

ORDINANCE

AN ORDINANCE APPROVING A LEASE-PURCHASE AGREEMENT BETWEEN THE CITY OF MANITOU SPRINGS AND SUNTRUST EQUIPMENT FINANCE & LEASING CORP

WHEREAS, the City is a home rule municipality with all powers granted by Article XX of the Colorado Constitution and its Home Rule Charter;

WHEREAS, Article XX, § 6 of the Colorado Constitution states: "The statutes of the state of Colorado, **so far as applicable**, shall continue to apply to such cities and towns, except insofar as superseded by the charters of such cities and towns or by ordinance passed pursuant to such charters." Colo. Const. art. XX, § 6 (emphasis added);

WHEREAS, Section 5.8 of the City's Home Rule Charter provides that ordinances adopted by the City Council become effective five days after publication after final passage;

WHEREAS, C.R.S. § 31-15-801 purports to require that municipalities approve long term lease agreements and lease-purchase agreements by ordinance that is not effective for at least thirty (30) days after passage;

WHEREAS, C.R.S. § 31-15-801 conflicts with Section 5.8 of the City's Home Rule Charter, which provides that ordinances are effective five days after publication after final passage;

WHEREAS, C.R.S. § 31-15-801 contains no declaration of statewide concern and specifically applies to a "city" or a "town", which terms have been construed to mean a statutory city and statutory town by the Colorado Court of Appeals in the case of *Allely v. City of Evans*, 124 P.3d 911 (Colo. App. 2005);

WHEREAS, the City Council hereby finds and determines that the procedures for approval of lease-purchase agreements are a matter of purely local concern; and

WHEREAS, as a home rule municipality, in the matter of deciding the procedures applicable to the approval of lease-purchase agreements, which is a matter of purely local concern, the City is not subject to those portions of C.R.S. §§ 31-15-801 and -802 which conflict with Section 5.8 of the City's Home Rule Charter.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MANITOU SPRINGS, COLORADO, THAT:

Section 1: *Approval of Documents.* The Master Municipal Lease and Option Agreement between the City of Manitou Springs and SunTrust Equipment Finance & Leasing Corp. and Escrow Agreement between the City of Manitou Springs and SunTrust Equipment Finance & Leasing Corp. are hereby approved in substantially the form attached hereto as **Exhibit A** and incorporated herein by this reference. The City Administrator is hereby authorized and directed to execute the agreements on behalf of the City with any changes approved by the City Attorney.

Section 2: If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 3: The repeal or modification of any provision of Manitou Springs Municipal Code by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 4: This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 5: This ordinance shall take effect five (5) days after publication following final passage.

Passed on First Reading and Ordered Published this 23rd day of October, 2012.

/s/ Donna Kast
City Clerk

A Public Hearing on this ordinance will be held at the October 30, 2012 City Council meeting. The Council Meeting will be held at 7:00 P.M. at City Hall, 606 Manitou Avenue, Manitou Springs, Colorado.

Ordinance Published: October 23, 2012 (in full)
City's Official Website and at City Hall

Passed on Second Reading and Ordered Published this 30th day of October 2012.

Approved: /s/ Marc A. Snyder
Mayor and City Council

Attest: /s/ Donna Kast
City Clerk

Approved for Council Action: /s/ Jack Benson
City Administrator

Approved as to form: /s/ Jeff Parker
City Attorney

Published: October 30, 2012 (in full)
City's Official Website and at City Hall

EXHIBIT A