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**RESOLUTION NO. 23-22**

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO REGARDING MODIFICATIONS RELATING TO, AND DEEMED REISSUANCE FOR FEDERAL INCOME TAX PURPOSES OF, ITS FIXED RATE REFUNDING AND IMPROVEMENT REVENUE NOTE (YOUNG MEN'S CHRISTIAN ASSOCIATION OF THE PIKES PEAK REGION PROJECT) SERIES 2016A AND VARIABLE RATE REFUNDING AND IMPROVEMENT REVENUE NOTE (YOUNG MEN'S CHRISTIAN ASSOCIATION OF THE PIKES PEAK REGION PROJECT) SERIES 2016B; AND AUTHORIZING THE EXECUTION AND DELIVERY BY THE COUNTY OF ANY AND ALL NECESSARY DOCUMENTS TO EFFECTUATE SUCH MODIFICATIONS AND DEEMED REISSUANCE.**

**BOARD OF COUNTY COMMISSIONERS**
**COUNTY OF EL PASO, STATE OF COLORADO**

**WHEREAS,** El Paso County, Colorado (the "County"), is a legally and regularly created, established, organized and existing body politic and corporate and political subdivision of the State of Colorado (the "State"); and

**WHEREAS,** the County is authorized by the County and Municipality Development Revenue Bond Act, constituting Article 3, Title 29, Colorado Revised Statutes, as amended (the "Act") and the Colorado Supplemental Public Securities Act, Article 57, Title 11, Section 201 *et seq.*, Colorado Revised Statutes, as amended (the "Supplemental Act"), to finance land, buildings or other improvements and properties suitable or used for or in connection with sports and recreational facilities available for use by members of the general public either as participants or spectators, and to refinance obligations previously incurred to finance such properties, all to the end that the county or municipality may be able to promote economic activity by inducing nonprofit corporations to locate, expand or remain in the State for the benefit of the inhabitants of the State for the promotion of their health, safety, welfare, convenience and prosperity; and

**WHEREAS,** the County is further authorized by the Act and the Supplemental Act to issue revenue bonds (defined under the Act to include bonds, notes, or other securities evidencing an obligation and issued under the Act) for the purpose of defraying the cost of financing any project, including the payment of principal and interest on such revenue bonds for not exceeding three years, the funding of any reserve funds which the County may deem advisable to establish in connection with the retirement of such revenue bonds or the maintenance of the project and incidental expenses incurred in issuing such revenue bonds, and to secure payment of such revenue bonds as provided in the Act and the Supplemental Act; and

**WHEREAS**, pursuant to Resolution No. 16-169, dated May 24, 2016, attached hereto as Exhibit A (the "Initial Resolution"), the County issued its El Paso County, Colorado Fixed Rate Refunding and Improvement Revenue Note (Young Men's Christian Association of the Pikes Peak Region Project) Series 2016A in the original aggregate principal amount of $11,250,000 (the "Series 2016A Note"); its El Paso County, Colorado Variable Rate Refunding and Improvement Revenue Note (Young Men's Christian Association of the Pikes Peak Region Project) Series 2016B in the original aggregate principal amount of $3,250,000 (the "Series 2016B Note"); and

its El Paso County, Colorado Variable Rate Refunding and Improvement Revenue Note (Young Men's Christian Association of the Pikes Peak Region Project) Taxable Series 2016C in the original aggregate principal amount of $500,000 (the "Series 2016C Note", and together with the Series 2016A Note and the Series 2016B Note, the "Original Notes"), the proceeds of which were used (a) to refinance the El Paso County, Colorado Variable Rate Demand Revenue Note (Young Men's Christian Association of the Pikes Peak Region Project) Series 2006, the proceeds of which were used for: (i) the acquisition, construction, and equipping of property located at 17250 Jackson Creek Parkway in Monument, Colorado, and (ii) refinancing of the outstanding City of Colorado Springs, Colorado Variable Rate Demand Obligations Series 2002, the proceeds of which were used for acquiring, constructing, completing and equipping of property located at 4025 Family Place in Colorado Springs, Colorado (the properties at 17250 Jackson Creek Parkway in Monument, Colorado and 4025 Family Place in Colorado Springs, Colorado are collectively referred to as the "Facilities"), (b) to reimburse the Borrowers for the construction, improvements and equipping of property located at 17250 Jackson Creek Parkway in Monument, Colorado and (c) to pay issuance expenses of the Original Notes, which Facilities are located within the corporate limits of the County (collectively, the "Project"); and

**WHEREAS**, the Facilities are owned and operated by the Young Men's Christian Association of the Pikes Peak Region (the "Borrower"), a Colorado nonprofit corporation and a 501(c)(3) exempt organization under the Internal Revenue Code of 1986, as amended (the "Code"); and

**WHEREAS**, the Borrower is experiencing liquidity challenges that have impaired its ability to meet certain financial covenants and to make certain capital expenditures on the Facilities; and

**WHEREAS**, to address its liquidity challenges, the Borrower has proposed the execution and delivery of the Third Amendment to Financing Agreement (the "Amendment"), by and among the Borrower; the County; and PNC NCNVINV, Inc. (the "Lender"), as successor in interest to BBVA Mortgage Corporation, as successor in interest to Compass Mortgage Corporation, amending the Financing Agreement, dated as of June 1, 2016, as amended by the Amendment and Consent to Financing Agreement, dated as of April 11, 2018, as further amended by the Omnibus Amendments to Credit Facilities, dated July 20, 2020 (collectively, the "Existing Financing Agreement"), in order to, among other things, accomplish the following: (a) waive existing defaults; (b) modify the requirement to comply with certain financial covenants and modify certain Borrower reporting requirements; (c) defer certain principal payments to the applicable maturity date; (d) address requirements for use of certain funds of the Borrower; (e) impose certain consent rights with respect to capital expenditures; (g) address subordinate debt payments; and (i) convert the index used to calculate the interest rate on the Series 2016B Note from LIBOR to Term SOFR and related modifications (collectively, the "Modifications"); and

**WHEREAS,** the modifications reflected in the Amendment may constitute a deemed reissuance (the "Deemed Reissuance") of the outstanding Series 2016A Note and Series 2016B Note (the "Reissued Notes"); and

**WHEREAS,** representatives of the Borrower have met with officials of the County and have proposed that the County enter into the Amendment and such other documents and

instruments as may be necessary or desirable in connection with the Modifications and the Deemed Reissuance; and

**WHEREAS,** there have been presented to the Board of County Commissioners of the County the Amendment;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO, THAT:

Section 1. ***Ratification of Prior Action.*** All action (not inconsistent with the provisions of this Resolution) heretofore taken by the Board and other officials of the County, relating to the Modifications and the Deemed Reissuance for the purposes herein set forth, be, and the same hereby are, ratified, approved and confirmed. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to them in the Existing Financing Agreement, as modified by the Amendment (the "Financing Agreement"). The County is authorized under the Act and the Supplemental Act to issue and deliver its revenue bonds and notes in the form of one or more instruments, such as the Original Notes and the Reissued Notes, for the purpose, in the manner and upon the terms and conditions set forth in the Act, the Supplemental Act and the Financing Agreement. The Original Notes and the Reissued Notes are issued pursuant to the Act and the Supplemental Act.

Section 2. ***Findings.*** The Board does hereby determine, based upon representations of the Borrower heretofore submitted to the County, as follows:

(a) The Project is an eligible "project," as defined in the Act.

(b) The Reissued Notes effectuate the public purposes of the County and carry out the purposes of the Act by, among other things, providing land, buildings or other improvements and properties suitable or used for or in connection with sports and recreational facilities available for use by members of the general public either as participants or spectators all to the end that the county or municipality may be able to promote economic activity by inducing nonprofit corporations to locate, expand or remain in the State for the benefit of the inhabitants of the State for the promotion of their health, safety, welfare, convenience and prosperity.

(c) The Original Notes and the Reissued Notes are special, limited obligations of the County payable solely out of the income, revenues and receipts specifically pledged pursuant to the Financing Agreement. The Original Notes and the Reissued Notes, and the premium, if any, and the interest thereon shall never constitute the debt or indebtedness of the County, the State or any political subdivision thereof within the meaning of any provision or limitation of the State Constitution or statutes, shall not constitute nor give rise to a pecuniary liability of the County, the State or any political subdivision thereof or a charge against their general credit or taxing power and shall not constitute a "multiple fiscal year direct or indirect debt or other financial obligation" of the County under Article X, Section 20 of the State Constitution. None of the County, the State or any political subdivision thereof shall be obligated to pay the principal of, premium, if any, or interest on the Original Notes or the Reissued Notes, or other costs incident thereto. The Original

Notes and the Reissued Notes do not constitute a debt, loan, credit or pledge of the faith and credit or taxing power of the County, the State or any political subdivision thereof.

