

ORDINANCE NO. 081, 2017
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE LEASING OF CERTAIN CITY PROPERTY AND THE EXECUTION
AND DELIVERY BY THE CITY OF A SITE LEASE, A LEASE AGREEMENT, AND
OTHER DOCUMENTS AND MATTERS IN CONNECTION WITH THE FINANCING OF
THE CITY'S ACQUISITION OF CERTAIN PARKING FACILITIES; SETTING FORTH
CERTAIN PARAMETERS AND RESTRICTIONS WITH RESPECT TO THE FINANCING;
AND PROVIDING FOR OTHER MATTERS RELATED THERETO

WHEREAS, the City of Fort Collins, Colorado (the "City") is a duly organized and existing home rule municipality of the State of Colorado, created and operating pursuant to Article XX of the Constitution of the State of Colorado and the home rule charter of the City (the "Charter");

WHEREAS, the City is authorized by Article XX, Section 6 of the Colorado Constitution, and 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 City Council of the City (the "City Council") is authorized by Chapter 23, Article IV, Division 2 of the Fort Collins Municipal Code, to lease any and all interests in real property owned in the name of the City if the City Council first finds that the lease is in the best interest of the City;

WHEREAS, the City desires to acquire approximately 216 parking spaces in a parking facility (the "Project") that is being constructed by Bohemian Companies in connection with a hotel development project in downtown Fort Collins;

WHEREAS, the City Council has determined and hereby determines that it is in the best interest of the City to finance the acquisition of the Project by entering into a lease financing with ZB, N.A., or such other purchaser selected by the City (the "Purchaser");

WHEREAS, the proceeds of the lease financing will be used to finance the acquisition of the Project;

WHEREAS, the City Council has determined and hereby determines that the leased property under the Site Lease (hereinafter defined) and the Lease (hereinafter defined) will consist of a site of approximately 8.75 acres (the "Site") and the building and improvements located thereon, which consists of the Fort Collins Senior Center (as more particularly described in Exhibit A to the Site Lease and the Lease, the "Leased Property");

WHEREAS, the City Council now hereby determines that in order to finance the acquisition of the Project, it is in the best interest of the City and its inhabitants that (a) the City enter into a Site and Improvement Lease (the "Site Lease") with U.S. Bank National Association, as trustee (the "Trustee") under the Indenture (hereinafter defined) pursuant to which the City will lease the Leased Property to the Trustee, and that (b) the City enter into a Lease Agreement

(the "Lease") with the Trustee pursuant to which the Trustee will lease the Leased Property back to the City;

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

WHEREAS, the City'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 City; shall not constitute a mandatory charge or requirement in any ensuing budget year; shall not constitute a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any constitutional, charter, statutory limitation or other requirement concerning the creation of indebtedness or multiple fiscal year financial obligation, nor a mandatory payment obligation of the City in any ensuing fiscal year beyond any fiscal year during which the Lease shall be in effect;

WHEREAS, the Trustee will enter into an Indenture of Trust (the "Indenture") pursuant to which there will be executed and delivered certain certificates of participation (the "Certificates") dated as of their date of delivery that shall evidence proportionate interests in the right to receive certain Revenues (as defined in the Lease), which Certificates shall be payable solely from the sources therein provided and shall not directly or indirectly obligate the City to make any payments beyond those appropriated for any fiscal year during which the Lease shall be in effect;

WHEREAS, the Certificates will be purchased by the Purchaser;

WHEREAS, the proceeds from the sale of the Certificates will finance the acquisition of the Project by the City and pay the costs of issuance in connection therewith;

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 City, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act; and

WHEREAS, there has been presented to the City Council and are on file at the City offices the following: (i) the proposed form of the Site Lease; and (ii) the proposed form of the Lease.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS, COLORADO as follows:

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

Section 2. Ratification and Approval of Prior Actions. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the City Council or the officers, agents or employees of the City relating to the selection of the Purchaser, the execution and

delivery of the Site Lease and the Lease, the acquisition of the Project, and the sale, execution and delivery of the Certificates is hereby ratified, approved and confirmed.

Section 3. Finding of Best Interests. The City Council hereby finds and determines, pursuant to the Constitution, the laws of the State of Colorado and the Charter, that the acquisition of the Project, and the financing of the costs thereof, including the costs of issuance incurred in connection therewith, pursuant to the terms set forth in the Site Lease, the Lease and the Sale Certificate (hereinafter defined) are necessary, convenient, and in furtherance of the City's public purposes and are in the best interests of the City and the City Council hereby authorizes and approves the same.

Section 4. Supplemental Act; Parameters. The City Council 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 City Manager or the Financial Officer of the City (the "Financial Officer") 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 City pursuant to the Lease, subject to the following parameters and restrictions:

- a. the term of the Site Lease shall not extend beyond December 31, 2032;
- b. the aggregate rental amount to be paid by the Trustee pursuant to the Site Lease shall not be less than \$9,995,000;
- c. the Lease Term shall not extend beyond December 31, 2027;
- d. the maximum annual repayment cost of the Base Rentals under the Lease shall not exceed \$995,000, and the aggregate principal amount of the Base Rentals payable by the City pursuant to the Lease shall not exceed \$8,600,000;
- e. the maximum interest rate on the interest component of the Base Rentals relating to the Certificates shall not exceed 2.75%; and
- f. 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 City Council hereby delegates to each of the City Manager or the Financial Officer the independent authority to select the purchaser of the Certificates, 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 City Council hereby agrees and acknowledges that the net proceeds of the Certificates will be used, together with other available moneys of the City, to finance the costs of acquiring the Project and to pay costs of issuance.

