

**TOWN OF SUPERIOR  
ORDINANCE NO. O-10  
SERIES OF 2019**

**AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR AUTHORIZING THE TOWN TO ENTER INTO A LEASE FINANCING TO REIMBURSE THE TOWN FOR THE COST OF ACQUIRING CERTAIN PROPERTY; AUTHORIZING DOCUMENTS IN CONNECTION THEREWITH; SETTING FORTH PARAMETERS AND RESTRICTIONS WITH RESPECT TO THE LEASE FINANCING; AND PROVIDING FOR OTHER MATTERS RELATED THERETO.**

**WHEREAS**, the Town of Superior, Colorado (the “Town”) is a statutory town and political subdivision of the State of Colorado (the “State”), duly organized and operating under the Constitution and laws of the State;

**WHEREAS**, the Town is authorized by part 8 of Article 15 of title 31, Colorado Revised Statutes (“C.R.S.”), to enter into rental or leasehold agreements in order to provide necessary land, buildings, equipment and other property for governmental or proprietary purposes;

**WHEREAS**, the Town has recently acquired a parcel of land located at 1500 Coalton Road in the Town (“Parcel A”) and the building located thereon (the “Building”) that will be used by the Town for certain governmental or proprietary purposes;

**WHEREAS**, the Board of Trustees of the Town (the “Board”) has determined and now hereby determines that it is in the best interest of the Town to reimburse the Town for the acquisition of Parcel A and the Building located thereon (hereinafter referred to as the “Project”) by entering into a lease financing;

**WHEREAS**, the Board has determined and hereby determines that the leased property under the lease financing will consist of (a) Parcel A and the Building located thereon, and (b) Town Hall, which is owned by the Town and located at 124 East Coal Creek Drive in the Town, and the parcel of land on which Town Hall is located (collectively, the “Leased Property”), as further described in the Lease (hereinafter defined);

**WHEREAS**, the Board has determined and now hereby determines that in order to reimburse the Town for the acquisition of the Project, it is in the best interest of the Town and its inhabitants that the Town enters into (a) a Site and Improvement Lease (the “Site Lease”) between the Town, as lessor, and UMB Bank, n.a., as trustee (the “Trustee”), as lessee, pursuant to which the Town will lease the Leased Property to the Trustee, and (b) a Lease Purchase Agreement (the “Lease”) between the Trustee, as lessor, and the Town, as lessee, pursuant to which the Trustee will lease back the Leased Property to the Town;

**WHEREAS**, pursuant to the Lease, and subject to the right of the Town to terminate the Lease and other limitations as therein provided, the Town will pay certain Base Rentals and Additional Rentals (as such terms are defined in the Lease) in consideration for the right of the Town to use the Leased Property;

**WHEREAS**, the Town’s obligation under the Lease to pay Base Rentals and Additional Rentals shall be from year to year only; shall constitute currently budgeted expenditures of the Town; shall not constitute a mandatory charge or requirement in any ensuing budget year; and shall not constitute a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional, statutory limitation or requirement concerning the creation of indebtedness or multiple fiscal year financial obligation, nor a mandatory payment obligation of the Town in any ensuing fiscal year beyond any fiscal year during which the Lease shall be in effect;

**WHEREAS**, contemporaneously with the execution and delivery of the Site Lease and the Lease, the Trustee will execute and deliver an Indenture of Trust (the “Indenture”) pursuant to which there will be executed and delivered one or more certificates of participation (the “Certificates”) that will evidence the right to receive certain revenues under the Lease, which Certificates shall be payable solely from the sources therein provided and shall not directly or indirectly obligate the Town to make any payments beyond those appropriated for any fiscal year during which the Lease shall be in effect;

**WHEREAS**, it is expected that the Certificates will be purchased by Zions Bancorporation, N.A. (the “Initial Purchaser”);