Section 3. ***Approval and Authorization of Documents.*** The Amendment, be, and the same is in all respects hereby approved, authorized and confirmed, and the Chair or any other Commissioner of the Board is hereby authorized and directed to execute, and the County Clerk or the Deputy Clerk of the County is hereby authorized and directed to attest, in substantially the form and content as presented to the County on this date, the Amendment, but with such changes, modifications, additions and deletions therein as shall to them seem necessary, desirable or appropriate by the Executive Director of Economic Development in consultant with bond counsel, their execution thereof to constitute conclusive evidence of their approval of any and all changes, modifications, additions and deletions from the forms thereof presented at this meeting.

Section 4. ***Authorization with respect to the Reissued Notes.***

(a) The Reissued Notes are outstanding in the principal amount, bear such date and interest rate and mature as set forth in the Financing Agreement, provided, however, that the aggregate principal amount of Reissued Notes shall not exceed an aggregate principal amount of $11,600,000. The Reissued Notes are payable, subject to redemption prior to maturity and are or shall be, as applicable, in substantially the form as provided in the Financing Agreement. Furthermore, the Reissued Notes are payable at such places and in such forms, carry such registration privileges, are or shall be executed and do or shall contain such terms, covenants and conditions, all as set forth in the Financing Agreement. The Reissued Notes bear interest at a fixed or variable rate as provided in the Financing Agreement and the final maturity of the Reissued Notes is not more than forty (40) years after the date of the Deemed Reissuance.

(b) The delivery of Reissued Notes pursuant to the terms of the Financing Agreement, be, and the same is in all respects hereby approved, authorized and confirmed, and the Chair or any other Commissioner of the Board are hereby authorized and directed, if needed, to execute Reissued Notes and the County Clerk or Deputy Clerk of the County, if needed, is hereby authorized and directed to attest Reissued Notes and each is hereby authorized to deliver Reissued Notes for and on behalf of the County, if required.

Section 5. ***Compliance with the Act.*** In connection with the Modifications and the Deemed Reissuance, the County hereby makes the following determinations:

(a) that the amounts necessary in each year to pay the principal of and interest on the Reissued Notes is dependent upon the rate of interest on the Reissued Notes, but in any event shall not exceed the principal amount of the Reissued Notes plus interest as set forth in the Financing Agreement;

(b) that the Project is located within the corporate limits of the County;

(c) that the terms of the Financing Agreement and related security documents require that the Borrower will cause to be maintained, or maintain, the Project and will cause to be carried, or carry, all proper insurance with respect thereto and require the payment of all applicable taxes with respect thereto;

(d) in reliance upon information provided by the Borrower, that the amounts required to be paid by the Borrower under the terms of the Financing Agreement will be adequate to retire the Reissued Notes;

(e) reserve funds will be established as provided in the Financing Agreement; and

(f) that proceeds from the issuance of the Original Notes were drawn and the Reissued Notes will paid as set forth in the Financing Agreement.

Section 6. ***Investments.*** To the extent the proceeds of the Original Notes or the Reissued Notes or any special funds from the revenues from the Project are required to be invested and reinvested for any period of time, such investments shall only be in securities and other investments that are permitted under, and made and held in accordance with, the terms of the Act, Section 11-57-214 of the Supplemental Act, the Financing Agreement and the related federal tax certificates from the County and the Borrower.

Section 7. ***County to Execute and Deliver Additional Documents.*** The officers, employees and agents of the County shall take all action in conformity with the Act necessary or advisable to effectuate the Modification and Deemed Reissuance and shall take all action necessary or advisable in conformity with the Act to finance the Project and for carrying out, giving effect to and consummating the transactions contemplated by this Resolution and the Financing Agreement, including the execution and delivery of appropriate closing documents, subject to the approval of special counsel to the County.

Section 8. ***No Pecuniary Liability.*** Nothing contained in this Resolution or in the Original Notes, the Reissued Notes, the Financing Agreement, or any other instrument shall give rise to a pecuniary liability of, or a charge upon the general credit or taxing powers of the County, the State or any other county, municipality or political subdivision of the State. The breach by any party of any agreement contained in this Resolution, the Original Notes, the Reissued Notes, the Financing Agreement, or any other instrument shall not impose any pecuniary liability upon, or a charge upon the general credit or taxing powers of the County, the State or any county, municipality or political subdivision of the State, none of which has the power to pay out of its general fund, or otherwise contribute, any part of the cost of financing the Project, or power to operate the Project as a business or in any manner.

Section 9. ***Supplemental Public Securities Act.*** Section 11-57-204 of the Supplemental Act provides that a public entity, including the County, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act. The Board of County Commissioners of the County hereby elects to apply all of the provisions of the Supplemental Act to the Original Notes and the Reissued Notes.

Section 10. ***Limitation of Rights.*** With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Resolution, the Original Notes or the Reissued Notes is intended or shall be construed to give to any person, other than the County and the Borrower, any legal or equitable right, remedy or claim under or with respect to this Resolution or any covenants, conditions and provisions herein contained; this Resolution and

all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the County and the Borrower.

Section 11. ***Immunity of Officers.*** No recourse for the payment of any part of the principal of, premium, if any, or interest on the Original Notes or the Reissued Notes, for the satisfaction of any liability arising from, founded upon or existing by reason of the issue, purchase or ownership of the Original Notes or the Reissued Notes, shall be had against any official, officer, member or agent of the County or the State, all such liability to be expressly released and waived as a condition of and as a part of the consideration for the issue, sale and purchase of the Original Notes and the closing of the Modifications.

Section 12. ***Captions.*** The captions or headings in this Resolution are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Resolution.

Section 13. ***Irrepealability.*** After the closing of the Modifications, this Resolution shall be and remain irrepealable until the Original Notes and Reissued Notes and the interest thereon shall have been fully paid, canceled and discharged.

Section 14. ***Severability.*** If any section, paragraph, clause or provision of this Resolution 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 Resolution.

Section 15. ***Inconsistent Actions Repealed.*** All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith and with the documents hereby approved, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, or ordinance or part thereof.

Section 16. **Termination Date.** This Resolution and all of the obligations of the County described herein shall terminate on June 30, 2023 if the Modifications have not been closed by that date (the "Expiration Date"); provided, however, the Executive Director of Economic Development or an authorized representative of the County is hereby authorized to extend the Expiration Date to a later date in their sole discretion.

Section 17. ***Effectiveness.*** This Resolution shall take effect immediately.

[Remainder of page intentionally left blank]

Resolution No. 23-22

INTRODUCED AND ADOPTED at a regular meeting of the Board of County Commissioners of the County on this 17th day of January, 2023.

EL PASO COUNTY, COLORADO

By _____
Chair
Board of County Commissioners

[SEAL]

ATTEST:

By _____
County Clerk

**Exhibit A**

# RESOLUTION NO. 16-169

A RESOLUTION AUTHORIZING THE ISSUANCE AND DELIVERY OF A NOT TO EXCEED $15,000,000 EL PASO COUNTY, COLORADO, REFUNDING AND IMPROVEMENT REVENUE NOTES (YOUNG MEN'S CHRISTIAN ASSOCIATION OF THE PIKES PEAK REGION PROJECT) SERIES 2016 IN ONE OR MORE SERIES OF FIXED OR VARIABLE RATE NOTES

WHEREAS, counties and municipalities in the State of Colorado (the "State") are authorized by the County and Municipality Development Revenue Bond Act, article 3 of title 29 of Colorado Revised Statutes, as amended (the "Act"), to finance land, buildings or other improvements and properties suitable or used for or in connection with sports and recreational facilities available for use by members of the general public either as participants or spectators, and to refinance obligations previously incurred to finance such properties, all to the end that the county or municipality may be able to promote economic activity by inducing nonprofit corporations to locate, expand or remain in the State for the benefit of the inhabitants of the State for the promotion of their health, safety, welfare, convenience and prosperity; and

