

After this instrument has been recorded, please return to:

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Butler Snow LLP
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Denver, Colorado 80202

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

BANC OF AMERICA PUBLIC CAPITAL CORP,

as Lessor

and

ARAPAHOE COUNTY, COLORADO,

as Lessee

FIRST AMENDMENT TO LEASE PURCHASE AGREEMENT

[CLOSING DATE], 2021

This First Amendment to Lease Purchase Agreement amends and supplements the Lease Purchase Agreement between Arapahoe County, Colorado, as lessee, and Banc of America Public Capital Corp, as lessor, dated as of May 19, 2011, which was recorded with the Arapahoe County Clerk and Recorder on May 19, 2011, at Reception No. D1047761.

FIRST AMENDMENT TO LEASE PURCHASE AGREEMENT

FIRST AMENDMENT TO LEASE PURCHASE AGREEMENT dated as of [closing date], 2021, (the “First Amendment to Lease Purchase Agreement”) by and between ARAPAHOE COUNTY, COLORADO, as lessee, (the “County”), a body corporate and politic of the State of Colorado (the “State”) duly organized and existing under the laws of the State, and BANC OF AMERICA PUBLIC CAPITAL CORP, a Kansas corporation, as lessor (together with its successors and assigns, “BAPCC”) amends the Lease Purchase Agreement dated as of May 19, 2011 (the “2011 Lease Purchase Agreement”).

WITNESSETH:

WHEREAS, the County has previously leased certain real property of the County and the improvements located thereon (the “Initial Leased Property”) to BAPCC under the Site Lease dated as of May 19, 2011 (the “Site Lease”) and then leased the Initial Leased Property back from BAPCC pursuant to the 2011 Lease Purchase Agreement; and

WHEREAS, the County and BAPCC have determined that a portion of the Initial Leased Property be released and the Board of County Commissioners has determined that it is in the best interests of the County and its residents and taxpayers that the County and BAPCC execute and deliver this First Amendment to Lease Purchase Agreement to amend the description of the Leased Property as described in **Exhibit A** to the 2011 Lease; and

WHEREAS, the County and BAPCC also have agreed to amend the Base Rental Schedule described in **Exhibit B** to the 2011 Lease to lower the interest component of the Base Rental Schedule and to make certain other amendments to the 2011 Lease;

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

ARTICLE I

DEFINITIONS AND APPLICABILITY

Section 1.1. **Definitions Generally.** Except as set forth in Section 1.2 hereof, all capitalized words and phrases in this First Amendment to Lease Purchase Agreement not otherwise defined herein shall have the respective meanings set forth in the 2011 Lease, unless the context otherwise requires.

Section 1.2. **Amended Definitions.** The following definitions set forth in Section 1.02 of the 2011 Lease are amended to read as follows:

“Base Rental Payment Dates” as of [closing date], 2021, means the May 15 and November 15 of each Fiscal Year during the Lease Term, with the first Base Rental Payment Date commencing on May 15, 2022.

“Lease Rate” as of [closing date], 2021, means 1.1545% per annum.

“Tax Compliance Certificate” means the certificate delivered by the County as of the date of execution and delivery of the First Amendment to Lease Purchase Agreement, containing statements as to facts and expectations which are material for purposes of the excludability of the interest component of Base Rentals from gross income under the Code.

Section 1.3. First Lease Purchase Agreement Amendment. This First Amendment to Lease Purchase Agreement amends and supplements the 2011 Lease Purchase Agreement and is entered into in accordance with the provisions of the 2011 Lease Purchase Agreement. Except as otherwise provided in this First Lease Purchase Agreement Amendment, the provisions of the 2011 Lease Purchase Agreement remain in full force and effect.

ARTICLE II

AMENDMENTS TO LEASE PURCHASE AGREEMENT

Section 2.1. Amendment to 2011 Lease Purchase Agreement Exhibit A. Exhibit A to the 2011 Lease Purchase Agreement, setting forth the description of the Leased Property, is hereby amended as set forth in Appendix A to this First Lease Purchase Agreement Amendment.

