12.01. Assignment and Subleasing of the Lease. This Lease may not be assigned by the City for any reason other than to a successor by operation of law. However, the Leased Property may be subleased to any other person or entity, as a whole or in part, by the City, but without the necessity of obtaining the consent of the Investor, subject, however, to each of the following conditions:

(a) this Lease, and the obligations of the City hereunder, shall, at all times during the Lease Term remain obligations of the City subject to Section 6.01 of this Lease, and the City shall maintain its obligations to the Investor, notwithstanding any sublease;

(b) the City shall furnish or cause to be furnished to the Investor a copy of any sublease agreement; and

(c) no sublease by the City shall violate the Constitution or laws of the State.

(d) no sublease by the City shall result in a violation of the covenants provided in Section 10.04 hereof.

ARTICLE XIII

EVENTS OF DEFAULT AND REMEDIES

Section 13.01. Events of Default Defined. Any one of the following shall be an “Event of Default” under this Lease:

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

(b) failure by the City to surrender possession of the Leased Property by the tenth Business Day of the Fiscal Year in respect of which an Event of Nonappropriation has occurred;

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

(d) the City (i) files a petition or application seeking reorganization, arrangement under federal bankruptcy law, or other debtor relief under the laws of the State or (ii) is the subject of such a petition or application which is not contested by the City, or otherwise dismissed or discharged, within 30 days.

The foregoing provisions of this Section 13.01 are subject to the following limitations: (a) the City shall be obligated to pay the Base Rentals and Additional Rentals only during the Original Term or current Renewal Term, except as otherwise expressly provided in this Lease; and (b) if, by reason of Force Majeure, the City shall be unable in whole or in part to carry out any agreement on its part herein contained, other than the obligations on the part of the City contained in Article VI of this Lease, the City shall not be deemed in default during the continuance of such inability. The City agrees, however, to remedy, as promptly as legally and reasonably possible, the cause or causes preventing the City from carrying out its agreement; provided that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the City.

Section 13.02. Remedies on Default. Whenever any Event of Default referred to in Section 13.01 of this Lease shall have happened and be continuing, the Investor may, without any further demand or notice, take one or any combination of the following remedial steps:

(a) The Investor may terminate the Lease Term and give notice to the City to surrender possession of the Leased Property within ten Business Days of such notice.

(b) The Investor may proceed to foreclose through the courts on or otherwise sell, trade-in, repossess or liquidate the City's interest in the Leased Property, or any part thereof in any lawful manner; provided, however, that the Investor may not recover from the City any deficiency which may exist following the liquidation of the City's interest in the Leased Property in excess of Base Rentals and Additional Rentals for the then current Fiscal Year plus any additional amounts payable under subparagraph (d) of this Section 13.02.

(c) The Investor may lease or sublease the Leased Property or any portion thereof or sell any interest the Investor has in the Leased Property.

(d) The Investor may recover from the City:

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

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

(e) The Investor may take whatever action at law or in equity may appear necessary or desirable to enforce its rights in and to the Leased Property under this Lease.

Section 13.03. Limitations on Remedies. A judgment requiring a payment of money may be entered against the City by reason of an Event of Default only as to the City's liabilities described in paragraph (d) of Section 13.02 of this Lease. A judgment requiring a payment of money may be entered against the City by reason of an Event of Nonappropriation only to the extent that the City fails to surrender possession of the Leased Property as required by Section 6.06 of this Lease, and only as to the liabilities described in paragraph (d)(i) of Section 13.02 of this Lease. The remedy described in paragraph (d)(ii) of Section 13.02 of this Lease is not available for an Event of Default consisting of failure by the City to surrender use or possession of the Leased Property within ten Business Days following notice of an Event of Nonappropriation.

Section 13.04. No Remedy Exclusive. Subject to Section 13.03 hereof, no remedy herein conferred upon or reserved to the Investor is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Investor to exercise any remedy reserved in this Article XIII, it shall not be necessary to give any notice, other than such notice as may be required in this Article XIII.

Section 13.05. Waivers. The Investor 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.

Section 13.06. Agreement to Pay Attorneys' Fees and Expenses. To the extent permitted by law and subject to the provisions of Section 6.01 hereof, in the event that either party hereto shall default under any of the provisions hereof and the nondefaulting party shall employ attorneys or incur other expenses for the collection of Base Rentals and Additional Rentals, or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it shall on demand therefor pay to the nondefaulting party the fees of such attorneys and such other expenses so incurred by the nondefaulting party, to the extent that such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction.

ARTICLE XIV

MISCELLANEOUS

Section 14.01. Sovereign Powers of City. Nothing in this Lease shall be construed as diminishing, delegating, or otherwise restricting any of the sovereign powers of the City. Nothing in this Lease shall be construed to require the City to occupy and operate the Leased Property other than as lessee, or to require the City to exercise its right to purchase the Investor's interest in the Leased Property as provided in Article XI hereof.