WHEREAS, the Act further authorizes such counties and municipalities to issue "revenue bonds" (defined as bonds, notes or other securities evidencing an obligation) for the purposes described above, including all incidental expenses incurred in issuing such notes, to secure the payment of such notes as provided in the Act, and to enter into financing agreements with others for the purpose of providing revenue to pay such notes upon such terms and conditions as such counties and municipalities may deem advisable; and

WHEREAS, the Young Men's Christian Association of the Pikes Peak Region and/or the YMCA Foundation of the Pikes Peak Region, each a Colorado nonprofit corporation and organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (collectively, the "Corporations"), have presented to El Paso County, Colorado (the "County") a proposal whereby the County will, pursuant to the Act and the Supplemental Public Securities Act, Part 2 of Article 57 of Title 11 of the Colorado Revised Statutes, as amended (the "Supplemental Public Securities Act"), issue the revenue notes hereinafter described and loan the proceeds therefrom to the Corporations (a) to refinance the El Paso County, Colorado Variable Rate Demand Revenue Bonds (Young Men's Christian Association of the Pikes Peak Region Project) Series 2006, the proceeds of which were used for: (i) the acquisition, construction, and equipping of property located at 17250 Jackson Creek Parkway in Monument, Colorado, and (ii) refinancing of the outstanding City of Colorado Springs, Colorado Variable Rate Demand Obligations Series 2002, the proceeds of which were used for acquiring, constructing, completing and equipping of property located at 4025 Family Place in Colorado Springs, Colorado (collectively, the "Facilities"), (b) to reimburse the Borrowers for the construction, improvements and equipping of property located at

17250 Jackson Creek Parkway in Monument, Colorado and (c) to pay issuance expenses of the Notes (collectively, the "Project"), which Facilities will be located within the corporate limits of the County; and

WHEREAS, the El Paso County, Colorado Refunding and Improvement Revenue Notes (Young Men's Christian Association of the Pikes Peak Region Project) Series 2016 (the "Notes") in an aggregate principal amount not to exceed $15,000,000 will be issued, sold and delivered by the County to Compass Mortgage Corporation (the "Lender"), in one or more series of fixed or variable rate notes, to provide funds to finance the Project; and

WHEREAS, the County has held a public hearing on the Notes and the financing of the Project, after publication of reasonable public notice of such hearing; and

WHEREAS, there has been presented to the Board of County Commissioners of the County the proposed form of a Financing Agreement, dated as of June 1, 2016 (the "Financing Agreement"), by and among the County, the Corporations and the Lender, and the proposed form of a Tax Regulatory Agreement (the "Tax Regulatory Agreement", and together with the Financing Agreement, the "County Documents"), by and among the County and the Corporations; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO:

**Section 1.** All action not inconsistent with the provisions of this Resolution heretofore taken by any of the County's officials and the efforts of the County directed toward the financing of the Project, the issuance and delivery of the Notes therefor, and loaning the proceeds thereof to the Corporations therefor be, and the same hereby are, ratified, approved and confirmed.

**Section 2.** The County shall finance and refinance the Project with the proceeds of the Notes in accordance with the provisions and conditions of the Financing Agreement.

**Section 3.** To defray the cost of financing the Project, there is hereby authorized and created revenue Notes designated as "El Paso County, Colorado, Refunding and Improvement Revenue Notes (Young Men's Christian Association of the Pikes Peak Region Project) Series 2016" in one or more series of fixed or variable rate notes, in the principal amount not to exceed $15,000,000 to be dated the date of their issuance and delivery. The Notes shall bear interest from their date at a fixed or variable rate to be determined pursuant to the Financing Agreement.

The Notes will mature no later than on December 1, 2026 and principal and interest on the Notes shall be payable as provided in the Financing Agreement. The Notes will be issuable as fully registered notes in accordance with the provisions of the Act and the Financing Agreement.

The Notes shall be subject to redemption prior to maturity and shall be in substantially the form provided in the Financing Agreement. The Board of County Commissioners hereby delegates to the Chair of the Board of County Commissioners or the Vice Chair of the Board of County Commissioners the authority to make the final determinations relating to the Notes, as provided in the Supplemental Act, subject to the parameters set forth above.

**Section 4**. The following determinations and findings, based upon information supplied and representations made by the Corporations are hereby made in accordance with the Act:

(a) The terms of the Financing Agreement pursuant to which the County will loan the proceeds of the Notes to the Corporations provide that the Corporations shall cause the Project being financed to be maintained in good repair and shall carry all proper insurance with respect thereto.

(b) The revenues payable under the Financing Agreement are sufficient to pay all other requirements of the Financing Agreement and this Resolution.

(c) No reserve fund shall be established for the Notes.

**Section 5**. The form, terms and provisions of the County Documents are hereby approved, and the County shall enter into the County Documents substantially in the form of the County Documents presented at this meeting, but with such changes therein as the officers of the County executing the County Documents or the Economic Development Manager shall approve, the execution thereof being deemed conclusive of approval of any such changes, and the Chair of the Board of County Commissioners or the Vice Chair of the Board of County Commissioners is hereby authorized and directed to execute and deliver the County Documents and the County Clerk or the Deputy County Clerk is hereby authorized and directed to affix the seal of the County to, and to attest the County Documents in substantially the form of the County Documents attached hereto.

**Section 6**. The form, terms and provisions of the Notes, in substantially the form contained in the Financing Agreement, are hereby approved; and the Chair of the Board of County Commissioners or the Vice Chair of the Board of County Commissioners is hereby authorized and directed to execute the Notes, the County Clerk or the Deputy County Clerk is hereby authorized and directed to attest the Notes and each is authorized to deliver the Notes in the form contained in the Financing Agreement but with such changes therein as the officer of the County executing the Notes or the Economic Development Manager shall approve, the execution thereof being deemed conclusive of the approval of any such changes. The seal of the County is hereby authorized and directed to be affixed to or imprinted on the Notes. The signature of the Chair of the Board of County Commissioners or the Vice Chair of the Board of County Commissioners or the signature of the County Clerk or the Deputy County Clerk on the Notes, and the County seal, may be a facsimile.

**Section 7.** The officers of the County shall take all action which they deem necessary or reasonably required in conformity with the Act to finance the Project which is hereby authorized, and for carrying out, giving effect to and consummating the transactions contemplated by this Resolution and the County Documents, including without limitation the execution and delivery of any closing documents to be delivered in connection with the execution and delivery of the Notes. The County hereby affirmatively opts into all the provisions of the Supplemental Public Securities Act.

**Section 8.** The cost of financing the Project will be paid out of the proceeds of the Notes. THE NOTES AND THE INTEREST THEREON SHALL NEVER CONSTITUTE THE DEBT OR INDEBTEDNESS OF THE COUNTY WITHIN THE MEANING OF ANY PROVISION OR LIMITATION OF THE CONSTITUTION OR STATUTES OF THE STATE OF COLORADO, AND SHALL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS.

**Section 9.** Pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended, the Board of County Commissioners hereby approves the issuance of the Notes and the financing of the Project.

**Section 10.** After the Notes are issued, this Resolution shall be and remain irrepealable until the Notes and interest thereon shall have been fully paid, cancelled and discharged.

**Section 11.** If any section, paragraph, clause or provision of this Resolution 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 Resolution.

**Section 12.** All bylaws, orders, resolutions and Resolutions, or parts thereof, inconsistent herewith or with the documents hereby approved are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or Resolution, or part thereof.

# EXHIBIT B

# PROOF OF TEFRA NOTICE PUBLICATION

THE EL PASO COUNTY ADVERTISER AND NEWS,
FOUNTAIN, COLORADO 80817
STATE OF COLORADO

ss.

COUNTY OF EL PASO

I, Karen M. Johnson, do solemnly swear that I am General Manager of the El Paso County Advertiser and News, that the same is a weekly newspaper printed, in whole or in part, and published in the County of El Paso, state of Colorado, and has a general circulation therein; that said newspaper has been published continuously and uninterruptedly in said county of El Paso for a period of more than 52 weeks next prior to the first publication of the annexed notice and that said newspaper is a weekly newspaper duly qualified for publishing legal notices and advertisements within the meaning of the laws of the State of Colorado.

That copies of each number of said paper in which said notice and list were published were delivered by carriers or transmitted by mail to each of the subscribers of said paper for a period of 1 consecutive insertions, once each week, and on the same day of each week; and that first publication of said notice was in the issue of said newspaper dated May 11, A.D. 2016 and that the last publication of said notice was in the issue of said newspaper dated May 11, A.D. 2016.