Section 2.2. Amendment to 2011 Lease Purchase Agreement Exhibit B. Exhibit B to the 2011 Lease Purchase Agreement, setting forth the Base Rentals Schedule, is hereby amended as of [closing date], 2021, as set forth in Appendix B to this First Lease Purchase Agreement Amendment.

Section 2.3. Amendment to Section 10.04 of 2011 Lease Purchase Agreement. Section 10.04 of the 2011 Lease Purchase Agreement is amended to read:

10.04 Tax Covenant of County. The County covenants for the benefit of BAPCC that it will not take any action or omit to take any action with respect to the Base Rentals or any other funds of the County or the Leased Property (except for the possible exercise of the County’s right to terminate this Lease as provided herein) if such action or omission (i) would cause the interest component of the Base Rentals to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Code, or (ii) would cause the interest component of the Base Rentals to lose its exclusion from alternative minimum taxable income as defined in Section 55(b)(2) of the Code, or (iii) would cause the interest component of the Base Rentals to lose its exclusion from Colorado taxable income or to lose its exclusion from Colorado alternative minimum taxable income under present Colorado law. Subject to the County’s right to terminate this Lease as provided herein, the foregoing covenant shall remain in full force and effect, notwithstanding the termination of the Lease, until the date on which all obligations of the County in fulfilling the above covenant under the Code and Colorado law have been met. In furtherance of this covenant, the County agrees to comply with the procedures and requirements set forth in the Tax Compliance Certificate.

For the purpose of Section 265(b)(3)(B) of the Code, the County hereby designates its obligations to pay the Base Rentals as qualified tax-exempt obligations.

Section 2.4. Amendment to Section 10.06 of 2011 Lease Purchase Agreement. In the second paragraph of Section 10.06 of the 2011 Lease Purchase Agreement the following clause (d) is inserted after clause (c): “(d) all anti-money laundering laws and regulations.”

Section 2.5. Amendment to Section 11.01 of 2011 Lease Purchase Agreement. In the fourth line, insert “on or after May 15, 2027” after “Base Rental Payment Date.”

Section 2.6. Amendment to Section 11.02 of 2011 Lease Purchase Agreement. The references to “July 1, 2021” in Section 11.02 of the 2011 Lease Purchase Agreement are amended to read “May 15, 2027.”

ARTICLE III

MISCELLANEOUS

Section 3.1. Execution in Counterparts. This First Amendment to Lease Purchase Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

Section 3.2. 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 First Lease Purchase Agreement Amendment.

Section 3.3. Filing of Form 8038-G. As soon as it is available, the County shall provide to BAPCC evidence that it has filed the Form 8038-G for this First Amendment to Lease Purchase Agreement with the Internal Revenue Service by delivering to BAPCC proof of mailing such Form 8038-G. Notwithstanding anything to the contrary, it shall not be an Event of Default if the County does not provide to BAPCC evidence that it filed the Form 8038-G with the Internal Revenue Service.

[Signature Page of First Amendment to Lease Purchase Agreement Follows]

IN WITNESS WHEREOF, the County has caused this First Amendment to Lease Purchase Agreement to be executed in its corporate name and the seal of the County to be affixed hereto and attested by its duly authorized officers; and BAPCC has caused this First Amendment to Lease Purchase Agreement to be executed in its name and attested by its duly authorized officer. All of the above are effective as of the date first above written.

(SEAL)

ARAPAHOE COUNTY, COLORADO,
as Lessee

Attest:

By: _____
County Clerk

By: _____
Chair, Board of County Commissioners

BANC OF AMERICA PUBLIC CAPITAL
CORP, as Lessor

By: _____

Name: _____

Title: _____

[Signature Page of First Amendment to Lease Purchase Agreement]

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by Nancy Jackson, Chair of the Board of County Commissioners, Arapahoe County, Colorado.

WITNESS my hand and official seal.

[SEAL]

Notary Public, State of Colorado

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by Joan Lopez, County Clerk and Recorder of Arapahoe County, Colorado.

WITNESS my hand and official seal.