Section 14.02. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified or registered mail, postage prepaid, addressed as follows: if to the City, City of Northglenn, Colorado, _____, Attention: Finance Director, with a copy to the City Attorney; if to the Investor, _____, Attention: _____. The City and the Investor may, by written notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 14.03. Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the Investor and the City and their respective successors and assigns, subject, however, to the limitations contained in Article XII and Section 14.05 of this Lease.

Section 14.04. Amendments, Changes and Modifications. Except as otherwise provided in this Lease, this Lease may not be effectively amended, changed, modified or altered without the written consent of the parties hereto.

Section 14.05. Assignment by Investor; Registration and Transfer. The City shall serve as registrar for this Lease and the rights to payments hereunder. The Investor shall be the initial registered owner of rights to receive payments hereunder. If the Investor transfers its rights to receive payments as permitted under this Section, the registrar shall note on this Lease and in the records of the City the name and address of the transferee. This Lease is transferable only by notation on the registration books maintained by the registrar, and is freely transferable

provided that the Investor and each assignee or transferee agrees that it shall not assign or transfer this Lease or any interest herein except where:

- (a) the transferring holder thereof shall first have complied with all applicable state and federal securities laws and regulations; and
- (b) the Lease is transferred to
 - (i) a transferee who executes and delivers to the City a letter of the transferee substantially to the same effect as that delivered to the City by the Investor upon the original execution and delivery of this Lease; or
 - (ii) a transferee who qualifies as a qualified institutional investor; or
 - (iii) a transferee who qualifies as an “accredited investor” within the meaning of Section 2(15) of the 1933 Act; or
 - (iv) a securitization Special Purpose Vehicle (“SPV”) the interests in which SPV are sold to institutional investors only; and
- (c) the transferring holder will not prepare or furnish, or cause to be prepared or furnished, any disclosure regarding the City’s finances without the prior review and written consent of the City, in the City’s sole discretion.

In connection with any transfer or sale the City may require a letter from the transferee to the effect that the transferee is one of the types of entities mentioned in paragraphs (b)(i) through (iv) of this Section 14.05, purchasing for its own account with no present view to resale or other distribution of any interest in this Lease.

Section 14.06. Net Lease. This Lease shall be deemed and construed to be a “triple net lease,” and the City shall, subject to Section 6.01 hereof, pay absolutely net during the Lease Term, the Base Rentals, Additional Rentals and all other payments required hereunder, free of any deductions, and without abatement, deduction or setoff (other than credits against Base Rentals expressly provided for in this Lease).

Section 14.07. Payments Due on Holidays. If the date for making any payment or the last day for performance of any act or the exercising of any right, as provided in this Lease, shall be a day other than a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in this Lease.

Section 14.08. Severability. In the event that any provision of this Lease, other than the requirement of the City to pay Base Rentals in accordance with Section 6.01 and the requirement of the Investor to provide quiet enjoyment of the Leased Property and to convey the Leased Property to the City under the conditions set forth in Article XI of this Lease, and the requirement that the obligation of the City to pay Base Rentals, Additional Rentals and other amounts under this Lease are subject to the limitations of Section 6.01 hereof, shall be held

invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 14.09. Execution in Counterparts. This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute but one and the same Lease.

Section 14.10. Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the State, without regard to conflict of laws principles.

Section 14.11. 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.

[Signature Page to Lease Purchase Agreement follows]

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

_____,
as Lessor

By _____
Name: _____
Title: _____

[SEAL]

CITY OF NORTHGLENN, COLORADO
as Lessee

Attest:

By _____
City Clerk

By _____
Mayor

[Signature Page to Lease Purchase Agreement]

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me this ____ day of December, 2010, by _____, as _____ of _____ organized under the laws of _____.

Witness my hand and official seal.

[SEAL]

Notary Public

My Commission Expires:

STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

This instrument was acknowledged before me this ____ day of _____, 2010,
_____, as Mayor of the City of Northglenn, Colorado, and by
_____, as City Clerk of said City.

Witness my hand and official seal.

[SEAL]

Notary Public for the State of Colorado

My Commission Expires:

EXHIBIT A

DESCRIPTION OF LEASED PROPERTY

All water and water rights represented by ____ Inches administered by the Church Ditch Water Authority as the successor in interest to the Church Ditch Company, together with its appurtenances.

**EXHIBIT B
BASE RENTALS SCHEDULE**

<u>Date</u>	<u>Principal Component</u>	<u>Interest Component¹</u>	<u>Base Rentals Total¹</u>	<u>Remaining Lease Balance</u>	<u>Inches Released</u>
6-01-11	\$	\$	\$	\$	
12-01-11					
6-01-12					
12-01-12					
6-01-13					
12-01-13					
6-01-14					
12-01-14					
6-01-15					
12-01-15	\$ _____	\$ _____	\$ _____	\$ _____	