Karen M. Johnson
General Manager

Subscribed and sworn to before me, a notary public and for the County of El Paso, State of Colorado, th 11th day of May A.D. 2016

Marianne McBride
Notary Public

MARIANNE MCBRIDE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20064034113
MY COMMISSION EXPIRES SEPTEMBER 30, 2016

**CONCERNING A PLAN OF FINANCE TO FINANCE A PROJECT IN EL PASO COUNTY, COLORADO FOR YOUNG MEN'S CHRISTIAN ASSOCIATION OF THE PIKES PEAK REGION**

Notice is hereby given that El Paso County, Colorado ("El Paso County") will conduct a public hearing concerning the approval of a plan of finance including the issuanc by El Paso County of its Refunding Revenue Bond (Young Men's Christian Association of t Pikes Peak Region Project), Series 2016 in the aggregate principal amount not to exceed $15,000,000 (the "Series 2016 Bonds"), for the following purposes: (a) to refinance the El Paso County, Colorado Variable Rate Demand Revenue Bonds (Young Men's Christian Association of the Pikes Peak Region Project) Series 2006, the proceeds of which were used for the financing and/or refinancing of the acquisition, construction, and equipping of property located at (i) 17250 Jackson Creek Parkway in Monument, Colorado, (ii) 207 Nort Nevada Avenue in Colorado Springs, Colorado, and (iii) 4025 Family Place in Colorado Springs, Colorado, and (b) to pay certain Series 2016 Bonds issuance expenses (collectiv the "Project"). The property financed as part of the Project is or will be owned and operate by the Young Men's Christian Association of the Pikes Peak Region and used by YMCA Foundation of the Pikes Peak Region (collectively, the "Borrowers"), each a Colorado nonprofit corporation and a 501(c)(3) exempt organization under the Internal Revenue Coc of 1986, as amended (the "Code").

The Series 2016 Bonds will constitute special, limited obligations of El Paso County payable solely from revenues derived by El Paso County from the Borrowers. El Paso County will have no financial obligations with respect to the Series 2016 Bonds and t Series 2016 Bonds will not constitute a multiple fiscal year obligation of El Paso County.

THE BONDS AND THE INTEREST THEREON SHALL NEVER CONSTITUT THE DEBT OR INDEBTEDNESS OF THE COUNTY WITHIN THE MEANING OF ANY PROVISION OR LIMITATION OF THE CONSTITUTION OR STATUTES OF THE STATE OF COLORADO AND SHALL NOT CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXI POWERS.

All interested persons are invited to present comments at a public hearing regardin the plan of finance and the issuance of the Series 2016 Bonds and the Project being financed thereby. The public hearing will be held on Friday, May 27, 2016, at 8:30 a.r at the offices of El Paso County, Colorado, Economic Development Division, at 200 South Cascade, Suite 150, Colorado Springs, CO 80903.

Published in the El Paso County Advertiser and News
Publication Date: May 11, 2016

# EXHIBIT C

# PUBLIC APPROVAL CERTIFICATE

# PUBLIC APPROVAL CERTIFICATE

## EL PASO COUNTY, COLORADO FOR YOUNG MEN'S CHRISTIAN ASSOCIATION OF THE PIKES PEAK REGION

WHEREAS, the purpose of this approval certificate is to satisfy the public approval requirement of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code") in order to qualify the interest on the Notes for exclusion from gross income of the owners thereof for federal income tax purposes pursuant to the applicable provisions of the Code; and

WHEREAS, representatives of Young Men's Christian Association of the Pikes Peak Region and used by YMCA Foundation of the Pikes Peak Region (collectively, the "Borrowers"), have represented to the Board of County Commissioners of El Paso County, Colorado (the "Board") that (A) the proceeds of the above-referenced Notes (the "Series 2016 Notes") will be loaned to the Borrowers, as part of a plan of finance for the following purposes: (a) to refinance the El Paso County, Colorado Variable Rate Demand Revenue Bonds (Young Men's Christian Association of the Pikes Peak Region Project) Series 2006, the proceeds of which were used for the financing and/or refinancing of the acquisition, construction, and equipping of property located at (i) 17250 Jackson Creek Parkway in Monument, Colorado, (ii) 207 North Nevada Avenue in Colorado Springs, Colorado, and (iii) 4025 Family Place in Colorado Springs, Colorado, and (b) to pay certain Series 2016 Bonds issuance expenses (collectively, the "Project"); and (B) the Project will be owned and operated by the Borrowers; and

WHEREAS, a public hearing was held at 9:00 a.m., Mountain time on May 27, 2016 (the "Public Hearing") after a Notice of Public Hearing was published for the Public Hearing on May 11, 2016 in the *El Paso County Advertiser & News*, as evidenced by the affidavit of publication attached hereto as Exhibit A; and

WHEREAS, after a reasonable public notice was given, the Public Hearing was held and no objections were raised with respect to the plan of finance, the proposed issuance of the Notes or the financing of the Project;

NOW, THEREFORE, based upon all of the foregoing, ON BEHALF OF THE BOARD, I HEREBY CERTIFY THAT:

1. The Board is the highest elected legislative body of the El Paso County, Colorado and I am the Chair of the Board; and

2. The Board has been informed of the purpose for which the Notes are proposed to be issued and the proceedings of the Public Hearing and the Board has been informed that no objections were raised with respect to the plan of finance, the proposed issuance of the Notes or the financing of the Project at the Public Hearing; and

3. On behalf of the Board, I hereby ratify, acknowledge and approve the holding of a public hearing on the Notes, the plan of finance and the Project; and

4. For the sole purpose of qualifying the interest on the Notes for exclusion from gross income of the owners thereof for federal income tax purposes pursuant to the applicable provisions of the Code, on behalf of the Board, I hereby approve the issuance of the Notes in the principal amount of not to exceed $15,000,000 and the financing of the Project and the plan of finance on behalf of the Borrowers.

IN WITNESS WHEREOF, the undersigned has set his hand as of May 27, 2016.

EL PASO COUNTY, COLORADO

By _____
Chair
Board of County Commissioners

# THIRD AMENDMENT TO FINANCING AGREEMENT

This Third Amendment to Financing Agreement (this "Third Amendment"), dated as of February 1, 2023 (the "Third Amendment Effective Date") is by and among EL PASO COUNTY, COLORADO, a body politic and corporate and a political subdivision duly organized and existing under the laws and constitution of the State of Colorado (the "County"), PNC NCNVINV, Inc. successor in interest to BBVA Mortgage Corporation, an Alabama corporation formerly known as Compass Mortgage Corporation ("Lender") and YOUNG MEN'S CHRISTIAN ASSOCIATION OF THE PIKES PEAK REGION, a Colorado nonprofit corporation ("Borrower").

## RECITALS

**A.** The County, the Lender, the Borrower, and YMCA Foundation of the Pikes Peak Region (the "Foundation") previously entered into that certain Financing Agreement, dated as of June 1, 2016 (the "Original Agreement") pursuant to which: (i) the County issued (A) its Fixed Rate Refunding and Improvement Revenue Note (Young Men's Christian Association of the Pikes Peak Region Project), Series 2016A (the "Series 2016A Note"), (B) its Variable Rate Refunding and Improvement Revenue Note (Young Men's Christian Association of the Pikes Peak Region Project), Series 2016B (the "Series 2016B Note"), and (C) its Variable Rate Refunding and Improvement Revenue Note (Young Men's Christian Association of the Pikes Peak Region Project), Taxable Series 2016C (the "Series 2016C Note"); (ii) the Lender made a loan to the County in exchange for the Series 2016A Note, the Series 2016B Note, and the Series 2016C Note, and (iii) the County made the Loan to the Borrower and the Foundation of the proceeds of the Series 2016A Note, the Series 2016B Note, and the Series 2016C Note.

**B.** The Original Agreement was amended pursuant to an Amendment and Consent to Financing Agreement effective as of April 11, 2018 (the "First Amendment") to, among other things, permit the dissolution of the Foundation, and was further amended pursuant to that certain Omnibus Amendments to Credit Facilities effective as of July 20, 2020 (the "Second Amendment"). The Original Agreement, as amended by the First Amendment and the Second Amendment, is herein referred to as the "Existing Agreement". The Existing Agreement, as amended by this Third Amendment, is referred to as the "Agreement". Capitalized terms used and not otherwise defined herein have the meanings given to them in the Agreement.