**WHEREAS**, the net proceeds from the sale of the Certificates to the Initial Purchaser will be used to: (a) reimburse the Town for the costs of acquiring the Project, (b) pay the costs of the lease financing, and (c) pay two years of capitalized interest on the Certificates;

**WHEREAS**, Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, C.R.S., as amended (the “Supplemental Act”), provides that a public entity, including the Town, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act;

**WHEREAS**, there has been presented to the Board the proposed forms of the Site Lease and the Lease; and

**WHEREAS**, capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Lease.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR, COLORADO, as follows:**

**Section 1. Recitals Incorporated.** The foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Board.

**Section 2. Ratification and Approval of Prior Actions.** All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Board or the officers, agents or employees of the Town relating to the Site Lease, the Lease, the acquisition of the Project, the reimbursement of the costs of the Project, the preparation of the request for proposal and the selection of the Initial Purchaser, and the sale, execution and delivery of the Certificates is hereby ratified, approved and confirmed.

**Section 3. Finding of Best Interests.** The Board hereby finds and determines, pursuant to the Constitution and the laws of the State, that the acquisition of the Project and the reimbursement of the costs of such acquisition, pursuant to the terms set forth in the Site Lease and the Lease, including paying the costs of the lease financing incurred in connection therewith, are necessary, convenient, and in furtherance of the Town's public purposes and are in the best interests of the Town and the Board hereby authorizes and approves the same.

**Section 4. Supplemental Act; Parameters.** The Board hereby elects to apply all of the provisions of the Supplemental Act to the Site Lease and the Lease and in connection therewith delegates to each of the Mayor, the Town Manager or the Finance Director the independent authority to make any determination delegable pursuant to §11-57-205(1)(a-i) C.R.S., as amended, in relation to the Site Lease and the Lease, and to execute a sale certificate (the "Sale Certificate") setting forth such determinations, including without limitation, the term of the Site Lease, the rental amount to be paid by the Trustee pursuant to the Site Lease, the term of the Lease, and the rental amount to be paid by the Town pursuant to the Lease, subject to the following parameters and restrictions:

- a. the term of the Site Lease shall not extend beyond December 31, 2039;
- b. the aggregate principal amount of the Base Rentals payable by the Town pursuant to the Lease shall not exceed \$4,200,000;
- c. the term of the Lease shall not extend beyond December 31, 2034;
- d. the maximum interest rate on the interest component of the Base Rentals relating to the Certificates shall not exceed 3.00% per annum; and
- e. the purchase price of the Certificates shall not be less than 100% of the principal amount of the Certificates.

Pursuant to §11-57-205 of the Supplemental Act, the Board hereby delegates to each of the Mayor, the Town Manager or the Finance Director the independent authority to select the purchaser of the Certificates (if other than the Initial Purchaser), to sign a contract for the purchase of the Certificates or to accept a binding bid for the Certificates and to execute any agreement or agreements in connection therewith.

The delegation set forth in this Section 4 shall be effective for one year following the date hereof.

The Board hereby agrees and acknowledges that the proceeds of the Certificates will be used to reimburse the Town for the costs of acquiring the Project and to pay the costs of the lease financing, including capitalized interest on the Certificates.

**Section 5. Approval of Documents.** The Site Lease and the Lease, in substantially the forms presented to the Board, are in all respects approved, authorized and confirmed, and the Mayor of the Town is hereby authorized and directed for and on behalf of the Town to execute and deliver the Site Lease and the Lease, in substantially the forms and with substantially the

same contents as presented to the Board, provided that such documents may be completed, corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance and to comply with the terms of the Sale Certificate.

**Section 6. Authorization to Execute Collateral Documents.** The Town Clerk is hereby authorized and directed to attest all signatures and acts of any official of the Town in connection with the matters authorized by this Ordinance and to place the seal of the Town on any document authorized and approved by this Ordinance. The Mayor, the Town Clerk, the Town Manager, the Finance Director and other employees and officials of the Town are hereby authorized and directed to execute and deliver for and on behalf of the Town 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 approval hereby given to the various documents referred to above includes an approval of such additional details therein as may be necessary and appropriate for their completion, deletions therefrom and additions thereto as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance and to comply with the terms of the Sale Certificate. The execution of any document or instrument by the appropriate officers of the Town herein authorized shall be conclusive evidence of the approval by the Town of such document or instrument in accordance with the terms hereof.