Section 5. Approval of Documents. The Site Lease and the Lease, in substantially the forms presented to the City Council and on file with the City Clerk in connection with this Ordinance, are in all respects approved, authorized and confirmed, and the Mayor of the City is hereby authorized and directed for and on behalf of the City to execute and deliver the Site Lease and the Lease, in substantially the forms and with substantially the same contents as presented to the City Council, 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.

Section 6. Authorization to Execute Collateral 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 and to place the seal of the City on any document authorized and approved by this Ordinance. The Mayor, the City Clerk, the City Manager, the Financial Officer and other employees and officials of the City are hereby authorized and directed 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 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 may be approved by the City Manager or the Financial Officer prior to the execution of the documents. The execution of any instrument by the appropriate officers of the City herein authorized shall be conclusive evidence of the approval by the City of such 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 City within the meaning of any constitutional, statutory or Charter provision, nor a mandatory charge or requirement against the City in any ensuing fiscal year beyond the then current fiscal year. The City 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 City in accordance with the provisions of the Lease. Neither the Lease nor the Certificates shall constitute a mandatory charge or requirement of the City 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 City within the meaning of any constitutional, statutory or Charter 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 City 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 City to make any payments beyond those budgeted and appropriated for the City's then current fiscal year.

Section 8. Reasonableness of Rentals; Fair Market Value. The City Council hereby determines and declares that the Base Rentals due under the Lease, in the maximum amounts 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 City 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 City Council hereby determines and declares that the period during which the City 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 City Council hereby further determines that the amount of rental payments to be received by the City from the Trustee pursuant to the Site Lease, in accordance with the provisions set forth in Section 4 hereof, is fair market 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 City Council, or any officer or agent of the City 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 City Council or the City, 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 ordinances, resolutions, bylaws, orders, and other instruments, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, resolution, bylaw, order, or other instrument, or part thereof, heretofore repealed.

Section 11. Severability. If any section, subsection, paragraph, clause or other provision of this Ordinance for any reason is held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or other provision shall not affect any of the remaining provisions of this Ordinance, the intent being that the same are severable.

Section 12. Charter Controls. Pursuant to Article XX of the State Constitution and the Charter, all State statutes that might otherwise apply in connection with the provisions of this Ordinance are hereby superseded to the extent of any inconsistencies or conflicts between the provisions of this Ordinance and the Sale Certificate authorized hereby and such statutes. Any such inconsistency or conflict is intended by the City Council and shall be deemed made pursuant to the authority of Article XX of the State Constitution and the Charter.

Introduced, considered favorably on first reading, and ordered published this 6th day of June, A.D. 2017, and to be presented for final passage on the 5th day of July, A.D. 2017.

ATTEST:





Mayor



City Clerk

Passed and adopted on final reading on the 5th day of July, A.D. 2017.

ATTEST:




Mayor


City Clerk

STATE OF COLORADO)
)
 COUNTY OF LARIMER) ss.
)
 CITY OF FORT COLLINS)

I, Wanda Winkelmann, City Clerk of the City of Fort Collins, Colorado (the "City"), do hereby certify the following:

1. The attached copy of Ordinance No. 081, 2017 (the "Ordinance") is a true, correct and complete copy thereof.

2. The Ordinance was introduced, read, and approved on first reading by the City Council of the City (the "Council") at a regular meeting thereof held at Council Chambers, City Hall, 300 West LaPorte Avenue, Fort Collins, Colorado, the regular meeting place thereof, on Tuesday, the 6th day of June, 2017, by the members of the Council as follows:

Name	"Yes"	"No"	Absent	Recused
Wade Troxell, Mayor				
Gerry Horak, Mayor Pro-Tem				
Bob Overbeck				
Ray Martinez				
Ken Summers				
Kristin Stephens				
Ross Cunniff				

3. The Ordinance was duly published in full at least seven days before its final passage on the City's official internet web site. In addition, the Ordinance was duly published by number and title only, together with a statement that the text thereof was available for public inspection and acquisition in the office of the City Clerk of the City and on the City's internet web site, in the *Coloradoan*, a newspaper of general circulation published in the City in its issue of June __, 2017, as evidenced by the certificate of the publisher attached hereto as Exhibit A. Both publications contained a notice giving the date when the Ordinance would be presented for final passage.

4. The Ordinance was read and finally passed on second reading, without amendment, by the Council at a regular meeting thereof held at Council Chambers, City Hall, 300 West LaPorte Avenue, Fort Collins, Colorado, the regular meeting place thereof, on Tuesday, the 5th day of July, 2017, by the members of the Council as follows:

Name	"Yes"	"No"	Absent	Recused
Wade Troxell, Mayor				
Gerry Horak, Mayor Pro-Tem				
Bob Overbeck				
Ray Martinez				
Ken Summers				
Kristin Stephens				
Ross Cunniff				

5. Following its final passage, the Ordinance was duly published in full on the City's official internet web site within seven days following its final passage. In addition, a notice of the final passage of the Ordinance was duly published in the *Coloradoan*, a newspaper of general circulation published in the City, in its issue of July __, 2017, as evidenced by the certificate of the publisher attached hereto as Exhibit B.

6. A true copy of the Ordinance has been authenticated by the signatures of the Mayor of the City and myself as City Clerk, sealed with the seal of the City, and numbered and recorded in a book marked "Ordinance Record" kept for that purpose in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins, Colorado this ____ day of _____, 2017.

(SEAL)

City Clerk
City of Fort Collins, Colorado

Exhibit A

(Attach certificate of publication of Ordinance after first reading)

Exhibit B

(Attach certificate of publication of Ordinance after final passage)