**C.** The County, the Lender, and the Borrower have agreed to further amend the Existing Agreement to address certain Events of Default that exist under the Existing Agreement and to change the interest rate index applicable to the Series 2016B Note because the current LIBOR index applicable thereto will no longer be available.

**D.** Accordingly, the parties have agreed to amend certain terms of the Existing Agreement, as set forth herein.

**E.** NOW THEREFORE, in consideration of the mutual conditions and agreements set forth in the Existing Agreement and this Third Amendment, and other valuable consideration,

the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

**Article I.** Amendments to Financing Agreement.

Section 1.1 Amendments to Section 1.02.

(a) New Definitions. Section 1.02 of the Existing Agreement is hereby amended to add the following defined terms:

"*Adjusted Index*" means the product of the Applicable Index multiplied by 65.01%.

"*Applicable Index*" means the Term SOFR Rate plus the SOFR adjustment, as the Applicable Index may be adjusted pursuant to Section 3.04(a)(ii).

"*Base Rate*" means the highest of (A) the Prime Rate, (B) the sum of the Overnight Bank Funding Rate plus 50 basis points (0.50%), and (C) the sum of Daily Simple SOFR plus 100 basis points (1.00%), so long as Daily Simple SOFR is offered, ascertainable and not unlawful; provided, however, if the Base Rate as determined above would be less than the Floor, then such rate shall be deemed to be the Floor. If and when the Applicable Index is the Base Rate and the Base Rate as determined above changes, the Applicable Index will change automatically without notice to the County or the Borrower, effective on the date of any such change.

"*Benchmark*" means, initially, SOFR and the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to a then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 3.04(a)(ii). Any reference to "Benchmark" shall include, as applicable, the published component used in the calculation thereof.

"*Benchmark Replacement*" means, the sum of (a) the alternate benchmark rate and (b) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Lender, giving due consideration to (x) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (y) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for U.S. dollar-denominated commercial credit facilities at such time; provided that if the Benchmark Replacement as determined pursuant to the foregoing would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor.

"*Benchmark Replacement Date*" means a date and time determined by the Lender, which date shall be no later than the earliest to occur of the following events with respect to the then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event," the later of (A) the date of the public statement or publication of information referenced therein and (B) the date on which the administrator of such

Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide such Benchmark (or such component thereof); or

(2) in the case of clause (3) of the definition of "Benchmark Transition Event," the date determined by the Lender, which date shall promptly follow the date of the public statement or publication of information referenced therein.

"*Benchmark Transition Event*" means, the occurrence of one or more of the following events, with respect to the then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide such Benchmark (or component thereof) permanently or indefinitely;

(2) a public statement or publication of information by an Official Body having jurisdiction over the Lender, the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) or an Official Body having jurisdiction over the Lender announcing that such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

"*Benchmark Unavailability Period*" means the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder in accordance with Section 3.04(a)(ii).

"*Conforming Changes*" means, with respect to the Term SOFR Rate or any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate", "Business Day," the definition of "Interest Period" (or other applicable provision regarding interest periods available), the definition of "U.S. Government Securities Business Day," timing and frequency of determining rates and

making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Lender decides may be appropriate to reflect the adoption and implementation of the Term SOFR Rate or such Benchmark Replacement and to permit the administration thereof by the Lender in a manner substantially consistent with market practice (or, if the Lender decides that adoption of any portion of such market practice is not administratively feasible or if the Lender determines that no market practice for the administration of the Term SOFR Rate or the Benchmark Replacement exists, in such other manner of administration as the Lender decides is reasonably necessary in connection with the administration of the interest rate with respect to the Series 2016C Note).

"*Daily Simple SOFR*" means, for any day (a "SOFR Rate Day"), the interest rate per annum determined by the Lender by dividing (the resulting quotient rounded upwards, at the Lender's discretion, to the nearest 1/100th of 1%) (A) SOFR for the day (the "SOFR Determination Date") that is two (2) Business Days prior to (i) such SOFR Rate Day if such SOFR Rate Day is a Business Day or (ii) the Business Day immediately preceding such SOFR Rate Day if such SOFR Rate Day is not a Business Day, by (B) a number equal to 1.00 minus the SOFR Reserve Percentage, in each case, as such SOFR is published by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate) on the website of the Federal Reserve Bank of New York, currently at http://www.newyorkfed.org, or any successor source identified by the Federal Reserve Bank of New York or its successor administrator for the secured overnight financing rate from time to time. If Daily Simple SOFR as determined above would be less than the Floor, then Daily Simple SOFR shall be deemed to be the Floor. If SOFR for any SOFR Determination Date has not been published or replaced with a Benchmark Replacement by 5:00 p.m. (Pittsburgh, Pennsylvania time) on the second Business Day immediately following such SOFR Determination Date, then SOFR for such SOFR Determination Date will be SOFR for the first Business Day preceding such SOFR Determination Date for which SOFR was published in accordance with the definition of "SOFR"; provided that SOFR determined pursuant to this sentence shall be used for purposes of calculating Daily Simple SOFR for no more than 3 consecutive SOFR Rate Days. If and when Daily Simple SOFR as determined above changes, any applicable rate of interest based on Daily Simple SOFR will change automatically without notice to the County or the Borrower, effective on the date of any such change.

"*Debt Service Deposit Account*" means the Debt Service Deposit Account established by the Borrower at PNC Bank, National Association (an affiliate of Lender) pursuant to the Second Amendment.

"*Employee Retention Credit*" means the tax credit offered by the IRS that was instituted by the CARES Act of March 2020, and extended and expanded by the Relief Act of 2021 and the American Rescue Plan Act of 2021.

"*Floor*" means a rate of interest per annum equal to zero basis points (0%).

"*Interest Period*" means the first Business Day of each month to but not including the first Business Day of the immediately succeeding month.[1]

"*Law*" means any law(s) (including common law), constitution, statute, treaty, regulation, rule, ordinance, opinion, issued guidance, release, ruling, order, executive order, injunction, writ, decree, bond, judgment, authorization or approval, lien or award of or any settlement arrangement, by agreement, consent or otherwise, with any Official Body, foreign or domestic.

"*Official Body*" means the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank) and any group or body charged with setting financial accounting or regulatory capital rules or standards (including the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervision or any successor or similar authority to any of the foregoing).

"*Overnight Bank Funding Rate*" means, for any day, the rate comprised of both overnight federal funds and overnight Eurocurrency borrowings by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB, as set forth on its public website from time to time, and as published on the next succeeding Business Day as the overnight bank funding rate by the NYFRB (or by such other recognized electronic source (such as Bloomberg) selected by the Lender for the purpose of displaying such rate); provided, that if such day is not a Business Day, the Overnight Bank Funding Rate for such day shall be such rate on the immediately preceding Business Day; provided, further, that if such rate shall at any time, for any reason, no longer exist, a comparable replacement rate determined by the Lender at such time (which determination shall be conclusive absent manifest error). If the Overnight Bank Funding Rate determined as above would be less than the Floor, then such rate shall be deemed to be the Floor. The rate of interest charged shall be adjusted as of each Business Day based on changes in the Overnight Bank Funding Rate without notice to the County or the Borrower.

"*NYFRB*" means the Federal Reserve Bank of New York.

"*Prime Rate*" means the rate publicly announced by Lender from time to time as its prime rate. The Prime Rate is determined from time to time by Lender as a means of pricing some loans to its borrowers. The Prime Rate is not tied to any external rate of interest or index and does not necessarily reflect the lowest rate of interest actually charged by Lender to any particular class or category of customers.

"*Relevant Governmental Body*" means the Board of Governors of the Federal Reserve System of the United States and/or the NYFRB, or a committee officially endorsed or

[1] NTD: If change will not be effective on the first day of a month, to add language providing for initial short period.

convened by the Board of Governors of the Federal Reserve System of the United States and/or the NYFRB, or any successor thereto.

"*Reset Date*" means the first Business Day of each month.

"*Second Amendment*" means the Omnibus Amendments to Credit Facilities dated as of July 20, 2020 among PNC Bank, National Association successor in interest to BBVA USA, an Alabama bank corporation formerly known as Compass Bank, as the "Term Lender", PNC NCNVINV, Inc. successor in interest to BBVA Mortgage Corporation, an Alabama corporation formerly known as Compass Mortgage Corporation, as the "Exempt Lender" or the "Lender" under and pursuant to this Financing Agreement, and the Borrower, and acknowledged and consented to for the purposes specified therein by the County.