**Section 7. No General Obligation Debt.** No provision of this Ordinance, the Site Lease, the Lease, the Indenture, or the Certificates shall be construed as creating or constituting a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional or statutory provision, nor a mandatory charge or requirement against the Town in any ensuing fiscal year beyond the then current fiscal year. The Town shall have no obligation to make any payment with respect to the Certificates except in connection with the payment of the Base Rentals and certain other payments under the Lease, which payments may be terminated by the Town in accordance with the provisions of the Lease. Neither the Lease nor the Certificates shall constitute a mandatory charge or requirement of the Town in any ensuing fiscal year beyond the then current fiscal year or constitute or give rise to a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional or statutory debt limitation and shall not constitute a multiple fiscal year direct or indirect debt or other financial obligation whatsoever. No provision of the Site Lease, the Lease or the Certificates shall be construed or interpreted as creating an unlawful delegation of governmental powers nor as a donation by or a lending of the credit of the Town within the meaning of Sections 1 or 2 of Article XI of the Colorado Constitution. Neither the Lease nor the Certificates shall directly or indirectly obligate the Town to make any payments beyond those budgeted and appropriated for the Town's then current fiscal year.

**Section 8. Reasonableness of Rentals.** The Board hereby determines and declares that the Base Rentals due under the Lease, in the maximum amount authorized pursuant to Section 4 hereof, constitute the fair rental value of the Leased Property and do not exceed a reasonable amount so as to place the Town under an economic compulsion to renew the Lease or to exercise its option to purchase the Trustee's interest in the Leased Property pursuant to the Lease. The Board hereby determines and declares that the period during which the Town has an option to purchase the Trustee's leasehold interest in the Leased Property (i.e., the entire

maximum term of the Lease) does not exceed the useful life of the Leased Property. The Board hereby further determines that the amount of rental payments to be received by the Town from the Trustee pursuant to the Site Lease is reasonable consideration for the leasing of the Leased Property to the Trustee for the term of the Site Lease as provided therein.

**Section 9. No Recourse against Officers and Agents.** Pursuant to § 11-57-209 of the Supplemental Act, if a member of the Board, or any officer or agent of the Town acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal, interest or prior redemption premiums on the Certificates. Such recourse shall not be available either directly or indirectly through the Board or the Town, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Certificates and as a part of the consideration of their sale or purchase, any person purchasing or selling such Certificate specifically waives any such recourse.

**Section 10. Repealer.** All acts, orders, bylaws and resolutions of the Town, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

**Section 11. Severability.** If any article, section, paragraph, sentence, clause or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Board hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one or part or parts be declared unconstitutional or invalid.

**Section 12. Safety.** This Ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

**Section 13. Ordinance Irrepealable.** After the Certificates are executed and delivered, this Ordinance shall be and remain irrepealable until the Certificates have been fully paid, satisfied and discharged, as provided in the Indenture.

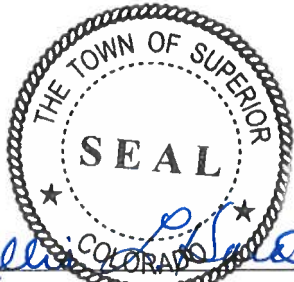

**Section 14. Effective Date.** This Ordinance shall take effect thirty (30) days after its final passage and publication.

**INTRODUCED, READ, PASSED, ADOPTED AND ORDERED  
PUBLISHED this 14<sup>th</sup> day of October, 2019.**

(SEAL)

  
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Clint Folsom, Mayor

ATTEST:

  
  
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Phyllis L. Harem, Town Clerk