[SEAL]

Notary Public, State of Colorado

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021,
by _____, as _____ of Banc of America Public Capital Corp.

WITNESS my hand and official seal.

[SEAL]

Notary Public, State of _____

APPENDIX A TO FIRST LEASE PURCHASE AGREEMENT AMENDMENT

EXHIBIT A TO LEASE PURCHASE AGREEMENT

DESCRIPTION OF THE LEASED PROPERTY

Improvements: Two buildings in Arapahoe County located on a portion of the Land described below and identified as 6924 S. Lima Street and 6954 S. Lima Street, together with any fixtures and permanent improvements to such buildings. The following are not part of the Leased Property: the buildings located on a portion of the Land described below and identified as 6904 S. Lima Street, 6914 S. Lima Street, 6934 S. Lima Street, 6964 S. Lima Street, 6974 S. Lima Street, and 6984 S. Lima Street together with any fixtures and permanent improvements to such buildings.

Land: The land referred to in Schedule A is situated in the County of Arapahoe, State of Colorado and is described as follows:

Parcel 1:

Lot 2, Block 1, and Tract A,
South Lima Street Business Center Filing No. 1, according to the plat thereof recorded September 6, 2001 in Book 202 at Pages 71-72, at Reception No. B1151338,

EXCEPTING THEREFROM that portion conveyed in Special Warranty Deed recorded February 3, 2004 at Reception No. B4021058,

EXCEPTING THEREFROM that portion conveyed in Special Warranty Deed recorded February 27, 2007 at Reception No. B7024963,
County of Arapahoe,
State of Colorado.

Parcel 2:

An easement for access and incidental purposes as set forth in the Declaration of Easement recorded September 10, 2001 at Reception No. B1153702, in the records of the office of the Clerk and Recorder of the County of Arapahoe, State of Colorado.

APPENDIX B TO FIRST LEASE PURCHASE AGREEMENT AMENDMENT

EXHIBIT B TO LEASE PURCHASE AGREEMENT

Base Rentals Payment Schedule

Base Rental Payment Date	Outstanding Principal	Total Base Rental Payment	Interest Component @ 1.1545%	Principal Component	Remaining Lease Balance
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12/1/2021	\$5,600,000.00				\$5,600,000.00
5/15/2022		\$29,452.58	\$29,452.58	\$0.00	\$5,600,000.00
11/15/2022		\$612,326.00	\$32,326.00	\$580,000.00	\$5,020,000.00
5/15/2023		\$28,977.95	\$28,977.95	\$0.00	\$5,020,000.00
11/15/2023		\$613,977.95	\$28,977.95	\$585,000.00	\$4,435,000.00
5/15/2024		\$25,601.04	\$25,601.04	\$0.00	\$4,435,000.00
11/15/2024		\$620,601.04	\$25,601.04	\$595,000.00	\$3,840,000.00
5/15/2025		\$22,166.40	\$22,166.40	\$0.00	\$3,840,000.00
11/15/2025		\$632,166.40	\$22,166.40	\$610,000.00	\$3,230,000.00
5/15/2026		\$18,645.18	\$18,645.18	\$0.00	\$3,230,000.00
11/15/2026		\$638,645.18	\$18,645.18	\$620,000.00	\$2,610,000.00
5/15/2027		\$15,066.23	\$15,066.23	\$0.00	\$2,610,000.00
11/15/2027		\$650,066.23	\$15,066.23	\$635,000.00	\$1,975,000.00
5/15/2028		\$11,400.69	\$11,400.69	\$0.00	\$1,975,000.00
11/15/2028		\$656,400.69	\$11,400.69	\$645,000.00	\$1,330,000.00
5/15/2029		\$7,677.43	\$7,677.43	\$0.00	\$1,330,000.00
11/15/2029		\$667,677.43	\$7,677.43	\$660,000.00	\$670,000.00
5/15/2030		\$3,867.58	\$3,867.58	\$0.00	\$670,000.00
11/15/2030		\$673,867.58	\$3,867.58	\$670,000.00	\$0.00
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	\$5,600,000.00	\$5,928,583.53	\$328,583.53	\$5,600,000.00	