"*SOFR*" means, for any day, a rate equal to the secured overnight financing rate as administered by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"*SOFR Adjustment*" means 11.448 basis points (0.11448%).

"*SOFR Reserve Percentage*" means, for any day, the maximum effective percentage in effect on such day, if any, as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the reserve requirements (including, without limitation, supplemental, marginal and emergency reserve requirements) with respect to SOFR funding.

"*Term Lender*" means the "Lender" under the Term Loan Agreement.

"*Term Loan*" means the "Term Loan" under the Term Loan Agreement.

"*Term Loan Agreement*" means that certain Commercial Loan Agreement, dated September 7, 2018, between Borrower and PNC Bank, National Association, successor in interest to BBVA USA, an Alabama bank corporation formerly known as Compass Bank, and its successors and assigns, as such agreement is amended, supplemented, and otherwise modified from time to time.

"*Term SOFR Administrator*" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Lender in its reasonable discretion).

"*Term SOFR Rate*" means, for any Interest Period, the interest rate per annum determined by the Lender by dividing (the resulting quotient rounded upwards, at the Lender's discretion, to the nearest 1/100th of 1%) (A) the Term SOFR Reference Rate for a one-month period, as such rate is published by the Term SOFR Administrator on the day (the "Term SOFR Determination Date") that is two (2) Business Days prior to the first day of such Interest Period, by (B) a number equal to 1.00 minus the SOFR Reserve Percentage. If the one-month Term SOFR Reference Rate has not been published or replaced with a Benchmark Replacement by 5:00 p.m. (Pittsburgh, Pennsylvania time) on the Term SOFR Determination Date, then the Term SOFR Reference Rate, for purposes of clause (A) in

the preceding sentence, shall be the Term SOFR Reference Rate for such tenor on the first Business Day preceding such Term SOFR Determination Date for which such Term SOFR Reference Rate for such tenor was published in accordance herewith, so long as such first preceding Business Day is not more than three (3) Business Days prior to such Term SOFR Determination Date. If the Term SOFR Rate, determined as provided above, would be less than the Floor, then the Term SOFR Rate shall be deemed to be the Floor. The Term SOFR Rate shall be adjusted automatically without notice to the County or the Borrower on and as of (i) the first day of each Interest Period, and (ii) the effective date of any change in the SOFR Reserve Percentage.

"*Term SOFR Reference Rate*" means the forward-looking term rate based on SOFR.

"*Third Amendment*" means the Third Amendment to Financing Agreement dated as of February 1, 2023, among the County, the Borrower, and the Lender.

"*Third Amendment Effective Date*" means February 1, 2023.

"*U.S. Dollars*" means the lawful currency of the United States of America.

"*U.S. Government Securities Business Day*" means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

(b) Amended Definitions. Section 1.02 of the Existing Agreement is hereby amended to amend and restate in their entirety the following defined terms:

"Borrower Documents" means this Financing Agreement, the Borrower Note, the Tax Regulatory Agreement, the Deed of Trust, the Assignment, the Environmental Indemnity, the Pledge and Security Agreement between the YMCA and PNC Bank, National Association successor in interest to BBVA USA, an Alabama bank corporation formerly known as Compass Bank and PNC NCNVINV, Inc. successor in interest to BBVA Mortgage Corporation, an Alabama corporation formerly known as Compass Mortgage Corporation dated as of July 20, 2020, and all other documents entered into by any Borrower in connection with this Financing Agreement and the issuance of the Notes by the County.

"Business Day" means each day other than a Saturday, a Sunday, or any holiday on which the banks in the State of Colorado are closed for business, provided that when used in connection with an amount that bears interest at a rate based on the Term SOFR Reference Rate or any direct or indirect calculation or determination of the Term SOFR Reference Rate, any "Business Day" must also be a U.S. Government Securities Business Day.

"Tax Regulatory Agreement" means, collectively, the Tax Regulatory Agreement, dated June 9, 2016, between the County and the Borrower Representative in connection with the initial issuance and delivery of the Notes, and the Tax Regulatory Agreement, dated January [__], 2023, between the County and the Borrower, with respect to the deemed reissuance of the Series 2016A Note and Series 2016B Note for federal income tax purposes, as the same may be modified from time to time pursuant to its terms with the prior written consent of the Registered Owner.

Section 1.2 Amendment of Section 3.02. From and after the Third Amendment Effective Date, Section 3.02 of the Existing Agreement is hereby amended to add the following sentence the end of such Section:

"The Series 2016A Note and Series 2016B Note are deemed reissued for federal income tax purposes as of the date of this Third Amendment."

Section 1.3 Amendment and Restatement of Section 3.04(a)(ii). From and after the Third Amendment Effective Date, Section 3.04(a)(ii) of the Existing Agreement is hereby amended and restated in its entirety to read as follows:

"(ii) (A) The Series 2016B Note will bear interest at a variable rate equal to 155 basis points (1.55%) in excess of the Adjusted Index from time to time in effect, and such rate of interest will change on the first day of each Interest Period (the "Series 2016B Interest Rate"). Any change in the Series 2016B Interest Rate based on a change in the Applicable Index will occur on the Third Amendment Effective Date and thereafter on each Reset Date. Each change in the Series 2016B Interest Rate based on a change in the Applicable Index will be effective from and including the Reset Date as of which such change occurred.

(B) Unascertainable; Increased Costs. (I) If, on or after the Third Amendment Effective Date:

(1) the Lender shall have determined (which determination shall be conclusive and binding absent manifest error) that (x) the Term SOFR Rate cannot be determined pursuant to the definition thereof; or (y) a fundamental change has occurred with respect to the Term SOFR Rate (including, without limitation, changes in national or international financial, political or economic conditions), or

(2) the Lender determines that for any reason that the Term SOFR Rate does not adequately and fairly reflect the cost to the Lender of funding, establishing or maintaining the Series 2016B Note,

then the Lender shall have the rights specified in paragraph (D) below.

(C) Illegality. If on or after the Third Amendment Effective Date, the Lender shall have determined, or any Official Body shall have asserted, that the maintenance or holding of the Series 2016B Note, or the determination or charging of interest rates based on the Term SOFR Rate, has been made impracticable or unlawful by compliance by the Lender in good faith with any Law or any interpretation or application thereof by any Official Body or with any request or directive of any such Official Body (whether or not having the force of Law), then the Lender shall have the rights specified in paragraph (D) below.

(D) Lender's Rights. In the case of any event specified in paragraph (B) or paragraph (C) above, the Lender shall promptly so notify the County and the Borrower thereof.

(1) If at any time the Lender makes a determination under paragraph (B) above, then the Applicable Index shall become the Base Rate at the end of the applicable Interest Period.

(2) If the Lender notifies the County and the Borrower of a determination under clause (C) above, on the date specified in such notice the Applicable Index shall become the Base Rate.

(E) Benchmark Replacement Setting.

(1) Benchmark Replacement. Notwithstanding anything to the contrary herein, if Lender determines that a Benchmark Transition Event has occurred on or after the Third Amendment Effective Date with respect to a Benchmark, then the Lender may, upon written notice to the County and the Borrower, replace such Benchmark with a Benchmark Replacement; and any such written notice shall specify the date that the Benchmark Replacement is effective and will not require any further action or consent of any other party to this Agreement.

(2) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Lender will have the right to make Conforming Changes from time to time upon written notice thereof to the County and the Borrower and, notwithstanding anything to the contrary in this Agreement, such Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(3) Notices; Standards for Decisions and Determinations. The Lender will promptly notify the County and the Borrower of (A) the implementation of any Benchmark Replacement, and (B) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Lender will notify the County and the Borrower of the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Lender pursuant to this paragraph (3), including any determination with respect to a rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or selection, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from any other party to the this Agreement.

(5) Benchmark Unavailability Period. During a Benchmark Unavailability Period, the Applicable Index shall automatically become the Base Rate.

(F) Notwithstanding anything herein to the contrary, the Lender will not adjust the Applicable Index to an index other than the Term SOFR Reference Rate or the Base

Rate unless it first obtains an opinion of Bond Counsel that such adjustment will not adversely impact the tax-exempt status of interest on the Notes.

(G) The Lender does not warrant or accept any responsibility for and shall not have any liability with respect to, the administration, submission or any other matter related to the Term SOFR Reference Rate or with respect to any alternative or successor rate thereto, or replacement rate therefor.

Section 1.4 Amendment and Restatement of Section 3.04(b)(ii). From and after the Third Amendment Effective Date, Section 3.04(b)(ii) of the Existing Agreement is hereby amended and restated in its entirety to read as follows:

"(ii) For purposes hereof, the "Series 2016B Taxable Rate" is a variable rate of interest equal to 238 basis points (2.38%) in excess of the Adjusted Index from time to time in effect (determined in the same manner as the Series 2016B Interest Rate is determined)."

Section 1.5 Amendment of Section 3.08. From and after the Third Amendment Effective Date, the second sentence of the fourth paragraph of the form of Note set forth in Section 3.08 is hereby amended and restated in its entirety to read as follows:

"[SERIES 2016B Note – This Note will bear interest at a variable rate determined in accordance with the applicable terms and provisions set forth in Section 3.04(a)(ii) of the Financing Agreement; provided, however, that this Note will bear interest at the Series 2016B Taxable Rate or the Series 2016B Default Rate in accordance with the applicable terms and provisions set forth in Section 3.04 of the Financing Agreement.]"

Section 1.6 Amendment of Section 6.05. From and after the Third Amendment Effective Date, Section 6.05 of the Existing Agreement is hereby amended to add the following paragraphs (f), (g) and (h) to such Section:

"(f) As soon as available, but not later than 30 days after and as of the end of each calendar month, the Borrower Representative shall provide to the Registered Owner interim financial statements of the Borrower and 225 North Nevada LLC, prepared internally by the Borrower, to include a statement of financial position (or balance sheet) as of the end of each such period and a statement of activities (or income statement) from the beginning of the then-current fiscal year to the end of such calendar month. The Borrower Representative must provide all such financial statements on a consolidated basis for the Borrower and 225 North Nevada LLC and otherwise in accordance with GAAP consistently applied with the Borrower's past practices. Such financial statements will be in form and detail reasonably satisfactory to the Registered Owner."

(g) As soon as available, but not later than the 15th day of each calendar month, the Borrower Representative shall provide to the Registered Owner a good faith projection of all cash receipts and disbursements relating to the Borrower's and 225 North Nevada LLC's operations for a thirteen-week period beginning with the first day of such period, it being recognized by each Registered Owner that any projections and forecasts provided are based on good faith estimates and assumptions believed by the Borrower Representative, Borrower, and 225 North Nevada LLC to be reasonable as of the date of

the applicable projections or assumptions and that actual results during the period or periods covered by any such projections and forecasts may differ from projected or forecasted results.

(h) As soon as available, but not later than 30 days after the end of each calendar month, the Borrower Representative shall provide to the Registered Owner a copy of the minutes for all meetings of the governing body of the Borrower and 225 North Nevada LLC and all minutes of committees thereof submitted to the governing body of the Borrower and 225 North Nevada LLC.

Section 1.7 Additional Special Covenants. Article VI of the Existing Agreement is amended to add the following additional Sections thereto. For the avoidance of doubt, to the extent any of the additional Sections below conflict with the Borrower's undertakings in Section 4 of the Second Amendment, the provisions of this Third Amendment shall control.

"**Section 6.18. Capital Expenditures**. The Borrower will not make any aggregate capital expenditure greater than $100,000 per annum, except those permitted in writing by Term Lender, in the Term Lender's sole and absolute discretion for itself and as agent of the Lender, such permission being granted or withheld in Term Lender's sole and absolute discretion. Costs associated with customary maintenance or replacement of current building systems or infrastructure with like-kind or similar materials are not deemed capital expenditures.

**Section 6.19. Subordination Agreement**. Pursuant to that certain Subordination Agreement dated June 9, 2016, between G.E. Johnson Construction Company, Inc., a Colorado corporation ("GE Johnson") and PNC Bank, National Association successor in interest to BBVA USA, an Alabama bank corporation formerly known as Compass Bank and PNC NCNVINV, Inc. successor in interest to BBVA Mortgage Corporation, an Alabama corporation formerly known as Compass Mortgage Corporation, the Borrower shall not make any payments to GE Johnson under or in connection with the Pledge Letter (as defined in such Subordination Agreement), without the Lender's prior written consent.

**Section 6.20. Debt Service Deposit Account.**

(a) The Borrower shall, upon the sale of 213 East Platte Avenue, Colorado Springs, CO 80903 (the "*Vacant Lot*") and upon its receipt of Employee Retention Credit payments, deposit the net proceeds from the sale or receipt thereof into the Debt Service Deposit Account. The Borrower shall not deposit any other moneys in the Debt Service Deposit Account.

(b) Amounts on deposit in the Debt Service Deposit Account shall be used: (i) to make capital expenditures permitted in writing by the Term Lender, in the Term Lender's sole and absolute discretion for itself and as agent of the Lender or (ii) from and after March 1, 2023, to pay principal and interest due on the Series 2016A Notes, the Series 2106B Notes, and the Term Loan, pro rata. Amounts on deposit in the Debt Service Deposit Account may not be used for any other purpose.

(c) Upon written request of the Borrower, amounts on deposit in the Debt Service Deposit Account in excess of $2,500,000 will be released to the Borrower. Funds released from

the Debt Service Deposit Account may be used by the Borrower for any purpose permitted under the Financing Agreement, the Notes, and the other Borrower Documents.

**Article II.** **Existing Defaults**.

Section 2.1 Events of Default under the Existing Agreement have occurred as a result of the following (collectively, the "**Existing Defaults**"):

(a) The Borrower's failure to satisfy the Debt Service Coverage Ratio requirement in Section 6.13(a) of the Existing Agreement for the period ending December 31, 2020;

(b) The Borrower's failure to satisfy the Unrestricted Days Cash on Hand requirement as of December 31, 2020, December 31, 2021, and June 30, 2022;

(c) The Borrower's failure to provide audited financial statements within 150 days after and as of December 31, 2021;

(d) The Borrower's failure to provide interim financial statements no later than 45 days after and as of the end of December 31, 2021; and

(e) Failure to make required principal payments on the Series 2016A Note and the Series 2016B Notes due on September 1, 2022, October 3, 2022, November 1, 2022, December 1, 2022, and January 2, 2023.

Section 2.2 Subject to the terms and conditions set forth in this Third Amendment and the agreements set forth herein, the Lender hereby waives the Existing Defaults and all rights and remedies to which the Lender is entitled as a result of the Existing Events of Default, provided that the Borrower strictly complies with the additional agreements set forth in Article III and no other Default or Event of Default occurs. The waiver granted herein (a) is strictly limited to the Existing Events of Default for the time periods specified above, and except as expressly set forth herein, all the other terms, provisions, and conditions of the Financing Agreement, the Notes, and the other Borrower Documents shall remain in full force and effect without any amendment or modification, (b) shall not extend nor be deemed to extend to any other Default or Event of Default that may now exist or hereafter arise under the Financing Agreement, the Notes, or any of the other Borrower Documents, whether similar or dissimilar to the Existing Events of Default herein, (c) shall not impair, restrict, or limit any right or remedy of the Lender with respect to any other Default or Event of Default that may now exist or hereafter arise under the Financing Agreement, the Notes, or any of the other Borrower Documents, and (d) shall not constitute any course of dealing or other basis for altering any obligation of the County or the Borrower or any right, privilege, or remedy of the Lender under the Financing Agreement, the Notes, or any of the other Borrower Documents.

**Article III.** **Additional Modifications**. The County and the Borrower agree to the following additional modifications to the Existing Agreement set forth in this Article III, and the Lender consents to the following additional modifications to the Existing Agreement set forth in this Article III, provided that the Borrower strictly complies with the additional agreements set forth in Article III and that no Default or Event of Default, other than the Existing Defaults, occurs under the Financing Agreement, the Notes, or any other Borrower Document.

Section 3.1 Deferral of Principal Payments.

(a) The principal payments of the Series 2016A Note that were due and payable on September 1, 2022, October 3, 2022, November 1, 2022, and December 1, 2022 and the principal payments of the Series 2016A Note that are due and payable on January 2, 2023 and February 1, 2023 (collectively, the "Series 2016A Deferred Principal Payments") shall be deferred and the aggregate principal amount of the Series 2016A Deferred Principal Payments shall instead be due and payable on the maturity date as set forth in the Series 2016A Note.

(b) The principal payments of the Series 2016B Note that were due and payable on September 1, 2022, October 3, 2022, November 1, 2022, and December 1, 2022 and the principal payments of the the Series 2016B Note that are due and payable on January 2, 2023 and February 1, 2023 (collectively, the "Series 2016B Deferred Principal Payments") shall be deferred and the aggregate principal amount of the Series 2016B Deferred Principal Payments shall instead be due and payable on the maturity date as set forth in the Series 2016B Note.

(c) No deferral of interest on the Notes is being granted hereunder.

Section 3.2 Financial Covenants and Financial Reporting.

(a) Pursuant to Section 6.13 of the Financing Agreement, the Borrower is required to demonstrate compliance with the financial covenants set forth in Section 6.13(a), Section 6.13(b), and Section 6.13(c) as of each June 30 and December 31 (each, a "Semi-Annual Testing Date"). From and after the Third Amendment Effective Date, the Borrower is not required to demonstrate compliance with the financial covenants set forth in Section 6.13(a), Section 6.13(b), and Section 6.13(c) until the earlier of (i) the Semi-Annual Testing Date immediately succeeding the Borrower's receipt of Employee Retention Tax Credit Payments and on each Semi-Annual Testing Date thereafter and (ii) the Semi-Annual Testing Date occurring on December 31, 2023 and on each Semi-Annual Testing Date thereafter.

**Article IV. Representations & Warranties.**

Section 4.1 Borrower has the right, power, and authority to execute, deliver, and perform its obligations hereunder.

Section 4.2 Borrower has duly authorized its execution, delivery, and performance hereof.

Section 4.3 No consent or authorization of, filing with, or notice to any governmental authority or other person is a condition precedent to the execution, delivery, or performance hereof by Borrower, or the consummation of the transactions contemplated hereby, except as have been obtained or made and are in full force and effect.

Section 4.4 Borrower has duly executed and delivered this Third Amendment.

Section 4.5 When fully executed and delivered, this Third Amendment will constitute the legal, valid, and binding agreement of Borrower enforceable against Borrower in accordance herewith for the benefit of the County and the Lender, except as enforcement may be limited by

bankruptcy law or other applicable law affecting the enforcement of creditors' rights generally, by the application of equitable principles, and by public policy.

Section 4.6 Borrower's execution and delivery hereof, and the performance of its obligations hereunder, do not (i) violate or conflict with the corporate documents of Borrower, (ii) to Borrower's knowledge, violate any law applicable to Borrower, or its property or assets, or (iii) violate or result in a breach or default under the terms, conditions, or provisions of any material document of Borrower.

**Article V. Release.** Borrower represents and warrants to the Lender and the County that as of the Third Amendment Effective Date, Borrower does not have any claim, counterclaim, defense, or set-off against the Lender or the County with respect to the Notes, the Financing Agreement, or any other Borrower Document. Without limiting the generality of the foregoing, Borrower releases Lender and County and their affiliates, and the commissioners, directors, officers, employees, volunteers, successors, assigns, agents, and representatives of each such person (including the heirs, beneficiaries, and personal representatives of any such individual), from, against, and with respect to, and further discharges and waives any such claims (known and unknown), counterclaims, defenses, and set-offs with respect to the Notes, the Financing Agreement, or any other Borrower Agreement arising on or prior to the Third Amendment Effective Date, or arising after the Third Amendment Effective Date but resulting from any occurrence or omission on or prior to the Third Amendment Effective Date. The provisions of this Article V will survive repayment of the Notes.

**Article VI. Reaffirmation, Certification, and Conditions Precedent.**

Section 6.1 As conditions precedent to the amendments, modifications, consents, and other agreements provided for in this Third Amendment:

(a) After giving effect to this Third Amendment, Borrower confirms and reaffirms all of the terms and conditions of the Financing Agreement, the Notes, and the other Borrower Documents, and certifies that all of its representations and warranties as set forth therein are true and correct as of the Third Amendment Effective Date, as though made on the Third Amendment Effective Date (or, to the extent that such representations and warranties relate solely to an earlier date, on and as of such earlier date);

(b) Borrower certifies, as of the Third Amendment Effective Date, that no Default or Event of Default, other than the Existing Defaults, has occurred and is continuing and there is no event, circumstance, or omission that with time or notice, or both, would result in Event of Default, other than the Existing Defaults; and

(c) Borrower agrees to execute and deliver such agreements and other instruments as may be requested by Bond Counsel in connection with the deemed reissuance of the Series 2016A Notes and the Series 2016B Notes for federal income tax purposes in connection with the modifications effectuated by this Third Amendment and shall cause to be delivered to the County and the Lender an opinion of Bond Counsel that the modifications effectuated by this Third Amendment will not adversely impact the tax-exempt status of interest on the Series 2016A Notes and the Series 2016B Notes.

Section 6.2 The Financing Agreement, the Notes, and the other Borrower Documents are and remain in full force and effect in accordance with their respective terms and are ratified and confirmed by Borrower in all respects.

Section 6.3 The execution, delivery, and performance of this Third Amendment does not and will not operate as a modification or waiver of any right, power, or remedy of the Lender under the Financing Agreement, the Notes, or any other Borrower Document, except as specifically set forth in this Third Amendment. The consents and waivers herein are limited to the specifics of this Third Amendment.

**Article VII. Miscellaneous.**

Section 7.1 Borrower agrees to pay all costs and expenses of the Lender and the County in connection with the preparation, negotiation, execution, delivery, and administration of this Third Amendment and all other instruments or documents provided for herein or delivered or to be delivered hereunder or in connection herewith.

Section 7.2 Borrower shall take such further steps and actions, and execute and deliver such statements, assignments, agreements, instruments, and other documents, as Lender from time to time reasonably may request in connection with the administration, maintenance, and enforcement of this Third Amendment in order to effectuate the purposes and the terms, provisions, and conditions hereof.

Section 7.3 Each party has had the opportunity to review and negotiate the terms, provisions, and conditions of this Third Amendment and to seek the advice of legal counsel in connection herewith and therewith; any applicable rule of construction, to the effect that any ambiguities are resolved against the drafting party, will not be employed in the interpretation hereof or thereof; and terms, provisions, and conditions hereof and thereof will be construed fairly as to all parties hereto and not in favor of or against any party, regardless of which party was generally responsible for preparation.

Section 7.4 In the event that any term or provision of this Third Amendment is finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to applicable law by a governmental authority having jurisdiction and venue, that determination will not impair or otherwise affect the validity, legality, or enforceability of the remaining terms, provisions, and conditions of this Third Amendment, which will be enforced as if the unenforceable term or provision were deleted.

Section 7.5 The validity of this Third Amendment, its construction, interpretation, and enforcement, and the rights of the parties hereunder, will be determined under, governed by, and construed in accordance with the laws of the State of Colorado.

Section 7.6 This Third Amendment may be executed in any number of counterparts, all of which when taken together will constitute one and the same instrument, and any of the parties hereto may execute this Third Amendment by signing any such counterpart. Delivery of an executed counterpart of this Third Amendment by electronic mail will be equally as effective as delivery of an original executed counterpart of this Third Amendment. Any party delivering an executed counterpart of this Third Amendment by electronic mail shall also deliver an original

executed counterpart of this Third Amendment, but the failure to deliver an original executed counterpart will not affect the validity, enforceability, and binding effect of this Third Amendment.

Section 7.7 This Third Amendment embodies the entire understanding and agreement between the parties hereto with respect to the subject matter of this Third Amendment and supersedes any and all prior or contemporaneous agreements or understandings with respect to the matters set forth herein and therein, whether express or implied, oral or written.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed in the name and on behalf of the parties hereto as of the date first above written.

**BORROWER**:
YOUNG MEN'S CHRISTIAN ASSOCIATION OF THE PIKES PEAK REGION, a Colorado nonprofit corporation

By: _____
Name: Boyd Williams
Title: President and Chief Executive Officer

**LENDER**:
PNC NCNVINV, Inc. successor in interest to BBVA Mortgage Corporation, an Alabama corporation formerly known as Compass Mortgage Corporation

By: _____
Name: Rachel Festervand
Title: Officer

**COUNTY**:
EL PASO COUNTY, COLORADO

By: _____
Chair, Board of County Commissioners

[SEAL]

ATTEST:

By _____
County Clerk